

## **Chapter 113A.**

### **Pollution Control and Environment.**

#### Article 1.

#### Environmental Policy Act.

##### **§ 113A-1. Title.**

This Article shall be known as the North Carolina Environmental Policy Act of 1971. (1971, c. 1203, s. 1; 1991, c. 431, s. 1.)

##### **§ 113A-2. Purposes.**

The purposes of this Article are: to declare a State policy which will encourage the wise, productive, and beneficial use of the natural resources of the State without damage to the environment, maintain a healthy and pleasant environment, and preserve the natural beauty of the State; to encourage an educational program which will create a public awareness of our environment and its related programs; to require agencies of the State to consider and report upon environmental aspects and consequences of their actions involving the expenditure of public moneys or use of public land; and to provide means to implement these purposes. (1971, c. 1203, s. 2; 1991 (Reg. Sess., 1992), c. 945, s. 1.)

##### **§ 113A-3. Declaration of State environmental policy.**

The General Assembly of North Carolina, recognizing the profound influence of man's activity on the natural environment, and desiring, in its role as trustee for future generations, to assure that an environment of high quality will be maintained for the health and well-being of all, declares that it shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all of its citizens, safe, healthful, productive and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance. (1971, c. 1203, s. 3.)

##### **§ 113A-4. Cooperation of agencies; reports; availability of information.**

The General Assembly authorizes and directs that, to the fullest extent possible:

- (1) The policies, rules, and public laws of this State shall be interpreted and administered in accordance with the policies set forth in this Article; and
- (2) Every State agency shall include in every recommendation or report on any action involving significant expenditure of public moneys or use of public land for projects and programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible official setting forth the following:
  - a. The direct environmental impact of the proposed action;
  - b. Any significant adverse environmental effects which cannot be avoided should the proposal be implemented;
  - c. Mitigation measures proposed to minimize the impact;
  - d. Alternatives to the proposed action;

- e. The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity; and
  - f. Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.
- (2a) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any agency which has either jurisdiction by law or special expertise with respect to any environmental impact involved. The failure of an agency to provide comments within the comment period established under this subdivision or to request an extension for a specific period of time set forth in the request shall be treated by the responsible official as a conclusion by that agency that there is no significant environmental impact. Any unit of local government or other interested party that may be adversely affected by the proposed action may submit written comment. The responsible official shall consider written comment from units of local government and interested parties that is received within the established comment period. Copies of such detailed statement and such comments shall be made available to the Governor, to such agency or agencies as he may designate, and to the appropriate multi-county regional agency as certified by the Secretary of Administration, shall be placed in the public file of the agency and shall accompany the proposal through the existing agency review processes. A copy of such detailed statement shall be made available to the public and to counties, municipalities, institutions and individuals, upon request.
- (3) The Governor, and any State agency charged with duties under this Article, may call upon any of the public institutions of higher education of this State for assistance in developing plans and procedures under this Article and in meeting the requirements of this Article, including without limitation any of the following units of the University of North Carolina: the Water Resources Research Institute, the Institute for Environmental Studies, the Triangle Universities Consortium on Air Pollution, and the School of Government at the University of North Carolina at Chapel Hill. (1971, c. 1203, s. 4; 1987, c. 827, s. 125; 1991, c. 431, s. 2; 1991 (Reg. Sess., 1992), c. 945, s. 2; 2006-264, s. 29(g); 2015-90, s. 1.)

**§ 113A-5. Review of agency actions involving major adverse changes or conflicts.**

Whenever, in the judgment of the responsible State official, the information obtained in preparing the statement indicates that a major adverse change in the environment, or conflicts concerning alternative uses of available natural resources, would result from a specific program, project or action, and that an appropriate alternative cannot be developed, such information shall be presented to the Governor for review and final decision by him or by such agency as he may designate, in the exercise of the powers of the Governor. (1971, c. 1203, s. 5.)

**§ 113A-6. Conformity of administrative procedures to State environmental policy.**

All agencies of the State shall periodically review their statutory authority, administrative rules, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit or hinder full compliance with the purposes

and provisions of this Article and shall propose to the Governor such measures as may be necessary to bring their authority, rules, policies and procedures into conformity with the intent, purposes and procedures set forth in this Article. (1971, c. 1203, s. 6; 1987, c. 827, s. 126.)

**§ 113A-7. Other statutory obligations of agencies.**

Nothing in this Article shall in any way affect nor detract from specific statutory obligations of any State agency

- (1) To comply with criteria or standards of environmental quality or to perform other statutory obligations imposed upon it,
- (2) To coordinate or consult with any other State agency or federal agency, or
- (3) To act, or refrain from acting contingent upon the recommendations or certification of any other State agency or federal agency. (1971, c. 1203, s. 7.)

**§ 113A-8. Major development projects.**

(a) The governing bodies of all cities, counties, and towns acting individually, or collectively, may by ordinance require any special-purpose unit of government or private developer of a major development project to submit detailed statements, as defined in G.S. 113A-4(2), of the impact of such projects for consideration by those governing bodies in matters within their jurisdiction. Any such ordinance may not be designed to apply to only a particular major development project, and shall be applied consistently.

(b) Any ordinance adopted pursuant to this section shall exempt those major development projects for which a detailed statement of the environmental impact of the project or a functionally equivalent permitting process is required by federal or State law, regulation, or rule.

(c) Any ordinance adopted pursuant to this section shall establish minimum criteria to be used in determining whether a statement of environmental impact is required. A detailed statement of environmental impact may not be required for a project that does not exceed the minimum criteria and any exceptions to the minimum criteria established by the ordinance.

(d) Any ordinance adopted pursuant to this section shall exempt from its requirements the certain cases for which an environmental document is not required as set forth in G.S. 113A-12. (1971, c. 1203, s. 8; 1991, c. 431, s. 3; 2014-90, s. 5.)

**§ 113A-8.1. Surface water transfers.**

An environmental assessment shall be prepared for any transfer for which a petition is filed in accordance with G.S. 143-215.22L. The determination of whether an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of this Article. (1998-168, s. 6; 2007-484, s. 43.7C; 2007-518, s. 4.)

**§ 113A-9. Definitions.**

As used in this Article, unless the context indicates otherwise, the term:

- (1) "Environmental assessment" (EA) means a document prepared by a State agency to evaluate whether the probable impacts of a proposed action require the preparation of an environmental impact statement under this Article.

- (2) "Environmental document" means an environmental assessment, an environmental impact statement, or a finding of no significant impact.
- (3) "Environmental impact statement" (EIS) means the detailed statement described in G.S. 113A-4(2).
- (4) "Finding of no significant impact" (FONSI) means a document prepared by a State agency that lists the probable environmental impacts of a proposed action, concludes that a proposed action will not result in a significant adverse effect on the environment, states the specific reason or reasons for such conclusion, and states that an environmental impact statement is not required under this Article.
- (5) "Major development project" shall include but is not limited to shopping centers, subdivisions and other housing developments, and industrial and commercial projects, but shall not include any projects of less than ten contiguous acres in extent.
- (6) "Minimum criteria" means a rule that designates a particular action or class of actions for which the preparation of environmental documents is not required.
- (7) "Public land" means all land and interests therein, title of which is vested in the State of North Carolina, in any State agency, or in the State for the use of any State agency or political subdivision of the State, and includes all vacant and unappropriated land, swampland, submerged land, land acquired by the State by virtue of being sold for taxes or by any other manner of acquisition, or escheated land.
- (7a) "Significant expenditure of public moneys" means expenditures of public funds greater than ten million dollars (\$10,000,000) for a single project or action or related group of projects or actions. For purposes of this subdivision, contributions of funds or in-kind contributions by municipalities, counties, regional or special-purpose government agencies, and other similar entities created by an act of the General Assembly and in-kind contributions by a non-State entity shall not be considered an expenditure of public funds for purposes of calculating whether such an expenditure is significant.
- (8) "Special-purpose unit of government" includes any special district or public authority.
- (9) "State agency" includes every department, agency, institution, public authority, board, commission, bureau, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include local governmental units or bodies such as cities, towns, other municipal corporations or political subdivisions of the State, county or city boards of education, other local special-purpose public districts, units or bodies of any kind, or private corporations created by act of the General Assembly, except in those instances where programs, projects and actions of local governmental units or bodies are subject to review, approval or licensing by State agencies in accordance with existing statutory authority, in which case local governmental units or bodies shall supply information which may be required by such State agencies for preparation of any environmental statement required by this Article.

- (10) "State official" means the Director, Commissioner, Secretary, Administrator or Chairman of the State agency having primary statutory authority for specific programs, projects or actions subject to this Article, or his authorized representative.
- (11) "Use of public land" means land-disturbing activity of greater than 10 acres that results in substantial, permanent changes in the natural cover or topography of those lands that includes:
  - a. The grant of a lease, easement, or permit authorizing private use of public land; or
  - b. The use of privately owned land for any project or program if (i) the State or any agency of the State has agreed to purchase the property or to exchange the property for public land and (ii) the use meets the other requirements of this subdivision. (1971, c. 1203, s. 9; 1991 (Reg. Sess., 1992), c. 945, s. 3; 2015-90, s. 2.)

**§ 113A-10. Provisions supplemental.**

The policies, obligations and provisions of this Article are supplementary to those set forth in existing authorizations of and statutory provisions applicable to State agencies and local governments. In those instances where a State agency is required to prepare an environmental document or to comment on an environmental document under provisions of federal law, no separate environmental document shall be required to be prepared or published under this Article so long as the environmental document or comment meets the provisions of this Article. (1971, c. 1203, s. 10; 1991 (Reg. Sess., 1992), c. 945, s. 4; 2015-90, s. 3.)

**§ 113A-11. Adoption of rules.**

- (a) The Department of Administration shall adopt rules to implement this Article.
- (b) Each State agency shall adopt rules that establish minimum criteria. An agency may include a particular action or class of actions in its minimum criteria only if the agency makes a specific finding that the action or class of actions has no significant long-term impact on the environment. Rules establishing minimum criteria shall be consistent with rules adopted by the Department of Administration. (1991 (Reg. Sess., 1992), c. 899, s. 1; c. 945, s. 7(b); 2015-90, s. 4.)

**§ 113A-12. Environmental document not required in certain cases.**

Notwithstanding any other provision in this Article, no environmental document shall be required in connection with:

- (1) The construction, maintenance, or removal of an electric power line, water line, sewage line, stormwater drainage line, telephone line, telegraph line, cable television line, data transmission line, natural gas line, or similar infrastructure project within or across the right-of-way of any street or highway.
- (2) An action approved under:
  - a. A general permit issued under G.S. 113A-118.1, 143-215.1(b)(3), or 143-215.108(c)(8).

- b. A Coastal Habitat Protection Plan under G.S. 143B-279.8.
  - c. A special order pursuant to G.S. 143-215.2 or G.S. 143-215.110.
  - d. An action taken to address an emergency under G.S. 143-215.3 or other similar emergency conditions.
  - e. A remedial or similar action to address contamination under Chapter 130A or 143 of the General Statutes, including a brownfield agreement entered into under G.S. 130A-310.32.
  - f. A certificate of convenience and necessity under G.S. 62-110.
  - g. An industrial or pollution control project approval by the Secretary of Commerce under Chapter 159C of the General Statutes.
  - h. A project approved as a water infrastructure project under Chapter 159G of the General Statutes.
  - i. A certification issued by the Division of Water Resources of the Department of Environmental Quality under the authority granted to the Environmental Management Commission by G.S. 143B-282(a)(1)u.
- (3) A lease or easement granted by a State agency for:
- a. The use of an existing building or facility.
  - b. Placement of a wastewater line or other structures or uses on or under submerged lands pursuant to a permit granted under G.S. 143-215.1.
  - c. A shellfish cultivation lease granted under G.S. 113-202.
  - d. A facility for the use or benefit of The University of North Carolina System, the North Carolina community college system, the North Carolina public school systems, or one or more constituent institutions of any of those systems.
  - e. A health care facility financed pursuant to Chapter 131A of the General Statutes or receiving a certificate of need under Article 9 of Chapter 131E of the General Statutes.
- (4) The construction of a driveway connection to a public roadway.
- (5) Any State action in connection with a project for which public lands are used and/or public monies are expended if the land or expenditure is provided as an incentive for the project pursuant to an agreement that makes the incentives contingent on prior completion of the project or activity, or completion on a specified timetable, and a specified level of job creation or new capital investment.
- (6) A major development as defined in G.S. 113A-118 that receives a permit issued under Article 7 of Chapter 113A of the General Statutes.
- (7) The issuance of an executive order under G.S. 166A-19.30(a)(5) waiving the requirement for an environmental document.
- (8) The redevelopment or reoccupation of an existing building or facility, so long as any additions to the existing building or facility do not increase the total footprint to more than one hundred fifty percent (150%) of the footprint of the existing building or facility and so long as any new construction does not increase the total footprint to more than one hundred fifty percent (150%) of the footprint of the existing building or facility.
- (9) Facilities created in the course of facilitating closure activities under Part 2I of Article 9 of Chapter 130A of the General Statutes.

- (10) Any project or facility specifically required or authorized by an act of the General Assembly.
- (11) Any project undertaken as mitigation for the impacts of an approved project or to mitigate or avoid harm from natural environmental change, including wetlands and buffer mitigation projects and banks, coastal protections and mitigation projects, and noise mitigation projects. (1991 (Reg. Sess., 1992), c. 945, ss. 5, 7(a); c. 1030, s. 51.15; 2010-186, s. 1; 2010-188, s. 1; 2011-398, s. 59(a); 2014-90, s. 4; 2014-100, s. 14.7(j); 2015-90, s. 5; 2015-241, s. 14.30(c).)

**§ 113A-13. Administrative and judicial review.**

The preparation of an environmental document required under this Article is intended to assist the responsible agency in determining the appropriate decision on the proposed action. An environmental document required under this Article is a necessary part of an application or other request for agency action. Administrative and judicial review of an environmental document is incidental to, and may only be undertaken in connection with, review of the agency action. No other review of an environmental document is allowed. (1991 (Reg. Sess., 1992), c. 945, ss. 5, 7(a).)

**§§ 113A-14 through 113A-20. Reserved for future codification purposes.**

Article 2.

Interstate Environmental Compact.

**§ 113A-21. Title.**

This Article shall be known and cited as "The Interstate Environmental Compact Act of 1971." (1971, c. 805, s. 1.)

**§ 113A-22. Purpose.**

The General Assembly of North Carolina recognizes and declares:

- (1) The concern for the purity and life-giving qualities of our environment is of primary interest to every citizen of North Carolina and to all Americans.
- (2) The quality of our environment depends upon the management of the air, water, and land resources upon which our lives depend.
- (3) The ultimate responsibility for the health, safety, and welfare of the citizens of North Carolina rests upon the State government.
- (4) The environment of every state is affected with local, state, regional, and national interests since ecological systems cross state boundaries.
- (5) The discharge of this responsibility of environmental protection can be enhanced by acting in concert and cooperation with other states and with the federal government. (1971, c. 805, s. 2.)

**§ 113A-23. Compact provisions.**

The Interstate Environmental Compact is hereby enacted into law and entered into with all other jurisdictions legally joining herein in the form substantially as follows:

## Article 1. Findings, Purposes and Reservations of Power.

- (1) Findings. – Signatory states hereby find and declare:
  - (a) The environment of every state is affected with local, state, regional, and national interests and its protection, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatories.
  - (b) Certain environmental pollution problems transcend state boundaries and thereby become common to adjacent states requiring cooperative efforts.
  - (c) The environment of each state is subject to the effective control of the signatories, and coordinated, cooperative or joint exercise of control measures is in their common interests.
- (2) Purposes. – The purposes of the signatories in enacting this Compact are:
  - (a) To assist and participate in the national environment protection programs as set forth in federal legislation; to promote intergovernmental cooperation for multi-state action relating to environmental protection through interstate agreements; and to encourage cooperative and coordinated environmental protection by the signatories and the federal government;
  - (b) To preserve and utilize the functions, powers, and duties of existing state agencies of government to the maximum extent possible consistent with the purposes of the Compact.
- (3) Powers of the United States. – (a) Nothing contained in this Compact shall impair, affect or extend the constitutional authority of the United States. (b) The signatories hereby recognize the power and right of the Congress of the United States at any time by any statute expressly enacted for that purpose to revise the terms and conditions of its content.
- (4) Powers of the States. – Nothing contained in this Compact shall impair or extend the constitutional authority of any signatory state, nor shall the police powers of any signatory state be affected.

## Article 2. Short Title, Definitions, Purposes and Limitations.

- (1) Short Title. – This Compact shall be known and may be cited as the Interstate Environmental Compact.
- (2) Definitions. – For the purpose of this Compact and of any supplemental or concurring legislation enacted pursuant or in relation hereto, except as may be otherwise required by the context:
  - (a) "State" shall mean any one of the 50 states of the United States of America, the Commonwealth of Puerto Rico and the Territory of the Virgin Islands, but shall not include the District of Columbia.
  - (b) "Interstate environment pollution" shall mean any pollution of a stream or body of water crossing or marking a state boundary, interstate air quality control region designated by an appropriate federal agency or solid waste collection and disposal district or program involving the jurisdiction or territories of more than one state.

- (c) "Government" shall mean the governments of the United States and the signatory states.
- (d) "Federal government" shall mean the government of the United States of America and any appropriate department, instrumentality, agency, commission, bureau, division, branch or other unit thereof, as the case may be, but shall not include the District of Columbia.
- (e) "Signator" shall mean any state which enters into this Compact and is a party thereto.

### Article 3. Intergovernmental Cooperation.

(1) Agreements with the Federal Government and other Agencies. – Signatory states are hereby authorized jointly to participate in cooperative or joint undertakings for the protection of the interstate environment with the federal government or with any intergovernmental or interstate agencies.

### Article 4. Supplementary Agreements, Jurisdiction and Enforcement.

(1) Signatories may enter into agreements for the purpose of controlling interstate environmental problems in accordance with applicable federal legislation and under terms and conditions as deemed appropriate by the agreeing states under paragraph (6) and paragraph (8) of this Article 4.

(2) Recognition of Existing Nonenvironmental Intergovernmental Arrangements. – The signatories agree that existing federal-state, interstate or intergovernmental arrangements which are not primarily directed to environmental protection purposes as defined herein are not affected by this Compact.

(3) Recognition of Existing Intergovernmental Agreements Directed to Environmental Objectives. – All existing interstate compacts directly relating to environmental protection are hereby expressly recognized and nothing in this Compact shall be construed to diminish or supersede the powers and functions of such existing intergovernmental agreements and the organizations created by them.

(4) Modification of Existing Commissions and Compacts. – Recognition herein of multi-state commissions and compacts shall not be construed to limit directly or indirectly the creation of additional multi-state organizations or interstate compacts, nor to prevent termination, modification, extension, or supplementation of such multi-state organizations and interstate compacts recognized herein by the federal government or states party thereto.

(5) Recognition of Future Multi-State Commissions and Interstate Compacts. – Nothing in this Compact shall be construed to prevent signatories from entering into multi-state organizations or other interstate compacts which do not conflict with their obligations under this Compact.

(6) Supplementary Agreements. – Any two or more signatories may enter into supplementary agreements for joint, coordinated or mutual environmental management activities relating to interstate pollution problems common to the territories of such states and for the establishment of common or joint regulations, management, services, agencies or facilities for such purposes or may designate an appropriate agency to act as their joint agency in regard thereto. No supplementary agreement shall be valid to the extent that it conflicts with the purposes of this Compact and the creation of a joint agency by supplementary agreement shall not affect the

privileges, powers, responsibilities or duties under this Compact of signatories participating therein as embodied in this Compact.

(7) Execution of Supplementary Agreements and Effective Date. – The Governor is authorized to enter into supplementary agreements for the State and his official signature shall render the agreement immediately binding upon the State; provided that:

- (a) The legislature of any signatory entering into such a supplementary agreement shall at any subsequent legislative session by concurrent resolution bring the supplementary agreement before it and by appropriate legislative action approve, reverse, modify, or condition the agreement of that state.
- (b) Nothing in this agreement shall be construed to limit the right of Congress by act of law expressly enacted for that purpose to disapprove or condition such a supplementary agreement.

(8) Special Supplementary Agreements. – Signatories may enter into special supplementary agreements with the District of Columbia or foreign nations for the same purposes and with the same powers as under paragraph (6), Article 4, upon the conditions that such nonsignatory party accept the general obligations of signatories under this Compact. Provided, that such special supplementary agreements shall become effective only after being consented to by the Congress.

(9) Jurisdiction of Signatories Reserved. – Nothing in this Compact or in any supplementary agreement thereunder shall be construed to restrict, relinquish or be in derogation of, any power or authority constitutionally possessed by any signatory within its jurisdiction.

(10) Complementary Legislation by Signatories. – Signatories may enact such additional legislation as may be deemed appropriate to enable its officers and governmental agencies to accomplish effectively the purposes of this Compact and supplementary agreements recognized or entered into under the terms of this Article.

(11) Legal Rights of Signatories. – Nothing in this Compact shall impair the exercise by any signatory of its legal rights or remedies established by the United States Constitution or any other laws of this nation.

#### Article 5. Construction, Amendment, and Effective Date.

(1) Construction. – It is the intent of the signatories that no provision of this Compact or supplementary agreement entered into hereunder shall be construed as invalidating any provision of law of any signatory and that nothing in this Compact shall be construed to modify or qualify the authority of any signatory to enact or enforce environmental protection legislation within its jurisdiction.

(2) Severability. – The provisions of this Compact or of agreements hereunder shall be severable and if any phrase, clause, sentence or provisions of this Compact, or such an agreement is declared to be contrary to the constitutionality of the remainder of this Compact or of any agreement and the applicability thereof to any participating jurisdiction, agency, person or circumstance shall not be affected thereby and shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the signatory affected as to all severable matters. It is the intent of the signatories that the provisions of this Compact shall be reasonably and liberally construed in the context of its purposes.

(3) Amendments. – Amendments to this Compact may be initiated by legislative action of any signatory and become effective when concurred in by all signatories and approved by Congress.

(4) Effective Date. – This Compact shall become binding on a state when enacted by it into law and such state shall thereafter become a signatory and party hereto with any and all states legally joining herein. (1971, c. 805, s. 3.)

**§§ 113A-24 through 113A-29. Reserved for future codification purposes.**

§ 113A-24: Reserved for future codification purposes.

§ 113A-25: Reserved for future codification purposes.

§ 113A-26: Reserved for future codification purposes.

§ 113A-27: Reserved for future codification purposes.

§ 113A-28: Reserved for future codification purposes.

§ 113A-29: Reserved for future codification purposes.

Article 3.

Natural and Scenic Rivers System.

§ 113A-30: Recodified as G.S. 143B-135.140 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ 113A-31: Recodified as G.S. 143B-135.142 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ 113A-32: Recodified as G.S. 143B-135.144 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ 113A-33: Recodified as G.S. 143B-135.146 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ 113A-34: Recodified as G.S. 143B-135.148 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ 113A-35: Recodified as G.S. 143B-135.150 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ **113A-35.1:** Recodified as G.S. 143B-135.152 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ **113A-35.2:** Recodified as G.S. 143B-135.154 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ **113A-36:** Recodified as G.S. 143B-135.156 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ **113A-37:** Recodified as G.S. 143B-135.158 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ **113A-38:** Recodified as G.S. 143B-135.160 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ **113A-39:** Recodified as G.S. 143B-135.162 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ **113A-40:** Recodified as G.S. 143B-135.164 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ **113A-41:** Recodified as G.S. 143B-135.166 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ **113A-42:** Recodified as G.S. 143B-135.168 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ **113A-43:** Recodified as G.S. 143B-135.170 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ **113A-44:** Recodified as G.S. 143B-135.172 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

**§§ 113A-45 through 113A-49. Reserved for future codification purposes.**

#### Article 4.

#### Sedimentation Pollution Control Act of 1973.

§ **113A-50. Short title.**

This Article shall be known as and may be cited as the "Sedimentation Pollution Control Act of 1973." (1973, c. 392, s. 1.)

§ **113A-51. Preamble.**

The sedimentation of streams, lakes and other waters of this State constitutes a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters, principally from construction sites and road maintenance. The continued development of this State will result in an intensification of pollution through sedimentation unless timely and appropriate action is taken. Control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose. It is the purpose of this Article to provide for the creation, administration, and enforcement of a program and for the adoption of minimal mandatory standards which will permit development of this State to continue with the least detrimental effects from pollution by sedimentation. In recognition of the desirability of early coordination of sedimentation control planning, it is the intention of the General Assembly that preconstruction conferences be held among the affected parties, subject to the availability of staff. (1973, c. 392, s. 2; 1975, c. 647, s. 3.)

### **§ 113A-52. Definitions.**

As used in this Article, unless the context otherwise requires:

- (1) Repealed by Session Laws 1973, c. 1417, s. 1.
- (1a) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines "affiliate" as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.
- (2) "Commission" means the North Carolina Sedimentation Control Commission.
- (3) "Department" means the North Carolina Department of Environmental Quality.
- (4) "District" means any Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.
- (5) "Erosion" means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
- (6) "Land-disturbing activity" means any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.
- (7) "Local government" means any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of this Article.
- (7a) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines "parent" as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (8) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- (9) "Secretary" means the Secretary of Environmental Quality.
- (10) "Sediment" means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.
- (10a) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines "subsidiary" as an affiliate

that is directly, or indirectly through one or more intermediaries, controlled by another person.

- (10b) "Tract" means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
- (11) "Working days" means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken. (1973, c. 392, s. 3; c. 1417, s. 1; 1975, c. 647, s. 1; 1977, c. 771, s. 4; 1989, c. 179, s. 1; c. 727, s. 218(60); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991, c. 275, s. 1; 1993 (Reg. Sess., 1994), c. 776, s. 1; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u), (v).)

### **§ 113A-52.01. Applicability of this Article.**

This Article shall not apply to the following land-disturbing activities:

- (1) Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
  - a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
  - b. Dairy animals and dairy products.
  - c. Poultry and poultry products.
  - d. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
  - e. Bees and apiary products.
  - f. Fur producing animals.
  - g. Mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.
- (2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, as adopted by the Department of Agriculture and Consumer Services.
- (3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- (4) For the duration of an emergency, activities essential to protect human life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5).
- (5) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- (6) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2 (January 1, 2014 Edition). (1993 (Reg. Sess., 1994), c. 776, s. 2; 1997-84, s. 1; 2014-100, s. 14.7(k); 2015-263, s. 19; 2016-113, s. 14; 2017-108, s. 6(a).)

**§ 113A-52.1. Forest Practice Guidelines.**

(a) The Department of Agriculture and Consumer Services shall adopt Forest Practice Guidelines Related to Water Quality (best management practices). The adoption of Forest Practices Guidelines Related to Water Quality under this section is subject to the provisions of Chapter 150B of the General Statutes.

(b) If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this Article shall apply to such activity and any related land-disturbing activity on the tract.

(c) The Commissioner shall establish and appoint a Forestry Technical Advisory Committee to assist in the development and periodic review of Forest Practice Guidelines Related to Water Quality. The Forestry Technical Advisory Committee shall consist of one member from the forest products industry, one member who is a consulting forester, one member who is a private landowner knowledgeable in forestry, one member from the United States Forest Service, one member from the academic community who is knowledgeable in forestry, one member employed by the Department of Environmental Quality who is knowledgeable in erosion and sedimentation control, one member who is knowledgeable in wildlife management, one member who is knowledgeable in marine fisheries management, one member who is knowledgeable in water quality, and one member from the conservation community. (1989, c. 179, s. 2; 2017-108, s. 6(b).)

**§ 113A-53. Repealed by Session Laws 1973, c. 1262, s. 41.**

**§ 113A-54. Powers and duties of the Commission.**

(a) The Commission shall, in cooperation with the Secretary of Transportation and other appropriate State and federal agencies, develop, promulgate, publicize, and administer a comprehensive State erosion and sedimentation control program.

(b) The Commission shall develop and adopt and shall revise as necessary from time to time, rules and regulations for the control of erosion and sedimentation resulting from land-disturbing activities. The Commission shall adopt or revise its rules and regulations in accordance with Chapter 150B of the General Statutes.

(c) The rules and regulations adopted pursuant to G.S. 113A-54(b) for carrying out the erosion and sedimentation control program shall:

- (1) Be based upon relevant physical and developmental information concerning the watershed and drainage basins of the State, including, but not limited to, data relating to land use, soils, hydrology, geology, grading, ground cover, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;
- (2) Include such survey of lands and waters as may be deemed appropriate by the Commission or required by any applicable laws to identify those areas, including multijurisdictional and watershed areas, with critical erosion and sedimentation problems; and

- (3) Contain conservation standards for various types of soils and land uses, which standards shall include criteria and alternative techniques and methods for the control of erosion and sedimentation resulting from land-disturbing activities.
- (d) In implementing the erosion and sedimentation control program, the Commission shall:
- (1) Assist and encourage local governments in developing erosion and sedimentation control programs and, as a part of this assistance, the Commission shall develop a model local erosion and sedimentation control ordinance. The Commission shall approve, approve as modified, or disapprove local programs submitted to it pursuant to G.S. 113A-60.
  - (2) Assist and encourage other State agencies in developing erosion and sedimentation control programs to be administered in their jurisdictions. The Commission shall approve, approve as modified, or disapprove programs submitted pursuant to G.S. 113A-56 and from time to time shall review these programs for compliance with rules adopted by the Commission and for adequate enforcement.
  - (3) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of this Article and erosion and sedimentation control rules, ordinances, regulations, and plans.
  - (4) Require submission of erosion and sedimentation control plans by those responsible for initiating land-disturbing activities for approval prior to commencement of the activities.
- (e) To assist it in developing the erosion and sedimentation control program required by this Article, the Commission is authorized to appoint an advisory committee consisting of technical experts in the fields of water resources, soil science, engineering, and landscape architecture.
- (f) Repealed by Session Laws 1987, c. 827, s. 10, effective August 13, 1987.
- (g) The Commission is authorized to make the final decision on a request for the remission of a civil penalty under G.S. 113A-64.2. (1973, c. 392, s. 5; c. 1331, s. 3; c. 1417, s. 6; 1975, 2nd Sess., c. 983, s. 74; 1977, c. 464, s. 35; 1979, c. 922, s. 2; 1983 (Reg. Sess., 1984), c. 1014, ss. 1, 2; 1987, c. 827, s. 10; 1987 (Reg. Sess., 1988), c. 1000, s. 3; 1989, c. 676, s. 1; 1993 (Reg. Sess., 1994), c. 776, s. 3; 2002-165, ss. 2.2, 2.3; 2015-241, s. 14.26(a).)

**§ 113A-54.1. Approval of erosion control plans.**

- (a) A draft erosion and sedimentation control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. Except as provided in subsection (a1) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must

include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity. The Commission shall approve, approve with modifications, or disapprove a draft erosion and sedimentation control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion and sedimentation control plan or a revised erosion and sedimentation control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion and sedimentation control plans approved under this Article.

(a1) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

(b) If, following commencement of a land-disturbing activity pursuant to an approved erosion and sedimentation control plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require any revision of the plan that is necessary to comply with this Article. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan.

(c) The Commission shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Director of the Division of Energy, Mineral, and Land Resources may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection (d1) of this section upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(d) In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in writing the specific reasons that the plan was disapproved. The applicant or the proposed transferee may appeal the Director's disapproval of the plan to the Commission. For purposes of this subsection and subsection (c) of this section, an applicant's record or a proposed transferee's record may be considered for only the two years prior to the application date.

(d1) The Department may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection:

- (1) The Department may transfer a plan if all of the following conditions are met:
  - a. The successor-owner of the property submits to the Department a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
  - b. The Department finds all of the following:
    1. The plan holder is one of the following:
      - I. A natural person who is deceased.
      - II. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
      - III. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
      - IV. A person who has sold the property on which the permitted activity is occurring or will occur.
    2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
    3. The successor-owner is the sole claimant of the right to engage in the permitted activity.
    4. There will be no substantial change in the permitted activity.
- (2) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
- (3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
- (4) Notwithstanding changes to law made after the original issuance of the plan, the Department may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Commission from requiring a revised plan pursuant to G.S. 113A-54.1(b).

(e) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the

approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1. (1989, c. 676, s. 2; 1993 (Reg. Sess., 1994), c. 776, s. 4; 1998-221, s. 1.11(a); 1999-379, s. 1; 2005-386, s. 7.1; 2006-250, s. 1; 2011-394, s. 3; 2012-143, s. 1(f); 2013-121, s. 3.)

**§ 113A-54.2. Approval Fees.**

(a) An application fee of sixty-five dollars (\$65.00) per acre of disturbed land shown on an erosion and sedimentation control plan or of land actually disturbed during the life of the project shall be charged for the review of an erosion and sedimentation control plan under this Article.

(b) The Sedimentation Account is established as a nonreverting account within the Department. Fees collected under this section shall be credited to the Account and shall be applied to the costs of administering this Article.

(c) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 1039, s. 3.

(d) This section may not limit the existing authority of local programs approved pursuant to this Article to assess fees for the approval of erosion and sedimentation control plans. (1989 (Reg. Sess., 1990), c. 906, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 3; 1993 (Reg. Sess., 1994), c. 776, s. 5; 1999-379, s. 5; 2002-165, s. 2.4; 2007-323, s. 30.1(a).)

**§ 113A-55. Authority of the Secretary.**

The sedimentation control program developed by the Commission shall be administered by the Secretary under the direction of the Commission. To this end the Secretary shall employ the necessary clerical, technical, and administrative personnel, and assign tasks to the various divisions of the Department for the purpose of implementing this Article. The Secretary may bring enforcement actions pursuant to G.S. 113A-64 and G.S. 113A-65. The Secretary shall make final agency decisions in contested cases that arise from civil penalty assessments pursuant to G.S. 113A-64. (1973, c. 392, s. 6, c. 1417, s. 3; 1993 (Reg. Sess., 1994), c. 776, s. 6.)

**§ 113A-56. Jurisdiction of the Commission.**

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:

- (1) Conducted by the State.
- (2) Conducted by the United States.
- (3) Conducted by persons having the power of eminent domain other than a local government.
- (4) Conducted by a local government.
- (5) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other State agency that has submitted an erosion and sedimentation control program to be administered by it, if the program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments that administer a delegated erosion and sedimentation control program over all other land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the

Commission has the following authority with respect to a delegated erosion and sedimentation control program:

- (1) To review erosion and sedimentation control plan approvals made by a delegated erosion and sedimentation control program and to require a revised plan if the Commission determines that a plan does not comply with the requirements of this Article or the rules adopted pursuant to this Article.
- (2) To review the compliance activities of a delegated erosion and sedimentation control program and to take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action. (1973, c. 392, s. 7; c. 1417, s. 4; 1987, c. 827, s. 130; 1987 (Reg. Sess., 1988), c. 1000, s. 4; 2002-165, s. 2.5; 2006-250, s. 2.)

**§ 113A-57. Mandatory standards for land-disturbing activity.**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

- (1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
- (2) The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.
- (3) Whenever land-disturbing activity that will disturb more than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commission.
- (4) No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract unless, 30 or more days prior to initiating the activity, an

erosion and sedimentation control plan for the activity is filed with the agency having jurisdiction and approved by the agency. An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program, and the land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The agency having jurisdiction shall forward to the Director of the Division of Water Resources a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

- (5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan. (1973, c. 392, s. 8; c. 1417, s. 5; 1975, c. 647, s. 2; 1979, c. 564; 1983 (Reg. Sess., 1984), c. 1014, s. 3; 1987, c. 827, s. 131; 1989, c. 676, s. 3; 1991, c. 275, s. 2; 1998-99, s. 1; 1999-379, s. 2; 2002-165, s. 2.6; 2005-386, s. 7.2; 2005-443, s. 2; 2006-255, s. 2; 2006-264, s. 53(a); 2013-413, s. 57(f).)

#### **§ 113A-58. Enforcement authority of the Commission.**

In implementing the provisions of this Article the Commission is authorized and directed to:

- (1) Inspect or cause to be inspected the sites of land-disturbing activities to determine whether applicable laws, regulations or erosion and sedimentation control plans are being complied with;
- (2) Make requests, or delegate to the Secretary authority to make requests, of the Attorney General or solicitors for prosecutions of violations of this Article. (1973, c. 392, s. 9; 2002-165, s. 2.7.)

#### **§ 113A-59. Educational activities.**

The Commission in conjunction with the soil and water conservation districts, the North Carolina Agricultural Extension Service, and other appropriate State and federal agencies shall conduct educational programs in erosion and sedimentation control, such programs to be directed towards State and local governmental officials, persons engaged in land-disturbing activities, and interested citizen groups. (1973, c. 392, s. 10.)

#### **§ 113A-60. Local erosion and sedimentation control programs.**

(a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related activities. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of

the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this Article and rules adopted pursuant to this Article.

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

(d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program. An ordinance adopted by a local government that establishes a limited program shall conform to the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. The local government shall establish and collect a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. The total fee shall not exceed one hundred dollars (\$100.00) per acre. A local government that administers a limited erosion and sedimentation control program shall pay to the Commission the portion of the fee that equals eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local government that administers a limited erosion and sedimentation control program and that receives an erosion control plan and fee under this subsection shall immediately transmit the plan to the Commission for review. A local government may create or designate agencies or subdivisions of the local government to administer the limited program. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration of the limited program. The resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs.

(e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion and sedimentation control program shall not issue a notice of violation if inspection indicates that the person engaged in land-disturbing activity has failed to comply with this Article, rules adopted pursuant to this Article, or an approved erosion and sedimentation control plan. The local government shall notify the Commission if any person has initiated land-disturbing activity for which an erosion and sedimentation control plan is required in the absence of an approved plan. If a local government with a limited program determines that a person engaged in a land-disturbing activity has failed to comply with an approved erosion and sedimentation control plan, the local government shall refer the matter to the Commission for inspection and enforcement pursuant to G.S. 113A-61.1. (1973, c. 392, s. 11; 1993 (Reg. Sess., 1994), c. 776, s. 7; 2002-165, s. 2.8; 2006-250, s. 3.)

### **§ 113A-61. Local approval of erosion and sedimentation control plans.**

(a) For those land-disturbing activities for which prior approval of an erosion and sedimentation control plan is required, the Commission may require that a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60 require the applicant to submit a copy of the erosion and sedimentation control plan to the appropriate soil and water conservation district or districts at the same time the applicant submits the erosion and sedimentation control plan to the local government for approval. The soil and water conservation district or districts shall review the plan and submit any comments and recommendations to the local government within 20 days after the soil and water conservation district received the erosion and sedimentation control plan or within any shorter period of time as may be agreed upon by the soil and water conservation district and the local government. Failure of a soil and water conservation district to submit comments and recommendations within 20 days or within agreed upon shorter period of time shall not delay final action on the proposed plan by the local government.

(b) Local governments shall review each erosion and sedimentation control plan submitted to them and within 30 days of receipt thereof shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. A local government shall only approve a plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control.

(b1) A local government shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. A local government shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection (b3) of this section upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice.

- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due.
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article.
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(b2) In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by a local government pursuant to subsection (b1) of this section, the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The local government shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of subsection (c) of this section, the applicant may appeal the local government's disapproval of the plan directly to the Commission. For purposes of this subsection and subsection (b1) of this section, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

(b3) A local government administering an erosion and sedimentation control program may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection:

- (1) The local government may transfer a plan if all of the following conditions are met:
  - a. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
  - b. The local government finds all of the following:
    - 1. The plan holder is one of the following:
      - I. A natural person who is deceased.
      - II. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
      - III. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
      - IV. A person who has sold the property on which the permitted activity is occurring or will occur.
    - 2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
    - 3. The successor-owner is the sole claimant of the right to engage in the permitted activity.
    - 4. There will be no substantial change in the permitted activity.
- (2) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
- (3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.

- (4) Notwithstanding changes to law made after the original issuance of the plan, the local government may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the local government from requiring a revised plan pursuant to G.S. 113A-54.1(b).

(c) The disapproval or modification of any proposed erosion and sedimentation control plan by a local government shall entitle the person submitting the plan to a public hearing if the person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval or modification. The hearings shall be conducted pursuant to procedures adopted by the local government. If the local government upholds the disapproval or modification of a proposed erosion and sedimentation control plan following the public hearing, the person submitting the erosion and sedimentation control plan is entitled to appeal the local government's action disapproving or modifying the plan to the Commission. The Commission, by regulation, shall direct the Secretary to appoint such employees of the Department as may be necessary to hear appeals from the disapproval or modification of erosion and sedimentation control plans by local governments. In addition to providing for the appeal of local government decisions disapproving or modifying erosion and sedimentation control plans to designated employees of the Department, the Commission shall designate an erosion and sedimentation control plan review committee consisting of three members of the Commission. The person submitting the erosion and sedimentation control plan may appeal the decision of an employee of the Department who has heard an appeal of a local government action disapproving or modifying an erosion and sedimentation control plan to the erosion and sedimentation control plan review committee of the Commission. Judicial review of the final action of the erosion and sedimentation control plan review committee of the Commission may be had in the superior court of the county in which the local government is situated.

(d) Repealed by Session Laws 1989, c. 676, s. 4. (1973, c. 392, s. 12; 1979, c. 922, s. 1; 1989, c. 676, s. 4; 1993 (Reg. Sess., 1994), c. 776, ss. 8, 9; 1998-221, s. 1.11(b); 1999-379, s. 3; 2002-165, s. 2.9; 2012-143, s. 1(f); 2013-121, s. 4.)

#### **§ 113A-61.1. Inspection of land-disturbing activity; notice of violation.**

(a) The Commission, a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60, or other approving authority shall provide for inspection of land-disturbing activities to ensure compliance with this Article and to determine whether the measures required in an erosion and sedimentation control plan are effective in controlling erosion and sedimentation resulting from the land-disturbing activity. Notice of this right of inspection shall be included in the certificate of approval of each erosion and sedimentation control plan. The Department of Agriculture and Consumer Services may inspect land-disturbing activities undertaken on forestland for the production and harvesting of timber and timber products to determine compliance with the Forest Practice Guidelines Related to Water Quality adopted pursuant to G.S. 113A-52.1.

(b) No person shall willfully resist, delay, or obstruct an authorized representative of the Commission, an authorized representative of a local government, or an employee or an agent of the Department while the representative, employee, or agent is inspecting or attempting to inspect a land-disturbing activity under this section.

(b1) No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the Department of Agriculture and Consumer Services while the representative, employee, or agent is inspecting or attempting to inspect a land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products under this section.

(c) If the Secretary, a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60, or other approving authority determines that the person engaged in the land-disturbing activity has failed to comply with this Article, the Secretary, local government, or other approving authority shall immediately serve a notice of violation upon that person. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. A notice of violation shall specify a date by which the person must comply with this Article and inform the person of the actions that need to be taken to comply with this Article. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64. If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the Department, local government, or other approving authority shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. If the Department, local government, or other approving authority is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures. (1989, c. 676, s. 5; 1993 (Reg. Sess., 1994), c. 776, s. 10; 1999-379, s. 6; 2002-165, s. 2.10; 2015-241, s. 14.26(d); 2017-108, s. 6(c).)

#### **§ 113A-62. Cooperation with the United States.**

The Commission is authorized to cooperate and enter into agreements with any agency of the United States government in connection with plans for erosion and sedimentation control with respect to land-disturbing activities on lands that are under the jurisdiction of such agency. (1973, c. 392, s. 13; 2002-165, s. 2.11.)

#### **§ 113A-63. Financial and other assistance.**

The Commission and local governments are authorized to receive from federal, State, and other public and private sources financial, technical, and other assistance for use in accomplishing the purposes of this Article. (1973, c. 392, s. 14.)

#### **§ 113A-64. Penalties.**

(a) Civil Penalties. –

- (1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).
- (2) The Secretary or a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60 shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty, the reason for assessing the penalty, the option available to that person to request a remission of the civil penalty under G.S. 113A-64.2, the date of the deadline for that person to make the remission request regarding this particular penalty, and, when that person has not been assessed any civil penalty under this section for any previous violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to be subject to the maximum cumulative total civil penalty under subdivision (1) of this subsection. The notice of assessment shall be served by any means authorized under G.S. 1A-1. A notice of assessment by the Secretary shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Secretary within 30 days after it is due, the Department shall request the Attorney General to institute a civil action to recover the amount of the assessment. A notice of assessment by a local government shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the local government as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program. If a violator does not pay a civil penalty assessed by a local government within 30 days after it is due, the local government may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

- (3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.
- (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.
- (5) The clear proceeds of civil penalties collected by the Department or other State agency or a local government under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) **Criminal Penalties.** – Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000). (1973, c. 392, s. 15; 1977, c. 852; 1987, c. 246, s. 3; 1987 (Reg. Sess., 1988), c. 1000, s. 5; 1989, c. 676, s. 6; 1991, c. 412, s. 2; c. 725, s. 5; 1993, c. 539, s. 873; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 776, s. 11; 1998-215, s. 52; 1999-379, s. 4; 2002-165, s. 2.12; 2013-413, s. 33; 2015-241, s. 14.26(b).)

**§ 113A-64.1. Restoration of areas affected by failure to comply.**

The Secretary or a local government that administers a local erosion and sedimentation control program approved under G.S. 113A-60 may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this Article. (1993 (Reg. Sess., 1994), c. 776, s. 12; 2002-165, s. 2.13.)

**§ 113A-64.2. Remission of civil penalties.**

(a) A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Commission within 60 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based.

(b) The following factors shall be considered in determining whether a civil penalty remission request will be approved:

- (1) Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
- (2) Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
- (3) Whether the violation was inadvertent or a result of an accident.

- (4) Whether the petitioner had been assessed civil penalties for any previous violations.
- (5) Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
- (6) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.

(c) The petitioner has the burden of providing information concerning the financial impact of a civil penalty on the petitioner and the burden of showing the petitioner's financial hardship.

(d) The Commission may remit the entire amount of the penalty only when the petitioner has not been assessed civil penalties for previous violations and payment of the civil penalty will prevent payment for necessary remedial actions.

(e) The Commission may not impose a penalty under this section that is in excess of the civil penalty imposed by the Department. (2015-241, s. 14.26(c).)

**§ 113A-65. Injunctive relief.**

(a) Violation of State Program. – Whenever the Secretary has reasonable cause to believe that any person is violating or is threatening to violate the requirements of this Article he may, either before or after the institution of any other action or proceeding authorized by this Article, institute a civil action for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur, and shall be in the name of the State upon the relation of the Secretary.

(b) Violation of Local Program. – Whenever the governing body of a local government having jurisdiction has reasonable cause to believe that any person is violating or is threatening to violate any ordinance, rule, regulation, or order adopted or issued by the local government pursuant to this Article, or any term, condition or provision of an erosion and sedimentation control plan over which it has jurisdiction, may, either before or after the institution of any other action or proceeding authorized by this Article, institute a civil action in the name of the local government for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

(c) Abatement, etc., of Violation. – Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under subsections (a) or (b) of this section shall not relieve any party to the proceeding from any civil or criminal penalty prescribed for violations of this Article. (1973, c. 392, s. 16; 1993 (Reg. Sess., 1994), c. 776, s. 13; 2002-165, s. 2.14.)

**§ 113A-65.1. Stop-work orders.**

(a) The Secretary may issue a stop-work order if he finds that a land-disturbing activity is being conducted in violation of this Article or of any rule adopted or order issued pursuant to this Article, that the violation is knowing and willful, and that either:

- (1) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent.

(2) Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent.

(3) The land-disturbing activity is being conducted without an approved plan.

(b) The stop-work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the Secretary pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials which does not contribute to the violation may continue while the stop-work order is in effect. A copy of this section shall be attached to the order.

(c) The stop-work order shall be served by the sheriff of the county in which the land-disturbing activity is being conducted or by some other person duly authorized by law to serve process as provided by G.S. 1A-1, Rule 4, and shall be served on the person at the site of the land-disturbing activity who is in operational control of the land-disturbing activity. The sheriff or other person duly authorized by law to serve process shall post a copy of the stop-work order in a conspicuous place at the site of the land-disturbing activity. The Department shall also deliver a copy of the stop-work order to any person that the Department has reason to believe may be responsible for the violation.

(d) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in G.S. 113A-64(a). A stop-work order issued pursuant to this section may be issued for a period not to exceed five days.

(e) The Secretary shall designate an employee of the Department to monitor compliance with the stop-work order. The name of the employee so designated shall be included in the stop-work order. The employee so designated, or the Secretary, shall rescind the stop-work order if all the violations for which the stop-work order are issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The Secretary shall rescind a stop-work order that is issued in error.

(f) The issuance of a stop-work order shall be a final agency decision subject to judicial review in the same manner as an order in a contested case pursuant to Article 4 of Chapter 150B of the General Statutes. The petition for judicial review shall be filed in the superior court of the county in which the land-disturbing activity is being conducted.

(g) As used in this section, days are computed as provided in G.S. 1A-1, Rule 6. Except as otherwise provided, the Secretary may delegate any power or duty under this section to the Director of the Division of Energy, Mineral, and Land Resources of the Department or to any person who has supervisory authority over the Director. The Director may delegate any power or duty so delegated only to a person who is designated as acting Director.

(h) The Attorney General shall file a cause of action to abate the violations which resulted in the issuance of a stop-work order within two business days of the service of the stop-work order. The cause of action shall include a motion for an ex parte temporary

restraining order to abate the violation and to effect necessary remedial measures. The resident superior court judge, or any judge assigned to hear the motion for the temporary restraining order, shall hear and determine the motion within two days of the filing of the complaint. The clerk of superior court shall accept complaints filed pursuant to this section without the payment of filing fees. Filing fees shall be paid to the clerk of superior court within 30 days of the filing of the complaint. (1991, c. 412, s. 1; 1998-99, s. 2; 2005-386, s. 7.3; 2012-143, s. 1(f).)

#### **§ 113A-66. Civil relief.**

(a) Any person injured by a violation of this Article or any ordinance, rule, or order duly adopted by the Secretary or a local government, or by the initiation or continuation of a land-disturbing activity for which an erosion and sedimentation control plan is required other than in accordance with the terms, conditions, and provisions of an approved plan, may bring a civil action against the person alleged to be in violation (including the State and any local government). The action may seek any of the following:

- (1) Injunctive relief.
- (2) An order enforcing the law, rule, ordinance, order, or erosion and sedimentation control plan violated.
- (3) Damages caused by the violation.
- (4) Repealed by Session Laws 2002-165, s. 2.15, effective October 23, 2002.

If the amount of actual damages as found by the court or jury in suits brought under this subsection is five thousand dollars (\$5,000) or less, the plaintiff shall be awarded costs of litigation including reasonable attorneys fees and expert witness fees.

(b) Civil actions under this section shall be brought in the superior court of the county in which the alleged violations occurred.

(c) The court, in issuing any final order in any action brought pursuant to this section may award costs of litigation (including reasonable attorney and expert-witness fees) to any party, whenever it determines that such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require, the filing of a bond or equivalent security, the amount of such bond or security to be determined by the court.

(d) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek injunctive or other relief. (1973, c. 392, s. 17; 1987 (Reg. Sess., 1988), c. 1000, s. 6; 2002-165, s. 2.15.)

#### **§ 113A-67. Annual Report.**

The Department shall report to the Environmental Review Commission on the implementation of this Article on or before October 1 of each year. The Department shall include in the report an analysis of how the implementation of the Sedimentation Pollution Control Act of 1973 is affecting activities that contribute to the sedimentation of streams, rivers, lakes, and other waters of the State. The report shall also include a review of the effectiveness of local erosion and sedimentation control programs. The report shall be submitted to the Environmental Review Commission with the report required by G.S. 143-214.7(e) as a single report. (2004-195, s. 2.1; 2017-10, s. 4.15(a).)

**§ 113A-68:** Reserved for future codification purposes.

§ 113A-69: Reserved for future codification purposes.

Article 4A.

Vehicular Surface Areas.

§§ 113A-70, 113A-71: Repealed by Session Laws 2013-413, s. 54. For effective date of repeal, see editor's note.

Article 5.

North Carolina Appalachian Trails System Act.

§ 113A-72: Recodified as G.S. 143B-135.70 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ 113A-73: Recodified as G.S. 143B-135.72 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ 113A-74: Recodified as G.S. 143B-135.74 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ 113A-75: Recodified as G.S. 143B-135.76 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ 113A-76: Recodified as G.S. 143B-135.78 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015

§ 113A-77: Recodified as G.S. 143B-135.80 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§§ 113A-78 through 113A-82. Reserved for future codification purposes.

Article 6.

North Carolina Trails System.

§ 113A-83: Recodified as G.S. 143B-135.90 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

§ 113A-84: Recodified as G.S. 143B-135.92 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.

- § **113A-85:** Recodified as G.S. 143B-135.94 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- § **113A-86:** Recodified as G.S. 143B-135.96 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- § **113A-87:** Recodified as G.S. 143B-135.98 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- § **113A-87.1:** Recodified as G.S. 143B-135.100 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- § **113A-88:** Recodified as G.S. 143B-135.102 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- § **113A-89:** Recodified as G.S. 143B-135.104 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- § **113A-90:** Recodified as G.S. 143B-135.106 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- § **113A-91:** Recodified as G.S. 143B-135.108 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- § **113A-92:** Recodified as G.S. 143B-135.110 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- § **113A-92.1:** Recodified as G.S. 143B-135.112 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- § **113A-93:** Recodified as G.S. 143B-135.114 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- § **113A-94:** Recodified as G.S. 143B-135.116 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- § **113A-95:** Recodified as G.S. 143B-135.118 by Session Laws 2015-241, s. 14.30(f), effective July 1, 2015.
- §§ 113A-96 through 113A-99. Reserved for future codification purposes.**

Article 7.

## Coastal Area Management.

### Part 1. Organization and Goals.

#### **§ 113A-100. Short title.**

This Article shall be known as the Coastal Area Management Act of 1974. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

#### **§ 113A-101. Cooperative State-local program.**

This Article establishes a cooperative program of coastal area management between local and State governments. Local government shall have the initiative for planning. State government shall establish areas of environmental concern. With regard to planning, State government shall act primarily in a supportive standard-setting and review capacity, except where local governments do not elect to exercise their initiative. Enforcement shall be a concurrent State-local responsibility. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

#### **§ 113A-102. Legislative findings and goals.**

(a) Findings. – It is hereby determined and declared as a matter of legislative finding that among North Carolina's most valuable resources are its coastal lands and waters. The coastal area, and in particular the estuaries, are among the most biologically productive regions of this State and of the nation. Coastal and estuarine waters and marshlands provide almost ninety percent (90%) of the most productive sport fisheries on the east coast of the United States. North Carolina's coastal area has an extremely high recreational and esthetic value which should be preserved and enhanced.

In recent years the coastal area has been subjected to increasing pressures which are the result of the often-conflicting needs of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens. Unless these pressures are controlled by coordinated management, the very features of the coast which make it economically, esthetically, and ecologically rich will be destroyed. The General Assembly therefore finds that an immediate and pressing need exists to establish a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.

In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property rights shall be preserved in accord with the Constitution of this State and of the United States.

(b) Goals. – The goals of the coastal area management system to be created pursuant to this Article are as follows:

- (1) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;
- (2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the

- land and water for development, use, or preservation based on ecological considerations;
- (3) To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;
  - (4) To establish policies, guidelines and standards for:
    - a. Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;
    - b. The economic development of the coastal area, including but not limited to construction, location and design of industries, port facilities, commercial establishments and other developments;
    - c. Recreation and tourist facilities and parklands;
    - d. Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;
    - e. Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;
    - f. Protection of present common-law and statutory public rights in the lands and waters of the coastal area;
    - g. Any other purposes deemed necessary or appropriate to effectuate the policy of this Article. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

### **§ 113A-103. Definitions.**

As used in this Article:

- (1) "Advisory Council" means the Coastal Resources Advisory Council created by G.S. 113A-105.
- (1a) "Boat" means a vessel or watercraft of any type or size specifically designed to be self-propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by water.
- (2) "Coastal area" means the counties that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean (extending offshore to the limits of State jurisdiction, as may be identified by rule of the Commission for purposes of this Article, but in no event less than three geographical miles offshore) or any coastal sound. The Governor, in accordance with the standards set forth in this subdivision and in subdivision (3) of this section, shall designate the counties that constitute the "coastal area," as defined by this section, and his designation shall be final and conclusive. On or before May 1, 1974, the Governor shall file copies of a list of said coastal-area counties with the chairmen of the boards of commissioners of each county in the coastal area, with the mayors of each incorporated city within the coastal area (as so defined) having a population of 2,000 or more and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean, and with the Secretary of State. By way of

illustration, the counties designated as coastal-area counties under this subdivision as of July 1, 2012, are Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. The coastal-area counties and cities shall transmit nominations to the Governor of members of the Coastal Resources Commission as provided in G.S. 113A-104(d).

- (3) "Coastal sound" means Albemarle, Bogue, Core, Croatan, Currituck, Pamlico and Roanoke Sounds. For purposes of this Article, the inland limits of a sound on a tributary river shall be defined as the limits of seawater encroachment on said tributary river under normal conditions. "Normal conditions" shall be understood to include regularly occurring conditions of low stream flow and high tide, but shall not include unusual conditions such as those associated with hurricane and other storm tides. Unless otherwise determined by the Commission, the limits of seawater encroachment shall be considered to be the confluence of a sound's tributary river with the river or creek entering it nearest to the farthest inland movement of oceanic salt water under normal conditions. For purposes of this Article, the aforementioned points of confluence with tributary rivers shall include the following:
- a. On the Chowan River, its confluence with the Meherrin River;
  - b. On the Roanoke River, its confluence with the northeast branch of the Cashie River;
  - c. On the Tar River, its confluence with Tranters Creek;
  - d. On the Neuse River, its confluence with Swift Creek;
  - e. On the Trent River, its confluence with Ready Branch.

Provided, however, that no county shall be considered to be within the coastal area which: (i) is adjacent to, adjoining or bounded by any of the above points of confluence and lies entirely west of said point of confluence; or (ii) is not bounded by the Atlantic Ocean and lies entirely west of the westernmost of the above points of confluence.

- (4) "Commission" means the Coastal Resources Commission created by G.S. 113A-104.
- (4a) "Department" means the Department of Environmental Quality.
- (5) a. "Development" means any activity in a duly designated area of environmental concern (except as provided in paragraph b of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal; or placement of a floating structure in an area of environmental concern identified in G.S. 113A-113(b)(2) or (b)(5).
- b. The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:

1. Work by a highway or road agency for the maintenance of an existing road, if the work is carried out on land within the boundaries of the existing right-of-way, or for emergency repairs and safety enhancements of an existing road as described in an executive order issued under G.S. 166A-19.30(a)(5).
2. Work by any railroad company or by any utility and other persons engaged in the distribution and transmission of petroleum products, water, telephone or telegraph messages, or electricity for the purpose of inspecting, repairing, maintaining, or upgrading any existing substations, sewers, mains, pipes, cables, utility tunnels, lines, towers, poles, tracks, and the like on any of its existing railroad or utility property or rights-of-way, or the extension of any of the above distribution-related facilities to serve development approved pursuant to G.S. 113A-121 or 113A-122;
3. Work by any utility and other persons for the purpose of construction of facilities for the development, generation, and transmission of energy to the extent that such activities are regulated by other law or by present or future rules of the State Utilities Commission regulating the siting of such facilities (including environmental aspects of such siting), and work on facilities used directly in connection with the above facilities;
4. The use of any land for the purposes of planting, growing, or harvesting plants, crops, trees, or other agricultural or forestry products, including normal private road construction, raising livestock or poultry, or for other agricultural purposes except where excavation or filling affecting estuarine waters (as defined in G.S. 113-229) or navigable waters is involved;
5. Maintenance or repairs (excluding replacement) necessary to repair damage to structures caused by the elements or to prevent damage to imminently threatened structures by the creation of protective sand dunes.
6. The construction of any accessory building customarily incident to an existing structure if the work does not involve filling, excavation, or the alteration of any sand dune or beach;
7. Completion of any development, not otherwise in violation of law, for which a valid building or zoning permit was issued prior to ratification of this Article and which development was initiated prior to the ratification of this Article;
8. Completion of installation of any utilities or roads or related facilities not otherwise in violation of law, within a subdivision that was duly approved and recorded prior to the ratification of this Article and which installation was initiated prior to the ratification of this Article;
9. Construction or installation of any development, not otherwise in violation of law, for which an application for a building or

zoning permit was pending prior to the ratification of this Article and for which a loan commitment (evidenced by a notarized document signed by both parties) had been made prior to the ratification of this Article; provided, said building or zoning application is granted by July 1, 1974;

10. It is the intention of the General Assembly that if the provisions of any of the foregoing subparagraphs 1 to 10 of this paragraph are held invalid as a grant of an exclusive or separate emolument or privilege or as a denial of the equal protection of the laws, within the meaning of Article I, Secs. 19 and 32 of the North Carolina Constitution, the remainder of this Article shall be given effect without the invalid provision or provisions.
- c. The Commission shall define by rule (and may revise from time to time) certain classes of minor maintenance and improvements which shall be exempted from the permit requirements of this Article, in addition to the exclusions set forth in paragraph b of this subdivision. In developing such rules the Commission shall consider, with regard to the class or classes of units to be exempted:
1. The size of the improved or scope of the maintenance work;
  2. The location of the improvement or work in proximity to dunes, waters, marshlands, areas of high seismic activity, areas of unstable soils or geologic formations, and areas enumerated in G.S. 113A-113(b)(3); and
  3. Whether or not dredging or filling is involved in the maintenance or improvement.
- (5a) "Floating structure" means any structure, not a boat, supported by a means of floatation, designed to be used without a permanent foundation, which is used or intended for human habitation or commerce. A structure shall be considered a floating structure when it is inhabited or used for commercial purposes for more than thirty days in any one location. A boat may be considered a floating structure when its means of propulsion has been removed or rendered inoperative.
- (6) "Key facilities" include the site location and the location of major improvement and major access features of key facilities, and mean:
- a. Public facilities, as determined by the Commission, on nonfederal lands which tend to induce development and urbanization of more than local impact, including but not limited to:
    1. Any major airport designed to serve as a terminal for regularly scheduled air passenger service or one of State concern;
    2. Major interchanges between the interstate highway system and frontage-access streets or highways; major interchanges between other limited-access highways and frontage-access streets or highways;
    3. Major frontage-access streets and highways, both of State concern; and
    4. Major recreational lands and facilities;

- b. Major facilities on nonfederal lands for the development, generation, and transmission of energy.
- (7) "Lead regional organizations" means the regional planning agencies created by and representative of the local governments of a multi-county region, and designated as lead regional organizations by the Governor.
- (8) "Local government" means the governing body of any county or city which contains within its boundaries any lands or waters subject to this Article.
- (9) "Person" means any individual, citizen, partnership, corporation, association, organization, business trust, estate, trust, public or municipal corporation, or agency of the State or local government unit, or any other legal entity however designated.
- (10) Repealed by Session Laws 1987, c. 827, s. 133.
- (11) "Secretary" means the Secretary of Environmental Quality, except where otherwise specified in this Article. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 913, s. 1; c. 932, s. 2.1; 1987, c. 827, s. 133; 1989, c. 727, s. 126; 1991 (Reg. Sess., 1992), c. 839, ss. 1, 4; 1995, c. 509, s. 58; 1997-443, s. 11A.119(a); 2012-202, s. 1; 2014-100, s. 14.7(l); 2015-241, s. 14.30(u), (v).)

**§ 113A-104. Coastal Resources Commission.**

(a) Established. – The General Assembly hereby establishes within the Department of Environmental Quality a commission to be designated the Coastal Resources Commission.

(b) Repealed by Session Laws 2013-360, s. 14.24(a), effective July 1, 2013.

(b1) Composition. – The Coastal Resources Commission shall consist of 13 members as follows:

- (1) One appointed by the Governor who shall at the time of appointment be a coastal property owner or experienced in land development.
- (2) One appointed by the Governor who shall at the time of appointment be a coastal property owner or experienced in land development.
- (3) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in engineering in the coastal area or a marine-related science.
- (4) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in engineering in the coastal area or a marine-related science.
- (5) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in coastal-related business.
- (6) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in local government within the coastal area.
- (7) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in coastal agriculture.
- (8) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in commercial fishing.

- (9) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in coastal forestry.
- (10) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment be actively connected with or have experience in sports fishing.
- (11) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall serve at large.
- (12) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment be actively connected with or have experience in wildlife.
- (13) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall serve at large.

(c) Appointment of Members. – As used in this section, the term "appointing authority" means the Governor in the case of members appointed by the Governor and means the General Assembly in the case of members appointed by the General Assembly. Appointments to the Commission shall be made to provide knowledge and experience in a diverse range of coastal interests. The members of the Commission shall serve and act on the Commission solely for the best interests of the public and public trust, and shall bring their particular knowledge and experience to the Commission for that end alone. Counties and cities in the coastal area may designate and transmit to the appointing authorities no later than May 1 of each even-numbered year qualified persons in the categories set out in subsection (b1) of this section corresponding to the Commission positions to be filled that year.

(c1) The members of the Commission whose qualifications are described in subdivisions (3), (6), (7), (8), (9), (11), and (12) of subsection (b1) of this section shall be persons who do not derive any significant portion of their income from land development, construction, real estate sales, or lobbying and do not otherwise serve as agents for development-related business activities.

(c2) All members of the Commission are covered persons for the purposes of Subchapter II of Chapter 163A of the General Statutes, the State Government Ethics Act. As covered persons, members of the Commission shall comply with the applicable requirements of the State Government Ethics Act, including mandatory training, the public disclosure of economic interests, and ethical standards for covered persons. Members of the Commission shall comply with the provisions of the State Government Ethics Act to avoid conflicts of interest. The Governor may require additional disclosure of potential conflicts of interest by the members described in subsection (c1) of this section. The Governor may promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons described in subsection (c1) of this section.

(d) Repealed by Session Laws 2013-360, s. 14.24(a), effective July 1, 2013.

(e) Repealed by Session Laws 2013-360, s. 14.24(a), effective July 1, 2013.

(f) Office May Be Held Concurrently with Others. – Membership on the Coastal Resources Commission is hereby declared to be an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(g) Terms. – The members shall serve staggered terms of office of four years. At the expiration of each member's term, the appointing authority shall reappoint or replace the member with a new member of like qualification as specified in subsection (b1) of this section.

(h) Vacancies. – In the event of a vacancy arising otherwise than by expiration of term, the appointing authority shall appoint a successor of like qualification as specified in subsection (b1) of this section who shall then serve the remainder of his predecessor's term.

(i) Officers. – The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of the vice-chairman's regularly appointed term.

(j) Compensation. – The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(k) Repealed by Session Laws 2013-360, s. 14.24(a), effective July 1, 2013.

(l) Attendance. – Regular attendance at Commission meetings is a duty of each member. The Commission shall develop procedures for declaring any seat on the Commission to be vacant upon failure by a member to perform this duty.

(m) Quorum. – A majority of the Commission shall constitute a quorum. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; c. 486, ss. 1-6; 1981, c. 932, s. 2.1; 1989, c. 505; c. 727, s. 218(64); 1997-443, s. 11A.119(a); 2013-360, s. 14.24(a); 2015-9, s. 1.3; 2015-241, s. 14.30(u); 2017-6, s. 3.)

### **§ 113A-105. Coastal Resources Advisory Council.**

(a) Creation. – There is hereby created and established a council to be known as the Coastal Resources Advisory Council.

(b) Membership and Terms. – The Coastal Resources Advisory Council shall consist of not more than 20 members appointed or designated by the Coastal Resources Commission. Counties and cities in the coastal area may nominate candidates for consideration by the Commission. The terms of all Council members serving on the Council on January 1, 2013, shall expire on July 31, 2013. A new Council shall be appointed in the manner provided by this subsection with terms beginning on August 1, 2013, and expiring on June 30, 2015. Members may be reappointed at the discretion of the Commission, provided that one-half of the membership at the beginning of any two-year term are residents of counties in the coastal area.

(c) Functions and Duties. – The Advisory Council shall assist the Secretary and the Secretary of Administration in an advisory capacity:

- (1) On matters which may be submitted to it by either of them or by the Commission, including technical questions relating to the development of rules, and
- (2) On such other matters arising under this Article as the Council considers appropriate.

(d) **Multiple Offices.** – Membership on the Coastal Resources Advisory Council is hereby declared to be an office that may be held concurrently with other elective or appointive offices (except the office of Commission member) in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(e) **Chairman and Vice-Chairman.** – A chairman and vice-chairman shall be elected annually by the Council.

(f) **Compensation.** – The members of the Advisory Council who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 249, ss. 1, 2; 1989, c. 727, s. 127; c. 751, s. 8(14a); 1991 (Reg. Sess., 1992), c. 959, s. 26; 1995, c. 123, s. 4; c. 504, s. 7; 2013-360, s. 14.25.)

## Part 2. Planning Processes.

### **§ 113A-106. Scope of planning processes.**

Planning processes covered by this Article include the development and adoption of State guidelines for the coastal area and the development and adoption of a land-use plan for each county within the coastal area, which plans shall serve as criteria for the issuance or denial of development permits under Part 4. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

#### **§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

The Commission shall approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8. (1997-400, s. 3.3.)

### **§ 113A-107. State guidelines for the coastal area.**

(a) State guidelines for the coastal area shall consist of statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area. Such guidelines shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102. They shall give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern that may be designated by the Commission under Part 3. Land and water areas addressed in the State guidelines may include underground areas and resources, and airspace above the land and water, as well as the surface of the land and surface waters. Such guidelines shall be used in the review of applications for permits issued pursuant to this Article and for review of and comment on proposed public, private and federal agency activities that are subject to review for consistency with State guidelines for the coastal area. Such comments shall be consistent with federal laws and regulations.

(b) The Commission shall be responsible for the preparation, adoption, and amendment of the State guidelines. In exercising this function it shall be furnished such

staff assistance as it requires by the Secretary of Environmental Quality and the Secretary of the Department of Administration, together with such incidental assistance as may be requested of any other State department or agency.

(c) The Commission shall mail proposed as well as adopted rules establishing guidelines for the coastal area to all cities, counties, and lead regional organizations within the area and to all State, private, federal, regional, and local agencies the Commission considers to have special expertise on the coastal area. A person who receives a proposed rule may send written comments on the proposed rule to the Commission within 30 days after receiving the proposed rule. The Commission shall consider any comments received in determining whether to adopt the proposed rule.

(d), (e) Repealed by Session Laws 1987, c. 827, s. 134.

(f) The Commission shall review its rules establishing guidelines for the coastal area at least every five years to determine whether changes in the rules are needed. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1975, 2nd Sess., c. 983, ss. 75, 76; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, s. 134; 1989, c. 313; c. 727, s. 218(65); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v).)

#### **§ 113A-107.1. Sea-level policy.**

(a) The General Assembly does not intend to mandate the development of sea-level policy or the definition of rates of sea-level change for regulatory purposes.

(b) No rule, policy, or planning guideline that defines a rate of sea-level change for regulatory purposes shall be adopted except as provided by this section.

(c) Nothing in this section shall be construed to prohibit a county, municipality, or other local government entity from defining rates of sea-level change for regulatory purposes.

(d) All policies, rules, regulations, or any other product of the Commission or the Division related to rates of sea-level change shall be subject to the requirements of Chapter 150B of the General Statutes.

(e) The Commission shall be the only State agency authorized to define rates of sea-level change for regulatory purposes. If the Commission defines rates of sea-level change for regulatory purposes, it shall do so in conjunction with the Division of Coastal Management of the Department. The Commission and Division may collaborate with other State agencies, boards, and commissions; other public entities; and other institutions when defining rates of sea-level change. (2012-202, s. 2(a).)

#### **§ 113A-108. Effect of State guidelines.**

All local land-use plans adopted pursuant to this Article within the coastal area shall be consistent with the State guidelines. No permit shall be issued under Part 4 of this Article which is inconsistent with the State guidelines. Any State land policies governing the acquisition, use and disposition of land by State departments and agencies shall take account of and be consistent with the State guidelines adopted under this Article, insofar as lands within the coastal area are concerned. Any State land classification system which shall be promulgated shall take account of and be consistent with the State guidelines adopted under this Article, insofar as it applies to lands within the coastal area. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 113A-109: Repealed by Session Laws 2017-10, s. 3.8, effective May 4, 2017.

**§ 113A-110. Land-use plans.**

(a) A land-use plan for a county shall, for the purpose of this Article, consist of statements of objectives, policies, and standards to be followed in public and private use of land within the county, which shall be supplemented by maps showing the appropriate location of particular types of land or water use and their relationships to each other and to public facilities and by specific criteria for particular types of land or water use in particular areas. The plan shall give special attention to the protection and appropriate development of areas of environmental concern designated under Part 3. The plan shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102 and with the State guidelines adopted by the Commission under G.S. 113A-107. The plan shall be adopted, and may be amended from time to time, in accordance with the procedures set forth in this section.

(b) The body charged with preparation and adoption of a county's land-use plan (whether the county government or the Commission) may delegate some or all of its responsibilities to the lead regional organization for the region of which the county is a part. Any such delegation shall become effective upon the acceptance thereof by the lead regional organization. Any county proposing a delegation to the lead regional organization shall give written notice thereof to the Commission at least two weeks prior to the date on which such action is to be taken. Any city or county within the coastal area may also seek the assistance or advice of its lead regional organization in carrying out any planning activity under this Article.

(c) The body charged with preparation and adoption of a county's land-use plan (whether the county or the Commission or a unit delegated such responsibility) may either (i) delegate to a city within the county responsibility for preparing those portions of the land-use plan which affect land within the city's zoning jurisdiction or (ii) receive recommendations from the city concerning those portions of the land-use plan which affect land within the city's zoning jurisdiction, prior to finally adopting the plan or any amendments thereto or (iii) delegate responsibility to some cities and receive recommendations from other cities in the county. The body shall give written notice to the Commission of its election among these alternatives. On written application from a city to the Commission, the Commission shall require the body to delegate plan-making authority to that city for land within the city's zoning jurisdiction if the Commission finds that the city is currently enforcing its zoning ordinance, its subdivision regulations, and the State Building Code within such jurisdiction.

(d) The body charged with adoption of a land-use plan may either adopt it as a whole by a single resolution or adopt it in parts by successive resolutions; said parts may either correspond with major geographical sections or divisions of the county or with functional subdivisions of the subject matters of the plan. Amendments and extensions to the plan may be adopted in the same manner.

(e) Prior to adoption or subsequent amendment of any land-use plan, the body charged with its preparation and adoption (whether the county or the Commission or a unit delegated such responsibility) shall hold a public hearing at which public and private parties shall have the opportunity to present comments and recommendations. Notice of the hearing shall be given not less than 30 days before the date of the hearing and shall state the date, time, and place of the hearing; the subject of the hearing; the action which is proposed; and that copies of the proposed plan or amendment are available for public inspection at a designated office in the county

courthouse during designated hours. Any such notice shall be published at least once in a newspaper of general circulation in the county.

(f) No land-use plan shall become finally effective until it has been approved by the Commission. The county or other unit adopting the plan shall transmit it, when adopted, to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the plan, and shall review and consider each county land-use plan in light of such objections and comments, the State guidelines, the requirements of this Article, and any generally applicable standards of review adopted by rule of the Commission. Within 45 days after receipt of a county land-use plan the Commission shall either approve the plan or notify the county of the specific changes which must be made in order for it to be approved. Following such changes, the plan may be resubmitted in the same manner as the original plan.

(g) Copies of each county land-use plan which has been approved, and as it may have been amended from time to time, shall be maintained in a form available for public inspection by (i) the county, (ii) the Commission, and (iii) the lead regional organization of the region which includes the county. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

#### **§ 113A-111. Effect of land-use plan.**

No permit shall be issued under Part 4 of this Article for development which is inconsistent with the approved land-use plan for the county in which it is proposed. No local ordinance or other local regulation shall be adopted which, within an area of environmental concern, is inconsistent with the land-use plan of the county or city in which it is effective; any existing local ordinances and regulations within areas of environmental concern shall be reviewed in light of the applicable local land-use plan and modified as may be necessary to make them consistent therewith. All local ordinances and other local regulations affecting a county within the coastal area, but not affecting an area of environmental concern, shall be reviewed by the Commission for consistency with the applicable county and city land-use plans and, if the Commission finds any such ordinance or regulation to be inconsistent with the applicable land-use plan, it shall transmit recommendations for modification to the adopting local government. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

#### **§ 113A-112. Planning grants.**

The Secretary is authorized to make grants to local governmental units for the purpose of assisting in the development of local plans and management programs under this Article. The Secretary shall develop and administer generally applicable criteria under which local governments may qualify for such assistance. The Secretary may condition payment of a grant on the completion of the local plan or management program and may pay the grant in installments based on satisfactory completion of specific elements of the plan or program and on approval of the plan or program by the Commission. Of the funds appropriated to the Department to make grants under this section, the Department may carry forward to the next fiscal year funds in the amount necessary to pay grants awarded or extended in any fiscal year. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1989, c. 727, s. 218(66); 1997-443, s. 11A.119(a); 2001-494, s. 6.)

### Part 3. Areas of Environmental Concern.

#### **§ 113A-113. Areas of environmental concern; in general.**

(a) The Coastal Resources Commission shall by rule designate geographic areas of the coastal area as areas of environmental concern and specify the boundaries thereof, in the manner provided in this Part.

(b) The Commission may designate as areas of environmental concern any one or more of the following, singly or in combination:

- (1) Coastal wetlands as defined in G.S. 113-229(n)(3) and contiguous areas necessary to protect those wetlands;
- (2) Estuarine waters, that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in the most recent official published agreement adopted by the Wildlife Resources Commission and the Department of Environmental Quality;
- (3) Renewable resource areas where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could jeopardize future water, food or fiber requirements of more than local concern, which may include:
  - a. Watersheds or aquifers that are present sources of public water supply, as identified by the Department or the Environmental Management Commission, or that are classified for water-supply use pursuant to G.S. 143-214.1;
  - b. Capacity use areas that have been declared by the Environmental Management Commission pursuant to G.S. 143-215.13(c) and areas wherein said Environmental Management Commission (pursuant to G.S. 143-215.3(d) or 143-215.3(a)(8)) has determined that a generalized condition of water depletion or water or air pollution exists;
  - c. Prime forestry land (sites capable of producing 85 cubic feet per acre-year, or more, of marketable timber), as identified by the Department.
- (4) Fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, scientific or scenic values or natural systems, which may include:
  - a. Existing national or State parks or forests, wilderness areas, the State Nature and Historic Preserve, or public recreation areas; existing sites that have been acquired for any of the same, as identified by the Secretary; and proposed sites for any of the same, as identified by the Secretary, provided that the proposed site has been formally designated for acquisition by the governmental agency having jurisdiction;
  - b. Present sections of the natural and scenic rivers system;
  - c. Stream segments that have been classified for scientific or research uses by the Environmental Management Commission, or that are proposed to be so classified in a proceeding that is pending before said Environmental Management Commission pursuant to G.S. 143-214.1 at the time of the designation of the area of environmental concern;

- d. Existing wildlife refuges, preserves or management areas, and proposed sites for the same, as identified by the Wildlife Resources Commission, provided that the proposed site has been formally designated for acquisition (as hereinafter defined) or for inclusion in a cooperative agreement by the governmental agency having jurisdiction;
  - e. Complex natural areas surrounded by modified landscapes that do not drastically alter the landscape, such as virgin forest stands within a commercially managed forest, or bogs in an urban complex;
  - f. Areas that sustain remnant species or aberrations in the landscape produced by natural forces, such as rare and endangered botanical or animal species;
  - g. Areas containing unique geological formations, as identified by the State Geologist; and
  - h. Historic places that are listed, or have been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966; historical, archaeological, and other places and properties owned, managed or assisted by the State of North Carolina pursuant to Chapter 121; and properties or areas that are or may be designated by the Secretary of the Interior as registered natural landmarks or as national historic landmarks;
- (5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution;
- (6) Natural-hazard areas where uncontrolled or incompatible development could unreasonably endanger life or property, and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind and water, which may include:
- a. Sand dunes along the Outer Banks;
  - b. Ocean and estuarine beaches and the shoreline of estuarine and public trust waters;
  - c. Floodways and floodplains;
  - d. Areas where geologic and soil conditions are such that there is a substantial possibility of excessive erosion or seismic activity, as identified by the State Geologist;
  - e. Areas with a significant potential for air inversions, as identified by the Environmental Management Commission.
- (7) Areas which are or may be impacted by key facilities.
- (8) Outstanding Resource Waters as designated by the Environmental Management Commission and such contiguous land as the Coastal Resources Commission reasonably deems necessary for the purpose of maintaining the exceptional water quality and outstanding resource values identified in the designation.
- (9) Primary Nursery Areas as designated by the Marine Fisheries Commission and such contiguous land as the Coastal Resources Commission reasonably deems

necessary to protect the resource values identified in the designation including, but not limited to, those values contributing to the continued productivity of estuarine and marine fisheries and thereby promoting the public health, safety and welfare.

(c) In those instances where subsection (b) of this section refers to locations identified by a specified agency, said agency is hereby authorized to make the indicated identification from time to time and is directed to transmit the identification to the Commission; provided, however, that no designation of an area of environmental concern based solely on an agency identification of a proposed location may remain effective for longer than three years unless, in the case of paragraphs (4)a and d of subsection (b) of this section, the proposed site has been at least seventy-five percent (75%) acquired. Within the meaning of this section, "formal designation for acquisition" means designation in a formal resolution adopted by the governing body of the agency having jurisdiction (or by its chief executive, if it has no governing body), together with a direction in said resolution that the initial step in the land acquisition process be taken (as by filing an application with the Department of Administration to acquire property pursuant to G.S. 146-23).

(d) Additional grounds for designation of areas of environmental concern are prohibited unless enacted into law by an act of the General Assembly. (1973, c. 476, s. 128; c. 1262, ss. 23, 86; c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 518, s. 1; 1989, c. 217, s. 1; c. 727, s. 128; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

**§ 113A-114. Repealed by Session Laws 1983, c. 518, s. 2, effective June 13, 1983.**

**§ 113A-115. Designation of areas of environmental concern.**

(a) Prior to adopting any rule permanently designating any area of environmental concern the Secretary and the Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. Hearings required by this section are in addition to the hearing required by Article 2A of Chapter 150B of the General Statutes. The following provisions shall apply for all such hearings:

- (1) Notice of any such hearing shall be given not less than 30 days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the Secretary is available for public inspection at the county courthouse of each county affected.
- (2) Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin.
- (3) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the first date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement

with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section.

- (4) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Attorney General and with the board of commissioners of each county affected thereby.

(b) In addition to the notice required by G.S. 113A-115(a)(2) notice shall be given to any interested State agency and to any citizen or group that has filed a request to be notified of a public hearing to be held under this section.

(c) The Commission shall review the designated areas of environmental concern at least biennially. New areas may be designated and designated areas may be deleted, in accordance with the same procedures as apply to the original designations of areas under this section. Areas shall not be deleted unless it is found that the conditions upon which the original designation was based shall have been found to be substantially altered. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1975, 2nd Sess., c. 983, s. 78; 1981, c. 932, s. 2.1; 1987, c. 827, s. 135; 2000-189, s. 11.)

#### **§ 113A-115.1. Limitations on erosion control structures.**

(a) As used in this section:

- (1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.
- (1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).
- (2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.
- (3) "Terminal groin" means one or more structures constructed at the terminus of an island or on the side of an inlet, with a main stem generally perpendicular to the beach shoreline, that is primarily intended to protect the terminus of the island from shoreline erosion and inlet migration. A "terminal groin" shall be pre-filled with beach quality sand and allow sand moving in the littoral zone to flow past the structure. A "terminal groin" may include other design features, such as a number of smaller supporting structures, that are consistent with sound engineering practices and as recommended by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes. A "terminal groin" is not a jetty.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This subsection shall not apply to any of the following:

- (1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to July 1, 2003.

(2) Any permanent erosion control structure that was originally constructed prior to July 1, 1974, and that has since been in continuous use to protect an inlet that is maintained for navigation.

(3) Any terminal groin permitted pursuant to this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for a permanent erosion control structure originally permitted pursuant to a variance granted by the Commission prior to July 1, 1995, if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(c1) The Commission may authorize the repair or replacement of a temporary erosion control structure that was originally permitted prior to July 1, 1995, if the Commission finds that (i) the structure is located adjacent to an intertidal marine rock outcropping designated by the State as a Natural Heritage Area pursuant to Part 42 of Article 2 of Chapter 143B of the General Statutes and (ii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(d) Any rule that prohibits permanent erosion control structures shall not apply to terminal groins permitted pursuant to this section.

(e) In addition to the requirements of Part 4 of Article 7 of Chapter 113A of the General Statutes, an applicant for a permit for the construction of a terminal groin shall submit all of the following to the Commission:

(1) Information to demonstrate that structures or infrastructure are threatened by erosion.

(2) An environmental impact statement that satisfies the requirements of G.S. 113A-4. An environmental impact statement prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, et seq., for the construction of the terminal groin shall satisfy the requirements of this subdivision.

(3) A list of property owners and local governments that may be affected by the construction of the proposed terminal groin and its accompanying beach fill project and proof that the property owners and local governments have been notified of the application for construction of the terminal groin and its accompanying beach fill project.

(4) A plan for the construction and maintenance of the terminal groin and its accompanying beach fill project prepared by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes.

(5) A plan for the management of the inlet and the estuarine and ocean shorelines immediately adjacent to and under the influence of the inlet. The inlet management plan monitoring and mitigation requirements must be reasonable

and not impose requirements whose costs outweigh the benefits. The inlet management plan is not required to address sea level rise. The inlet management plan shall do all of the following relative to the terminal groin and its accompanying beach fill project:

- a. Describe the post-construction activities that the applicant will undertake to monitor the impacts on coastal resources.
- b. Define the baseline for assessing any adverse impacts and the thresholds for when the adverse impacts must be mitigated.
- c. Provide for mitigation measures to be implemented if adverse impacts reach the thresholds defined in the plan.
- d. Provide for modification or removal of the terminal groin if the adverse impacts cannot be mitigated.

- (6) Proof of financial assurance verified by the Commission or the Secretary of Environmental Quality in the form of a bond, insurance policy, escrow account, guaranty, local government taxing or assessment authority, a property owner association's approved assessment, or other financial instrument or combination of financial instruments that is adequate to cover the cost of implementing all of the following components of the inlet management plan:

- a. Long-term maintenance and monitoring of the terminal groin.
- b. Implementation of mitigation measures.
- c. Modification or removal of the terminal groin.
- d. Repealed by Session Laws 2013-384, s. 3(a), effective August 23, 2013, and applicable to permit applications submitted on or after that date.

(f) The Commission shall issue a permit for the construction of a terminal groin if the Commission finds no grounds for denying the permit under G.S. 113A-120 and the Commission finds all of the following:

- (1) The applicant has complied with all of the requirements of subsection (e) of this section.
- (2) Repealed by Session Laws 2013-384, s. 3(a), effective August 23, 2013, and applicable to permit applications submitted on or after that date.
- (3) The terminal groin will be accompanied by a concurrent beach fill project to prefill the groin.
- (4) Construction and maintenance of the terminal groin will not result in significant adverse impacts to private property or to the public recreational beach. In making this finding, the Commission shall take into account the potential benefits of the project, including protection of the terminus of the island from shoreline erosion and inlet migration, beaches, protective dunes, wildlife habitats, roads, homes, and infrastructure, and mitigation measures, including the accompanying beach fill project, that will be incorporated into the project design and construction and the inlet management plan.
- (5) The inlet management plan is adequate for purposes of monitoring the impacts of the proposed terminal groin and mitigating any adverse impacts identified as a result of the monitoring.
- (6) Except to the extent expressly modified by this section, the project complies with State guidelines for coastal development adopted by the Commission pursuant to G.S. 113A-107.

(g) The Commission may issue no more than six permits for the construction of a terminal groin pursuant to this section, provided that two of the six permits may be issued only for the construction of terminal groins on the sides of New River Inlet in Onslow County and Bogue Inlet between Carteret and Onslow Counties.

(h) A local government may not use funds generated from any of the following financing mechanisms for any activity related to the terminal groin or its accompanying beach fill project:

- (1) Special obligation bonds issued pursuant to Chapter 159I of the General Statutes.
- (2) Nonvoted general obligation bonds issued pursuant to G.S. 159-48(b)(4).
- (3) Financing contracts entered into under G.S. 160A-20 or G.S. 159-148.

(i) No later than January 1, 2019, and every five years thereafter, the Coastal Resources Commission shall report to the Environmental Review Commission on the implementation of this section. The report shall provide a detailed description of each proposed and permitted terminal groin and its accompanying beach fill project, including the information required to be submitted pursuant to subsection (e) of this section. For each permitted terminal groin and its accompanying beach fill project, the report shall also provide all of the following:

- (1) The findings of the Commission required pursuant to subsection (f) of this section.
- (2) The status of construction and maintenance of the terminal groin and its accompanying beach fill project, including the status of the implementation of the plan for construction and maintenance and the inlet management plan.
- (3) A description and assessment of the benefits of the terminal groin and its accompanying beach fill project, if any.
- (4) A description and assessment of the adverse impacts of the terminal groin and its accompanying beach fill project, if any, including a description and assessment of any mitigation measures implemented to address adverse impacts. (2003-427, s. 3; 2004-195, s. 1.2; 2004-203, s. 43; 2011-387, s. 1; 2012-201, s. 2(a); 2013-384, s. 3(a); 2015-241, ss. 14.6(r), 14.30(v); 2017-10, s. 4.19; 2018-114, s. 15.)

#### Part 4. Permit Letting and Enforcement.

##### **§ 113A-116. Local government letter of intent.**

Within two years after July 1, 1974, each county and city within the coastal area shall submit to the Commission a written statement of its intent to act, or not to act, as a permit-letting agency under G.S. 113A-121. If any city or county states its intent not to act as a permit-letting agency or fails to submit a statement of intent within the required period, the Secretary shall issue permits therein under G.S. 113A-121; provided that a county may submit a letter of intent to issue permits in any city within said county that disclaims its intent to issue permits or fails to submit a letter of intent. Provided, however, should any city or county fail to become a permit-letting agency for any reason, but shall later express its desire to do so, it shall be permitted by the Coastal Resources Commission to qualify as such an agency by following the procedure herein set forth for qualification in the first instance. (1973, c. 1284, s. 1; 1975, c. 452, s. 2; 1977, c. 771, s. 4; 1989, c. 727, s. 129.)

**§ 113A-117. Implementation and enforcement programs.**

(a) The Secretary shall develop and present to the Commission for consideration and to all cities and counties and lead regional organizations within the coastal area for comment a set of criteria for local implementation and enforcement programs. In the preparation of such criteria, the Secretary shall emphasize the necessity for the expeditious processing of permit applications. Said criteria may contain recommendations and guidelines as to the procedures to be followed in developing local implementation and enforcement programs, the scope and coverage of said programs, minimum standards to be prescribed in said programs, staffing of permit-letting agencies, permit-letting procedures, and priorities of regional or statewide concern. Within 20 months after July 1, 1974, the Commission shall adopt and transmit said criteria (with any revisions) to each coastal-area county and city that has filed an applicable letter of intent, for its guidance.

(b) The governing body of each city in the coastal area that filed an affirmative letter of intent shall adopt an implementation and enforcement plan with respect to its zoning area within 36 months after July 1, 1974. The board of commissioners of each coastal-area county that filed an affirmative letter of intent shall adopt an implementation plan with respect to portions of the county outside city zoning areas within 36 months after July 1, 1974, provided, however, that a county implementation and enforcement plan may also cover city jurisdictions for those cities within the counties that have not filed affirmative letters of intent pursuant to G.S. 113A-116. Prior to adopting the implementation and enforcement program the local governing body shall hold a public hearing at which public and private parties shall have the opportunity to present comments and views. Notice of the hearing shall be given not less than 15 days before the date of the hearing, and shall state the date, time and place of the hearing, the subject of the hearing, and the action which is to be taken. The notice shall state that copies of the proposed implementation and enforcement program are available for public inspection at the county courthouse. Any such notice shall be published at least once in one newspaper of general circulation in the county at least 15 days before the date on which the public hearing is scheduled to begin.

(c) Each coastal-area county and city shall transmit its implementation and enforcement program when adopted to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the program, and shall review and consider each local implementation and enforcement program submitted in light of such objections and comments, the Commission's criteria and any general standards of review applicable throughout the coastal area as may be adopted by the Commission. Within 45 days after receipt of a local implementation and enforcement program the Commission shall either approve the program or notify the county or city of the specific changes that must be made in order for it to be approved. Following such changes, the program may be resubmitted in the same manner as the original program.

(d) If the Commission determines that any local government is failing to administer or enforce an approved implementation and enforcement program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 90 days of receipt of notification from the Commission, the Commission shall assume enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program. (1973, c. 1284, s. 1; 1975, c. 452, s. 3; 1977, c. 771, s. 4; 1989, c. 727, s. 130.)

**§ 113A-118. Permit required.**

(a) After the date designated by the Secretary pursuant to G.S. 113A-125, every person before undertaking any development in any area of environmental concern shall obtain (in addition to any other required State or local permit) a permit pursuant to the provisions of this Part.

(b) Under the expedited procedure provided for by G.S. 113A-121, the permit shall be obtained from the appropriate city or county for any minor development; provided, that if the city or county has not developed an approved implementation and enforcement program, the permit shall be obtained from the Secretary.

(c) Permits shall be obtained from the Commission or its duly authorized agent.

(d) Within the meaning of this Part:

(1) A "major development" is any development which requires permission, licensing, approval, certification or authorization in any form from the Environmental Management Commission, the Department of Environmental Quality, the Department of Administration, the North Carolina Oil and Gas Commission, the North Carolina Pesticides Board, the North Carolina Sedimentation Control Board, or any federal agency or authority; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

(2) A "minor development" is any development other than a "major development."

(e) If, within the meaning of G.S. 113A-103(5)b3, the siting of any utility facility for the development, generation or transmission of energy is subject to regulation under this Article rather than by the State Utilities Commission or by other law, permits for such facilities shall be obtained from the Coastal Resources Commission rather than from the appropriate city or county.

(f) The Secretary may issue special emergency permits under this Article. These permits may only be issued in those extraordinary situations in which life or structural property is in imminent danger as a result of storms, sudden failure of man-made structures, or similar occurrence. These permits may carry any conditions necessary to protect the public interest, consistent with the emergency situation and the impact of the proposed development. If an application for an emergency permit includes work beyond that necessary to reduce imminent dangers to life or property, the emergency permit shall be limited to that development reasonably necessary to reduce the imminent danger; all further development shall be considered under ordinary permit procedures. This emergency permit authority of the Secretary shall extend to all development in areas of environmental concern, whether major or minor development, and the mandatory notice provisions of G.S. 113A-119(b) shall not apply to these emergency permits. To the extent feasible, these emergency permits shall be coordinated with any emergency permits required under G.S. 113-229(e1). The fees associated with any permit issued pursuant to this subsection or rules adopted pursuant to this subsection shall be waived. (1973, c. 476, s. 128; c. 1282, ss. 23, 33; c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1979, c. 253, s. 5; 1981, c. 932, s.

2.1; 1983, c. 173; c. 518, s. 3; 1987, c. 827, s. 136; 1989, c. 727, s. 131; 1997-443, s. 11A.119(a); 2007-485, s. 5; 2012-143, s. 1(d); 2014-4, s. 4(c); 2015-241, s. 14.30(u).)

**§ 113A-118.1. General permits.**

(a) The Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider:

- (1) The size of the development;
- (2) The impact of the development on areas of environmental concern;
- (3) How often the class of development is carried out;
- (4) The need for onsite oversight of the development; and
- (5) The need for public review and comment on individual development projects.

(b) General permits may be issued by the Commission. Individual developments carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of G.S. 113A-119.

(c) The Commission may impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues.

(d) The variance, appeals, and enforcement provisions of this Article shall apply to any individual development projects undertaken under a general permit.

(e) The Commission shall allow the use of riprap in the construction of groins in estuarine and public trust waters on the same basis as the Commission allows the use of wood. (1983, c. 171; c. 442, s. 1; 1987, c. 827, s. 137; 2002-126, s. 29.2(f).)

**§ 113A-118.2. Development in Primary Nursery Areas and Outstanding Resource Waters areas of environmental concern.**

Public notice, opportunity for public comment, and agency review shall be required for all development within the Primary Nursery Areas or Outstanding Resource Waters areas of environmental concern. Provided, however, that the Coastal Resources Commission may by rule exempt or issue general permits for minor maintenance and improvement projects as defined in G.S. 113A-103(5)c. and for single-family residential development pursuant to use standards or conditions adopted by the Coastal Resources Commission. (1989, c. 217, s. 2.)

**§ 113A-119. Permit applications generally.**

(a) Any person required to obtain a permit under this Part shall file with the Secretary and (in the case of a permit sought from a city or county) with the designated local official an application for a permit in accordance with the form and content designated by the Secretary and approved by the Commission. The applicant must submit with the application a check or money order payable to the Department or the city or county, as the case may be, constituting a fee set by the Commission pursuant to G.S. 113A-119.1.

(b) Upon receipt of any application, a significant modification to an application for a major permit, or an application to modify substantially a previously issued major permit, the Secretary shall issue public notice of the proposed development (i) by mailing a copy of the application or modification, or a brief description thereof together with a statement indicating where a detailed copy of the proposed development may be inspected, to any citizen or group which has filed a request to be notified of the proposed development, and

to any interested State agency; (ii) with the exception of minor permit applications, by posting or causing to be posted a notice at the location of the proposed development stating that an application, a modification of an application for a major permit, or an application to modify a previously issued major permit for development has been made, where the application or modification may be inspected, and the time period for comments; and (iii) with the exception of minor permit applications, by publishing notice of the application or modification at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least 20 days before final action on a major permit or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the Secretary by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after mailing of the mailed notice, whichever is later.

(c) Within the meaning of this Part, the "designated local official" is the official who has been designated by the local governing body to receive and consider permit applications under this Part. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 307; 1985, c. 372; 1989, c. 53; c. 727, s. 132; 1989 (Reg. Sess., 1990), c. 987, s. 1; 2013-413, s. 30; 2017-209, s. 5(b).)

#### **§ 113A-119.1. Permit fees.**

(a) The Commission shall have the power to establish a graduated fee schedule for the processing of applications for permits, renewals of permits, modifications of permits, or transfers of permits issued pursuant to this Article. In determining the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing the applications, related compliance activities, and the complexity of the development sought to be undertaken for which a permit is required under this Article. The fee to be charged for processing an application may not exceed four hundred dollars (\$400.00). The total funds collected from fees authorized by the Commission pursuant to this section in any fiscal year shall not exceed thirty-three and one-third percent (33 1/3%) of the total personnel and administrative costs incurred by the Department for permit processing and compliance programs within the Division of Coastal Area Management.

(b) Fees collected under this section shall be applied to the costs of administering this Article.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1039, s. 4. (1989 (Reg. Sess., 1990), c. 987, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 4.)

#### **§ 113A-119.2. Review of offshore fossil fuel facilities.**

(a) In addition to the definitions set out in G.S. 113A-103, as used in this section, the following definitions shall apply:

- (1) "Coastal fishing waters" has the same meaning as in G.S. 113-129.
- (2) "Discharge" has the same meaning as in G.S. 143-215.77.
- (3) "Offshore fossil fuel facility" means those facilities for the exploration, development, or production of oil or natural gas which, because of their size, magnitude, or scope of impacts, have the potential to affect any land or water use or natural resource of the coastal area. For purposes of this definition, offshore fossil fuel facilities shall include, but are not limited to:

- a. Structures, including drill ships and floating platforms and structures relocated from other states or countries, located in coastal fishing waters.
  - b. Any equipment associated with a structure described in sub-subdivision a. of this subdivision, including, but not limited to, pipelines and vessels that are used to carry, transport, or transfer oil, natural gas, liquid natural gas, liquid propane gas, or synthetic gas.
  - c. Onshore support or staging facilities associated with a structure described in sub-subdivision a. of this subdivision.
- (4) "Oil" has the same meaning as in G.S. 143-215.77.
- (b) In addition to any other information necessary to determine consistency with State guidelines adopted pursuant to G.S. 113A-107, the following information is required for the review of an offshore fossil fuel facility located in coastal fishing waters:
- (1) All information required to be included in an Exploration Plan required pursuant to Subpart B of Part 250 of 30 C.F.R. (July 1, 2009 edition).
  - (2) All information required to be included in an Oil-Spill Response Plan required pursuant to Subpart B of Part 254 of 30 C.F.R. (July 1, 2009 edition).
  - (3) An assessment of alternatives to the proposed offshore fossil fuel facility that would minimize the likelihood of an unauthorized discharge.
  - (4) An assessment of the potential for an unauthorized discharge to cause temporary or permanent violations of the federal and State water quality standards, including the antidegradation policy adopted pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).
  - (5) Any other information that the Commission determines necessary for consistency review. (2010-179, s. 2.)

**§ 113A-120. Grant or denial of permits.**

- (a) The responsible official or body shall deny an application for a permit upon finding:
- (1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.
  - (2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).
  - (3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subdivisions a through c of G.S. 113A-113(b)(3).
  - (4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4).
  - (5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.
  - (6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.

- (7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.
- (8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.
- (9) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources.
- (10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through (9) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.

(b) In the absence of such findings, a permit shall be granted. The permit may be conditioned upon the applicant's amending his proposal to take whatever measures or agreeing to carry out whatever terms of operation or use of the development that are reasonably necessary to protect the public interest with respect to the factors enumerated in subsection (a) of this section.

(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- (1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with other federal and state laws, regulations, and rules for the protection of the environment.

(b2) For purposes of subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.

(c) Repealed by Session Laws 1989, c. 676, s. 7. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1; 1983, c. 518, ss. 4, 5; 1987, c. 827, s. 138; 1989, c. 51; c. 676, s. 7; 1997-337, s. 2; 1997-456, s. 55.2B; 1997-496, s. 2; 2000-172, s. 2.1.)

### **§ 113A-120.1. Variances.**

(a) Any person may petition the Commission for a variance granting permission to use the person's land in a manner otherwise prohibited by rules or standards prescribed by the

Commission, or orders issued by the Commission, pursuant to this Article. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of the rules, standards, or orders.
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- (3) The hardships did not result from actions taken by the petitioner.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the rules, standards, or orders; will secure public safety and welfare; and will preserve substantial justice.

(b) The Commission may impose reasonable and appropriate conditions and safeguards upon any variance it grants. (1989, c. 676, s. 8; 2002-68, s. 1.)

### **§ 113A-120.2. Expired.**

### **§ 113A-121. Permits for minor developments under expedited procedures.**

(a) Applications for permits for minor developments shall be expeditiously processed so as to enable their promptest feasible disposition.

(b) In cities and counties that have developed approved implementation and enforcement programs, applications for permits for minor developments shall be considered and determined by the designated local official of the city or county as the case may be. In cities and counties that have not developed approved implementation and enforcement programs, such applications shall be considered and determined by the Secretary. Minor development projects proposed to be undertaken by a local government within its own permit-letting jurisdiction shall be considered and determined by the Secretary.

(c) Failure of the Secretary or the designated local official (as the case may be) to approve or deny an application for a minor permit within 25 days from receipt of application shall be treated as approval of the application, except that the Secretary or the designated local official (as the case may be) may extend the deadline by not more than an additional 25 days in exceptional cases. No waiver of the foregoing time limitation (or of the time limitation established in G.S. 113A-122(c)) shall be required of any applicant.

(d) Repealed by Session Laws 1981, c. 913, s. 2. (1973, c. 1284, s. 1; 1977, c. 771, s. 4; 1981, c. 913, s. 2; 1983, c. 172, s. 1; c. 399; 1989, c.727, s. 133.)

### **§ 113A-121.1. Administrative review of permit decisions.**

(a) An applicant for a minor or major development permit who is dissatisfied with the decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. When a local official makes a decision to grant or deny a minor development permit and the Secretary is dissatisfied with the decision, the Secretary may file a petition for a contested case within 20 days after the decision is made.

(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the appropriateness of a contested case hearing shall be made

in writing and received by the Commission within 20 days after the disputed permit decision is made. A determination of the appropriateness of a contested case shall be made within 15 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

- (1) Has alleged that the decision is contrary to a statute or rule;
- (2) Is directly affected by the decision; and
- (3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final decision on the permit pursuant to G.S. 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case.

(c) When the applicant seeks administrative review of a decision concerning a permit under subsection (a) of this section, the permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission makes a final decision in the contested case, and no action may be taken during that time that would be unlawful in the absence of a permit.

(d) A permit challenged under subsection (b) of this section remains in effect unless a stay is issued by the administrative law judge as set forth in G.S. 150B-33 or by a reviewing court as set forth in G.S. 150B-48. (1981, c. 913, s. 3; 1983, c. 400, ss. 1, 2; 1987, c. 827, s. 139; 1995, c. 409, s. 1; 2011-398, s. 37; 2014-120, s. 23.)

#### **§ 113A-122. Procedures for hearings on permit decisions.**

- (a) Repealed by Session Laws 1987, c. 827, s. 140.
- (b) The following provisions shall be applicable in connection with hearings pursuant to this section:
  - (1), (2) Repealed by Session Laws 1987, c. 827, s. 140.
  - (3) A full and complete record of all proceedings at any hearing under this section shall be taken by a reporter appointed by the Commission or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Commission.
  - (4) to (6) Repealed by Session Laws 1987, c. 827, s. 140.
  - (7) The burden of proof at any hearing on a decision granting a permit shall be upon the person who requested the hearing.
  - (8), (9) Repealed by Session Laws 1987, c. 827, s. 140.
  - (10) The Commission shall grant or deny the permit in accordance with the provisions of G.S. 113A-120. All such orders and decisions of the Commission

shall set forth separately the Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Commission is based.

- (11) The Commission shall have the authority to adopt a seal which shall be the seal of said Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, rule of procedure or any other official act or records of the Commission or its minutes may be certified by the Executive Director under his hand and the seal of the Commission and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action to proceedings. The Commission shall have the right to take official notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Commission or by any other person or interested party where material, relevant and competent.

(c) Failure of the Commission to approve or deny an application for a permit pursuant to this section within 75 days from receipt of application shall be treated as approval of the application, except the Commission may extend the deadline by not more than an additional 75 days in exceptional cases.

Failure of the Commission to dispose of an appeal pursuant to this section within 90 days from notice of appeal shall be treated as approval of the action appealed from, except that the Commission may extend the deadline by not more than an additional 90 days if necessary to properly consider the appeal.

(d) All notices which are required to be given by the Secretary or Commission or by any party to a proceeding under this section shall be given by registered or certified mail to all persons entitled thereto. The date of receipt or refusal for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Commission may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. The Commission may prescribe the form and content of any particular notice. (1973, c. 1284, s. 1; 1979, c. 253, s. 6; 1981, c. 913, ss. 4-6; 1983, c. 172, s. 2; 1987, c. 827, s. 140.)

### **§ 113A-123. Judicial review.**

(a) Any person directly affected by any final decision or order of the Commission under this Part may appeal such decision or order to the superior court of the county where the land or any part thereof is located, pursuant to the provisions of Chapter 150B of the General Statutes. Pending final disposition of any appeal, no action shall be taken which would be unlawful in the absence of a permit issued under this Part.

(b) Any person having a recorded interest or interest by operation of law in or registered claim to land within an area of environmental concern affected by any final decision or order of the Commission under this Part may, within 90 days after receiving notice thereof, petition the superior court to determine whether the petitioner is the owner of the land in question, or an interest, therein, and in case he is adjudged the owner of the subject land, or an interest therein, the court shall determine whether such order so restricts the use of his property as to deprive him of the practical uses thereof, being not otherwise authorized by law, and is therefore an unreasonable

exercise of the police power because the order constitutes the equivalent of taking without compensation. The burden of proof shall be on petitioner as to ownership and the burden of proof shall be on the Commission to prove that the order is not an unreasonable exercise of the police power, as aforesaid. Either party shall be entitled to a jury trial on all issues of fact, and the court shall enter a judgment in accordance with the issues, as to whether the Commission order shall apply to the land of the petitioner. The Secretary shall cause a copy of such finding to be recorded forthwith in the register of deeds office in the county where the land is located. The method provided in this subsection for the determination of the issue of whether such order constitutes a taking without compensation shall be exclusive and such issue shall not be determined in any other proceeding. Any action authorized by this subsection shall be calendared for trial at the next civil session of superior court after the summons and complaint have been served for 30 days, regardless of whether issues were joined more than 10 days before the session. It is the duty of the presiding judge to expedite the trial of these actions and to give them a preemptory setting over all others, civil or criminal. From any decision of the superior court either party may appeal to the court of appeals as a matter of right.

(c) After a finding has been entered that such order shall not apply to certain land as provided in the preceding subsection, the Department of Administration, upon the request of the Commission and upon finding that sufficient funds are available therefor, and with the consent of the Governor and Council of State may take the fee or any lesser interest in such land in the name of the State by eminent domain under the provisions of Chapter 146 of the General Statutes and hold the same for the purposes set forth in this Article. (1973, c. 1284, s. 1; c. 1331, s. 3; 1977, c. 771, s. 4; 1987, c. 827, s. 1; 1989, c. 727, s. 134.)

#### **§ 113A-124. Additional powers and duties.**

(a) The Secretary shall have the following additional powers and duties under this Article:

- (1) To conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.
- (2) To cooperate with the Secretary of the Department of Administration in drafting State guidelines for the coastal area.
- (3) To keep a list of interested persons who wish to be notified of proposed developments and proposed rules designating areas of environmental concern and to so notify these persons of such proposed developments by regular mail. A reasonable registration fee to defray the cost of handling and mailing notices may be charged to any person who so registers with the Commission.
- (4) To propose rules to implement this Article for consideration by the Commission.
- (5) To delegate such of his powers as he may deem appropriate to one or more qualified employees of the Department or to any local government, provided that the provisions of any such delegation of power shall be set forth in departmental rules.
- (6) To delegate the power to conduct a hearing, on his behalf, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his

recommendations with the record of the hearing to the Secretary for decision or action.

(b) In order to carry out the provisions of this Article the Secretaries of Administration and of Environmental Quality may employ such clerical, technical and professional personnel, and consultants with such qualifications as the Commission may prescribe, in accordance with the State personnel rules and budgetary laws, and are hereby authorized to pay such personnel from any funds made available to them through grants, appropriations, or any other sources. In addition, the said secretaries may contract with any local governmental unit or lead regional organization to carry out the planning provisions of this Article.

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
- (5) Repealed by Session Laws 1987, c. 827, s. 141.
- (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
- (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
- (8) To adopt rules to implement this Article.
- (9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.

(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-209, s. 5(a).)

#### **§ 113A-125. Transitional provisions.**

(a) Existing regulatory permits shall continue to be administered within the coastal area by the agencies presently responsible for their administration until a date (not later than 44 months after July 1, 1974), to be designated by the Secretary of Natural and Economic Resources as the permit changeover date. Said designation shall be effective from and after its filing with the Secretary of State.

(b) From and after the "permit changeover date," all existing regulatory permits within the coastal area shall be administered in coordination and consultation with (but not subject to the veto of) the Commission. No such existing permit within the coastal area shall be issued, modified, renewed or terminated except after consultation with the Commission. The provisions of this subsection concerning consultation and coordination shall not be interpreted to authorize or require the extension of any deadline established by this Article or any other law for completion of any permit, licensing, certification or other regulatory proceedings.

(c) Within the meaning of this section, "existing regulatory permits" include dredge and fill permits issued pursuant to G.S. 113-229; sand dune permits issued pursuant to G.S. 104B-4; air pollution control and water pollution control permits, special orders or certificates issued pursuant to G.S. 143-215.1 and 143-215.2, or any other permits, licenses, authorizations, approvals or certificates issued by the Board of Water and Air Resources pursuant to Chapter 143; capacity use area permits issued pursuant to G.S. 143-215.15; final approval of dams pursuant to G.S. 143-215.30; floodway permits issued pursuant to G.S. 143-215.54; water diversion authorizations issued pursuant to G.S. 143-354(c); oil refinery permits issued pursuant to G.S. 143-215.99; mining operating permits issued pursuant to G.S. 74-51; permissions for construction of wells issued pursuant to G.S. 87-88; and rules concerning pesticide application within the coastal area issued pursuant to G.S. 143-458; approvals by the Department of Health and Human Services of plans for water supply, drainage or sewerage, pursuant to G.S. 130-161.1 and 130-161.2; standards and approvals for solid waste disposal sites and facilities, adopted by the Department of Health and Human Services pursuant to Chapter 130, Article 13B; permits relating to sanitation of shellfish, crustacea or scallops issued pursuant to Chapter 130, Articles 14A or 14B; permits, approvals, authorizations and rules issued by the Department of Health and Human Services pursuant to Articles 23 or 24 of Chapter 130 with reference to mosquito control programs or districts; any permits, licenses, authorizations, rules, approvals or certificates issued by the Department of Health and Human Services relating to septic tanks or water wells; oil or gas well rules and orders issued for the protection of environmental values or resources pursuant to G.S. 113-391; a certificate of public convenience and necessity issued by the State Utilities Commission pursuant to Chapter 62 for any public utility plant or system, other than a carrier of persons or property; permits, licenses, leases, options, authorization or approvals relating to the use of State forestlands, State parks or other state-owned land issued by the State Department of Administration, the State Department of Natural and Economic Resources or any other State department, agency or institution; any approvals of erosion and sedimentation control plans that may be issued by the North Carolina Sedimentation Control Commission pursuant to G.S. 113A-60 or 113A-61; and any permits, licenses, authorizations, rules, approvals or certificates issued by any State agency pursuant to any environmental protection legislation not specified in this subsection that may be enacted prior to the permit changeover date.

(d) The Commission shall conduct continuing studies addressed to developing a better coordinated and more unified system of environmental and land-use permits in the coastal area, and shall report its recommendations thereon from time to time to the General Assembly. (1973, c. 1284, s. 1; 1975, c. 452, ss. 4, 5; 1979, c. 299; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 142; 1997-443, s. 11A.122; 2002-165, s. 2.16.)

### **§ 113A-126. Injunctive relief and penalties.**

(a) Upon violation of any of the provisions of this Article or of any rule or order adopted under the authority of this Article the Secretary may, either before or after the

institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the State upon the relation of the Secretary for injunctive relief to restrain the violation and for a preliminary and permanent mandatory injunction to restore the resources consistent with this Article and rules of the Commission. If the court finds that a violation is threatened or has occurred, the court shall, at a minimum, order the relief necessary to prevent the threatened violation or to abate the violation consistent with this Article and rules of the Commission. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(b) Upon violation of any of the provisions of this Article relating to permits for minor developments issued by a local government, or of any rule or order adopted under the authority of this Article relating to such permits, the designated local official may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the affected local government upon the relation of the designated local official for injunctive relief to restrain the violation and for a preliminary and permanent mandatory injunction to restore the resources consistent with this Article and rules of the Commission. If the court finds that a violation is threatened or has occurred, the court shall, at a minimum, order the relief necessary to prevent the threatened violation or to abate the violation consistent with this Article and rules of the Commission. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(c) Any person who shall be adjudged to have knowingly or willfully violated any provision of this Article, or any rule or order adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates, any such provision, rule or order after written notice from the Secretary or (in the case of a permit for a minor development issued by a local government) written notice from the designated local official, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

- (d) (1) A civil penalty of not more than one thousand dollars (\$1,000) for a minor development violation and ten thousand dollars (\$10,000) for a major development violation may be assessed by the Commission against any person who:
- a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
  - b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.
  - c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house

or curtilage, for the purpose of conducting any investigations provided for in this Article.

- d. Violates a rule of the Commission implementing this Article.
- (2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.
  - (3) The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final decision was served on the violator.
  - (4) In determining the amount of the civil penalty, the Commission shall consider the following factors:
    - a. The degree and extent of harm, including, but not limited to, harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
    - b. The duration and gravity of the violation;
    - c. The effect on water quality, coastal resources, or public trust uses;
    - d. The cost of rectifying the damage;
    - e. The amount of money saved by noncompliance;
    - f. Whether the violation was committed willfully or intentionally;
    - g. The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority; and
    - h. The cost to the State of the enforcement procedures.
  - (4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars (\$1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars (\$2,500), whichever is less.
  - (5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 485, ss. 1-3; c. 518, s. 6; 1987, c. 827, ss. 11, 143; 1991, c. 725, s. 6; 1991 (Reg. Sess., 1992), c. 839, s. 3; c. 890, s. 8; 1993, c. 539, s. 874; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 53(a); 2006-229, s. 1; 2011-398, s. 38.)

**§ 113A-127. Coordination with the federal government.**

All State agencies shall keep informed of federal and interstate agency plans, activities, and procedures within their area of expertise that affect the coastal area. Where federal or interstate agency plans, activities or procedures conflict with State policies, all reasonable steps shall be taken by the State to preserve the integrity of its policies. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

**§ 113A-128. Protection of landowners' rights.**

Nothing in this Article authorizes any governmental agency to adopt a rule or issue any order that constitutes a taking of property in violation of the Constitution of this State or of the United States. (1973, c. 1284, s. 1; 1987, c. 827, s. 144.)

**§ 113A-129: Reserved for future codification purposes.**

Part 5. Coastal Reserves.

**§ 113A-129.1. Legislative Findings and Purposes.**

(a) Findings. – It is hereby determined and declared as a matter of legislative finding that the coastal area of North Carolina contains a number of important undeveloped natural areas. These areas are vital to continued fishery and wildlife protection, water quality maintenance and improvement, preservation of unique and important coastal natural areas, aesthetic enjoyment, and public trust rights such as hunting, fishing, navigation, and recreation. Such land and water areas are necessary for the preservation of estuarine areas of the State, constitute important research facilities, and provide public access to waters of the State.

(b) Purposes. – Important public purposes will be served by the preservation of certain of these areas in an undeveloped state. Such areas would thereafter be available for research, education, and other consistent public uses. These areas would also continue to contribute perpetually to the natural productivity and biological, economic, and aesthetic values of North Carolina's coastal area. (1989, c. 344, s. 1.)

**§ 113A-129.2. Coastal Reserve Program.**

(a) There is hereby created a North Carolina Coastal Reserve System for the purpose of acquiring, improving, and maintaining undeveloped coastal land and water areas in a natural state.

(b) This system shall be established and administered by the Department of Environmental Quality. In so doing the Department shall consult with and seek the ongoing advice of the Coastal Resources Commission. The Department may by rule define the areas to be included in this system and set standards for its use.

(c) This system shall be established within the coastal area as defined by G.S. 113A-103(2).

(d) All acquisitions or dispositions of property for lands within this system shall be in accordance with the provisions of Chapter 146 of the General Statutes.

(e) All lands and waters within the system shall be used primarily for research and education. Other public uses, such as hunting, fishing, navigation, and recreation, shall be allowed to the extent consistent with these primary uses. Improvements and alterations to

the lands shall be limited to those consistent with these uses. (1989, c. 344, s. 1; c. 727, s. 218(58); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

**§ 113A-129.3. Coordination.**

(a) To the extent feasible, this system shall be carried out in coordination with the National Estuarine Reserve Research System established by 16 U.S.C. § 1461.

(b) To the extent feasible, lands and waters within this system shall be dedicated as components of the "State Nature and Historic Preserve" as provided in Article XIV, Section 5, of the Constitution and as nature reserves pursuant to G.S. 113A-164.1 to G.S. 113A-164.11. (1989, c. 344, s. 1, c. 770, s. 47.)

**§§ 113A-130 through 113A-134. Reserved for future codification purposes.**

Part 6. Public Beach and Coastal Waterfront Access Program.

**§ 113A-134.1. Legislative findings.**

(a) The General Assembly finds that there are many privately owned lots or tracts of land in close proximity to the Atlantic Ocean and the coastal waters in North Carolina that have been and will be adversely affected by hazards such as erosion, flooding, and storm damage. The sand dunes on many of these lots provide valuable protective functions for public and private property and serve as an integral part of the beach sand supply system. Placement of permanent substantial structures on these lots will lead to increased risks of loss of life and property, increased public costs, and potential eventual encroachment of structures onto the beach.

(b) The public has traditionally fully enjoyed the State's beaches and coastal waters and public access to and use of the beaches and coastal waters. The beaches provide a recreational resource of great importance to North Carolina and its citizens and this makes a significant contribution to the economic well-being of the State. The General Assembly finds that the beaches and coastal waters are resources of statewide significance and have been customarily freely used and enjoyed by people throughout the State. Public access to beaches and coastal waters in North Carolina is, however, becoming severely limited in some areas. Also, the lack of public parking is increasingly making the use of existing public access difficult or impractical in some areas. The public interest would best be served by providing increased access to beaches and coastal waters and by making available additional public parking facilities. There is therefore, a pressing need in North Carolina to establish a comprehensive program for the identification, acquisition, improvement, and maintenance of public accessways to the beaches and coastal waters. (1981, c. 925, s. 1; 1983, c. 751, s. 13; 1989, c. 344; s. 2; 1995, c. 183, s. 2.)

**§ 113A-134.2. Creation of program; administration; purpose; definitions.**

(a) There is created the Public Beach and Coastal Waterfront Access Program, to be administered by the Commission and the Department, for the purpose of acquiring, improving, and maintaining property along the Atlantic Ocean and coastal waterways to which the public has rights-of-access or public trust rights as provided in this Part.

(b) As used in this Part:

(1) "Public trust resources" has the same meaning as in G.S. 113-131(e).

(2) "Public trust rights" has the same meaning as in G.S. 1-45.1. (1981, c. 925, s. 1; 1983, c. 757, s. 13; 1989, c. 344, s. 2; c. 727, s. 136; c. 751, s. 13; 1995, c. 183, s. 3.)

**§ 113A-134.3. Standards for public access program.**

(a) The Commission, with the support of the Department, shall establish and carry out a program to assure the acquisition, improvement, and maintenance of a system of public access to coastal beaches and public trust waters. This public access program shall include standards to be adopted by the Commission for the acquisition of property and the use and maintenance of the property. The standards shall be written to assure that land acquisition funds shall only be used to purchase interests in property that will be of benefit to the general public. Priority shall be given to acquisition of lands that due to adverse effects of natural hazards, such as past and potential erosion, flooding, and storm damage, are unsuitable for the placement of permanent structures, including lands for which a permit for improvements has been denied under rules adopted pursuant to State law. The program shall be designed to provide and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all coastal beaches and public trust waters where access is compatible with the natural resources involved and where reasonable access is not available.

(b) To the maximum extent possible, this program shall be coordinated with State and local beach and coastal water management and recreational programs and shall be carried out in cooperation with local governments. Prior to the purchase of any interests in property, the Secretary or his designee shall make a written finding of the public purpose to be served by the acquisition. Once property is purchased, the Department may allow property, without charge, to be controlled and operated by the county or municipality in which the property is located, subject to an agreement requiring that the local government use and maintain the property for its intended public purpose.

(c) Subject to any restrictions imposed by law, any funds appropriated or otherwise made available to the Public Beach and Coastal Waterfront Access Program may be used to meet matching requirements for federal or other funds. The Department shall make every effort to obtain funds from sources other than the General Fund to implement this program. Funds may be used to acquire or develop land for pedestrian access including parking and to make grants to local governments to accomplish the purposes of this Part. All acquisitions or dispositions of property made pursuant to this Part shall be in accordance with the provisions of Chapter 146 of the General Statutes. All grants to local governments pursuant to this Part for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the State if the local government uses the property for a purpose other than beach or coastal waters access. (1981, c. 925, s. 1; 1983, c. 334; c. 757, s. 13; 1987, c. 827, s. 145; 1989, c. 344, s. 2; c. 727, s. 137; c. 751, s. 13; 1995, c. 183, s. 4.)

**§§ 113A-134.4 through 113A-134.9. Reserved for future codification purposes.**

Article 7B.

Bogue Inlet Access Program.

**§ 113A-134.10: Repealed by Session Laws 1991, c. 365.**

Article 7C.

## Beach Management Plan.

### **§ 113A-134.11. Department to compile and evaluate information.**

The Department of Environmental Quality shall compile and evaluate information on the current conditions and erosion rates of beaches, on coastal geology, and on storm and erosion hazards for use in developing a State plan and strategy for beach management and restoration. The Department of Environmental Quality shall make this information available to local governments for use in land-use planning. (2000-67, s. 13.9(b); 2015-241, s. 14.30(u).)

### **§ 113A-134.12. Multiyear beach management and restoration strategy and plan.**

(a) The Department of Environmental Quality shall develop a multiyear beach management and restoration strategy and plan that does all of the following:

- (1) Utilizes the data and expertise available in the Divisions of Water Resources, Coastal Management, and Energy, Mineral, and Land Resources.
- (2) Identifies the erosion rate at each beach community and estimates the degree of vulnerability to storm and hurricane damage.
- (3) Uses the best available geological and geographical information to determine the need for and probable effectiveness of beach nourishment.
- (4) Provides for coordination with the U.S. Army Corps of Engineers, the North Carolina Department of Transportation, the North Carolina Division of Emergency Management, and other State and federal agencies concerned with beach management issues.
- (5) Provides a status report on all U.S. Army Corps of Engineers' beach protection projects in the planning, construction, or operational stages.
- (6) Makes maximum feasible use of suitable sand dredged from navigation channels for beach nourishment to avoid the loss of this resource and to reduce equipment mobilization costs.
- (7) Promotes inlet sand bypassing where needed to replicate the natural flow of sand interrupted by inlets.
- (8) Provides for geological and environmental assessments to locate suitable materials for beach nourishment.
- (9) Considers the regional context of beach communities to determine the most cost-effective approach to beach nourishment.
- (10) Provides for and requires adequate public beach access, including handicapped access.
- (11) Recommends priorities for State funding for beach nourishment projects, based on the amount of erosion occurring, the potential damage to property and to the economy, the benefits for recreation and tourism, the adequacy of public access, the availability of local government matching funds, the status of project planning, the adequacy of project engineering, the cost-effectiveness of the project, and the environmental impacts.
- (12) Includes recommendations on obtaining the maximum available federal financial assistance for beach nourishment.
- (13) Is subject to a public hearing to receive citizen input.

(b) Each plan shall be as complete as resources and available information allow. Environmental Quality (2000-67, ss. 13.9(c), (d); 2012-143, s. 1(f); 2015-241, s. 14.30(u); 2017-10, s. 4.9.)

Article 8.

North Carolina Land Conservancy Corporation.

**§§ 113A-135 through 113A-149: Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 4.**

Article 9.

Land Policy Act.

**§ 113A-150. Short title.**

This Article shall be known as the Land Policy Act of 1974. (1973, c. 1306, s. 1.)

**§ 113A-151. Findings, intent and purpose.**

(a) Findings. – The General Assembly hereby finds that:

- (1) The land of North Carolina is a resource basic to the welfare of her people.
- (2) A lack of coordination of governmental action; a lack of clearly stated, sound, and widely understood guidelines for planning; and a lack of systematic collection, classification, and utilization of information regarding the land resource have led to inconsistencies in policy and inadequacies in planning for the present and future uses of the land resource.
- (3) Governmental agencies responsible for controlling land use and private and public users of the land resource are often unable to independently develop guidelines for land-use practices which provide adequate and meaningful provision for future demands on the land resource, while allowing current needs to be met.
- (4) Systematic and sound decisions as to the location and nature of major public investments in key facilities cannot be made without a comprehensive State policy regarding the land resource.
- (5) Those affected by State land-use policy and decisions must be given an opportunity for full participation in the policy-and decision-making process. Such a process must allow for the final implementation of policy by local governments. The State should take whatever steps necessary to encourage and assist local governments in meeting their obligation to control current uses and plan for future uses of the land resource.

(b) Intent and Purpose. – The General Assembly declares that it is the intent of this Article to undertake the continuing development and implementation of a State land-use policy, incorporating environmental, esthetic, economic, social, and other factors so as to promote the public interest, to preserve and enhance environmental quality, to protect areas of natural beauty and historic sites, to encourage beneficial economic development, and to protect and promote the public health, safety, and welfare. Such policy shall serve as a guide for decision-making in State

and federally assisted programs which affect land use, and shall provide a framework for the development of land-use policies and programs by local governments. It is the purpose of this Article to:

- (1) Promote patterns of land use which are in accord with a State land-use policy which encourages the wise and balanced use of the State's resources;
- (2) Establish a State policy to give local governments guidance and assistance in the establishment and implementation of local land planning and management programs so as to effectively meet their responsibilities for economically and environmentally sound land-use management;
- (3) Establish a State land-use policy which seeks to provide essential public services equitably to all persons within the State and to assure that citizens shall have, consistent with sound principles of land resource use, maximum freedom and opportunity to live and conduct their activities in locations of their personal choice;
- (4) Condition the distribution of certain federal and State funds on meeting reasonable and flexible State requirements for basic land planning; such conditions to include a clear statement of the State's authority and responsibility for review of planning and management by local governments;
- (5) Develop and maintain coordination of all State programs having a land-use impact, including joint planning and management of State lands with adjacent nonstate lands, so as to ensure consistency with the purposes of this Article;
- (6) Promote the development of systematic methods for the exchange of land-use, environmental, economic, and social information among all levels of government, and among agencies at all levels of government. (1973, c. 1306, s. 1.)

**§ 113A-152. Definitions.**

Unless the context otherwise requires, the following terms as used in this Article are defined as follows:

- (1) "Areas of environmental concern" means: those areas of this State where uncontrolled development, unregulated use, or other man-related activities could result in major or irreversible damage to important environmental, historic, cultural, scientific or scenic values, or natural systems or processes which are of more than local significance, or could unreasonably endanger life or property as a result of natural hazards, or could result in loss of continued long-range productivity in renewable resource areas.
- (2) "Principal officer" means the duly appointed or elected public official in responsible charge of a principal department of State government.
- (3) "Key facilities" means public facilities which tend to induce development and urbanization of more than local impact and includes, but is not limited to, major facilities for the development, generation, and transmission of energy, for communication, and for transportation.
- (4) "Local government" means any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of this Article.

- (5) "New communities and large-scale developments" means private development which, because of its magnitude or the magnitude of its effect on the surrounding environment, is likely to present issues of more than local significance.
- (6) "Project of regional impact" means land use, public development, and private development on government or nongovernmental lands for which there is a demonstrable impact affecting the interests of constituents of more than one local unit of government.
- (7) "Region" or "regional" means or refers to one or more of the official planning regions established pursuant to the laws of this State. (1973, c. 1306, s. 1.)

§ 113A-153: Repealed by Session Laws 2015-264, s. 15, effective October 1, 2015.

§ 113A-154. Repealed by Session Laws 1981, c. 881, s. 3.

**§ 113A-155. State land policy.**

(a) Content. – The State land policy of North Carolina shall consist of the following:

- (1) Consistent, comprehensive, and coordinated principles, guidelines, and methods for the transaction of all matters and affairs by any agency of State or local government dealing with, or related to, the acquisition, ownership, use, management, and disposition, in part or whole, of title or interests in state-owned and other public lands;
- (2) A compilation of all appropriate State laws, appellate court decisions, and current administrative practices, policies and principles, as established by precedent or administrative order, when accepted and recognized as such by the Land Policy Council; and
- (3) Principles, guidelines and methods regarding specific land-use and management problems identified by the Land Policy Council, which shall include, but not be limited to, the following:
  - a. Specific policies and principles for early acquisition of a reserve of lands to form a resource base from which needs for parklands, recreation sites, water reservoirs, key facilities, and other public needs may be met.
  - b. Specific policies and principles for the location, coordination, consolidation and joint use of utility rights-of-way, of whatever sort, whether above, below, or on the surface of the ground.
  - c. Specific policies regarding large-scale and special public projects and assemblage of land therefor.
  - d. Specific policies for determination and certification of areas of environmental concern.
  - e. Specific policies regarding new communities and large-scale developments on nongovernment lands.
  - f. Specific policies regarding projects of regional impact.
  - g. Other similar and related policies and directives as may be necessary to carry out the purpose of this Article.

(b) Effect. – Such policies, principles, directives and methods, when not inconsistent or in conflict with existing law or rules, shall guide and determine the administrative procedures,

findings, decisions and objectives of all agencies of State and local government with regard to acquisition, management, and disposition of public lands and interests therein and the regulation of private lands involved in or affected by areas of environmental concern, new communities, large-scale developments and projects of regional impact.

(c) Repealed by Session Laws 1987, c. 827, s. 147. (1973, c. 1306, s. 1; 1987, c. 827, s. 147.)

**§ 113A-156. State land classification system.**

(a) Purpose. – Within two years following July 1, 1974, the North Carolina Land Policy Council shall develop a State land classification system, which shall include comprehensive guidelines and policies and a method for the classification of all lands in the State for the purposes of:

- (1) Providing to State and local governmental agencies a system for achieving the stated purposes of this Article.
- (2) Promoting the orderly growth and development of the State in a manner consistent with the wise use and conservation of the land resources.
- (3) Assuring that the use and development of land in areas of environmental concern within the State is not inconsistent with the State land policy.
- (4) Assuring that the use of land for key facilities, new communities, and large-scale developments, or in areas which are or may be impacted by key facilities, new communities, and large-scale developments, is not inconsistent with the State land policy.

(b) Criteria for Classification. – The Council shall develop and adopt as a part of the classification system no fewer than four nor more than eight classifications which recognize all lands as a basic social and natural resource and which provide for the full range of private and public purposes in the use and conservation of the land resource. Emphasis shall be given to a harmonious relationship among the use potentials of the land, the physical and fiscal feasibility of providing necessary public services, and other facilities and social services. Areas of environmental concern, key facilities, projects of regional impact, new communities, and large-scale developments shall be recognized and made a part of the land classification system in order to further the stated purposes of this Article.

(c) Basis for Land Classification. – Full consideration shall be given, but shall not be limited to, the following aspects and characteristics of the lands of the State:

- (1) Topographic features such as land elevations and gradients.
- (2) Surface and underground waters, natural or artificial.
- (3) Geological, chemical, mineral and physical characteristics of the land.
- (4) The existing or potential utility of lands and sites having intrinsic historic, ecological, recreational, scenic or esthetic values or virtues.
- (5) The availability or potential availability of public services, including key facilities, health, education, and other community facilities and social services.
- (6) Areas of environmental concern, existing or potential key facilities, projects of regional impact, new communities, and large-scale development.

(d) Content. – The State land classification system shall include, but specifically is not limited to, the following:

- (1) Concise and explicit descriptions of each of the classification categories.

- (2) Guidelines and procedures for the preparation of official land-use plans by the land-planning agencies of local government, including a procedure for review by an appropriate State agency for sufficiency and consistency with the provisions of this Article, and a procedure for assembling local plans into regional plans.
  - (3) Rules and procedures for land reclassification together with an appellate procedure for property owners and other affected individuals, including officers of any level of government.
- (e) Repealed by Session Laws 1987, c. 827, s. 148. (1973, c. 1306, s. 1; 1987, c. 827, s. 148.)

**§ 113A-157. Repealed by Session Laws 1981, c. 881, s. 3.**

**§ 113A-158. Protection of rights.**

Nothing in this Article authorizes any governmental agency to adopt a rule or issue any order that constitutes a taking of property in violation of the Constitution of this State or of the United States, without payment of full compensation. (1973, c. 1306, s. 5; 1987, c. 827, s. 144.)

**§ 113A-159. Interpretation.**

It is the intention of the General Assembly that this Article be interpreted consistently with, and administered in coordination with, the Coastal Area Management Act of 1974. (1973, c. 1306, s. 6.)

**§§ 113A-160 through 113A-164. Reserved for future codification purposes.**

Article 9A.

Nature Preserves Act.

**§ 113A-164.1:** Recodified as G.S. 143B-135.250 by Session Laws 2015-241, s. 14.30(k2), effective July 1, 2015.

**§ 113A-164.2:** Recodified as G.S. 143B-135.252 by Session Laws 2015-241, s. 14.30(k2), effective July 1, 2015.

**§ 113A-164.3:** Recodified as G.S. 143B-135.254 by Session Laws 2015-241, s. 14.30(k2), effective July 1, 2015.

**§ 113A-164.4:** Recodified as G.S. 143B-135.256 by Session Laws 2015-241, s. 14.30(k2), effective July 1, 2015.

**§ 113A-164.5:** Recodified as G.S. 143B-135.258 by Session Laws 2015-241, s. 14.30(k2), effective July 1, 2015.

§ **113A-164.6:** Recodified as G.S. 143B-135.260 by Session Laws 2015-241, s. 14.30(k2), effective July 1, 2015.

§ **113A-164.7:** Recodified as G.S. 143B-135.262 by Session Laws 2015-241, s. 14.30(k2), effective July 1, 2015.

§ **113A-164.8:** Recodified as G.S. 143B-135.264 by Session Laws 2015-241, s. 14.30(k2), effective July 1, 2015.

§ **113A-164.9:** Recodified as G.S. 143B-135.266 by Session Laws 2015-241, s. 14.30(k2), effective July 1, 2015.

§ **113A-164.10:** Recodified as G.S. 143B-135.268 by Session Laws 2015-241, s. 14.30(k2), effective July 1, 2015.

§ **113A-164.11:** Recodified as G.S. 143B-135.270 by Session Laws 2015-241, s. 14.30(k2), effective July 1, 2015.

§ **113A-164.12:** Recodified as G.S. 143B-135.272 by Session Laws 2015-241, s. 14.30(k2), effective July 1, 2015.

#### Article 10.

##### Control of Outdoor Advertising near the Blue Ridge Parkway.

§ **113A-165. Advertisements prohibited within 1,000 feet of centerline; exceptions.**

No advertisement or advertising structure shall be erected, constructed, installed, maintained or operated within 1,000 feet of the centerline of the Blue Ridge Parkway, except the following:

- (1) Sign displays or devices which advertise sale, lease, rental, or development of the property on which it is located.
- (2) On-premises Signs. – For the purpose of this Article, those signs, displays or devices which carry only advertisements strictly related to the lawful use of the property on which it is located including signs, displays or devices which identify the business transacted, services rendered, goods sold or produced on the property, name of the business, [and] name of the person, firm or corporation occupying or owning the property. The size of signs advertising the major business activity is not regulated hereunder. Signs which advertise brand-name products or service sold or offered for sale on the property shall not be displayed as on-premise[s] signs unless such signs are on or attached to the building in which such products are sold. All such signs permitted under this subsection shall be located not more than 150 feet from the building in which such business activity is carried on.
- (3) Historic markers erected by duly constituted and authorized public authorities.
- (4) Highway markers and signs erected or caused to be erected by the Board of Transportation or other authorized authorities in accordance with the law.

- (5) Directional and official signs or notices erected and maintained by public officers or agencies pursuant to and in accordance with lawful authorization for the purpose of carrying out the official duty or responsibility.
- (6) Signs located within a 1,000-foot radius of intersections created by the crossing of the centerline of the Blue Ridge Parkway with the centerlines of components of the National System of Interstate and Defense Highways, Federal Aid Primary Highway System, or the North Carolina System of Primary Highways, not, however, inconsistent with other provisions of the General Statutes. (1973, c. 507, s. 5; 1975, c. 385.)

**§ 113A-166. Rules.**

The Secretary of Environmental Quality may adopt rules needed to implement this Article. (1975, c. 385; 1977, c. 771, s. 4; 1987, c. 827, s. 149; 1989, c. 727, s. 218(69); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v).)

**§ 113A-167. Existing billboards.**

Any billboard in existence upon May 26, 1975, and which does not conform to the requirements of this Article may be maintained for the life of such advertisement or advertising structure, provided that: The Department of Environmental Quality is authorized to acquire by purchase, gift or condemnation all outdoor advertising and all property rights pertaining thereto existing on May 26, 1975, which are nonconforming.

- (1) In any acquisition, purchase or condemnation, just compensation to the owner of the outdoor advertising where the owner of the outdoor advertising does not own the fee shall be limited to the fair market value at the time of the taking of the outdoor advertising owner's interest in the real property on which the outdoor advertising is located and such value shall include the value of the outdoor advertising.
- (2) In any acquisition, purchase or condemnation, just compensation to the owner of the fee or other interest in the real property upon which the outdoor advertising is located where said owner does not own the outdoor advertising located thereon shall be limited to the difference in the fair market value of the entire tract immediately before and immediately after the taking by the Commission of the right to erect and maintain such outdoor advertising thereon, and in arriving at the fair market value after the taking, any special or general benefits accruing to the property by reason of the acquisition shall be taken into consideration.
- (3) In any acquisition, purchase or condemnation, just compensation to the owner of the fee in the real property upon which the outdoor advertising is located where said owner also owns the outdoor advertising located thereon shall be limited to the fair market value of the outdoor advertising plus the difference in the fair market value of the entire tract immediately before and immediately after the taking by the Department of Environmental Quality of the right to erect and maintain such outdoor advertising thereon and in arriving at the fair market value after the taking, any special or general benefits accruing to the property by reason of the acquisition shall be taken into consideration. (1975, c. 385;

1977, c. 771, s. 4; 1989, c. 727, s. 218(70); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

**§ 113A-168. Removal, etc., of unlawful advertising.**

Any outdoor advertising erected or established after May 26, 1975, in violation of the provisions of this Article shall be unlawful and shall constitute a nuisance. The Department of Environmental Quality shall give 30 days' notice by certified mail to the owner of the nonconforming outdoor advertising structure, if such owner is known or can by reasonable diligence be ascertained, to move the outdoor advertising structure or to make it conform to the provisions of this Article and rules and regulations promulgated by the Department of Environmental Quality hereunder. The Department or its agents shall have the right to remove or contract to have removed the nonconforming outdoor advertising at the expense of the said owner if the said owner fails to act within 30 days after receipt of such notice. The Department or its agents or contractor and his employees may enter upon private property for the purpose of removing outdoor advertising prohibited by this Article or its implementing rules without civil or criminal liability. (1975, c. 385; 1977, c. 771, s. 4; 1987, c. 827, s. 150; 1989, c. 727, s. 138; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

**§ 113A-169. Condemnation procedure.**

For the purposes of this Article, the Department of Environmental Quality shall use the procedure for condemnation of property as provided for by Article 9 of Chapter 136 of the General Statutes. (1975, c. 385; 1977, c. 771, s. 4; 1989, c. 727, s. 218(71); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

**§ 113A-170. Violation a misdemeanor; injunctive relief.**

Any person, firm, corporation or association placing or erecting outdoor advertising structure or junkyard along the Blue Ridge Parkway in violation of this Article or a rule adopted under this Article shall be guilty of a Class 1 misdemeanor. In addition thereto, the Department of Environmental Quality may seek injunctive relief in the superior court of the county in which the said nonconforming outdoor advertising is located and require the outdoor advertising to conform to the provisions of this Article or a rule adopted under this Article, or require the removal of the said nonconforming outdoor advertising. (1975, c. 385; 1977, c. 771, s. 4; 1987, c. 827, s. 151; 1989, c. 727, s. 218(72); 1993, c. 539, s. 875; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

**§§ 113A-171 through 113A-175. Reserved for future codification purposes.**

Article 11.

Forest Development Act.

**§§ 113A-176 through 113A-183:** Recodified as Article 83 of Chapter 106, G.S. 106-1010 through G.S. 106-1018, by Session Laws 2011-145, s. 13.25(gg), effective July 1, 2011.

**§ 113A-184:** Reserved for future codification purposes.

**§ 113A-185:** Reserved for future codification purposes.

**§ 113A-186:** Reserved for future codification purposes.

**§ 113A-187:** Reserved for future codification purposes.

**§ 113A-188:** Reserved for future codification purposes.

#### Article 12.

##### Primary Forest Product Assessment Act.

**§§ 113A-189 through 113A-196:** Recodified as Article 84 of Chapter 106, G.S. 106-1025 through G.S. 106-1032, by Session Laws 2011-145, s. 13.25(ii), effective July 1, 2011.

**§ 113A-197:** Reserved for future codification purposes.

**§ 113A-198:** Reserved for future codification purposes.

**§ 113A-199:** Reserved for future codification purposes.

**§ 113A-200:** Reserved for future codification purposes.

**§ 113A-201:** Reserved for future codification purposes.

#### Article 13.

##### Toxic Substances Task Force and Incident Response Procedures.

**§§ 113A-202 through 113A-204. Repealed by Session Laws 1979, 2nd Session, c. 1310, s. 3.**

#### Article 14.

##### Mountain Ridge Protection.

**§ 113A-205. Short title.**

This Article shall be known as the Mountain Ridge Protection Act of 1983. (1983, c. 676, s. 1.)

**§ 113A-206. Definitions.**

Within the meaning of this Article:

- (1) The word "person" includes any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.
- (2) A person, as defined in this section, doing business or maintaining an office within a county is a resident of the county.
- (3) "Tall buildings or structures" include any building, structure or unit within a multiunit building with a vertical height of more than 40 feet measured from the top of the foundation of said building, structure or unit and the uppermost point of said building, structure or unit; provided, however, that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge exceeds 3 feet, then such measurement in excess of 3 feet shall be included in the 40-foot limitation described herein; provided, further, that no such building, structure or unit shall protrude at its uppermost point above the crest of the ridge by more than 35 feet. "Tall buildings or structures" do not include:
  - a. Water, radio, telephone or television towers or any equipment for the transmission of electricity or communications or both.
  - b. Structures of a relatively slender nature and minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills.
  - c. Buildings and structures designated as National Historic Sites on the National Archives Registry.
- (4) "Construction" includes reconstruction, alteration, or expansion.
- (5) "Ridge" means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.
- (6) "Protected mountain ridges" are all mountain ridges whose elevation is 3,000 feet and whose elevation is 500 or more feet above the elevation of an adjacent valley floor; provided, however, that a county, or a city with a population of fifty thousand (50,000) or more, may elect to eliminate the requirement for an elevation of 3,000 feet, and such election shall apply both to an ordinance adopted under G.S. 113A-208 and the prohibition against construction under G.S. 113A-209; provided, further, that such ordinance shall be adopted pursuant to the procedures of G.S. 113A-208.
- (7) "Crest" means the uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations. (1983, c. 676, s. 1; 1985, c. 713, s. 1.)

**§ 113A-207. Legislative findings.**

The construction of tall or major buildings and structures on the ridges and higher elevations of North Carolina's mountains in an inappropriate or badly designed manner can cause unusual problems and hazards to the residents of and to visitors to the mountains. Supplying water to, and disposing of the sewage from, buildings at high elevations with significant numbers of residents may infringe on the ground water rights and endanger the health of those persons living at lower elevations. Providing fire protection may be difficult given the lack of water supply and pressure and the possibility that fire will be fanned by high winds. Extremes of weather can endanger buildings, structures, vehicles, and persons. Tall or major buildings and structures located on ridges are a hazard to air navigation and persons on the ground and detract from the natural beauty of the mountains. (1983, c. 676, s. 1.)

**§ 113A-208. Regulation of mountain ridge construction by counties and cities.**

(a) Any county or city may adopt, effective not later than January 1, 1984, and may enforce an ordinance that regulates the construction of tall buildings or structures on protected mountain ridges by any person. The ordinance may provide for the issuance of permits to construct tall buildings on protected mountain ridges, the conditioning of such permits, and the denial of permits for such construction. Any ordinance adopted hereunder shall be based upon studies of the mountain ridges within the county, a statement of objectives to be sought by the ordinance, and plans for achieving these objectives. Any such county ordinance shall apply countywide except as otherwise provided in G.S. 160A-360, and any such city ordinance shall apply citywide, to construction of tall buildings on protected mountain ridges within the city or county, as the case may be.

A city with a population of 50,000 or more may adopt, prior to January 1, 1986, an ordinance eliminating the requirement for an elevation of 3,000 feet, as permitted by G.S. 113A-206(6).

(b) Under the ordinance, permits shall be denied if a permit application (and shall be revoked if a project) fails to provide for:

- (1) Sewering that meets the requirements of a public wastewater disposal system that it discharges into, or that is part of a separate system that meets applicable State and federal standards;
- (2) A water supply system that is adequate for fire protection, drinking water and other projected system needs; that meets the requirements of any public water supply system that it interconnects with; and that meets any applicable State standards, requirements and approvals;
- (3) Compliance with applicable State and local sedimentation control regulations and requirements; and
- (4) Adequate consideration to protecting the natural beauty of the mountains, as determined by the local governing body.

(c) Permits may be conditioned to insure proper operation, to avoid or mitigate any of the problems or hazards recited in the findings of G.S. 113A-207, to protect natural areas or the public health, and to prevent badly designed, unsafe or inappropriate construction.

(d) An ordinance adopted under the authority of this section applies to all protected mountain ridges as defined in G.S. 113A-206. A county or city may apply the ordinance to other mountain ridges within its jurisdiction if it finds that this application is reasonably

necessary to protect against some or all of the hazards or problems set forth in G.S. 113A-207. Additionally, a city with a population of 50,000 or more may apply the ordinance to other mountain ridges within its extraterritorial planning jurisdiction if it finds that this application is reasonably necessary to protect against some or all of the hazards or problems set forth in G.S. 113A-207.

(e) Determinations by the county or city governing board of heights or elevations under this Article shall be conclusive in the absence of fraud. Any county or city that adopts a ridge ordinance under the authority of this section or other authority shall send a copy of the ordinance to the Secretary of Environmental Quality.

(f) Any county or city that adopts an ordinance pursuant to this section must hold a public hearing before adopting the ordinance upon the question of adopting the ordinance or of allowing the construction of tall buildings on protected mountain ridges to be governed by G.S. 113A-209. The public hearing required by this section shall be held upon at least 10 days' notice in a newspaper of general circulation in the unit adopting the ordinance. Testimony at the hearing shall be recorded and any and all exhibits shall be preserved within the custody of the governing body. The testimony and evidence shall be made available for inspection and scrutiny by any person.

(g) Any resident of a county or city that adopted an ordinance pursuant to this section, or of an adjoining county, may bring a civil action against the ordinance-adopting unit, contesting the ordinance as not meeting the requirements of this section. If the ordinance is found not to meet all of the requirements of this section, the county or city shall be enjoined from enforcing the ordinance and the provisions of G.S. 113A-209 shall apply. Nothing in this Article authorizes the State of North Carolina or any of its agencies to bring a civil action to contest an ordinance, or for a violation of this Article or of an ordinance adopted pursuant to this Article. (1983, c. 676, s. 1; 1985, c. 713, ss. 2, 4; 1989, c. 727, s. 218(78); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v).)

#### **§ 113A-209. Certain buildings prohibited.**

(a) This section applies beginning January 1, 1984, in any county or city that has failed to adopt a ridge protection ordinance pursuant to G.S. 113A-208 by January 1, 1984.

(b) No county or city may authorize the construction of, and no person may construct, a tall building or structure on any protected mountain ridge.

(c) No county or city may authorize the providing of the following utility services to any building or structure constructed in violation of subsection (b) of this section: electricity, telephone, gas, water, sewer, or septic system. (1983, c. 676, s. 1.)

#### **§ 113A-210. Application to existing buildings.**

General Statutes 113A-208 and 113A-209 apply to buildings that existed upon the effective date of this Article as follows:

- (1) No reconstruction, alteration or expansion may aggravate or intensify a violation by an existing building or structure that did not comply (a) with G.S. 113A-209 upon its effective date, or (b) with an ordinance adopted under G.S. 113A-208 upon its effective date.

- (2) No reconstruction, alteration or expansion may cause or create a violation by an existing building or structure that did comply (a) with G.S. 113A-209 upon its effective date, or (b) with an ordinance adopted under G.S. 113A-208 upon its effective date. (1983, c. 676, s. 1.)

**§ 113A-211. Enforcement and penalties.**

(a) Violations of this Article shall be subject to the same criminal sanctions, civil penalties and equitable remedies as violations of county ordinances under G.S. 153A-123.

(b) Any person injured by a violation of this Article or any person who resides in the county in which the violation occurred may bring a civil action against the person alleged to be in violation. The action may seek:

- (1) Injunctive relief; or
- (2) An order enforcing the provision violated; or
- (3) Damages caused by the violation; or
- (4) Both damages and injunctive relief; or
- (5) Both damages and an enforcement order; or
- (6) Both an enforcement order and injunctive relief.

If actual damages as found by the court or jury in suits brought under this subsection are five hundred dollars (\$500.00) or less, the plaintiff shall be awarded double the amount of actual damages; if the amount of actual damages as found by the court or jury is greater than five hundred dollars (\$500.00), the plaintiff shall receive damages in the amount so found. Injunctive relief or an enforcement order under this subsection may be based upon a threatened injury, an actual injury, or both.

Civil actions under this subsection shall be brought in the General Court of Justice of the county in which the alleged violation occurred. The court, in issuing any final order in any action brought pursuant to this section may award costs of litigation, including reasonable attorney and expert-witness fees, to any party, whenever it determines that such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security, the amount of such bond or security to be determined by the court. Nothing in this section shall restrict any right which any person or class of persons may have under the common law or under any statute to seek injunctive or other relief.

(c) Within the meaning of this section, violations of this Article include violations of local ordinances adopted pursuant to G.S. 113A-208. (1983, c. 676, s. 1.)

**§ 113A-212. Assistance to counties and cities under ridge law.**

(a) The Secretary of Environmental Quality shall provide assistance upon request to the counties and cities in carrying out their functions pursuant to this Article, such as by providing model studies, plans, and ordinances for their consideration.

(b) The Secretary of Environmental Quality shall identify the protected mountain ridge crests in each county by showing them on a map or drawing, describing them in a document, or any combination thereof. Such maps, drawings, or documents shall identify the protected mountain ridges as defined in G.S. 113A-206 and such other mountain ridges as any county may request, and shall specify those protected mountain ridges that serve as all or part of the boundary line between two counties. By November 1, 1983, the map, drawing, or document tentatively identifying the protected mountain ridge crests of each

county shall be filed with the board of county commissioners and with the city governing body of each city that requests it. By January 1, 1984, the map, drawing, or document identifying the protected mountain ridge crests shall be permanently filed by the Secretary with the register of deeds in the county where the land lies, and made available for inspection at the office of the North Carolina Geodetic Survey (NC Emergency Management/Risk Management) in Raleigh. Copies of the maps, drawings, or documents certified by the register of deeds, shall be admitted in evidence in all courts and shall have the same force and effect as would the original.

(b1) By January 1, 1986, a map, drawing, or document tentatively identifying the protected mountain ridge crests of each city with a population of fifty thousand (50,000) or more that has eliminated the requirement for a minimum elevation of 3,000 feet, shall be filed by the Secretary of Environmental Quality with the board of county commissioners and with the city governing body. By March 1, 1986, the map, drawing, or document identifying the protected mountain ridge crests in the city with a population of fifty thousand (50,000) or more shall be permanently filed by the Secretary with the register of deeds in the county where the land within that city with a population of fifty thousand (50,000) or more lies, and shall be made available for inspection at the Secretary's office in Raleigh. Copies of the maps, drawings, or documents certified by the register of deeds shall be admitted in evidence in all courts and shall have the same force and effect as would the original.

(c) Determinations by the Secretary of elevations under this section shall be conclusive in the absence of fraud. (1983, c. 676, s. 1; 1985, c. 713, s. 3; 1989, c. 727, s. 218(79); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-170, s. 3.)

**§ 113A-213. Article is supplemental.**

This Article provides a supplemental source of authority in addition to other present or future legislation and shall not be construed as prescribing an exclusive procedure or as granting exclusive powers. (1983, c. 676, s. 1.)

**§ 113A-214. Choosing coverage or removal from coverage of this Article.**

(a) This Article shall apply in all counties and cities unless and until the jurisdiction adopts an ordinance exempting itself from the coverage of this Article.

This exemption shall only be effective after a binding referendum, in which all registered voters in the jurisdiction are eligible to vote, which shall be held on or before May 8, 1984. The binding referendum shall be held either as a result of a resolution passed by the governing body of the jurisdiction or as a result of an initiative petition signed by fifteen percent (15%) of the registered voters in the jurisdiction and filed with the Board of Elections of that county not later than 60 days before the election is to be held. At that referendum, each qualified voter desiring to vote shall be provided a ballot on which shall be printed the following:

FOR coverage under the Mountain Ridge Protection Act of 1983.

AGAINST coverage under the Mountain Ridge Protection Act of 1983.

(b) If a jurisdiction removes itself from the coverage of this Article, by means of a binding referendum, as provided for in subsection (a) of this section, then it shall have until May 13, 1986 to place itself again under the coverage of this Article by means of an ordinance passed after a

similar binding referendum. Once a jurisdiction opts out and then opts back under the Article, it may not take any further action to again remove itself from the coverage of the Article.

(c) If a county has chosen the permit procedure authorized by G.S. 113A-208, and then opts out of and either the county or any city in the county opts back under the coverage of this Article, then that jurisdiction may choose the permit procedure even after January 1, 1984.

(d) When a county removes itself from the coverage of this Article all cities within the county shall be removed from the coverage of this Article. Provided, however, a city in a county that has removed itself from coverage may, under the procedure set forth in subsection (b) of this section, place itself again under the coverage of this Article.

(e) When a protected mountain ridge is any part of the boundary between two jurisdictions then that part of the ridge shall be covered by this Article unless both jurisdictions remove themselves from the coverage of this Article. (1983, c. 676, s. 1.)

**§§ 113A-215 through 113A-219. Reserved for future codification purposes.**

Article 15.

Aquatic Weed Control.

**§ 113A-220. Short title.**

This Article shall be known as the Aquatic Weed Control Act of 1991. (1991, c. 132.)

**§ 113A-221. Definitions.**

Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

- (1) "Department" means the Department of Environmental Quality.
- (2) "Secretary" means the Secretary of Environmental Quality or his designee.
- (3) "Noxious aquatic weed" means any plant organism so designated under this Article.
- (4) "Waters of the State" means any surface body or accumulation of water, whether publicly or privately owned and whether naturally occurring or artificially created, which is contained within, flows through, or borders upon any part of this State. (1991, c. 132, s. 1; 1997-443, s. 11A.119(a); 2015-241, ss. 14.30(u), (v).)

**§ 113A-222. Designation of noxious aquatic weeds.**

(a) The Secretary, after consultation with the Director of the North Carolina Agricultural Extension Service, the Wildlife Resources Commission, and the Marine Fisheries Commission, and with the concurrence of the Commissioner of Agriculture, may designate as a noxious aquatic weed any plant organism which:

- (1) Grows in or is closely associated with the aquatic environment, whether floating, emersed, submersed, or ditch-bank species, and including terrestrial phases of any such plant organism;
- (2) Exhibits characteristics of obstructive nature and either massive productivity or choking density; and

- (3) Is or may become a threat to public health or safety or to existing or new beneficial uses of the waters of the State.
- (b) A plant organism may be designated as being a noxious aquatic weed either throughout the State or within specified areas within the State.
- (c) The Secretary shall designate a plant organism as a noxious aquatic weed by rules adopted pursuant to Chapter 150B of the General Statutes.
- (d) The Secretary may modify or withdraw any designation of a plant organism as a noxious aquatic weed made previously under this section. Any modification or withdrawal of such designation shall be made following the procedures for designation set out in this section. (1991, c. 132.)

**§ 113A-223. Powers and duties of the Secretary.**

(a) The Secretary shall direct the control, eradication, and regulation of noxious aquatic weeds so as to protect and preserve human health, safety, and the beneficial uses of the waters of the State and to prevent injury to property and beneficial plant and animal life. The Secretary shall have the power to:

- (1) Conduct research and planning related to the control of noxious aquatic weeds;
  - (2) Coordinate activities of all public bodies, authorities, agencies, and units of local government in the control and eradication of noxious aquatic weeds;
  - (3) Delegate to any public body, authority, agency, or unit of local government any power or duty under this Article, except that the Secretary may not delegate the designation of noxious aquatic weeds;
  - (4) Accept donations, grants, and services from both public and private sources;
  - (5) Enter into contracts or agreements, including cost-sharing agreements, with public or private agencies for research and development of methods of control of noxious aquatic weeds or for the performance of noxious aquatic weed control activities;
  - (6) Construct, acquire, operate, and maintain facilities and equipment necessary for the control of noxious aquatic weeds; and
  - (7) Enter upon private property for purposes of conducting investigations and engaging in aquatic weed control activities.
- (b) The Secretary may control, remove, or destroy any noxious aquatic weed located in the waters of the State or in areas adjacent to such waters wherever such weeds threaten to invade such waters. The Secretary may employ any appropriate control technology which is consistent with federal and State law, regulations, and rules. Control technologies may include, but are not limited to drawdown of waters, application of chemicals to shoreline and surface waters, mechanical controls, physical removal from transport mechanisms, quarantine of transport mechanisms, and biological controls. Any biological control technology may be implemented only after the environmental review provisions of the State Environmental Policy Act have been satisfied.
- (c) In determining the appropriate strategies and technologies, the Secretary shall consider their relative short-term and long-term cost-efficiency and effectiveness, consistent with a margin of safety adequate to protect public health and the resources of the State.
- (d) All activities carried out by the Secretary, his designees, and others authorized to perform any function under this Article shall be consistent with all applicable federal and State law, regulations, and rules. (1991, c. 132.)

**§ 113A-224. Powers of the Commissioner of Agriculture.**

(a) The Commissioner of Agriculture may regulate the importation, sale, use, culture, collection, transportation, and distribution of a noxious aquatic weed as a plant pest under Article 36 of Chapter 106 of the General Statutes.

(b) This Article shall not be construed to limit any power of the Commissioner of Agriculture, the Department of Agriculture and Consumer Services, or the Board of Agriculture under any other provision of law. (1991, c. 132, s. 1; 1997-261, s. 109.)

**§ 113A-225. Responsibilities of other State agencies.**

All State agencies shall cooperate with the Secretary to assist in the implementation of this Article. (1991, c. 132.)

**§ 113A-226. Enforcement.**

(a) Any person who violates this Article or any rule adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor for each offense.

(b) Whenever there exists reasonable cause to believe that any person has violated this Article or rules adopted pursuant to this Article, the Secretary may request the Attorney General to institute a civil action for injunctive relief to restrain the violation. The Attorney General may institute such action in the name of the State upon relation of the Department in the superior court of the county in which the violation occurred. Upon a determination by the court that the alleged violation of the provisions of this Article or of rules adopted pursuant to this Article has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action, nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty otherwise prescribed for violations of this Article. (1991, c. 132, c. 761, s. 20; 1993, c. 539, s. 877; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 113A-227. Adoption of rules.**

The Secretary may adopt rules necessary to implement the provisions of this Article pursuant to Chapter 150B of the General Statutes. (1991, c. 132.)

**§ 113A-228. Reserved for future codification purposes.**

**§ 113A-229. Reserved for future codification purposes.**

Article 16.

Conservation Easements Program.

**§ 113A-230. Legislative findings; intent.**

The General Assembly finds that a statewide network of protected natural areas, riparian buffers, and greenways can best be accomplished through a conservation easements program. The General Assembly further finds that other public conservation and use programs, such as natural area protection, beach access, trail systems, historic landscape protection, and agricultural preservation, can benefit from increased conservation tools. In this Article, the General Assembly therefore intends to extend the

ability of the Department of Environmental Quality to achieve these purposes and to strengthen the capability of private nonprofit land trusts to participate in land and water conservation. (1997-226, s. 6; 1997-443, s. 11A.119(b); 2015-241, s. 14.30(u).)

**§ 113A-231. Program to accomplish conservation purposes.**

The Department of Environmental Quality shall develop a nonregulatory program to accomplish conservation purposes, including the maintenance of ecological systems. As a part of this program, the Department shall exercise its powers to protect real property and interests in real property donated for conservation or conserved by other means. The Department shall call upon the Attorney General for legal assistance in developing and implementing the program. (1997-226, s. 6; 1997-443, s. 11A.119(b); 2002-155, s. 1; 2014-3, s. 14.14(c); 2015-241, s. 14.30(u).)

**§ 113A-232. Conservation Grant Fund.**

(a) Fund Created. – The Conservation Grant Fund is created within the Department of Environmental Quality. The Fund shall be administered by the Department. The purpose of the Fund is to stimulate the use of conservation easements, to improve the capacity of private nonprofit land trust organizations to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase landowner participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements.

(b) Fund Sources. – The Conservation Grant Fund shall consist of any monies appropriated to it by the General Assembly and any monies received from public or private sources. Unexpended monies in the Fund that were appropriated from the General Fund by the General Assembly shall revert at the end of the fiscal year unless the General Assembly otherwise provides. Unexpended monies in the Fund from other sources shall not revert and shall remain available for expenditure in accordance with this Article.

(c) Property Eligibility. – In order for real property or an interest in real property to be the subject of a grant under this Article, the real property or interest in real property must meet all of the following conditions:

- (1) Possess or have a high potential to possess ecological value.
- (2) Be reasonably restorable.
- (3) Be useful for one or more of the following purposes:
  - a. Public beach access or use.
  - b. Public access to public waters or trails.
  - c. Fish and wildlife conservation.
  - d. Forestland or farmland conservation.
  - e. Watershed protection.
  - f. Conservation of natural areas, as that term is defined in G.S. 143B-135.254(3).
  - g. Conservation of predominantly natural parkland.
- (4) Be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under G.S.

105-130.9. Land required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance do not qualify.

(c1) **Grant Eligibility.** – State conservation land management agencies, local government conservation land management agencies, and private nonprofit land trust organizations are eligible to receive grants from the Conservation Grant Fund. Private nonprofit land trust organizations must be certified under section 501(c)(3) of the Internal Revenue Code to aid in managing the land.

(d) **Use of Revenue.** – Revenue in the Conservation Grant Fund may be used only for the following purposes:

- (1) The administrative costs of the Department in administering the Fund.
- (2) Conservation grants made in accordance with this Article.
- (3) To establish an endowment account, the interest from which will be used for a purpose described in G.S. 113A-233(a). (1997-226, s. 6; 1997-443, s. 11A.119(b); 2002-155, s. 2; 2003-340, s. 1.4; 2014-3, s. 14.14(d); 2015-241, s. 14.30(u).)

### **§ 113A-233. Uses of a grant from the Conservation Grant Fund.**

(a) **Allowable Uses.** – A grant from the Conservation Grant Fund may be used only to pay for one or more of the following costs:

- (1) Reimbursement for total or partial transaction costs for a donation of real property or an interest in real property from an individual or corporation satisfying either of the following:
  - a. Insufficient financial ability to pay all costs or insufficient taxable income to allow these costs to be included in the donated value.
  - b. Insufficient tax burdens to allow these costs to be offset by charitable deductions.
- (2) Management support, including initial baseline inventory and planning.
- (3) Monitoring compliance with conservation easements, the related use of riparian buffers, natural areas, and greenways, and the presence of ecological integrity.
- (4) Education on conservation, including information materials intended for landowners and education for staff and volunteers.
- (5) Stewardship of land.
- (6) Transaction costs for recipients, including legal expenses, closing and title costs, and unusual direct costs, such as overnight travel.
- (7) Administrative costs for short-term growth or for building capacity.

(b) **Prohibition.** – The Fund shall not be used to pay the purchase price of real property or an interest in real property. (1997-226, s. 6; 2002-155, s. 3; 2014-3, s. 14.14(e).)

### **§ 113A-234. Administration of grants.**

(a) **Grant Procedures and Criteria.** – The Secretary of Environmental Quality shall establish the procedures and criteria for awarding grants from the Conservation Grant Fund. The criteria shall focus grants on those areas, approaches, and techniques that are likely to provide the optimum positive effect on environmental protection. The Secretary

shall make the final decision on the award of grants and shall announce the award publicly in a timely manner.

(b) Grant Administration. – The Secretary may administer the grants under this Article or may contract for selected activities under this Article. If administrative services are contracted, the Department shall establish guidance and criteria for its operation and contract with a statewide nonprofit land trust service organization. (1997-226, s. 6; 1997-443, s. 11A.119(b); 2002-155, s. 4; 2015-241, s. 14.30(v).)

### **§ 113A-235. Conservation easements.**

(a) Acquisition and Protection of Conservation Easements. – Ecological systems and appropriate public use of these systems may be protected through conservation easements, including conservation agreements under Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act, and conservation easements under the Conservation Reserve Enhancement Program. The Department of Environmental Quality shall work cooperatively with State and local agencies and qualified nonprofit organizations to monitor compliance with conservation easements and conservation agreements and to ensure the continued viability of the protected ecosystems. Soil and water conservation districts established under Chapter 139 of the General Statutes may acquire easements under the Conservation Reserve Enhancement Program by purchase or gift.

(b) Conveyance of Conservation Lands. – The Department may convey real property or an interest in real property that has been acquired for conservation in perpetuity to a federal agency, State agency, a local government, or a private nonprofit conservation organization in accordance with State law governing the conveyance of real property. The grantee of real property or an interest in real property shall manage and maintain the real property or interest in real property for the purposes set out in subsection (a) of this section. When conveying real property or an interest in real property under this subsection, the Department shall retain a possibility of reverter, a right of entry, or other appropriate property interest to ensure that the real property or interest in real property will continue to be managed and maintained in a manner that protects ecological systems and the appropriate public use of these systems.

(c) Report. – The Department shall report on the implementation of this Article to the Environmental Review Commission no later than 1 October of each year. The Department shall maintain an inventory of all conservation easements held by the Department. The inventory shall be included in the report required by this subsection. (1997-226, s. 6; 1997-443, s. 11A.119(b); 1999-329, s. 6.3; 2002-155, s. 5; 2004-195, s. 2.2; 2015-241, s. 14.30(u).)

### **§§ 113A-236 through 113A-239. Reserved for future codification purposes.**

## Article 17.

### Conservation, Farmland, And Open Space Protection And Coordination.

**§ 113A-240. Intent.**

(a) It is the intent of the General Assembly to continue to support and accelerate the State's programs of land conservation and protection, to find means to assure and increase funding for these programs, to support the long-term management of conservation lands acquired by the State, and to improve the coordination, efficiency, and implementation of the various State and local land protection programs operating in North Carolina.

(b) It is the further intent of the General Assembly that the State's lands should be protected in a manner that minimizes any adverse impacts on the ability of local governments to carry out their broad mandates. (2000-23, s. 2.)

**§ 113A-241. State to Preserve One Million Acres; Annual report.**

(a) The State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and private land protection efforts so that an additional one million acres of farmland, open space, and conservation lands in the State are permanently protected by December 31, 2009. These lands shall be protected by acquisition in fee simple or by acquisition of perpetual conservation easements by public conservation organizations or by private entities that are organized to receive and administer lands for conservation purposes.

(b) The Secretary of Environmental Quality shall lead the effort to add one million acres to the State's protected lands and shall plan and coordinate with other public and private organizations and entities that are receiving and administering lands for conservation purposes.

(c) The Secretary of Environmental Quality shall report to the Governor and the Environmental Review Commission on or before 1 October of each year on the State's progress towards attaining the goal established in this section. (2000-23, ss. 2, 3; 2001-452, s. 2.2; 2004-195, s. 2.3; 2015-241, s. 14.30(v).)

**§§ 113A-242 through 113A-250. Reserved for future codification purposes.**

Article 18.

Clean Water Management Trust Fund.

**§ 113A-251:** Recodified as G.S. 143B-135.230 by Session Laws 2015-241, s. 14.30(k1), effective July 1, 2015.

**§ 113A-252:** Recodified as G.S. 143B-135.232 by Session Laws 2015-241, s. 14.30(k1), effective July 1, 2015.

**§ 113A-253:** Recodified as G.S. 143B-135.234 by Session Laws 2015-241, s. 14.30(k1), effective July 1, 2015.

**§ 113A-253.1:** Repealed by Session Laws 2011-145, s. 13.26(a), effective July 1, 2011.

§ **113A-253.2**: Recodified as G.S. 143B-135.236 by Session Laws 2015-241, s. 14.30(k1), effective July 1, 2015.

§ **113A-254**: Recodified as G.S. 143B-135.238 by Session Laws 2015-241, s. 14.30(k1), effective July 1, 2015.

§ **113A-255**: Recodified as G.S. 143B-135.240 by Session Laws 2015-241, s. 14.30(k1), effective July 1, 2015.

§ **113A-256**: Recodified as G.S. 143B-135.242 by Session Laws 2015-241, s. 14.30(k1), effective July 1, 2015.

§ **113A-257**: Recodified as G.S. 143B-135.244 by Session Laws 2015-241, s. 14.30(k1), effective July 1, 2015.

§ **113A-258**: Recodified as G.S. 143B-135.246 by Session Laws 2015-241, s. 14.30(k1), effective July 1, 2015.

§ **113A-259**: Recodified as G.S. 143B-135.248 by Session Laws 2015-241, s. 14.30(k1), effective July 1, 2015.