

## **SUBCHAPTER 04R - ARCHAEOLOGY AND HISTORIC PRESERVATION SECTION**

### **SECTION .0100 - GENERAL RULES**

#### **07 NCAC 04R .0101 STATEMENT OF PURPOSE**

*History Note: Authority G.S. 150B-10; Eff. February 1, 1985; Amended June 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015; Repealed Eff. June 1, 2017.*

### **SECTION .0200 - ENVIRONMENTAL REVIEW**

#### **07 NCAC 04R .0201 PURPOSE**

*History Note: Authority G.S. 113A-4(2); 121-8; 121-9; 121-12(a); 121-23; 143B-62; 42 U.S.C. 4321; 54 U.S.C. 302301; 302303; 36 C.F.R. 800; Eff. February 1, 1985; Amended Eff. June 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015; Amended Eff. June 1, 2017; Expired Eff. August 1, 2025 pursuant to G.S. 150B-21.3A.*

#### **07 NCAC 04R .0202 DEFINITIONS**

The following definitions apply to this Subchapter unless otherwise indicated within the Rules:

- (1) "Adverse Effect" is defined as in 36 C.F.R. 800.5(a)(1).
- (2) "Area of Potential Effects" is defined as in 36 C.F.R. 800.16(d).
- (3) "Effect" is defined as in 36 C.F.R. 800.16(i).
- (4) "Historic property" is defined as in 36 C.F.R. 800.16(l).
- (5) "Office of State Archaeology" (OSA) is a section of the Division of Historical Resources, North Carolina Department of Natural and Cultural Resources. The OSA is responsible for protecting archaeological sites in North Carolina.
- (6) "State Historic Preservation Office" (HPO) is a section of the Division of Historical Resources, North Carolina Department of Natural and Cultural Resources. The HPO is responsible for administering historic preservation programs pursuant to State and federal law.
- (7) "State Historic Preservation Officer" (SHPO) is the Deputy Secretary, Office of Archives and History, North Carolina Department of Natural and Cultural Resources, and is further defined in 36 C.F.R. 800.16(v).
- (8) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal or State agency, including those carried out by or on behalf of a Federal or State agency; those carried out with Federal or State financial assistance; and those requiring a Federal or State permit, license, or approval. Undertakings include new and continuing projects, activities, or programs and any of their elements, including changes to the project's scope and location.
- (9) "Underwater Archaeology Branch" (OAB) is a unit of the OSA. The OAB is responsible for identifying, studying, interpreting, and protecting archaeological resources that represent the maritime history of North Carolina.

*History Note: Authority G.S. 121-8; 121-12(a); 121-23; 143B-62; 54 U.S.C. 302301, 302303, 306108; 36 C.F.R. 800.3-800.6, 800.16; Eff. February 1, 1985; Amended Eff. June 1, 1989;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;  
Amended Eff. June 1, 2017.*

**07 NCAC 04R .0203 SUBMISSIONS FOR REVIEW**

(a) All persons proposing an undertaking as defined in Rule .0202(8) of this Section shall submit a written request in writing to the HPO containing the following information:

- (1) a description of the project location;
- (2) a description of the actions(s) proposed;
- (3) the applicant's name, address, telephone number, and email address, if available;
- (4) a map indicating the project's location, including named or numbered roads;
- (5) the project area size in acres; and
- (6) photographs of any buildings 50 years or older within the area of potential effects.

(b) Proposed undertakings submitted for review shall be submitted in one of the following methods:

- (1) by mail addressed to the HPO, Attention Environmental Review Coordinator, 4617 Mail Service Center, Raleigh, NC 27601;
- (2) by internal State mail to the HPO, Attention Environmental Review Coordinator, 4617 Mail Service Center; or
- (3) by email to [environmental.review@ncdcr.gov](mailto:environmental.review@ncdcr.gov).

(c) All proposed undertaking applications shall be reviewed as either State-involved undertakings or federally-involved undertakings.

- (1) State-involved undertakings are those that require State approval or implicate State funds. State-involved undertakings include any State-issued permits, State-issued grants, and State-issued licenses. State-involved undertakings shall be reviewed by the HPO as staff to the Historical Commission for their effect on submerged cultural resources as well as historical, architectural, or archaeological structures, sites, districts, or objects. Any State-involved undertakings which may affect a property listed on the National Register of Historic Places shall be reviewed according to Rule .0206 of this Section.
- (2) Federally-involved undertakings are those that require federal approval or implicate federal funds. Federally-involved undertakings shall be reviewed by the SHPO using the regulations set forth in 36 C.F.R. 800. 36 C.F.R. 800 is hereby incorporated by reference, including subsequent amendments and additions, and may be accessed at no cost at <http://www.achp.gov/regs-rev04.pdf>.

(d) The HPO shall issue a response within 30 days of receipt of the submission.

*History Note: Authority G.S. 121-4(13); 121-8; 121-9; 121-12(a); 143B-62; 16 U.S.C. 470; 54 U.S.C. 302301; 302303; 36 C.F.R. 800;  
Eff. February 1, 1985;  
Amended Eff. June 1, 1989;  
Readopted Eff. June 1, 2017.*

**07 NCAC 04R .0204 UNDERWATER ARCHAEOLOGICAL REVIEW  
07 NCAC 04R .0205 ARCHITECTURAL REVIEW**

*History Note: Authority G.S. 113-229(e); 113A-4(2); 121-4(13); 121-22 through 121-28; 136-42.1; 143B-62(1)(f)(3); 143B-62(2)g; 16 U.S.C. 470; 36 C.F.R. 63; 36 C.F.R. 800.  
Eff. February 1, 1985;  
Amended Eff. June 1, 1989;  
Repealed Eff. June 1, 2017.*

**07 NCAC 04R .0206 PROCEDURES FOR STATE UNDERTAKINGS AFFECTING A NATIONAL REGISTER-LISTED PROPERTY**

(a) This Rule shall apply to State-involved undertakings affecting property listed in the National Register of Historic Places. National Register-listed properties may be identified through use of the HPO's Geographic Information System HPOWEB located at <http://gis.ncdcr.gov/hpoweb> or use of the North Carolina Listings in the National Register located at <http://www.hpo.ncdcr.gov/NR-PDFs.html>.

(b) For purposes of this Rule, the "agency concerned" means the State agency, commission, or entity responsible for issuing the grant, funding, license, or other approval required for the undertaking.

(c) Prior to the approval of any State funds and prior to any approval, license, or permit for any State-involved undertaking the head of the agency concerned shall:

- (1) submit a statement to the SHPO that the undertaking will have no adverse effect upon a property listed in the National Register of Historic Places; or
- (2) submit a statement that the undertaking will have an adverse effect upon a property listed in the National Register of Historic Places, describe the proposed undertaking, and invite review and comment from the SHPO.

(d) Based on the application and the statement submitted in Paragraph (c) of this Rule, the SHPO shall determine whether the undertaking creates an adverse effect requiring review by the Historical Commission. For purposes of this Rule, an undertaking shall be deemed to have an adverse effect requiring review by the Historical Commission when the undertaking creates an effect which meets the definition of "adverse effect" in Rule .0202 of this Section or when the undertaking includes the transfer or sale of a State-owned property listed in the National Register without conditions or restrictions regarding preservation, maintenance, or use of the National Register property.

(e) Review by the Historical Commission shall be required if any repair does not comply with the Standards of Rehabilitation in 36 C.F.R. 67.7. Replacement of existing windows shall be subject to review under this Rule.

(f) If the SHPO finds that an undertaking will have an adverse effect which requires review by the Historical Commission, he or she shall transmit a notice of the next regularly scheduled meeting of the Historical Commission to the agency head. From the time of receipt of the notice until the conclusion of the Historical Commission meeting, the agency shall take no action which would affect a property listed in the National Register of Historic Places without the approval of the SHPO acting for and on behalf of the Historical Commission. Such approval shall only be granted in the case a building inspector determines the National Register property poses a threat to public safety because of an unsafe or dangerous condition. Requests for emergency approval shall be emailed to environmental.review@ncdcr.gov. Emergency requests shall contain a copy of the original application as required in Rule .0203 of this Section and a copy of the building inspection.

(g) Members of the public who have knowledge of any undertaking that would have an adverse effect upon a property listed in the National Register of Historic Places may comment in writing to the SHPO, Department of Natural and Cultural Resources, MSC 4617, Raleigh, North Carolina 27699.

(h) The Historical Commission shall provide its recommendation(s) on the undertaking to the agency head within 30 days following the Commission's meeting.

(i) The agency head shall respond to the Historical Commission's recommendation in writing and inform the Historical Commission of what action the agency will take with regard to the historic property.

*History Note:* Authority G.S. 121-12(a); 143B-62;  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Readopted Eff. June 1, 2017.*

## SECTION .0300 - NATIONAL REGISTER: PLAN

### 07 NCAC 04R .0301 NATIONAL REGISTER ADVISORY COMMITTEE

(a) The SHPO shall appoint 12 members to the National Register Advisory Committee (NRAC), which serves as the State historic preservation review board required by 54 U.S.C. 302301(2). The NRAC's membership shall include five members of the North Carolina Historical Commission and seven members of the general public. The following professions shall be represented in the membership, with a majority of members being professionals as required by 54 U.S.C. 300318:

- (1) architect;
- (2) architectural historian;
- (3) professional historian;
- (4) prehistoric archaeologist; and
- (5) historic archaeologist.

(b) The NRAC reviews North Carolina nominations to the National Register of Historic Places (Register). The NRAC shall make a recommendation to the SHPO on whether the property nominated meets the National Register criteria for nomination as set forth in 36 C.F.R. 60.4.

(c) Mail for the NRAC shall be addressed to the HPO, Attention National Register Coordinator, 4617 Mail Service Center, Raleigh, NC 27601.

*History Note:* Authority G.S. 143B-62; 54 U.S.C. 300318, 302104, 302301; 36 C.F.R. 60.3(o), 60.4, 60.6.  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*  
*Amended Eff. June 1, 2017.*

## **07 NCAC 04R .0302 PUBLIC SUGGESTIONS FOR NATIONAL REGISTER**

*History Note:* Authority G.S. 121-8(b); 143B-62(1),(3);  
*Eff. February 1, 1985;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*  
*Repealed Eff. June 1, 2017.*

## **07 NCAC 04R .0303 NATIONAL REGISTER STUDY LIST**

(a) The Study List process is a formal screening process used to determine a property's likelihood of qualifying for the National Register. Placement on the Study List means the further study of the property's integrity and significance is recommended to prepare a National Register nomination form as provided in Rule .0304 of this Section.

(b) Study List applications are available upon request by contacting the HPO's Survey and National Register Branch. Contact information is available at [www.hpo.ncdcr.gov/hpostaff.htm](http://www.hpo.ncdcr.gov/hpostaff.htm). To apply for inclusion on the Study List, an applicant shall submit a Study List application to the address in Rule .0301(c) of this Section. Applications may be submitted by HPO staff, a professional consultant, a governmental agency, the property owner, or any person. Applications for inclusion on the Study List shall include the following information and documentation:

- (1) property name;
- (2) property location;
- (3) ownership information;
- (4) applicant contact information;
- (5) reason for the request;
- (6) physical description and history of the property;
- (7) map or site plan; and
- (8) photographs of the property.

(c) Study List applications shall be reviewed at a meeting of the NRAC. The NRAC shall review Study List applications pursuant to 36 C.F.R. 60.4 and 60.6(j) and provide a recommendation to the SHPO as to whether the property should be placed on North Carolina's Study List. The SHPO shall review the applications pursuant to 36 C.F.R. 60.4 and 60.6(k) and (l). The SHPO shall make a determination whether the property shall be placed on North Carolina's Study List.

(d) The SHPO shall notify the site owner or, if a district, the executive officer of the municipality or affected area, by mail of his or her opinion regarding the property's eligibility for the National Register. If the SHPO determines the property may be eligible for nomination to the National Register upon further study, the SHPO shall place the property on the Study List. The SHPO shall also notify the owner or executive officer of the effects of listing the property in the National Register in accordance with the applicable rules and statutes.

*History Note:* Authority G.S. 121-8(b); 143B-62; 54 U.S.C. 302104; 36 C.F.R. 60.5, 60.6, 60.9;  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*  
*Amended Eff. June 1, 2017.*

## **07 NCAC 04R .0304 NATIONAL REGISTER NOMINATIONS**

(a) An applicant who wishes to have a property nominated to the National Register shall submit a draft nomination in writing by mail to the address in Rule .0301(c) of this Section. Nomination forms are available at [www.nps.gov/nr/publications/forms.htm](http://www.nps.gov/nr/publications/forms.htm). Forms 10-900, 10-900a, and 10-900b are hereby incorporated by reference, including subsequent amendments and editions. The forms are available online at no cost.

(b) Upon request, the HPO shall provide nomination applicants with an electronic copy of the National Register Bulletin "How to Apply the National Register Criteria for Evaluation," available at <https://www.nps.gov/nr/publications/bulletins/nrb15/> and the National Register Bulletin "How to Complete the National Register Form" available at [www.nps.gov/nr/publications/bulletins/nrb16a/](https://www.nps.gov/nr/publications/bulletins/nrb16a/). Both Bulletins are hereby incorporated by reference, including subsequent amendments and editions. The Bulletins are available online at no cost. Applicants shall use the Bulletins as a guide when completing the National Register nomination form.

(c) The HPO shall review draft nomination forms using the standards in the Bulletins incorporated in Paragraph (b) of this Rule. The HPO shall provide written guidance to the applicant on necessary revisions to ensure the nomination meets the standards set forth in the Bulletins.

(d) When the HPO determines the nomination form is complete and in compliance with the Bulletins incorporated in subsection (b) of this Rule, the HPO shall send the application to the NRAC for consideration.

(e) The HPO shall provide written notice to the owner or owners of the nominated property in accordance with 36 C.F.R. 60.6. The HPO shall notify owners listed in the official land recordation records or tax records. The owner or owners shall have the opportunity to object to the nomination by submitting a written and notarized statement in accordance with 36 C.F.R. 60.6(g) to the address in Rule .0301(c) of this Section. If a majority of the owners of private property submit objections to its nomination, the SHPO shall follow the procedure set forth in 36 C.F.R. 60.6(n).

(f) Individuals and local government entities may provide comments on a proposed nomination as provided in 36 C.F.R. 60.6(g).

(g) The NRAC shall review nominations pursuant to 36 C.F.R. 60.4 and 60.6(j). The NRAC shall provide a recommendation to the SHPO as to whether the property meets the National Register Criteria for Evaluation in 36 C.F.R. 60.4 and should be forwarded to the Keeper of the National Register for listing in the National Register.

(h) The SHPO shall review the nomination and the NRAC's recommendation along with any public comments. The SHPO may, in his or her discretion, submit the nomination and comments to the Keeper of the National Register, Department of the Interior, National Park Service, Washington, D.C. 20240. The SHPO shall notify the property owner or owners and applicant of his or her final decision regarding the nomination.

(i) Following review by the Keeper of the National Register and receipt by the SHPO from that office of notice of approval or rejection of the nomination, the SHPO shall send to the property owner and chief executive officer of the local governmental unit notification of the disposition of the nomination and, if approved, a certificate signed by the SHPO stating that the property is listed in the National Register of Historic Places.

*History Note:* Authority G.S. 121-8(b); 143B-62; 36 C.F.R. 60.6, 60.11;  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Readopted Eff. June 1, 2017.*

#### **07 NCAC 04R .0305 NATIONAL REGISTER NOMINATION PRIORITIES**

*History Note:* Authority G.S. 121-8(b); 143B-62(3); 36 C.F.R. 60.11;  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*  
*Repealed Eff. June 1, 2017.*

### **SECTION .0400 - POLICIES REGARDING GRANTS-IN-AID FOR HISTORIC PRESERVATION PROJECTS AND NONSTATE MUSEUMS**

**07 NCAC 04R .0401 MONEY FOR GRANTS-IN-AID  
07 NCAC 04R .0402 CONDITIONS OF GRANT**

<b>07 NCAC 04R .0403</b>	<b>SOURCE OF QUALIFYING FUNDS</b>
<b>07 NCAC 04R .0404</b>	<b>CERTIFICATION OF NONSTATE FUNDS</b>
<b>07 NCAC 04R .0405</b>	<b>LOCAL FUNDS RAISED FIRST: EXCEPTIONS</b>
<b>07 NCAC 04R .0406</b>	<b>QUALIFIED PURPOSES</b>
<b>07 NCAC 04R .0407</b>	<b>EXCLUSIONS</b>
<b>07 NCAC 04R .0408</b>	<b>HISTORICAL RESEARCH/ARCHAEOLOGICAL INVESTIGATION</b>
<b>07 NCAC 04R .0409</b>	<b>SPONSORING ORGANIZATION TO CONTRACT</b>
<b>07 NCAC 04R .0410</b>	<b>STATEMENT OF MAINTENANCE: VISITATION: NONDISCRIMINATION</b>

*History Note:* Authority G.S. 121-11; 121-12(c); 143B-62(1)e; 143B-62(2)f;  
*Eff.* February 1, 1985;  
*Repealed Eff.* March 1, 1987.

## **SECTION .0500 - HISTORIC PRESERVATION COMMISSIONS**

### **07 NCAC 04R .0501 REVIEW OF COMMISSION REPORTS**

Local governments, municipal governing boards, local preservation commissions, historic district commissions, and landmark commissions shall submit requests for review of reports pursuant to G.S. 160A-400.4(b) and G.S. 160A-400.6(2)-(3) to the State Historic Preservation Officer (SHPO) in care of the State Historic Preservation Office (HPO), North Carolina Department of Natural and Cultural Resources, 4617 MSC, Raleigh, NC 27699 or emailed to the HPO's Local Government Coordinator. The Local Government Coordinator's contact information is available at [www.hpo.ncdcr.gov/hpostaff.htm](http://www.hpo.ncdcr.gov/hpostaff.htm).

*History Note:* Authority G.S. 121-8(e); 160A-400.4(b)(2); 160A-400.6 (2,3);  
*Eff.* February 1, 1985;  
*Amended Eff.* June 1, 1989;  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.* July 26, 2015;  
*Amended Eff.* June 1, 2017.

### **07 NCAC 04R .0502 CERTIFICATES OF APPROPRIATENESS**

(a) Local preservation commissions, in their discretion, may seek the advice of the Department of Natural and Cultural Resources when reviewing applications for Certificates of Appropriateness pursuant to G.S. 160A-400.9. Local preservation commissions shall submit such requests in writing to the HPO, North Carolina Department of Natural and Cultural Resources, 4617 MSC, Raleigh, NC 27699, or by email to the HPO's Local Government Coordinator. The Local Government Coordinator's contact information is available at [www.hpo.ncdcr.gov/hpostaff.htm](http://www.hpo.ncdcr.gov/hpostaff.htm). The review will be completed within 30 days of receipt. Comments in response to the request will be conveyed in writing to the commission requesting the review.

- (b) Requests for review of applications for Certificates of Appropriateness shall include a copy of the Certificate of Appropriateness application.
- (c) Local preservation commission decisions regarding Certificates of Appropriateness may be appealed as provided in Rule .0503 of this Section.

*History Note:* Authority G.S. 121-8(e); 160A-400.9(d);  
*Eff.* February 1, 1985;  
*Amended Eff.* June 1, 1989;  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.* July 26, 2015;  
*Amended Eff.* June 1, 2017.

### **07 NCAC 04R .0503 REVIEW OF APPEALS**

(a) The State of North Carolina and its agencies may appeal decisions of local preservation commissions to the North Carolina Historical Commission. Agencies shall submit requests for appeals to the Chairman, North Carolina Historical Commission c/o HPO, North Carolina Department of Natural and Cultural Resources, 4617 MSC, Raleigh, NC 27699. Agencies shall submit a copy of the record and decision from the local preservation commission as well as an explanation of the grounds for appeal. The Historical Commission shall consider appeals according to

the standards set forth in G.S. 160A-400.9. The Historical Commission may reverse, sustain, or modify the decision of the local preservation commission.

*History Note: Authority G.S. 143B-62; 160A-400.9(f); Eff. February 1, 1985; Amended Eff. June 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015; Amended Eff. June 1, 2017.*

## **07 NCAC 04R .0504 ADEQUATE INFORMATION**

*History Note: Authority G.S. 160A-395(2); 160A-397; 160A-398.1; 160A-399.5(2); 160A-399.6; Eff. February 1, 1985; Amended Eff. June 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015; Repealed Eff. June 1, 2017.*

## **SECTION .0600 – DESIGNATION OF HISTORIC PROPERTIES UNDER THE STATE BUILDING CODE**

### **07 NCAC 04R .0601 STATEMENT OF PURPOSE**

*History Note: Authority G.S. 121-8; Building Code Authority Chapter 10, Sec. 1009.1(a)(1), 1010.1(a)(1); Eff. February 1, 1985; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015; Repealed Eff. June 1, 2017.*

### **07 NCAC 04R .0602 GENERAL APPLICATION PROCESS; CRITERIA FOR DESIGNATION**

(a) Applications for designation of buildings as "historic buildings" as provided in 2012 North Carolina Rehab Code, Sec. 1.33 and 2015 North Carolina Existing Building Code, Chapter 2, Sec. 202 may be obtained from the State Historic Preservation Officer (SHPO), Attention Survey and National Register Branch, State Historic Preservation Office (HPO), North Carolina Department of Natural and Cultural Resources, 4617 MSC, Raleigh, N. C. 27699, or by email to the Supervisor of the Survey and National Register Branch of the Historic Preservation Office. The Supervisor's contact information is available at [www.hpo.ncdcr.gov/hpostaff.htm](http://www.hpo.ncdcr.gov/hpostaff.htm). Applications shall include the contents required by Rule .0605 of this Section.

(b) The SHPO or designee shall sign the application form deeming the property historic for the purposes of either the North Carolina Rehab Code or the 2015 North Carolina Existing Building Code if it meets one or more of the following criteria:

- (1) It is listed in the North Carolina or National Registers of Historic Places either individually or as a contributing building to a historic district;
- (2) It has been issued a Determination of Eligibility pursuant to 36 C.F.R. part 63 by the Keeper of the National Register of Historic Places;
- (3) It is identified as a contributing building to a local historic district under 36 C.F.R. 67.5; or
- (4) It is certified by the State Historic Preservation Officer using criteria set forth in 36 C.F.R. 60.4, as eligible to be listed on the National Register of Historic Places either individually or as a contributing building to a historic district. Properties "eligible to be listed on the National Register" include properties listed on the National Register Study list as provided in Rule .0303 of this Subchapter.

(c) The SHPO shall forward the application with a determination of whether the property has been deemed historic to the property owner, with copies to the local building inspector and the HPO's Restoration Branch.

(d) Any building determined by the SHPO to be individually eligible for listing in the National Register of Historic Places pursuant to Paragraph (b)(4) of this Rule shall be presented for addition to the State Study List at the next meeting of the National Register Advisory committee as provided in Rules .0301–.0304 of this Subchapter.

*History Note:* Authority G.S. 121-8; 54 U.S.C. 302303;  
*Eff. February 1, 1985;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*  
*Amended Eff. June 1, 2017.*

**07 NCAC 04R .0603 CRITERIA FOR DESIGNATION**  
**07 NCAC 04R .0604 DESIGNATING BUILDINGS AS HISTORIC FOR BUILDING CODE PURPOSES**

*History Note:* Authority G.S. 121-8(a),(c), and (f); Building Code Authority Chapter 1009.1(a)(1), 1010.1(a)(1);  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rules are necessary without substantive public interest Eff. July 26, 2015;*  
*Repealed Eff. June 1, 2017.*

**07 NCAC 04R .0605 DOCUMENTATION REQUIRED**

Applicants for "historic building" determinations shall include the following information and documentation in addition to the applicant's contact information:

- (1) An application for a building individually listed in the National Register or the National Register Study List shall include the following:
  - (a) a photograph of the building; and
  - (b) a citation to the National Register nomination by name and county.
- (2) An application for a building individually designated by local historic properties commissions shall include the following:
  - (a) a photograph of the building;
  - (b) a copy of the local designation report; and
  - (c) a letter from the local designating authority certifying that the property is designated as a local historic landmark or is in a local historic district.
- (3) An application for a building in a historic district that is listed in the National Register, listed on the State Study List, or in a locally designated historic district, shall include the following:
  - (a) the name of the district and shall indicate whether the building is designated in the National Register, on the State Study List, or locally;
  - (b) a photograph of the building;
  - (c) the address of the building;
  - (d) a statement of the building's significance as a contributing building in the district, pursuant to 36 C.F.R. 60.4, 36 C.F.R. 67.5, G.S. 160A-400.4 or G.S. 160A-400.5;
  - (e) a map of the district showing the location of the building; and
  - (f) for a building in a locally designated district, the applicant shall also provide a copy of the ordinance designating the district and the material required by Items (1) and (2) of this Rule relating to the property. The certification letter from the local designating authority required by Item (2) of this Rule shall certify that the property lies within the boundary of a locally designated district.
- (4) An application for a building not falling into any of the above categories shall include the following:
  - (a) photographs of the building (including interior features);
  - (b) a statement of the historical associations and significance of the building;
  - (c) an architectural description of the building; and
  - (d) a statement of the National Register criteria under 36 C.F.R. 60.4 it meets and how.

*History Note:* Authority G.S. 121-8; 54 U.S.C. 302303;  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*

*Amended Eff. June 1, 2017.*

**07 NCAC 04R .0606 APPEALS PROCEDURE**

*History Note: Authority G.S. 121-8(a),(c), and (f); 143B-62; Building Code Authority Chapter 1009.1(a)(1), 1010.1(a)(1);  
Eff. February 1, 1985;  
Amended Eff. June 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;  
Repealed Eff. June 1, 2017.*

**SECTION .0700 - ARCHAEOLOGICAL RESOURCES PROTECTION ACT**

**07 NCAC 04R .0701 PURPOSE**

*History Note: Authority G.S. 70-10 through 70-20;  
Eff. February 1, 1985;  
Repealed Eff. June 1, 1989.*

<b>07 NCAC 04R .0702</b>	<b>DEFINITIONS</b>
<b>07 NCAC 04R .0703</b>	<b>ARCHAEOLOGICAL INVESTIGATIONS ON STATE LANDS</b>
<b>07 NCAC 04R .0704</b>	<b>EMERGENCY ARCHAEOLOGICAL INVESTIGATIONS</b>
<b>07 NCAC 04R .0705</b>	<b>APPLICATION FOR ARCHAEOLOGICAL PERMITS</b>
<b>07 NCAC 04R .0706</b>	<b>QUALIFICATIONS FOR PERMITS</b>
<b>07 NCAC 04R .0707</b>	<b>ISSUANCE OF PERMITS</b>
<b>07 NCAC 04R .0708</b>	<b>TIME LIMITS OF PERMITS</b>
<b>07 NCAC 04R .0709</b>	<b>TERMS AND CONDITIONS OF PERMITS</b>
<b>07 NCAC 04R .0710</b>	<b>PERMIT DENIAL: SUSPENSION AND REVOCATION</b>
<b>07 NCAC 04R .0711</b>	<b>APPEALS RELATING TO PERMITS</b>
<b>07 NCAC 04R .0712</b>	<b>REPORTING REQUIREMENTS FOR SPECIFIC PERMITS</b>
<b>07 NCAC 04R .0713</b>	<b>REPORTING REQUIREMENTS FOR GENERAL PERMITS</b>
<b>07 NCAC 04R .0714</b>	<b>REPORT REVIEW FOR SPECIFIC PERMITS</b>
<b>07 NCAC 04R .0715</b>	<b>REPORT REVIEW FOR GENERAL PERMITS</b>
<b>07 NCAC 04R .0716</b>	<b>CUSTODY OF RESOURCES UNDER THE TERMS OF A SPECIFIC PERMIT</b>
<b>07 NCAC 04R .0717</b>	<b>CUSTODY/ARCHAEOLOGICAL RESOURCES UNDER/TERMS: GENERAL PERMIT</b>
<b>07 NCAC 04R .0718</b>	<b>CONFIDENTIALITY</b>

*History Note: Authority G.S. 70-12; 70-13; 70-14; 70-15(a); 70-18; 150B-23 through 150B-37;  
Eff. February 1, 1985;  
Amended Eff. June 1, 1989;  
Repealed Eff. June 1, 2017.*

**07 NCAC 04R .0719 ADDITIONAL REQUIREMENTS FOR A GENERAL PERMIT**

*History Note: Authority G.S. 70-13(c); 70-14;  
Eff. February 1, 1985;  
Repealed Eff. June 1, 1989.*

**SECTION .0800 – ARCHAEOLOGY SERVICES**

**07 NCAC 04R .0801 OPERATING HOURS**

*History Note: Authority G.S. 121-5(b); 121-8(b),(f);  
Eff. February 1, 1985;*

*Amended Eff. April 1, 2001;  
Repealed Eff. June 1, 2017.*

**07 NCAC 04R .0802 DISPOSITION OF ARTIFACTS; LOANS**

(a) accessioned archaeological artifacts shall not be deaccessioned unless they have been certified by the North Carolina Historical Commission to have no further value for scientific research and reference purposes. The Commission must consider:

- (1) whether the artifacts possess any new or undiscovered historical or archaeological information to add to the scientific community; and
- (2) whether other comparable artifacts exist, so that there is no reason to retain the artifacts for future scientific research and reference purpose.

(b) Artifacts in the custody of the Office of State Archaeology shall be loaned only for:

- (1) museum or research purposes;
- (2) non-museum public display by local, state, or federal agencies; or
- (3) to institutions for the purpose of public education.

(c) Loaned artifacts, specimens, documents, and records shall be maintained in the condition in which they were delivered. The borrower shall insure the articles against loss or damage for two times the amount of its fair market value as of the date the artifact was delivered. The artifacts shall be packaged in a manner that protects them from damage.

(d) The artifacts, specimens, documents, and records shall remain the property of the State of North Carolina and may be removed by the State with 10 days' written notice to the borrower. An item may be removed if the item has been damaged in any way or if there is a threat of theft or damage to the item. Notwithstanding any other provision of this Rule, an item may be immediately removed if requested by the borrower in writing to the State Archaeologist.

(e) Written authorization may be issued by the Office of State Archaeology to permit photography or duplication of any artifact of any kind. Requests shall be made in writing to the State Archaeologist and include: the name, address, and telephone number of the requestor, a description of the item being photographed or duplicated, and a statement describing the need for photographing or duplicating the items. An acknowledgment credit shall identify each artifact image with the Office of State Archaeology, North Carolina Division of Archives and History. The Office of State Archaeology may deny authorization if:

- (1) photography or duplication would degrade the quality of the item, such as fading or cracking from overexposure to light, air or moisture; or
- (2) handling of the item during photography or duplication would increase risk of damage to the item, such as accidental dropping, theft, or vandalism.

(f) All requests for loans of artifacts shall be submitted in writing to the State Archaeologist at least 30 days before the requested loan period. All requests shall include:

- (1) the requestor's name and address;
- (2) a statement describing the purpose for the loan, such as an exhibit, study, conservation;
- (3) a description of the requested object(s); and
- (4) the proposed loan period.

Requests shall be submitted to State Archaeologist, North Carolina Office State Archaeology, 4619 Mail Service Center, Raleigh NC 27699.

(g) A written contract between the borrower and the Division of Archives and History containing the period and conditions of the loan shall be signed prior to the lending of any artifact.

*History Note: Authority G.S. 121-2(8); 121-4(12); 121-5(b); 121-7; 121-8(c); 143B-62;  
Eff. February 1, 1985;  
Amended Eff. April 1, 2001; June 1, 1989;  
Readopted Eff. June 1, 2017.*

**07 NCAC 04R .0803 CURATION OF ARCHAEOLOGICAL COLLECTIONS**

(a) All requests to store archaeological, archival, and photographic collections at OSA curation facilities shall be submitted in writing to the State Archaeologist. All requests shall include:

- (1) a declaration or statement of ownership of the collection;
- (2) the name, address, phone number, and email address of the person or agency submitting the collection;

- (3) the provenience information for the collection;
- (4) the storage size of the collection in cubic feet or by archival boxes measuring 12 x 15 x 10 inches or 6 x 15 x 10 inches; and
- (5) the number of items to be stored.

Requests shall be submitted to State Archaeologist, North Carolina Office State Archaeology, 4619 Mail Service Center, Raleigh NC 27699.

(b) Decisions on storage requests shall be provided in writing by the State Archaeologist, in consultation with the Director of the Office of Archives and History, North Carolina Department of Natural and Cultural Resources, based on the following factors:

- (1) confirmation of the information submitted in the request under Paragraph (a) of this Rule;
- (2) the condition of the materials contained in the collection, such as fragility, rarity, or other conservation needs; and
- (3) the availability of storage space.

(c) Fees may be charged for curation and conservation services in the amount of two hundred dollars (\$200.00) per cubic foot of materials.

*History Note:* Authority G.S. 70-11; 121-4(8),(9),(13),(14); 121-4(14); 121-8(b),(c),(f); 143B-62; Eff. February 1, 1985; Amended Eff. April 1, 2001; June 1, 1989; Readopted Eff. June 1, 2017.

**07 NCAC 04R .0804 DEACCESSIONS**  
**07 NCAC 04R .0805 ACCESS TO ARCHAEOLOGICAL COLLECTIONS**  
**07 NCAC 04R .0806 ARCHAEOLOGICAL SITE FILES**  
**07 NCAC 04R .0807 PUBLIC ACCESS TO EXCAVATIONS**  
**07 NCAC 04R .0808 ARCHAEOLOGICAL SURVEY AND EVALUATION REPORT GUIDELINES**

*History Note:* Authority G.S. 70-18; 121-8(b),(d),(e),(f); 121-4(9); 132-1(a); 132-2; 132-9; 132-3(a); 143B-62(2)d; 143B-62(2)(g); Eff. February 1, 1985; Amended Eff. April 1, 2001; June 1, 1989; Repealed Eff. June 1, 2017.

## SECTION .0900 - TAX ACT CERTIFICATION REVIEW

### **07 NCAC 04R .0901 PURPOSE**

The State Historic Preservation Officer (SHPO) is responsible for making substantive judgments as to whether a structure meets the criteria for listing in the National Register of Historic Places or the "Secretary's Standards for Evaluating Structures within Registered Historic Districts" and whether the rehabilitation of a certified historic structure meets the "Secretary's Standards for Rehabilitation" and for forwarding the recommendations to the Secretary of the Interior within the prescribed time period.

*History Note:* Authority G.S. 121-8; 26 U.S.C. 46-48; 26 U.S.C. 170; 26 U.S.C. 191; 26 C.F.R. Part 1; 36 C.F.R. 67; Eff. February 1, 1985; Amended Eff. June 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.

### **07 NCAC 04R .0902 DEFINITIONS**

(a) "Certified Historic Structure" means a structure which is of a character subject to the allowance for depreciation provided in Section 167 of the Internal Revenue Code of 1954, as amended, which is either listed in the National Register or located in a registered historic district and certified by the Secretary as being of historic significance to the district. For purposes of the charitable contribution provisions only of the Internal Revenue Code, properties need not be depreciable to qualify as certified historic structures. For purposes of the demolition expense provisions of the Internal Revenue Code, any structure located in a registered historic district is considered a "certified historic

structure" unless the secretary has determined, prior to the demolition of the structure, that it is not of historic significance to the district.

(b) "Certified Rehabilitation" means any rehabilitation of a certified historic structure within the time frame specified by the law, which the secretary has certified to the Secretary of the Treasury as being consistent with the historic character of the property and, where applicable, with the district in which the property is located.

(c) "Historic District" means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects which are united by past events or aesthetically by plan or physical development.

(d) "Inspection" means a visit by an authorized representative of the SHPO or the secretary to a historic structure for the purpose of reviewing and evaluating the significance of the structure and the completed rehabilitation work.

(e) "National Register of Historic Places" means the national listing of districts, sites, buildings, or structures and objects significant in American history, architecture, archaeology, engineering, and culture that the secretary is authorized to expand and maintain pursuant to Section 101(a)(1) of 16 U.S.C. 470.

(f) "Owner" means a person who holds a fee simple interest in a structure; a holder of a life estate in property; a holder of a life estate in property with remainder to another person; or a lessee whose lease term without regard to renewal periods extends beyond the useful life of the improvements or for 15 years, whichever is greater.

(g) "Registered Historic District" means any district listed in the National Register or any district designated under a state or local statute which has been certified by the secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district and which has been certified by the secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

(h) "Rehabilitation" means the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural and cultural values. Seventy-five percent or more of the existing external walls must be retained in place as external walls in the rehabilitation process to qualify for the investment tax credit.

(i) "Secretary" means the Secretary of the Interior or the designee authorized to carry out his responsibilities.

(j) "Secretary's Standards for Evaluating Structures within Registered Historic Districts" means the criteria for judging whether or not a structure is contributing to the historic significance of a district and the eligibility of structures less than 50 years old. See 36 CFR 67.5.

(k) "Secretary's Standards for Rehabilitation" means the ten broadly worded statements to guide the rehabilitation of all historic buildings. They are used by the SHPO and the Secretary in reviewing and evaluating all projects requesting certification. See 36 CFR 67.7.

(l) "State or Local Statute" means a law of the state or local government designating, or providing a method for the designation of, a historic district or districts.

(m) "State Historic Preservation Officer" means the official within each state, designated by the governor at the request of the secretary, or the designee authorized to carry out his responsibilities, who acts as liaison for purposes of implementing historic preservation programs within the state.

(n) "Substantial Rehabilitation" means that the expenditures must exceed the greater of the taxpayer's adjusted basis in the structure (cost of the structure plus capital improvements minus depreciation) or five thousand dollars (\$5,000), within a 24-month period ending on the last day of the taxable year. A 60-month alternative is available only if there is a written set of architectural plans and specifications for all phases of the rehabilitation.

(o) "Tax Act Coordinator" means the designee of the SHPO authorized to carry out his responsibilities for Tax Act certification reviews and coordination of information concerning the Tax Acts and the preservation of historic structures.

*History Note: Authority G.S. 121-8; 26 U.S.C. 46-48; 26 U.S.C. 170; 26 U.S.C. 191; 26 C.F.R. Part 1; 36 C.F.R. 62.2; 36 C.F.R. 67; Eff. February 1, 1985; Amended Eff. June 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

## **07 NCAC 04R .0903 APPLICATIONS FOR CERTIFICATIONS**

(a) The owner of the property in question may apply for:

- (1) an evaluation of significance of rehabilitation work;
- (2) a determination whether or not a particular structure located within a registered historic district qualifies as a certified historic structure;

(3) a preliminary determination as to whether structures which appear to meet National Register criteria but are not yet individually listed in the National Register, or listed as part of a historic district, may qualify as certified historic structures when and if the properties or district in which the properties are located are listed in the National Register or the state or local district in which the properties are located is certified by the secretary. The owner is responsible for initiating the process of nomination of the property to the National Register. The property will be considered by the SHPO and the secretary for actual certification at the time the individual property or district is listed in the National Register or the state or local district is certified by the secretary.

(b) The owner's request for certifications of historic significance and of rehabilitation shall be made on "Historic Preservation Certification Application" forms (approved OMB form No. 42R-1765). Part 1 of the application shall be used in requesting an evaluation and certification (or decertification) of historic significance or a preliminary determination of historic significance, while Part 2 shall be used in requesting an evaluation of proposed rehabilitation work or a certification of completed rehabilitation work. Owners are encouraged to submit Parts 1 and 2 together to the SHPO. Owners may obtain Historic Preservation Certification Applications from the SHPO.

*History Note: Authority G.S. 121-8; 26 U.S.C. 46-48; 26 U.S.C. 170; 26 U.S.C. 191; 26 C.F.R. Part 1; 36 C.F.R. 62.2; 36 C.F.R. 67; Eff. February 1, 1985; Amended Eff. June 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

#### **07 NCAC 04R .0904 REVIEW ASSISTANCE AND PROCEDURES**

(a) The SHPO through the Tax Act Coordinator reviews all certification applications and makes comments and recommendations to the secretary through the regional office of the National Park Service.

(b) Survey specialists will review Part 1 applications (Certification of Significance), and restoration specialists will review Part 2 applications (Certification of Rehabilitation) and provide written comments to the Tax Act Coordinator.

(c) The Tax Act Coordinator will assist owners with their problems in preparing Parts 1 and 2 of the forms, examine forms when received for errors and omissions in documentation, request and receive additional information or clarification, coordinate application reviews, and transmit the reviewed applications to the SHPO for forwarding to the regional office of the National Park Service for the secretary to adjudge. A copy of the letter of transmittal will be sent to the owner and will include the SHPO's comments.

*History Note: Authority G.S. 121-8; Eff. February 1, 1985; Amended Eff. June 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

#### **07 NCAC 04R .0905 CERTIFICATION**

(a) Requests for evaluation of historic significance should be made by the owner to determine whether or not a structure located within a registered historic district contributes to the significance of the district.

(b) If the property is individually listed in the National Register, and of a character subject to the allowance for depreciation provided in Section 167 of the Internal Revenue Code of 1954, it automatically is considered a certified historic structure.

(1) To determine whether or not a property is individually listed in the National Register, the owner should consult the listing of National Register properties, which identifies the structures in a registered historic district that are of historic significance to the district.

(2) If the property is individually listed in the National Register and the owner believes it has lost the characteristics which caused it to be nominated and therefore wishes it delisted, the owner should consult the SHPO and refer to the delisting procedures outlined in 36 CFR 60.

(3) Many individual properties in the National Register include more than one structure. In these cases, the SHPO and the secretary will consider the property listing as a registered historic district for the purpose of determining which of the structures encompassed by the property are of historic significance to the property.

(4) If it is proposed that a structure individually listed in the National Register be moved as a part of a request for certification of rehabilitation, the owner must follow the procedures outlined in 36 CFR 60.8. When a property is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment.

(c) If the property is located within the boundaries of a registered historic district and the owner wishes the secretary to certify as to whether the structure contributes to the significance of the district, the owner must complete Part 1 of the Historic Preservation Certification Application and submit it to the SHPO. The following minimum documentation is required:

- (1) name of owner;
- (2) name and address of structure;
- (3) name of historic district;
- (4) current photographs of structure; photographs of the structure prior to alteration if rehabilitation has been completed; photographs showing the structure along with adjacent structures on the street; and, where applicable, photographs of significant interior features and spaces;
- (5) brief description of appearance including alterations, distinctive features and spaces, and dates of construction;
- (6) brief statement of significance summarizing how the building reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the building itself (i.e., unusual building techniques, important events that took place there, etc.);
- (7) sketch map showing structure's location within the district; and
- (8) signature of property owner requesting the evaluation.

(d) For purposes of the 15 and 20 percent tax credits under 26 U.S.C. 46, structures within registered historic districts are presumed to contribute to the significance of such districts unless certified as non-significant by the secretary. Owners of non-historic structures within registered historic districts must obtain certification of non-significance in order to qualify for either the 15 percent (buildings 30-39 years old) or the 20 percent (buildings 40 years or older) investment tax credit. If an owner begins or completes demolition or substantial alteration of a structure in a registered historic district without knowledge of requirements for certification of non-significance, he may request certification that the structure was not of historic significance to the district prior to substantial alteration or demolition in the same manner as stated in Paragraph (c) of this Rule.

(e) If an owner wishes to obtain certified rehabilitation status for a building which has been moved (or is proposed to be moved) into a registered historic district or which is within a registered historic district and which has been moved (or will be moved) elsewhere in the district, he must complete Part 1 of the Historic Preservation Certification Application and, in addition to the minimum documentation outlined in this Rule, should submit documentation which discusses:

- (1) the effect of the move on the property's appearance (any proposed demolition, proposed changes in foundations, etc.);
- (2) the new setting and general environment of the proposed site;
- (3) the effect of the move on the distinctive historical and visual character of the district.

Photographs showing the proposed location must be sent with the documentation. When a property is moved, every effect should be made to reestablish its historic orientation, immediate setting, and general environment.

(f) Structures within registered historic districts will be evaluated for conformance with the Secretary's Standards for Evaluating Structures within Registered Historic Districts.

(g) The SHPO will sign Part 1 indicating his recommendation as to the significance of the structure and forward Part 1, the photographs, and the map to the secretary within 45 days after the owner has submitted the required information.

(h) A preliminary certification of significance may be requested by the owner by filling out Part 1 of the Historic Preservation Certification Application and sending it to the SHPO. The SHPO will review preliminary certification requests for conformance with the National Register criteria (36 CFR 60.4) and the Secretary's Standards for Evaluating Structures within Registered Historic Districts. The SHPO shall forward the application with recommendations to the secretary for review. The secretary shall notify the applicant and the SHPO of the preliminary certification decision. The time periods applicable to other certification of significance requests shall apply to preliminary certification requests also.

(i) In cases where it is difficult to make a determination of significance because it is impossible to determine the amount of remaining historic fabric, such as where metal screening obscures facades, or where a substantial question exists about the degree of physical deterioration and structural damage, but an owner wishes to attempt certified rehabilitation, it may be necessary to make a certification of significance conditional upon approval of the completed

rehabilitation. A conditional certification indicates that the property appears to have the potential to meet National Register criteria for listing or to contribute to a district but will not be considered a certified historic structure until such time as the property is individually listed or, in the case of a building within a registered historic district, a certification of rehabilitation is issued.

(j) Once the significance of a structure located within a registered historic district has been determined by the secretary, the property owner and the SHPO will receive written notification in the form of a certification of significance or conditional certification or as a notice that the structure does not contribute to the historic significance of the district. Written notification will be made within 30 days of receipt of Part 1 of a Historic Preservation Certification Application, with documentation as specified in this Rule. In cases where Parts 1 and 2 are submitted together, review of Part 1 will be completed within 30 days, but notification to the owner for both Parts 1 and 2 will generally be made within 45 days.

(k) When a preliminary certification of significance has been made for a building proposed for individual listing in the National Register or for inclusion within a district proposed for listing or certification, the preliminary certification will be considered as completed as of the date of individual listing on the National Register or the date of listing or certification of the historic district. If information included in the nomination or district documentation differs substantially from that reviewed with the preliminary certification request, however, the SHPO and the secretary will review the preliminary request a second time prior to a final decision on listing the district and the secretary will make a judgment as to whether a structure should be treated as a certified historic structure.

*History Note: Authority G.S. 121-8; 26 U.S.C. 46-48; 26 U.S.C. 170; 26 U.S.C. 191; 26 C.F.R. Part 1; 36 C.F.R. 67; Eff. February 1, 1985; Amended Eff. June 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

## **07 NCAC 04R .0906 CERTIFICATION OF REHABILITATION**

Property owners desirous of having rehabilitations of certified historic structures qualified as "certified rehabilitations" shall comply with the following procedures:

(1) Complete Part 2 of the Historic Preservation Certification Application and submit it to the SHPO. The application may describe a proposed rehabilitation project, work in progress, or a completed rehabilitation. In all cases, photographs showing the appearance of the structure prior to rehabilitation, both on the exterior and on the interior, must accompany the application. Other documentation, such as sketch plans and elevation drawings, may be necessary to evaluate certain rehabilitation projects. Plans for any attached or adjacent new construction also must accompany the application and will be reviewed as part of the overall project. Where such documentation is not provided, review and evaluation cannot in some cases be completed. Owners who undertake rehabilitation projects without prior approval from the SHPO or secretary do so at their own risk. Review of rehabilitation work for certification purposes extends to the significant features of historic structures as defined by the secretary. For projects involving the rehabilitation of more than one structure where the structures are under single ownership and are judged by the secretary to have been functionally related historically to serve an overall purpose, such as a mill complex or an industrial plant, certification will be issued on the merits of the overall project rather than individual components. The addition of a new structure or the demolition of portions or all of a structure as part of the rehabilitation will also be reviewed as part of the overall project. In situations involving a rehabilitated structure in a historic district, the SHPO and the secretary will review the work both as it affects the historic building and the district and make a certification decision accordingly.

(2) If the work described in Part 2 of the application form is not completed the following procedures shall apply:

- (a) The SHPO shall review the overall proposed project as to whether or not the project is likely to meet the Secretary's Standards for Rehabilitation and forward the application and written recommendations to the secretary. This shall be done within 45 days of receipt of the documentation.
- (b) Upon receipt of the application describing the proposed project and the recommendation of the SHPO, the secretary will determine within 45 days if the proposed project is

consistent with the Secretary's Standards for Rehabilitation. If the proposed project does not meet the Secretary's Standards for Rehabilitation, the owner will be advised of necessary revisions to meet such standards and encouraged to work with the SHPO to bring the project into conformance. These notifications will be made in writing.

(c) Once a project has been approved, substantive changes in the work as described in the application should be promptly brought to the attention of the SHPO and the secretary to ensure continued conformance to the Standards; these changes do not require a new Historic Preservation Certification Application.

(3) When the overall rehabilitation project has been completed the following procedures shall apply:

(a) The owner shall notify the SHPO in writing of the project completion date and shall sign a statement that, in the owner's opinion, the completed rehabilitation meets the Secretary's Standards for Rehabilitation and is consistent with the work described in Part 2 of the Historic Preservation Certification Application. At this time the owner will be requested to provide photographs of the completed rehabilitation project; other documentation that the SHPO believes is necessary to make a recommendation to the secretary; and his social security or taxpayer identification number. Certifications will be issued to rehabilitations which have been carried out in accordance with proposed plans previously approved by the secretary.

(b) The SHPO shall forward recommendations as to certification to the secretary within 45 days of receipt of the project completion date and documentation.

(c) The completed project may be inspected by an authorized representative of the SHPO or the secretary to determine if the work meets the Secretary's Standards for Rehabilitation. The SHPO and the secretary reserve the right to make inspections at any time up to three years after completion of the rehabilitation and to withdraw certification upon determining that rehabilitation work was not undertaken as represented by the owner in his application and support documentation, or, the owner, upon obtaining certification, undertook additional work as part of the overall rehabilitation project in violation of the Secretary's Standards for Rehabilitation.

(d) Notification as to certification will be in writing and will normally be made by the secretary within 15 days of receipt of the SHPO's recommendations if the proposed rehabilitation had been previously approved by the secretary. Otherwise notification will normally be made within 45 days.

(e) If the completed rehabilitation project does not meet the secretary's standards, an explanatory letter will be sent to the owner. An appeal from this decision may be made by the owner. A rehabilitated structure not in conformance with the secretary's standards and which is determined to have lost those qualities which caused it to be nominated to the National Register, will be removed from the Register in accord with 36 CFR 60.15, or, if it has lost those qualities which caused it to be designated a certified historic structure, it will be certified as non-significant. In either case, the delisting or decertification is considered effective as of the date of issue and is not considered to be retroactive. In these situations, the Internal Revenue Service will be notified of the substantial alteration. The tax consequences regarding sections of the code will be determined by the Secretary of the Treasury.

(4) A preliminary determination that a rehabilitation project is consistent with the secretary's standards may be made for structures not yet designated certified historic structures, although issuance of a certification of rehabilitation will be made only for certified historic structures. Such a determination may be requested by the owner by completing Parts 1 and 2 of a Historic Preservation Certification Application. A determination that rehabilitation of a structure not yet designated a certified historic structure meets the secretary's standards does not constitute a certification of rehabilitation but does provide an owner with guidance as to the appropriateness of the rehabilitation. A preliminary determination may be requested for a property which is not yet listed in the National Register or for a property located in a state or local district which has not yet been certified.

(5) The SHPO will be notified in writing of all rehabilitation certification decisions made by the secretary.

*History Note:* Authority G.S. 121-8; 26 U.S.C. 46-48; 26 U.S.C. 170; 26 U.S.C. 191; 26 C.F.R. Part 1; 36 C.F.R. 67;  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

#### **07 NCAC 04R .0907 APPEALS**

(a) Except as otherwise noted in this Rule, an appeal by the owner or duly authorized representative, as appropriate, may be made from any of the certifications or denials of certification made pursuant to this Section. Such appeals must be in writing and received by the Associate Director for Archeology and Historic Preservation, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240, within 30 days of receipt of the decision which is the subject of the appeal. The denial of a preliminary certification of significance for an individual structure or for a building within a historic district may not be the subject of an appeal by the owner because the denial itself does not exhaust the administrative remedy that is available. The owner instead must seek recourse by consulting with the SHPO and undertaking the usual nomination process (36 CFR Part 60). Similarly, the denial of rehabilitation certification for a structure that is not a certified historic structure may not be appealed. The owner must seek a final certification of significance as the next step, rather than appealing the denial of rehabilitation certification. The appellant may request an opportunity for a meeting with the Associate Director to discuss the appeal. The Associate Director, or his designee, will review such appeals and the written record of the decision in question, and notify the appellant of his decision within 30 days of its receipt unless the appellant is required to submit additional information.

(b) In reviewing such appeals, the Associate Director shall consider:

- (1) alleged errors in professional judgment;
- (2) alleged substantial procedural errors; and
- (3) any additional information provided.

(c) The decision of the Associate Director shall be the final administrative decision on the matter. No person shall be considered to have exhausted his administrative remedies with respect to the certifications described in this Section until the Associate Director has issued a final administrative decision.

*History Note:* Authority G.S. 121-8; 26 U.S.C. 46-48; 26 U.S.C. 170; 26 U.S.C. 191; 26 C.F.R. Part 1; 36 C.F.R. 67;  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

#### **07 NCAC 04R .0908 TIME PERIODS**

*History Note:* Authority G.S. 121-8; 26 U.S.C. 46-48; 26 U.S.C. 170; 26 U.S.C. 191; 26 C.F.R. Part 1; 36 C.F.R. 67;  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*  
*Expired Eff. August 1, 2025 pursuant to G.S. 150B-21.3A.*

#### **07 NCAC 04R .0909 SCOPE OF RULES AND OVERVIEW OF STATUTORY AUTHORITY**

(a) Rules .0901 - .0908 of this Section relate to recommendations made by the State Historic Preservation Officer (SHPO) to the Secretary of the Interior in connection with federal tax incentives involving the rehabilitation of income-producing historic properties.

(b) The SHPO makes certifications of historic significance and certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of non-income-producing historic properties. The rules .0909 - .0915 of this Section are applicable to these certifications.

(c) The procedures for obtaining certifications are set forth in Rules .0909 - .0915 of this Section. Owners wishing certifications shall provide sufficient documentation to the SHPO to make certification decisions. These procedures shall be applicable to future and pending certification requests except as otherwise provided herein.

(d) Requests for certifications and approvals of proposed rehabilitation work shall be sent by an owner to the SHPO for review. All certification decisions shall be made by the SHPO based upon review by HPO staff of the application and supporting documentation.

(e) Rule .0916 of this Section relates to fees charged for reviewing income-producing and nonincome-producing rehabilitation certification requests.

(f) The SHPO makes certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of income-producing historic properties. Rule .0917 of this Section is applicable to the coordination with the Federal Certified Historic Rehabilitation Program for these rehabilitation certification requests.

*History Note:* Authority G.S. 105-129.35; 105-129.36A; 105-130.42; 105-151.23;  
*Temporary Adoption Eff. January 1, 1998;*  
*Eff. August 1, 1998;*  
*Amended Eff. November 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*  
*Temporary Amendment Eff. January 1, 2016;*  
*Temporary Amendment Expired Eff. October 11, 2016.*

<b>07 NCAC 04R .0910</b>	<b>DEFINITIONS</b>
<b>07 NCAC 04R .0911</b>	<b>INTRODUCTION TO HISTORIC PRESERVATION CERTIFICATIONS AND INFORMATION COLLECTION</b>
<b>07 NCAC 04R .0912</b>	<b>CERTIFICATIONS OF HISTORIC SIGNIFICANCE</b>
<b>07 NCAC 04R .0913</b>	<b>STANDARDS FOR EVALUATING SIGNIFICANCE WITHIN NATIONAL REGISTER OR CERTIFIED HISTORIC DISTRICTS</b>
<b>07 NCAC 04R .0914</b>	<b>CERTIFICATIONS OF REHABILITATION</b>
<b>07 NCAC 04R .0915</b>	<b>STANDARDS FOR REHABILITATION</b>

*History Note:* Authority G.S. 105-130.42; 105-151.23;  
*Temporary Adoption Eff. January 1, 1998;*  
*Eff. August 1, 1998;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*  
*Expired Eff. August 1, 2025 pursuant to G.S. 150B-21.3A.*

**07 NCAC 04R .0916 FEES FOR PROCESSING REHABILITATION CERTIFICATION REQUESTS**

(a) The North Carolina Department of Cultural Resources shall charge fees for reviewing income-producing and nonincome-producing rehabilitation certification requests in accordance with the schedule below.

(b) Payment shall be made payable to: North Carolina Department of Cultural Resources. A certification decision by the State Historic Preservation Office shall not be issued on an application until the appropriate remittance is received by the department. Fees are nonrefundable.

(c) No fee shall be charged for rehabilitations under twenty five thousand dollars (\$25,000).

(d) The fee for review of proposed rehabilitation projects over twenty five thousand dollars (\$25,000) is two hundred fifty dollars (\$250.00). The initial fee for review of a proposed rehabilitation project shall be deducted from the final review fee.

(e) The fees for review of completed rehabilitation projects are based on the dollar amount of the costs attributed solely to the rehabilitation of the certified historic structure as provided by the owner in the Historic Preservation Certification Application, Request for Certification of Completed Work, in accordance with the schedule below.

<b>Completed Qualifying Rehabilitation Expenditures</b>	<b>Fee</b>
\$25,000 - \$49,999	\$250
\$50,000 - \$99,999	\$500
\$100,000 - \$149,999	\$750
\$150,000 - \$199,999	\$1,000

\$200,000 - \$299,999	\$1,250
\$300,000 - \$399,999	\$1,750
\$400,000 - \$499,999	\$2,250
\$500,000 - \$999,999	\$2,750
\$1,000,000 - \$4,999,999	\$5,250
\$5,000,000 or more	\$7,750

(f) In the following cases the fee for preliminary review is two hundred fifty dollars (\$250.00) and the fee for final review is computed on the basis of the total completed qualifying rehabilitation expenditures.

- (1) In the case of a rehabilitation project which includes more than one certified historic structure where the structures are judged by the reviewing authority to have been functionally related historically to serve an overall purpose; or
- (2) In the case of multiple building projects where
  - (A) there is no historic functional relationship among the structures and which are under the same ownership;
  - (B) are located in the same historic district;
  - (C) are adjacent or contiguous;
  - (D) are of the same architectural type (e.g., rowhouses, loft buildings, commercial buildings); and
  - (E) are submitted by the owner for review at the same time.

*History Note:* Authority G.S. 105-129.35; 105-129.36A;

*Eff. November 1, 2004;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

#### **07 NCAC 04R .0917 COORDINATION WITH THE FEDERAL INCOME-PRODUCING HISTORIC PRESERVATION REHABILITATION PROGRAM**

- (a) A taxpayer is not required to apply for or pay the state fee for reviewing an income-producing rehabilitation certification request if the taxpayer is not going to utilize the state tax incentive.
- (b) National Park Service certification of a property as historically significant shall be deemed to be certification of a property as historically significant by the State Historic Preservation Officer.
- (c) The State Historic Preservation Officer shall certify and forward income-producing rehabilitation projects to the National Park Service for review, and National Park Service review shall constitute final certification. The National Park Service certification shall not be deemed to be project certification by the State Historic Preservation Officer.
- (d) Taxpayers are cautioned that deadlines and requirements for state certifications may differ from deadlines and requirements for federal certifications.

*History Note:* Authority G.S. 105-129.35; 105-129.36A;

*Eff. November 1, 2004;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

#### **07 NCAC 04R .0918 PURPOSE**

- (a) Rules .0918 - .0925 of this Section set forth the procedures for obtaining certifications for the state historic rehabilitation tax credits for qualifying rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2016 pursuant to Article 3L of G.S. 105.

*History Note:* Authority G.S. 105-129.105; 105-129.106; 105-129.107;

*Temporary Adoption Eff. January 1, 2016;*

*Temporary Adoption Expired Eff. October 11, 2016;*

*Eff. December 1, 2016.*

#### **07 NCAC 04R .0919 DEFINITIONS**

- (a) For purposes of Rules .0918 through .0925 of this Section:

- (1) "Certified historic district" is defined in 36 C.F.R. 67.2 and 26 USCS 47.

- (2) "Certified historic structure" is defined in 36 C.F.R. 67.2 and 26 U.S.C. Section 47.
- (3) "Certified rehabilitation" is defined in:
  - (A) 36 C.F.R. 67.2 for income-producing structures; and
  - (B) G.S. 105-129.106(c)(1) for non-income-producing structures.
- (4) "C.F.R." means the Code of Federal Regulations.
- (5) "Department of the Interior" means the United States Department of the Interior.
- (6) "Discrete property parcel" is defined in G.S. 105-129.106(c)(2).
- (7) "Historic district" is defined in 36 C.F.R. 67.2.
- (8) "Income-producing" refers to a certified historic structure that qualifies a taxpayer for a federal income tax credit under Section 47 of the Internal Revenue Code.
- (9) "Inspection" is defined in 36 C.F.R. 67.2. For purposes of this definition, "Authorized Representative of the Secretary" means a representative of the State Historic Preservation Officer.
- (10) "Integrity" means "historic integrity" as defined in NPS publication How to Apply the National Register Criteria for Evaluation: Bulletin 15. How to Apply the National Register Criteria for Evaluation: Bulletin 15 is hereby incorporated by reference, including subsequent amendments and editions. The Historical Commission has copies of the Bulletin available for inspection or it can be accessed online at no charge at <https://www.nps.gov/nr/publications/bulletins/nrb15/>.
- (11) "National Park Service" (NPS) means the division within the United States Department of the Interior responsible for administering national parks and historic preservation programs.
- (12) "National Register Historic District" means any historic district listed in the National Register of Historic Places.
- (13) "National Register Nomination" means the documentation for a resource that includes the National Register Nomination Form NPS 10-900 with accompanying continuation sheets, maps, and photographs, prepared in accord with requirements and guidance in the NPS publication How to Complete the National Register Registration Form: Bulletin 16A. How to Complete the National Register Registration Form: Bulletin 16A is hereby incorporated by reference, including subsequent amendments and editions. The Historical Commission has copies of the Bulletin available for inspection or it can be accessed online at <https://www.nps.gov/nr/publications/bulletins/nrb16a/>.
- (14) "National Register of Historic Places" is defined in 36 C.F.R. 67.2.
- (15) "Non-income-producing" refers to a certified historic structure that does not qualify a taxpayer for a federal income tax credit under Section 47 of the Internal Revenue Code.
- (16) "Owner" means a person, partnership, corporation, or public agency holding a fee-simple interest in a property or any other person or entity recognized by the North Carolina Department of Revenue for purposes of the applicable tax benefits.
- (17) "Period of significance" is defined in NPS publication How to Complete the National Register Registration Form: Bulletin 16A. How to Complete the National Register Registration form is incorporated by reference as provided in Subparagraph (a)(13) of this Rule.
- (18) "Property" is defined in 36 C.F.R. 67.2.
- (19) "Rehabilitation" is defined in 36 C.F.R. 67.2.
- (20) "Secretary of the Interior" means the Secretary of the United States Department of the Interior or the designee authorized to carry out his or her responsibilities.
- (21) "Standards for Rehabilitation" means the Secretary of the Interior's "Standards for Rehabilitation" as cited in the Code of Federal Regulations, 36 C.F.R. 67.
- (22) "State Historic Preservation Office (HPO)" means the section within the North Carolina Office of Archives, History, and Parks responsible for administering historic preservation programs.
- (23) "State Historic Preservation Officer (SHPO)" is defined in G.S. 105-129.105(c)(7) for income-producing rehabilitation projects, and G.S. 105-129.106(c)(6) for non-income-producing rehabilitation projects.
- (24) "State-certified historic structure" is defined in G.S. 105-129.106(c)(5).
- (25) "Structure" means "building" as defined by 36 C.F.R. 60.3(a), and includes houses, barns, churches, hotels, warehouses, and mills. Objects and sites as defined in 36 C.F.R. 60.3(j) and (l) shall not qualify as structures.

(b) Whenever reference is made to the Code of Federal Regulations in this Section, the definition in the Code of Federal Regulations shall apply unless specifically stated otherwise in a particular rule.

*History Note:* Authority G.S. 105-129.105; 105-129.106; 105-129.107; 121-4(13); 121-8; Temporary Adoption Eff. January 1, 2016; Temporary Adoption Expired Eff. October 11, 2016; Eff. December 1, 2016.

## **07 NCAC 04R .0920 APPLICATIONS**

(a) An owner, or a person with the owner's consent in accordance with 36 CFR 67.3(a)(1), (4), and (5), may apply for a state historic tax credit. Tax credits for rehabilitating income-producing historic structures shall only be available to applicants who qualify for a federal historic rehabilitation tax credit in accordance with 36 CFR 67 and Rules .0901-.0908 of this Section. Tax credits for rehabilitating non-income-producing historic structures shall not be conditioned on qualification for the federal historic rehabilitation tax credits.

(b) Application forms are available upon request from the HPO. Applicants shall include the following information and documentation in Part A of their application:

- (1) Name and address of the property;
- (2) Whether the property is income-producing or non-income-producing;
- (3) Whether the property is listed on the National Register of Historic Places or located within a National Register District or a Certified Local Historic District;
- (4) Date of building construction;
- (5) Estimated rehabilitation expenses;
- (6) Use of building prior to rehabilitation and proposed use after rehabilitation;
- (7) Floor area before and after rehabilitation;
- (8) Estimated rehabilitation start and end dates;
- (9) Owner name and contact information
- (10) If different from the owner, the name and contact information of a person who is available to answer questions related to the rehabilitation project;
- (11) A description of the rehabilitation work;
- (12) Photographs of the structure and its surroundings before rehabilitation, documenting both interior and exterior features along with a description of each photograph;
- (13) Drawings or sketches of proposed work; and
- (14) Floor plans.

(c) Applicants may amend their applications at any time after submission by providing the following:

- (1) Name and address of the property;
- (2) A description of the original proposed rehabilitation plan; and
- (3) A description of the amended rehabilitation plan.

(d) Upon completion of a rehabilitation project, an applicant shall submit Part B of the application which shall contain the following information and documentation:

- (1) Name and address of the property;
- (2) Rehabilitation start and end dates;
- (3) Rehabilitation expenses;
- (4) Photographs of the structure and its surroundings after the rehabilitation, documenting both interior and exterior features along with a description of each photograph; and
- (5) If applicable, a fee as provided in Rule .0925 of this Section.

(e) Upon completion of a non-income-producing rehabilitation project on a property not listed in the National Register of Historic Places as an individual property, an applicant shall provide the following in addition to the requirements in Paragraph (d) of this Rule:

- (1) Name of the National Register Historic District or Certified Local Historic District in which the property is located;
- (2) Date of construction;
- (3) Dates of alterations to the structure;
- (4) Whether the building has been moved from its original location;
- (5) Description of physical appearance of the structure;
- (6) Summary of how the building contributes to the significance of the historic district;
- (7) Map of the historic district; and
- (8) If available, a copy of Section 7 of the National Register of Historic Districts nomination form. The nomination forms for most properties are available on the HPO's website at <http://hpo.ncdcr.gov/NR-PDFs.html>.

(f) Applicants shall submit two copies of the application along with required documentation via mail addressed to Tax Credit Coordinator, State Historic Preservation Office, 4617 Mail Service Center, Raleigh, NC 27699-4617.

(g) If the application is incomplete in accordance with this Rule, the applicant will be notified in writing of the information necessary to complete the review. The application shall be placed on hold pending the receipt of complete information. If complete information is not received within 30 days from the date of the request to the applicant, the application shall be returned due to insufficient documentation.

(h) Approval of applications shall be conveyed to the applicant in writing by the SHPO or his or her representative. Certification decisions shall be made on the basis of the application in accordance with the applicable Rules of this Section. In the event of any discrepancy between the application and other supplementary material submitted with it (such as architectural plans, drawings, specifications, etc.), the applicant shall resolve the discrepancy in writing. In the event the discrepancy is not resolved, the description in the application shall take precedence.

(i) Reviews of State historic tax credit projects shall not be undertaken if the owner has objected to the listing of the property in the National Register of Historic Places.

*History Note:* Authority G.S. 105-129.105; 105-129.106; 105-129.107;  
*Temporary Adoption Eff. January 1, 2016;*  
*Temporary Adoption Expired Eff. October 11, 2016;*  
*Eff. December 1, 2016.*

#### **07 NCAC 04R .0921 CERTIFICATIONS OF HISTORIC SIGNIFICANCE**

(a) Part A of applications provided in accordance with Rule .0920 of this Section shall be evaluated by the SHPO and the HPO to determine if the property qualifies for a certification of historic significance. In accordance with 36 C.F.R. 67.4(a), a property shall qualify for a certification of historic significance if it meets one of the following requirements:

- (1) The individual property is located on the National Register of Historic Places in accordance with 54 U.S.C. Chapter 3021. Income-producing properties not listed on the National Register shall be considered if they meet the criteria in 36 C.F.R. 67.4. Non-income-producing properties must be listed on the National Register prior to the issuance of a certification of historic significance. A list of North Carolina properties on the National Register of Historic Places is available at <http://www.hpo.ncdcr.gov/NR-PDFs.html>; or
- (2) The property is a historically significant property located within a National Register District or a Certified Local Historic District.

(b) Certifications of historic significance for properties containing more than one structure shall be reviewed in accordance with 36 C.F.R. 67.4(d)(2) and (e).

(c) If a structure is to be moved as part of a rehabilitation for which certification is sought, the owner shall follow the procedures outlined in 36 C.F.R. 60 and 36 C.F.R. 67.4(h), or risk denial of a certification of historic significance.

(d) The SHPO shall send written notification to the applicant issuing a certification of historic significance or denying the application in accordance with this Rule and Rule .0922 of this Section.

*History Note:* Authority G.S. 105-129.105; 105-129.106; 105-129.107;  
*Temporary Adoption Eff. January 1, 2016;*  
*Temporary Adoption Expired Eff. October 11, 2016;*  
*Eff. December 1, 2016.*

#### **07 NCAC 04R .0922 STANDARDS FOR EVALUATING SIGNIFICANCE WITHIN NATIONAL REGISTER OR CERTIFIED HISTORIC DISTRICTS**

(a) A property shall be determined to be historically significant by the SHPO if it meets one of the following requirements:

- (1) The property is located within a National Register Historic District as provided in 36 C.F.R. 60 and contributes to the historical significance of the district as provided in 36 C.F.R. 67.5 by adding to the district's sense of time, place, and historical development. References in the cited C.F.R. sections to the "Secretary" shall mean "SHPO". A list of the National Register Historic Districts in North Carolina is available at <http://www.hpo.ncdcr.gov/NR-PDFs.html>; or
- (2) The property is located within a Certified Local Historic District as provided in G.S. 160A, Article 19, Part 3C and contributes to the historical significance of the district by the standards set forth in

36 C.F.R. 67.5 by adding to the district's sense of time, place, and historical development. The local historic district shall also be certified as a Registered Historic District by the Secretary of the Interior as provided in 36 C.F.R. 67.2.

(b) If a property is located in a National Register Historic District or Certified Local Historic District, but outside the district's time period of significance, the time period associated with the historic district shall be amended in accord with National Register amendment procedures set forth in NPS publication How to Complete the National Register Registration Form: Bulletin 16A to expand the time period of significance before a request for final certification is submitted to the SHPO. Bulletin 16A is incorporated by reference in Rule .0919(a)(13) of this Section.

*History Note:* *Authority G.S. 105-129.105; 105-129.106; 105-129.107;*  
*Temporary Adoption Eff. January 1, 2016;*  
*Temporary Adoption Expired Eff. October 11, 2016;*  
*Eff. December 1, 2016.*

#### **07 NCAC 04R .0923 CERTIFICATIONS OF REHABILITATION**

(a) A taxpayer shall obtain a certification of rehabilitation to claim a tax credit for rehabilitating an income-producing historic structure or a non-income producing historic structure. Applicants seeking certifications of rehabilitation shall submit an application in accordance with Rule .0920 of this Section.

- (1) Submission of Part A of the application initiates review of a rehabilitation project. Upon receipt of a completed Part A application, the SHPO shall determine if the project meets the "Standards for Rehabilitation" as outlined in Rule .0924 of this Section. If the proposed project does not meet the Standards for Rehabilitation, the SHPO shall notify the applicant in writing of a way to bring the proposed project into compliance with the Standards of Rehabilitation.
- (2) Upon completion of a rehabilitation project and submission of Part B of the application in accordance with Rule .0920 of this Section, the SHPO shall review the completed project to determine if it complies with the Standards for Rehabilitation in accordance with Rule .0924 of this Section.
- (3) If the project obtained a certification of historical significance and meets the Standards for Rehabilitation upon completion, then the SHPO shall issue a certification of rehabilitation.

(b) A rehabilitation project for certification purposes shall encompass all work on the interior and exterior of the certified historic structure(s) and its site and environment, including related demolition, new construction or rehabilitation work consistent with the standards set forth in 36 C.F.R. 67.6(b)(1) through (7). For purposes of this Rule, references in these cited C.F.R. sections to the "Secretary" shall mean "SHPO", and to "Internal Revenue Service" shall mean "Department of Revenue". For certification purposes, the SHPO shall only consider work related to the rehabilitation project described in the application.

(c) Once a proposed project has been approved, changes in the work as described in the application shall be brought to the attention of the SHPO in writing to ensure continued conformance to the Standards of Rehabilitation. The SHPO shall notify the applicant in writing whether the revised project continues to meet the Standards.

(d) To facilitate project review, the SHPO, by and through HPO staff, reserves the right to conduct on-site inspections of completed or pending projects to confirm matters represented in applications, to review any alterations, and to determine if the work meets the "Standards for Rehabilitation." The SHPO shall determine which projects to inspect based on Parts A and B of the application as provided in Rule .0920 of this Section and the applicable rules, statutes, and federal regulations.

(f) If a completed rehabilitation project does not meet the "Standards for Rehabilitation," the SHPO or his or her representative shall send a letter to the applicant enumerating the reasons for the project's failure to obtain a certification of rehabilitation.

*History Note:* *Authority G.S. 105-129.105; 105-129.106; 105-129.107;*  
*Temporary Adoption Eff. January 1, 2016;*  
*Temporary Adoption Expired Eff. October 11, 2016;*  
*Eff. December 1, 2016.*

#### **07 NCAC 04R .0924 STANDARDS FOR REHABILITATION**

(a) The SHPO shall evaluate applications for certifications of rehabilitation pursuant to the Standards of Rehabilitation as provided in 36 C.F.R. 67.7(a) – (d) and (f). For purposes of this Rule, references in these C.F.R.

sections to the "Secretary" shall mean "SHPO." The Standards shall apply to interior and exterior features, related landscape features, the building's site and environment, as well as attached, adjacent, or related new construction. The SHPO shall also consult the NPS Guidelines for Rehabilitating Historic Building and the NPS Preservation Briefs during review of applications. The NPS Guidelines for Rehabilitating Historic Buildings are incorporated by reference, including subsequent amendments and editions, and can be found at no cost at <https://www.nps.gov/tps/standards/rehabilitation/rehab>. The NPS Preservation Briefs are incorporated by reference, including subsequent amendments and editions, and can be found at no cost at <https://www.nps.gov/tps/how-to-preserve/briefs.htm>. Both publications are available for inspection with the North Carolina Historical Commission. The SHPO shall also consider the economic and technical feasibility of application of the Standards to the project under consideration.

(b) Prior approval of a project by local agencies and organizations shall not ensure certification by the SHPO for State tax credit purposes.

*History Note:* Authority G.S. 105-129.105; 105-129.106; 105-129.107;  
*Temporary Adoption Eff. January 1, 2016;*  
*Temporary Adoption Expired Eff. October 11, 2016;*  
*Eff. December 1, 2016.*

**07 NCAC 04R .0925 FEES FOR PROCESSING REHABILITATION CERTIFICATION REQUESTS**

(a) Upon submission of the application for a certification of rehabilitation, applicants for income-producing and non-income-producing rehabilitation certificates shall pay a fee in accordance with this Rule.

(b) Payment shall be made payable to: North Carolina Department of Natural and Cultural Resources. A certification decision by the State Historic Preservation Office shall not be issued on an application until the appropriate remittance is received by the department. Fees are nonrefundable.

(c) Applicants submitting proposed rehabilitation projects of over twenty-five thousand dollars (\$25,000) shall submit an application fee of two hundred fifty dollars (\$250.00) with Part A of their application as described in Rule .0920 of this Section.

(d) Upon completion of a rehabilitation project and submission of Part B of the application as described in Rule .0920 of this Section, applicants shall submit an additional fee for review of the completed rehabilitation project in accordance with the schedule below. The fees for review of completed rehabilitation projects are based on the dollar amount of the costs attributed to the rehabilitation of the certified historic structure. The schedule below sets forth the total fee owed, including the initial two hundred and fifty-dollar (\$250.00) application fee as described in Paragraph (c) of this Rule:

Completed Qualifying Rehabilitation Expenditures	Fee
\$5,000 - \$25,000	\$0
\$25,001 - \$50,000	\$250
\$50,001 - \$75,000	\$500
\$75,001 - \$100,000	\$750
\$100,001 - \$150,000	\$1,000
\$150,001 - \$200,000	\$1,500
\$200,001 - \$300,000	\$1,750
\$300,001 - \$400,000	\$2,000
\$400,001 - \$500,000	\$2,250
\$500,001 - \$1,000,000	\$2,750
\$1,000,001 - \$5,000,000	\$5,750
\$5,000,001 or more	\$8,750

(e) The total fee for application and review of non-income-producing projects shall be capped at one thousand dollars (\$1,000) per discrete property parcel every five years.

*History Note:* Authority G.S. 105-129.105; 105-129.106; 105-129.107;  
*Temporary Adoption Eff. January 1, 2016;*  
*Temporary Adoption Expired Eff. October 11, 2016;*

*Eff. December 1, 2016.*

**07 NCAC 04R .0926 COORDINATION WITH THE FEDERAL INCOME-PRODUCING HISTORIC PRESERVATION REHABILITATION PROGRAM**

*History Note:* *Authority G.S. 105-129.100; 105-129.102;*  
*Temporary Adoption Eff. January 1, 2016;*  
*Temporary Rule Expired Eff. October 11, 2016.*

**SECTION .1000 - EXPLORATION: RECOVERY: AND SALVAGE**

**07 NCAC 04R .1001 OWNERSHIP BY STATE**

*History Note:* *Authority G.S. 121-22; 121-23; 143B-62(1)g,(3);*  
*Eff. February 1, 1985;*  
*Repealed Eff. June 1, 1989.*

<b>07 NCAC 04R .1002</b>	<b>DEFINITIONS</b>
<b>07 NCAC 04R .1003</b>	<b>DEPARTMENT AUTHORIZED TO GRANT PERMITS AND LICENSES</b>
<b>07 NCAC 04R .1004</b>	<b>EXCEPTIONS</b>
<b>07 NCAC 04R .1005</b>	<b>PERMIT FOR EXPLORATION: RECOVERY OR SALVAGE</b>
<b>07 NCAC 04R .1006</b>	<b>TERMS AND CONDITIONS OF PERMITS</b>
<b>07 NCAC 04R .1007</b>	<b>APPEALS RELATING TO PERMITS</b>
<b>07 NCAC 04R .1008</b>	<b>OWNERSHIP AND DIVISION OF RECOVERED ITEMS</b>
<b>07 NCAC 04R .1009</b>	<b>PROTECTED AREAS</b>
<b>07 NCAC 04R .1010</b>	<b>SPECIAL AREAS FOR SPORT AND HOBBY OPERATIONS</b>
<b>07 NCAC 04R .1011</b>	<b>REPORTING REQUIREMENTS</b>
<b>07 NCAC 04R .1012</b>	<b>REPORT REVIEW</b>
<b>07 NCAC 04R .1013</b>	<b>TERMINATION OF PERMIT</b>

*History Note:* *Authority G.S. 121-22; 121-23; 121-24; 121-25; 150B;*  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Repealed Eff. June 1, 2017.*

**SECTION .1100 - HIGHWAY HISTORICAL MARKER PROGRAM**

<b>07 NCAC 04R .1101</b>	<b>DEFINITIONS</b>
<b>07 NCAC 04R .1102</b>	<b>ERECTION OF HIGHWAY MARKERS</b>
<b>07 NCAC 04R .1103</b>	<b>CRITERIA</b>
<b>07 NCAC 04R .1104</b>	<b>PLACEMENT OF MARKERS</b>
<b>07 NCAC 04R .1105</b>	<b>INSCRIPTION AND ERECTION</b>
<b>07 NCAC 04R .1106</b>	<b>CORRECTIONS TO MARKERS</b>

*History Note:* *Authority G.S. 100-8; 121-4(7); 136-42.1,2,.3; 136-43.1; 150B-11(1);*  
*Eff. February 1, 1985;*  
*Amended Eff. February 1, 1987;*  
*Repealed Eff. June 1, 1989.*

**SECTION .1200 - LOCAL HISTORICAL MARKER PROGRAM**

<b>07 NCAC 04R .1201</b>	<b>PURPOSE</b>
<b>07 NCAC 04R .1202</b>	<b>LOCAL MARKER ADVISORY COMMITTEES</b>
<b>07 NCAC 04R .1203</b>	<b>CRITERIA</b>
<b>07 NCAC 04R .1204</b>	<b>MARKERS</b>
<b>07 NCAC 04R .1205</b>	<b>PLACEMENT AND MAINTENANCE</b>

*History Note:* Authority G.S. 100-2; 100-3; 121-4(7); 143B-62(1)g,(3);  
Eff. February 1, 1985;  
Repealed Eff. June 1, 1989.

## SECTION .1300 - STAGVILLE PRESERVATION CENTER

**07 NCAC 04R .1301 PURPOSE**  
**07 NCAC 04R .1302 OPERATION**

*History Note:* Authority G.S. 121-4(8),(9); 143B-62(2)d;  
Eff. February 1, 1985;  
Amended Eff. February 1, 1987;  
Repealed Eff. June 1, 1989.

## SECTION .1400 - HISTORIC PRESERVATION AND CONSERVATION AGREEMENTS

**07 NCAC 04R .1401 GRANTOR-GRANTEE SPECIFICATIONS**

(a) The grantor of a preservation or conservation agreement may be any individual, public or private agency, institution, or organization owning an archaeologically, historically, or architecturally significant property.

(b) The State of North Carolina and any of its governmental departments and agencies may purchase or accept and hold a preservation or conservation agreement and may actively participate, upon request, in its negotiation between the grantor and any other group, agency, institution, or organization whose purpose includes the preservation and conservation of significant archaeological, historical, and architectural properties.

*History Note:* Authority G.S. 121-2(4),(5); 121-9(b)(c); 121-35; 121-37;  
Eff. February 1, 1985;  
Amended Eff. June 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.

**07 NCAC 04R .1402 AGREEMENT CONDITIONS**

(a) The specific conditions, clauses, specifications, and terms of a preservation or conservation agreement shall be determined through negotiation between the grantor and grantee.

(b) If the state is a party to the agreement, terms addressing the appropriate and long term preservation of the property shall include:

- (1) duration of the agreement;
- (2) specific methods and techniques for maintaining and administering the property;
- (3) public access or denial thereof;
- (4) provisions for seeking changes or alterations in the property and the agreement;
- (5) provisions for inspection of the property by the grantee;
- (6) provisions for seeking restitution of and remedies for breach of the terms of agreement by either the grantor or grantee;
- (7) procedures for seeking and granting consent or disapproval for proposed changes or alterations in the property or the agreement and for appealing any such actions;
- (8) any special provisions necessary for the effective and long term preservation of the property.

*History Note:* Authority G.S. 121-2(4),(5); 121-9(b)(c); 121-35; 121-38; 121-39;  
Eff. February 1, 1985;  
Amended Eff. June 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.

**07 NCAC 04R .1403 SPECIAL PROVISIONS FOR ARCHAEOLOGICAL SITES**

Preservation or conservation agreements entered into by the state for sites or landscapes containing or encompassing archaeological materials shall also address the following:

- (1) procedures, limitations, and processes for permitting the collection and analysis of cultural materials or artifacts from the ground surface of the sites;
- (2) permitting the excavation and analysis of all or a portion of the archaeological deposits at the sites;
- (3) determining curatorial and possession responsibilities and rights for all materials recovered through surface collection or excavation.

*History Note:* Authority G.S. 121-9; 121-35; 121-38;  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

#### **07 NCAC 04R .1404 TRANSFERRAL OF PRESERVATION OR CONSERVATION AGREEMENTS**

- (a) A preservation or conservation agreement may be transferred from the original grantee to subsequent grantees with the written consent of the grantor and grantee.
- (b) Alterations, modifications, or additions to the agreement during or after the transfer cannot be made without the written consent of the original grantee and grantor, and shall not modify in any manner the original intent and purpose of the agreement.

*History Note:* Authority G.S. 121-9(d); 121-37; 121-38;  
*Eff. February 1, 1985;*  
*Amended Eff. June 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

### **SECTION .1500 - SURVEY AND NATIONAL REGISTER BRANCH**

#### **07 NCAC 04R .1501 OPERATING HOURS**

#### **07 NCAC 04R .1502 HISTORIC STRUCTURE SITE FILES AND MAPS**

*History Note:* Authority G.S. 70-18; 121-4; 121-2(8); 121-4(13),(14); 121-4.1(a); 121-5(d); 121-8(b),(c),(f); 143B-62(2b); 143B-62(2d); 150B-2(8a);  
*Eff. April 1, 2001;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*  
*Repealed Eff. June 1, 2017.*

#### **07 NCAC 04R .1503 VISITATION POLICY**

(a) The Survey and National Registry Branch is the repository of photographs, field notes, research reports, drawings, National Register of Historic Places nominations, maps, computer databases, and other materials related to the North Carolina inventory of historic structures. Visitors seeking access to the Survey and National Register Branch files shall make an appointment through the branch supervisor or his or her designee at least 24 hours in advance of the time of the proposed appointment. Information on how to contact the Survey and National Register Branch may be found at <http://www.hpo.dcr.state.nc.us/spbranch.htm>.

(b) When multiple visitors seek access to the files on the same day, the branch supervisor or his or her designee may limit duration of visits and limit the number of visitors using the file collection. The branch supervisor or his or her designee may limit access based upon the following factors:

- (1) the files are in use by the Department;
- (2) space is unavailable to view the files;
- (3) the files would be damaged or harmed by exposure to environmental elements, such as air, light, or moisture; and
- (4) any other circumstances that will ensure the preservation of the files, as determined by the branch supervisor or his or her designee. "Other circumstances" include those that may result in theft or damage during use.

(c) Visitors shall switch off cell phones, pagers, and other electronic devices in the office area.

(d) Survey and National Register Branch staff shall have priority in using the copy machine.

*History Note:* Authority G.S. 121-4(13); 121-8(b),(c),(f); 143B-62(3);  
Eff. April 1, 2001;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;  
Amended Eff. June 1, 2017.

## SECTION .1600 – ARCHAEOLOGICAL PERMITS

### 07 NCAC 04R .1601 DEFINITIONS

The following definitions, as well as the definitions set forth in G.S. 70-12, shall apply to Section .0800 and this Section, unless otherwise indicated:

- (1) "Abandoned shipwrecks" means sunken vessels, ships, boats, and other watercraft and their associated cargoes, tackle, and materials that have remained unclaimed for 10 years as set forth in G.S. 121-22.
- (2) "Applicant" means a person or entity applying for a permit or license to conduct any archaeological investigations on State lands or archeological sites, or any type of exploration, recovery, or salvage operations of any part of an Abandoned shipwreck or its contents.
- (3) "Emergency archaeological investigation" means any surface collection, subsurface test, excavation, or other activity that results in the disturbance or removal of archaeological resources occurring on State lands or Abandoned shipwrecks undertaken because of:
  - (a) the accidental discovery of archaeological resources during construction or other ground disturbing activities; or
  - (b) threat of damage or destruction to archaeological resources caused by events including vandalism, fire, erosion, land clearing, road construction, dredging, flood, or hazardous contamination.
- (4) "Ground disturbance" means any activity that compacts or disturbs the ground including disturbance upon State lands or Abandoned shipwrecks related to the construction, alteration, trenching or expansion of dikes, borrow pits, utility lines, airports, bridges, housing developments, boat basins and channels, and the placement of fill or spoil dirt.
- (5) "Land controlling agency" means the State agency with management responsibilities for State land.
- (6) "Permit" means written authorization in accordance with these Rules to conduct archaeological investigation on State lands or Abandoned shipwrecks.
- (7) "Protected Area" means an area identified by the Department of Natural and Cultural Resources as having scientific, archaeological, or historical value, as evaluated by criteria set forth in 36 C.F.R. 60.4.
- (8) "Principal Investigator Archaeologist" means a person possessing the following:
  - (a) a postgraduate degree or equivalent training and experience in archaeology, anthropology, history, or another related field with a specialization in archaeology;
  - (b) a minimum of one year's experience in conducting archaeological field research; and
  - (c) a minimum of five years' experience in theoretical and methodological design and in collecting, handling, analyzing, evaluating, and reporting archaeological data.
- (9) "Risk of harm" means any disclosure of the nature or location of any archaeological resource that results or may result in the loss or destruction of archaeological context or information or the loss of historical, scientific, environmental, monetary, or religious attributes and values attributable to in archeological sites and artifacts.
- (10) "State Archaeologist" means the head of the Office of State Archaeology (Archaeology Section), Division of Historical Resources, Office of Archives and History, Department of Natural and Cultural Resources.
- (11) "State lands" shall mean "land" as defined in G.S. 70-12.
- (12) "Archaeological artifacts" means those materials showing human workmanship or modification or having been used or intended to be used or consumed by humans, including relics, monuments, tools and fittings, utensils, instruments, weapons, ammunition, and treasure trove and precious materials including gold, silver, bullion, pottery, ceramic, and similar or related materials.

*History Note:* Authority G.S. 70-12; 70-13; 70-14; 121-4; 121-22; 121-23; 143B-62(1)(h);  
Eff. June 1, 2017.

## **07 NCAC 04R .1602 ARCHAEOLOGICAL INVESTIGATIONS ON STATE LANDS**

(a) Any person conducting archeological investigations on State lands or Abandoned shipwrecks shall obtain a permit. Upon consultation with the Department of Administration and subject to the criteria and discretion set forth in this Section, Article 2 of G.S. 70 and Article 3 of G.S. 121, the State Archaeologist, as designee of the Secretary of the Department of Natural and Cultural Resources, may grant permits to any person wishing to conduct terrestrial or underwater archaeological investigations on State lands, the exploration, recovery, or salvage of abandoned shipwrecks, and of underwater archaeological artifacts of state-owned bottoms in navigable waters.

(b) No archaeological investigation, exploration, recovery, or salvage operations shall be conducted on State lands or Abandoned shipwrecks without a permit from the Department of Natural and Cultural Resources.

(c) After issuance, no permit or any part thereof shall be assigned or sublet.

(d) Permits shall be either General or Specific, as follows:

- (1) General Permits shall be issued to those land controlling agencies that employ Principal Investigator Archaeologists on a full time permanent basis to conduct archaeological investigations on State lands or Abandoned shipwrecks under the agency's control in accordance with the rules in this Section; and
- (2) Specific Permits shall be issued to Principal Investigator Archaeologists and shall include all permits other than General Permits.

(e) No permit shall be required for employees of the Department of Natural and Cultural Resources to conduct investigations being conducted as part of the Department's responsibilities.

*History Note:* Authority G.S. 70-13; 70-14; 121-23; 121-25; 143B-10; 143B-62(1)(h);  
Eff. June 1, 2017.

## **07 NCAC 04R .1603 APPLICATION FOR ARCHAEOLOGICAL PERMITS**

(a) General Permit. Applications for a land controlling agency shall include the following information:

- (1) a written description of the lands controlled by the agency, including the county and township;
- (2) a description of the nature and objectives of the investigation(s);
- (3) the name, address, telephone number, and qualifications of the principal investigator archaeologist;
- (4) evidence that the requirements of Rule .1604 of this Section are met;
- (5) the facility for curation of all artifacts, records, data, photographs, and other documents or information resulting from the investigations;
- (6) written protocols and procedures for access to records and artifacts of the facility where such records and artifacts are to be curated;
- (7) facilities and plans for stabilization and preservation of perishable or unstable artifacts;
- (8) the person or position in the institution or agency with responsibility for curation of artifacts and records and other documentation or information as to who shall determine access to this material; and
- (9) the principal investigator archaeologist's plans, if any, for dissemination of the results of the investigation in addition to the reporting requirements of Rule .1611 of this Section.

(b) Specific Permit. Applicants for Specific Permits shall submit applications to the State Archaeologist at least 30 days prior to the proposed start date of the archaeological investigations. Each Specific Permit application shall include:

- (1) a written description of the location of the proposed investigation, including the county and township;
- (2) a 1: 24,000 or larger scale map depicting the location of the proposed investigation;
- (3) a description of the nature, objectives and scope of the proposed investigation, including the methods to be employed and the requirements for clearing of vegetation;
- (4) the schedule for the investigation, including hours of the day and days of the week, as well as beginning and completion dates. The schedule shall include 60 days for review and comment of the draft report by the State Archaeologist and the land-controlling agency and a maximum of 30 days for response, revisions, and submittal of the final report by the applicant;

- (5) the name, address, telephone number, institutional affiliation, and qualifications of the principal investigator archaeologist;
- (6) the name, address, telephone number, and qualifications of the field director, if different from the principal investigator;
- (7) the approximate number of people proposed to carry out the investigation;
- (8) evidence of the applicant's capability to initiate, conduct, and complete the proposed investigations, such as prior training or participation in the type of investigation proposed in the application;
- (9) written criteria for evaluation of requests for access to records and artifacts at the facility where the records and artifacts are to be curated;
- (10) the facility identified for curation of all artifacts, records, data, photographs, and other documents or information resulting from the investigation;
- (11) written concurrence from the land-controlling agency regarding the applicant's proposed curatorial arrangements;
- (12) facilities and plans for stabilization and preservation of perishable or unstable artifacts;
- (13) the person or position in the institution or agency with responsibility for curation of artifacts and records, and other documentation or information as to who will determine access to this material;
- (14) a description of the type and timing of all access needs on State property, vehicular or otherwise, required to conduct the investigations;
- (15) a description of how the project will be coordinated with the site-specific land manager, including the applicant's documentation that initial contact has been made and the name of the person contacted;
- (16) a description of the provisions to be made to secure the permit area to assure the safety of non-project personnel who may visit the permit area during and after project hours;
- (17) an indication of the length of time each excavation unit will be open and a schedule for reclaiming all areas disturbed by any aspect of the archaeological investigations; and
- (18) the applicant's plans, if any, for dissemination of the results of the investigations in addition to the reporting requirements noted in Rule .1612 of this Section.

(c) Applications shall be sent to the State Archaeologist, Office of State Archaeology, 4619 MSC, Raleigh, NC 27699-4619, via U.S. Mail.

*History Note:* Authority G.S. 70-13; 70-14; 121-4(13); 121-23; 121-25; 143B-10; 143B-62(1)(h); Eff. June 1, 2017.

## **07 NCAC 04R .1604 REQUIREMENTS FOR AND ISSUANCE OF PERMITS**

- (a) Applicants for permits to conduct archaeological investigations shall certify on the application that they:
  - (1) have a postgraduate degree, or equivalent training and experience, in archaeology, anthropology, history, or another related field with a specialization in archaeology;
  - (2) have a minimum of one year's experience in conducting archaeological field research;
  - (3) have obtained and submitted for review by the State Archaeologist a criminal record check by the State Bureau of Investigation as set forth in G.S. 70-13.1 and G.S. 121-25.1;
  - (4) have funds, equipment, and facilities to undertake and complete the operation, provide supervision of all phases of the operation, and demonstrate the ability to carry out acceptable investigations that meet current professional standards, like those established by the Society for Historical Archaeology, the Conference on Underwater Archaeology, or the American Museum Association;
  - (5) will undertake the proposed activity for the purpose of furthering archaeological knowledge;
  - (6) will employ accepted techniques of survey, excavation, recovery, recording, preservation, and analysis used in investigations as follows:
    - (A) for investigations on State lands, the Secretary of Interior's Standards for Archaeology and Historic Preservation which is incorporated by reference, including subsequent amendments and editions, available for free at [https://www.nps.gov/history/local-law/arch\\_stnds\\_0.htm](https://www.nps.gov/history/local-law/arch_stnds_0.htm), and available for inspection at no cost in the Office of State Archaeology; and
    - (B) for Abandoned shipwrecks, applicants shall use the Abandoned Shipwreck Act Guidelines which is incorporated by reference, including subsequent amendments and

editions, available for free at [https://www.nps.gov/history/local-law/arch\\_stnds\\_0.htm](https://www.nps.gov/history/local-law/arch_stnds_0.htm), and available for inspection at no cost in the Office of State Archaeology; and

(7) will conserve the archaeological artifacts recovered during the proposed project and ensure that those artifacts and all original archaeological records and data associated with the undertaking shall be conserved and curated in accordance with the National Park Service Standards as set forth in 36 CFR.

(b) General Permits shall be issued or denied to a land-controlling agency within 90 days following submission of the completed application provided the terms and requirements of the rules in this Section pertaining to General Permits are fulfilled.

(c) The Specific Permit shall be issued or denied within 90 days following submission of the completed application provided the terms and requirements of the rules in this Section pertaining to Specific Permits are fulfilled.

(d) A Specific Permit shall not be issued to any person or entity conducting an Emergency archaeological investigation until the State Archaeologist receives and accepts a final report in accordance with Rules .1611 and .1612 of this Section.

(e) No General or Specific Permit shall be considered valid until a signed and dated original copy is returned to the State Archaeologist by the permittee.

*History Note:* Authority G.S. 70-11; 70-13; 70-13.1; 121-4(13); 121-23; 121-25; 121-25.1; 143B-10; 143B-62(1)(h);  
*Eff. June 1, 2017.*

## **07 NCAC 04R .1605 DURATION, EXTENSION, AND RENEWAL OF PERMITS**

(a) A Permit issued under this Section shall be extended or renewed in accordance with this Rule. Requests to extend or renew a Permit shall be submitted in writing to the State Archaeologist. The requests shall include:

- (1) the permittee's name, address, and telephone number;
- (2) a copy of the original permit;
- (3) whether the request is for an extension or renewal;
- (4) the time limit requested for an extension, not to exceed six months;
- (5) a statement describing the need for the extension or renewal; and
- (6) a statement certifying compliance with Rule .1604 of this Section.

(b) General Permits shall be valid for a period of five years from the date of issuance. General Permits may be extended for up to six months as requested by the permittee or renewed for five additional years. General Permits shall be extended only once, but may be renewed any number of times.

(c) Specific Permits shall be valid for a period of three years from the date of issuance. Specific Permits may be extended for up to six months as requested by the permittee or renewed for three additional years. Specific Permits may be extended only once, but may be renewed any number of times.

(d) Requests shall be approved or denied by the State Archaeologist based on:

- (1) the information submitted in the request under Paragraph (a); and
- (2) evaluation of past performance under the permit, such as compliance with the terms and conditions under the Permit and the progress of work completed under the Permit.

*History Note:* Authority G.S. 70-13; 70-14; 121-23; 121-25; 143B-62(1)(h);  
*Eff. June 1, 2017.*

## **07 NCAC 04R .1606 TERMS AND CONDITIONS OF PERMITS**

(a) All permits shall specify:

- (1) the nature and extent of the investigations allowed under the permit, including the time, duration, scope, location, and purpose of the investigations;
- (2) the name of the individual responsible for conducting the investigations and, if different, the name of the individual responsible for carrying out the terms and conditions of the permit;
- (3) the name of the land-controlling agency, university, museum, or other scientific or educational institution in which any collected materials and data will be deposited; and
- (4) the reporting requirements and schedule as set forth in Rules .1611 and .1612; and
- (5) other terms and conditions as determined by the Department to be necessary to ensure public safety, protect natural and cultural resources, safeguard land uses, and limit activities to investigations authorized under the permit.

- (b) Inspections may occur at the archeological investigation site to ensure that the terms and conditions of the permit are being met.
- (c) The permittee shall obtain and submit evidence of liability insurance upon acceptance of the terms and conditions of the permit.
- (d) Archaeological investigations conducted under a permit shall comply with all applicable state, federal, and local rules and regulations.
- (e) All access to State-owned lands during permitted investigations shall be controlled by and coordinated with the land-controlling agency and the site-specific land manager, such as superintendents, wardens, or facilities managers.
- (f) Applicants shall restore all project lands to their pre-project condition by the conclusion of the field investigations.
- (g) The land-controlling agency shall report in writing to the Secretary of the Department of Administration and State Archaeologist any change the Principal Investigator Archaeologist named in a General Permit within 10 days of that change.

*History Note:* Authority G.S. 70-13; 70-14; 121-23; 121-25; 143B-62(1)(h);  
Eff. June 1, 2017.

#### **07 NCAC 04R .1607 PERMIT DENIAL, SUSPENSION AND REVOCATION**

- (a) A permit may be denied if the State Archeologist finds that:
  - (1) the proposed investigations would represent an adverse effect, as defined in 36 C.F.R. 800.5(a)(1), to a unique or fragile natural resource, such as endangered plant or animal species;
  - (2) the proposed investigations would interfere with the operation and management of an area;
  - (3) the proposed investigations would pose a threat to public safety;
  - (4) the applicant has not completed the terms and conditions of a previous permit; or
  - (5) the results of the required criminal record check reveal one or more convictions listed in G.S. 70-13.1 or G.S. 125-25.1.
- (b) A permit may be suspended or revoked if the State Archaeologist, in consultation with the Department of Administration, finds that:
  - (1) the terms and conditions of the permit have been or are being violated;
  - (2) the permit applicant is convicted of a crime enumerated in G.S. 70-13.1 or G.S. 125-25.1;
  - (3) the permit holder fails to comply with the rules in this Section or applicable State or federal laws; or
  - (4) disclosure of information that the Department has determined would create a risk of harm in accordance with G.S. 70-18.

*History Note:* Authority G.S. 70-13; 70-14; 121-23; 121-24; 121-25; 143B-10; 143B-62(1)(h);  
Eff. June 1, 2017.

#### **07 NCAC 04R .1609 EMERGENCY ARCHAEOLOGICAL INVESTIGATIONS**

- (a) Emergency archaeological investigations on State lands or Abandoned shipwrecks shall not require a Permit. Emergency archaeological investigations shall include any unforeseen discovery of artifacts or records found during any land disturbing activity, whether or not through a permit issued under this Section, conducted on State lands or Abandoned shipwrecks.
- (b) Upon discovery or the need for an Emergency archaeological investigation, the State Archaeologist shall be notified. The State Archaeologist shall oversee the administration of Emergency archaeological investigations. The State Archaeologist shall designate a Principal investigator archaeologist to lead the investigation. Reporting requirements for emergency archaeological investigations shall be those set forth in Rule 1611 and .1612.
- (c) All artifacts and associated records recovered during emergency archaeological investigations shall remain the property of the State of North Carolina and shall be maintained in a repository approved by the State Archaeologist. Facilities where State-owned collections are maintained shall comply federal curation standards as set forth at 36 C.F.R. 79.

*History Note:* Authority G.S. 70-13; 70-14; 121-23; 123-25; 143B-10; 143B-62(1)(h);  
Eff. June 1, 2017.

#### **07 NCAC 04R .1611 REPORTING REQUIREMENTS FOR GENERAL PERMITS; REVIEW**

- (a) Reports of archaeological investigations conducted under the terms of a General Permit shall be submitted to the State Archaeologist (OSA).
- (b) Final reports concerning archaeological investigations and emergency archaeological investigations shall be submitted by the end of the calendar year that follows the year in which the archaeological investigations were completed.
- (c) The principal investigator archaeologist may request to extend the submission of the final report as set forth in Paragraph (d) of this Rule. The request shall be in writing to the State Archaeologist and include a copy of the permit. The State Archaeologist may extend the date to submit the final report based on the following factors:
  - (1) environmental changes;
  - (2) changes in the project specifications by the project sponsor; or
  - (3) unforeseen discoveries of complex or fragile archaeological materials, including human remains.
- (d) The principal investigator archaeologist shall provide in the report to OSA:
  - (1) information concerning the physical location of artifacts, records, and all other documentation for all archaeological investigations;
  - (2) itemized list of all recovered archaeological resources by type, variety, material, or other description and a list of accession numbers or other identifiers applied to the recovered resources;
  - (3) an itemized list of records, photographs, and other documents and a list of accession numbers or other identifiers applied to the records and data; and
  - (4) a summary of the results of all archaeological investigations as part of the report(s) required by the permit.
- (e) The State Archaeologist and head of the land-controlling agency shall review at least once a year the permittee's performance under any General Permit issued for a period greater than one year. The State Archaeologist shall review the final reports for General Permits to ensure that the reports meet the federal Secretary of the Interior's Standards for Archaeology and Historic Preservation and may request revisions of the final report if said standards are not met.
- (f) The State Archaeologist shall have 60 days following receipt of any report to review and return written comments on the report to the land-controlling agency and the principal investigator archaeologist.
- (g) The principal investigator shall revise and submit the final report, in accordance with the State Archaeologist written comments, within 30 days of receipt of review and comments by the State Archaeologist.

*History Note:* Authority G.S. 70-13; 70-14; 121-4; 121-23; 121-25; 143-10; 143B-62(1)(h);  
Eff. June 1, 2017.

## **07 NCAC 04R .1612 REPORTING REQUIREMENTS FOR SPECIFIC PERMITS; REVIEW**

- (a) Permittees shall prepare and submit to the State Archaeologist and the head of the land-controlling agency reports for all archaeological investigations conducted under Specific Permits in accordance with this Rule.
- (b) The permittee shall maintain a daily log of all project activities, including the types of equipment used and site conditions. The permittee shall provide copies of the daily log to the State Archaeologist upon request.
- (c) The permittee shall submit a letter to the State Archaeologist within 60 days after completion of the on-site archaeological investigation describing the activities conducted under the investigation. The letter to the State Archaeologist shall include the date for submission of the draft report as required by Paragraph (d) of this Rule.
- (d) The permittee shall submit draft reports according to the schedule established in the permit or, in the case of emergency archaeological investigations, by the date specified in the letter as required in Paragraph (c) of this Rule. Draft reports submitted for emergency archaeological investigations shall include information on storage and curation of artifacts, records, and other data in accordance with the specifications in Rule .1603(b)(9) through (13) of this Section.
- (e) The permittee shall submit final reports no later than 90 days after submission of the draft report.
- (f) If the specified submission date for a draft report of emergency archaeological investigations extends beyond one year from the date of submission a letter, as set forth in Paragraph (c) of this Rule, shall be submitted a year from the issuance date of the permit.
- (g) The permittee or, in the case of an emergency archaeological investigation, the Principal Investigator Archaeologist, shall provide in the final report the following information:
  - (1) the physical location of artifacts, records, and all other documentation;
  - (2) an itemized list of all recovered archaeological resources by type, variety, material, or other description and a list of accession numbers or other identifiers applied to the recovered resources; and

(3) an itemized list of records, photographs, and other documents and a list of accession numbers or other identifiers applied to the records and data.

(h) The permittee shall be responsible for the accuracy and validity of the data contained in the final report submitted to the Department of Natural and Cultural Resources.

(i) Permits issued for a period greater than one year shall be reviewed at least once a year through interim reports submitted by the permittee and by compliance inspections conducted at the investigation location. The review shall be conducted with the State Archaeologist and the head of the land-controlling agency or his or her designee. The interim report shall include: the name of the permittee, the location where the investigation is being conducted, the permit number, the name of the Principal Investigator Archaeologist, a description of the project goals, a description of the methods of research, all archaeological findings, and the project schedule.

(j) The State Archaeologist and the land-controlling agency shall review all draft and final reports for Permits to ensure that the investigations serve the public interest and the reports meet the federal Secretary of Interior's Standards for Archaeology and Historic Preservation which are incorporated by reference, including subsequent amendments and editions, for free at [https://www.nps.gov/history/local-law/arch\\_stnds\\_0.htm](https://www.nps.gov/history/local-law/arch_stnds_0.htm), and available for inspection at no cost at the Office of State Archaeology. The State Archaeologist may request revisions of the draft or final reports. Terms and conditions of a Permit shall be considered satisfied only after report revisions have been completed and the report has been accepted by the State Archaeologist.

(k) The State Archaeologist and the land-controlling agency have 60 days after receipt to review and comment on draft reports and return written comments to the permittee.

(l) The Principal Investigator Archaeologist shall revise and submit the final report, in accordance with the State Archaeologist written comments, within 30 days of receipt of review and comments by the State Archaeologist.

*History Note: Authority G.S. 70-13; 70-14; 121-4; 121-23; 121-25; 143B-10; 143B-62(h);  
Eff. June 1, 2017.*

#### **07 NCAC 04R .1613 CUSTODY OF RESOURCES UNDER TERMS OF PERMITS**

(a) The archaeological resources that are collected, excavated, or removed from State lands or Abandoned shipwrecks and related records and data shall remain the property of the State of North Carolina.

(b) The location of all records, artifacts, or other materials shall not be changed from that approved in the permit without prior approval of the State Archaeologist and, in the case of Specific Permits, the land-controlling agency. This restriction shall not apply to the temporary removal and relocation of artifacts or records for the purposes of scientific, historical, or educational research or for purposes of public display or education, so long as the artifacts or records remain:

- (1) In the case of General Permits, under the custody or control of the Principal Investigator Archaeologist or the land-controlling agency; or
- (2) In the case of Specific Permits, under the custody or control of the museum, university, or scientific or educational institution approved in the permit.

(c) Transfers of records and artifacts between universities, museums, and scientific or educational institutions shall be approved by the State Archaeologist. In the case of General Permits this Paragraph shall not apply to the movement of artifacts in the custody of a land-controlling agency so long as the artifacts remain under the control of the Principal Investigator Archaeologist and the land-controlling agency.

(d) All requests to relocate or transfer records, artifacts, or other materials related to a permit issued under this Section shall be in writing to the State Archaeologist. The requests shall include:

- (1) the permittee's name, address, and telephone number;
- (2) a copy of the permit;
- (3) a statement specifying whether the request is for relocation or transfer;
- (4) a description of items being relocated or transferred;
- (5) a statement describing the reason needed for the relocation or transfer;
- (6) the name, address, and telephone number of the institution where the items will be relocated or transferred; and
- (7) a letter from the permittee certifying that the receiving institution meets the qualifications for curation and preservation of the items as set forth in 36 C.F.R. 79

(e) Following a review of the application materials, the State Archaeologist shall notify the permittee in writing of its decision to approve or deny the request. Requests for relocation or transfer may be denied by the State Archaeologist if it:

- (1) would harm the safety of the item, such as by theft, vandalism, or risk of accidental damage; or

- (2) result in damage to the item, such as fading, breaking or, cracking due to overexposure from light, air, moisture, or additional movement.

*History Note:* Authority G.S. 70-13; 70-14; 121-23; 121-25; 143B-10; 143B-62(1)(h);  
*Eff. June 1, 2017.*