

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-747

Filed 16 September 2026

Wake County, No. 23CV031533-910

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, DIVISION OF COASTAL MANAGEMENT, and NORTH CAROLINA COASTAL RESOURCES COMMISSION, Plaintiffs,

v.

NORTH CAROLINA RULES REVIEW COMMISSION and BRIAN LIEBMAN¹ in his official capacity as CODIFIER OF RULES, OFFICE OF ADMINISTRATIVE HEARINGS, Defendants.

Appeal by Defendant from order entered 13 February 2025 and amended 3 March 2025 by Judge William R. Pittman in Wake County Superior Court. Heard in the Court of Appeals 19 March 2026.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, by John E. Branch, III, for Defendant-Appellant.

Attorney General Jeff Jackson, by Special Deputy Attorney General Elizabeth S. Young, for Plaintiffs-Appellees.

Southern Environmental Law Center, by Julia Furr Youngman, Elizabeth R. Rasheed, and Jessica Hardee, for Amicus Curiae North Carolina Coastal Federation.

GRIFFIN, Judge.

¹ Brian Liebman is substituted as Codifier of Rules for Ashley Snyder. N.C. R. Civ. P. 25(f)(1) (2025).

Defendant North Carolina Rules Review Commission (“RRC”)² appeals from the trial court’s amended order. RRC argues the trial court erred by (1) concluding Plaintiff North Carolina Coastal Resources Commission (“CRC”) had the statutory authority to enact policies via rulemaking, (2) summarily overruling RRC’s N.C. General Statute section 150B-21.9(a) objections, and (3) ordering RRC to approve the resubmitted rules without a new review. We affirm in part, reverse in part, and remand.

I. Factual and Procedural Background

This appeal arises from a dispute between Plaintiffs, the North Carolina Department of Environmental Quality (“DEQ”) and CRC, a commission within DEQ, and Defendants, RRC and Brian Liebman, in his official capacity as Codifier of Rules for the Office of Administrative Hearings.

The North Carolina Administrative Procedure Act (“APA”) establishes a uniform system for administrative rulemaking and review in North Carolina. As part of that statutory framework, the General Assembly created RRC and granted it authority to review proposed administrative rules for compliance with certain enumerated powers before those rules may be included in the North Carolina Administrative Code. *See* N.C. Gen. Stat. §§ 143B-30.1, 143B-30.2, 150B-21.9 (2025).

² Defendant Brian Liebman does not appeal, so any reference to Defendant in this opinion refers to RRC.

Additionally, the General Assembly amended the APA in 2013 to require periodic review of existing administrative rules.

A. CRC's Decennial Review and RRC's Objections

The General Assembly established the Coastal Area Management Act ("CAMA"), in part, for the "protection, preservation, orderly development, and management of the coastal area of North Carolina." N.C. Gen. Stat. § 113A-102(a) (2025). To fulfill this responsibility, the General Assembly requires CRC, among other obligations, to establish guidelines, policies, and standards governing land and water of North Carolina's coastal areas. *Id.* § 113A-102(b)(4); N.C. Gen. Stat. § 113A-104 (2025).

DEQ is a state agency vested with statutory authority to protect the environment and manage our state's natural resources. *See* N.C. Gen. Stat. § 143B-279.1 *et seq.* (2025). The Division of Coastal Management ("DCM"), a division within DEQ, is responsible for administering North Carolina's coastal management program, including implementing CRC rules, permitting, and enforcement under CAMA and the Dredge and Fill Law. N.C. Gen. Stat. §§ 113A-107(a)–(b), 113A-124(b) (2025); 15A N.C. Admin. Code 7A.0101(a) (2026).

Over the course of two years and ending in June 2022, CRC conducted the required decennial review of numerous rules contained in Subchapters 07H, 07I, 07J, and 07M of the North Carolina Administrative Code. CRC reviewed approximately 226 rules and submitted its readopted rules to RRC for review. During multiple

meetings held throughout 2022 and early 2023, RRC reviewed CRC's proposed rules and considered staff recommendations regarding compliance with the statutory criteria set forth in the APA.

Following its review, RRC objected to many of CRC's proposed rules. RRC concluded that the disputed rules failed to satisfy one or more of the statutory requirements under N.C. General Statute section 150B-21.9(a). After CRC revised and resubmitted the previously objected-to rules, RRC maintained its objections to thirty of those rules, concluding the revisions did not adequately resolve the identified concerns. RRC found the revised language either failed to remove ambiguity, did not constitute a substantial change under N.C. General Statute section 150B-21.12(c), or otherwise did not satisfy the Commission's objections.

B. Wake County Superior Court Proceedings

On 3 November 2023, DEQ and CRC filed a complaint for declaratory judgment, motion for injunctive relief, and motion for temporary restraining order in Wake County Superior Court against RRC and the Codifier of Rules. DEQ and CRC alleged RRC acted outside the scope of its statutory authority by objecting to CRC's rules without sufficient legal grounds. DEQ and CRC sought a declaration that RRC's objections were unlawful, an order compelling RRC to approve the rules, and reinstatement of the disputed rules into the North Carolina Administrative Code.

On 6 September 2024, both parties filed cross motions for summary judgment. The parties agreed that no genuine issues of material fact existed and that the

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dispute presented purely legal questions regarding the validity of RRC's objections under the APA. During the hearing, the parties acknowledged that RRC's authority was limited to determining whether the disputed rules satisfied the four statutory criteria contained in N.C. General Statute section 150B-21.9(a) and that RRC could not review the rules based on policy preferences, quality, or efficacy.

Wake County Superior Court granted DEQ and CRC's motion for summary judgment and denied RRC's motion. The court entered an amended order on 3 March 2025. In its order, the trial court concluded DEQ and CRC possessed statutory authority to "establish enforceable standards, guidelines, and policies through rulemaking" and further concluded that the term "adverse environmental impact," as used within the challenged rules, was not ambiguous in the rulemaking context. The court overruled RRC's objections to all thirty disputed rules and ordered RRC to approve the rules for inclusion in the North Carolina Administrative Code. RRC timely appeals the trial court's order.

II. Analysis

RRC contends the trial court erred by concluding CRC had the statutory authority to enact policies through rulemaking. Further, RRC claims the trial court erred by summarily overruling RRC's statutory objections. Moreover, RRC argues that, by ordering RRC to approve the resubmitted rules without a new review, the trial court erred.

“On judicial review of an administrative agency’s final decision, the substantive nature of each assignment of error dictates the standard of review.” *N.C. Dep’t of Env’t Quality v. N.C. Farm Bureau Fed’n, Inc.*, 388 N.C. 366, 372, 921 S.E.2d 121, 126 (2025) (citation omitted). In reviewing a decision in excess of statutory authority of an agency, the standard of review is de novo. N.C. Gen. Stat. § 150B-51(b)–(c) (2025). In addressing an alleged error of law made by an administrative agency, a superior court reviews de novo. *N.C. Dep’t of Env’t Quality v. N.C. Farm Bureau Fed’n, Inc.*, 388 N.C. at 372, 921 S.E.2d at 126 (citations omitted). On appeal to this Court, we conduct a two-part review: first, we determine “whether the trial court exercised the appropriate scope of review” and, second, when necessary, we decide “whether the court did so properly.” *Id.* at 372–73, 921 S.E.2d at 126 (citation omitted).

The purpose of the APA is to establish “a uniform system of administrative rule making and adjudicatory procedures for agencies.” *N.C. State Bd. of Educ. v. State*, 371 N.C. 149, 156, 814 S.E.2d 54, 59 (2018) (citation omitted). Generally, a “rule is not valid unless it is adopted in substantial compliance with” the APA. N.C. Gen. Stat. § 150B-18 (2025). Accordingly, there is a presumption that the APA’s rulemaking provisions “apply to the formulation of rules . . . in the absence of an explicit or implicit exemption.” *Cabarrus Cnty. Bd. of Educ. v. Dep’t of State Treasurer*, 374 N.C. 3, 20, 839 S.E.2d 814, 825 (2020) (citations omitted).

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A “rule,” in relevant part and defined by the APA, is any “agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly.” N.C. Gen. Stat. § 150B-2(8a) (2025). Moreover, the APA expressly excludes policies from the definition of a rule. *Id.* A “policy” is defined by the APA as “[a]ny nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule.” *Id.* § 150B-2(7a); *Comm’r of Labor v. Weekley Homes, L.P.*, 169 N.C. App. 17, 30–31, 609 S.E.2d 407, 416–17 (2005) (holding an operations manual that merely established and interpreted guidelines, as rooted in statutory authority, and did not sanction anyone did not require formal rulemaking). However, a policy can operate as an administrative “rule” when it is *binding*. See *Dillingham v. N.C. Dep’t of Hum. Res.*, 132 N.C. App. 704, 710, 513 S.E.2d 823, 827 (1999). A policy is binding when it “creates a binding standard which interprets” eligibility provisions and “describes the procedure and evidentiary requirements” by an agency to determine such eligibility. See *id.*; see also *McCrann ex rel. McCrann v. Dep’t of Health & Hum. Servs.*, 209 N.C. App. 241, 249, 704 S.E.2d 899, 905 (2011) (explaining that a Medicaid provision interpreting Medicaid eligibility was an administrative “rule”); *N.C. Dep’t of Env’t Quality, Div. of Water Res. v. N.C. Farm Bureau Fed’n, Inc.*, 388 N.C. at 375, 377, 921 S.E.2d at 128–29 (holding general permit *conditions*, functioning as generally applicable regulations, were “rules” and must be adopted through the rulemaking process).

“An administrative agency ‘is a creature of the statute creating it and has only those powers expressly granted to it or those powers included by necessary implication from the legislative grant of authority.’” *N.C. Dep’t of Revenue v. Philip Morris USA, Inc.*, 388 N.C. 181, 190, 919 S.E.2d 175, 181 (2025) (citation omitted). Therefore, each agency action must be rooted in legislation. *Id.*

Within the planning processes part of CAMA, N.C. General Statute section 113A-107 informs us that “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.” N.C. Gen. Stat. § 113A-107(a) (2025). CRC is “responsible for the preparation, adoption, and amendment of the State guidelines” and “shall review its rules establishing guidelines for the coastal area at least every five years to determine whether changes in the rules are needed.” *Id.* § 113A-107(b), (f). Moreover, State guidelines adopted for the coastal area must be publicly available on DEQ’s website either in its entirety or via a link to such guidelines in the North Carolina Administrative Code on the Office of Administrative Hearings website. *Id.* § 113A-107(g). Additionally, as mandated by section 150B-21.19, “Requirements for including rule in Code,” each guideline must cite the law it was under while the rule was adopted. *Id.*

During the decennial review process, RRC must determine whether a CRC rule meets all of the following criteria under N.C. General Statute section 150B-21.9:

- (1) It is within the authority delegated to the agency by the

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General Assembly.

(2) It is clear and unambiguous.

(3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency

(4) It was adopted in accordance with Part 2 of this Article.

N.C. Gen. Stat. § 150B-21.9(a); N.C. Gen. Stat. § 150B-2(1d). When reviewing a rule, RRC may approve the rule, object to the rule, or extend the period for review. N.C. Gen. Stat. § 150B-21.9(a). RRC approval is required before a rule may be included in the North Carolina Administrative Code. *Id.* § 150B-21.12(c). Additionally, RRC cannot “consider questions relating to the quality or efficacy of the rule.” *Id.* 150B-21.9; N.C. Gen. Stat. § 150B-2(1d).

When a rule fails to comply with any of the section 150B-21.9 criteria, RRC must object to the rule. N.C. Gen. Stat. § 150B-21.9. When RRC returns a permanent rule to an agency in accordance with North Carolina General Statute section 150B-21.12(d), “the agency may file an action for declaratory judgment in Wake County Superior Court.” *Id.* § 150B-21.8(d). Such declarations “have the force and effect of a final judgment.” N.C. Gen. Stat. § 1-253 (2025).

Statutes that involve the same subject must be construed together in harmony to give each effect. *Williams v. Williams*, 299 N.C. 174, 180–81, 261 S.E.2d 849, 854 (1980) (citations omitted). Statutory “construction which operates to defeat or impair the object of the statute must be avoided if that can reasonably be done without

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violence to the legislative language.” *State v. Hart*, 287 N.C. 76, 80, 213 S.E.2d 291, 295 (1975) (citation omitted). “Where possible, the language of a statute will be interpreted so as to avoid an absurd consequence.” *Id.* (citations omitted).

This case requires this Court to examine both statutory and regulatory language in analyzing an excess of statutory authority and errors of law. Statutory and regulatory interpretation properly begin with an examination of the plain words of the applicable statute and regulation, respectively. *Cole v. N.C. Dep’t of Pub. Safety*, 253 N.C. App. 270, 278, 800 S.E.2d 708, 714 (2017) (citations omitted); *Sound Rivers, Inc. v. N.C. Dep’t of Env’t Quality*, 271 N.C. App. 674, 737, 845 S.E.2d 802, 840 (2020) (citation omitted). We must give a statute or regulation its plain meaning when the language is clear. *Cole*, 253 N.C. App. at 278, 800 S.E.2d at 714 (citations omitted); *N.C. Dep’t of Env’t Quality v. N.C. Farm Bureau Fed’n, Inc.*, 388 N.C. at 374, 921 S.E.2d at 127 (citation omitted); *Sound Rivers, Inc.*, 271 N.C. App. at 737, 834 S.E.2d at 840 (citation omitted). However, where either is “ambiguous or unclear as to its meaning, the courts must interpret” them to give effect to the legislative or administrative intent. *N.C. Dep’t of Env’t Quality v. N.C. Farm Bureau Fed’n, Inc.*, 388 N.C. at 374, 921 S.E.2d at 127 (citation omitted); *Cole*, 253 N.C. App. at 278, 800 S.E.2d at 714 (citation omitted). “When interpreting undefined words or phrases, ‘courts may look to dictionaries to determine the ordinary meaning of words within a statute’” or an administrative regulation. *In re Oak Meadows Cmty. Ass’n*, 293 N.C.

App. 92, 96, 899 S.E.2d 404, 407 (2024) (citation omitted); *Cole*, 253 N.C. App. at 278, 800 S.E.2d at 714 (citations omitted).

“The court reviewing a final decision may affirm the decision or remand the case for further proceedings.” N.C. Gen. Stat. § 150B-51(b). “The function of all briefs . . . is to define clearly the issues presented to the reviewing court and to present the arguments and authorities upon which the parties rely in support of their respective positions thereon.” N.C. R. App. P. 28(a). “The scope of review on appeal is limited to issues so presented in the several briefs.” *Id.* An appellant’s brief must contain an argument with “the contentions of the appellant with respect to each issue presented.” N.C. R. App. P. 28(b)(6). “Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.” *Id.*; *State v. Graham*, 287 N.C. App. 477, 486, 882 S.E.2d 719, 727 (2023) (concluding an apparent argument was abandoned where a defendant had not provided support for his argument). It is not this Court’s job “to supplement an appellant’s brief with legal authority or *arguments not contained therein*.” *Thompson v. Bass*, 261 N.C. App. 285, 292, 819 S.E.2d 621, 627 (2018) (emphasis added) (citing *Eaton v. Campbell*, 220 N.C. App. 521, 522, 725 S.E.2d 893, 894 (2012)).

A. Statutory Authority and Article 2A of APA Rulemaking

RRC argues the trial court erred in concluding that CRC had statutory authority to enact policies through rulemaking and that it was in accordance with Article 2A of the APA. As part of the decennial review process, RRC objected to

nineteen of CRC's rules for excess of statutory authority. On appeal, RRC argues that the APA defines the parameters of what constitutes a rule and CAMA does not exempt CRC from compliance with the APA.

We agree with RRC that CRC is not exempt from the APA rulemaking process; CRC agrees with this, as well. The trial court incorrectly determined "[DEQ and CRC] have statutory authority to establish enforceable standards, guidelines and policies through rulemaking." The true issue lies at whether specific "rules" are really rules or whether they are policies that do not belong in the administrative code. We remand this case to the trial court for a determination on which "rule" is a rule and which is a policy. N.C. Gen. Stat. § 150B-51(b).

B. Clear and Unambiguous

RRC argues many of the rules are ambiguous and unclear. Specifically, RRC claims the phrase "significant adverse impact," featured within 15A N.C. Admin. Code 07H.0508, 15A N.C. Admin. Code 07H.0509, 15A N.C. Admin. Code 07H.2305, 15A N.C. Admin. Code 07M.0202, 15A N.C. Admin. Code 07M.0401, and 15A N.C. Admin. Code 07M.0403, is ambiguous. In determining whether something is clear and unambiguous, we begin with the analysis of the plain words. We turn to breakdown "significant adverse impact." "Significant" means "large enough to be noticed or to have an effect" or "likely to have influence." *Significant*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/significant> (last visited Sep. 8, 2026). "Significant" is contrasted with "negligible, unimportant, . . . miniscule."

Rutledge v. Tultex Corp./Kings Yarn, 308 N.C. 85, 102, 301 S.E.2d 359, 370 (1983) (emphasis omitted). “Adverse” is defined as “causing harm.” *Adverse*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/adverse> (last visited Sep. 8, 2026). Lastly, the plain meaning of “impact” is “the strong influence of one thing on another.” *Impact*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/impact> (last visited Sep. 8, 2026). Altogether, “significant adverse impact” roughly means a large harmful influence.

Of course, every word or phrase produces some meaning when you take the dictionary definitions of them and put them together. However, “significant adverse impact,” in plain terms, means a plethora of varying meanings in different contexts. Even in the same situation, two reasonable minds could believe differing results: one may think something significant while the other believes it negligible. When will a matter rise to the level of “significant?” There is no accompanying definition for this phrase in the statutory scheme. *See* N.C. Gen. Stat. § 113A-100 *et seq.* (2025). As there are no objective criteria, CRC could make inconsistent determinations based on subjective criteria. Consequently, we hold this phrase is unclear.

RRC additionally contends 15A N.C. Admin. Code 07J.0204 is unclear and/or ambiguous because CRC required submission of “any other information the Department or local permit officer deems necessary for a review of the application,” and RRC argues this phrase does not provide sufficient information of what information the Department may need before rejecting a permit application. We

agree. Without a more precise description of what kinds of materials or information an applicant may need, the provision remains unclear.

RRC claims 15A N.C. Admin. Code 07M.0401 is unclear, as well, in part because the rule's statement that permit applications "shall contain information to allow analysis of all proposed activities with these Rules." RRC argues that this phrase fails to specify the type or amount of information required so it is ambiguous and/or unclear. We agree. Such phrasing does not allow a regulated party to know what specifically is obligated of them in order to sufficiently comply with the rules.

RRC contends 15A N.C. Admin. Code 07M.0701 is ambiguous. The rule contains the following:

It is the policy of the State of North Carolina to require that adverse impacts to coastal lands and waters be mitigated or minimized through planning, site selection, compliance with standards for development, and creation or restoration of coastal resources.

The vague instruction to minimize or mitigate adverse impacts is unclear. This rule does not indicate who is to minimize/mitigate adverse impacts, the manner in which to minimize/mitigate such impacts, or the sufficiency of mitigation. Therefore, we hold this rule is unclear.

Therefore, we hold 15A N.C. Admin. Code 07H.0508, 15A N.C. Admin. Code 07H.0509, 15A NCAC 07H.2305, 15A N.C. Admin. Code 07M.0202, 15A N.C. Admin. Code 07M.0401, 15A N.C. Admin. Code 07M.0403, 15A N.C. Admin. Code 07J.0204, and 15A N.C. Admin. Code 07M.0701 are unclear/ambiguous. However, the

remaining rules are abandoned under this objection basis because RRC made no arguments for the specific contested rules; RRC merely gestures to large sections of the record but fails in its responsibility to make specific arguments in its brief. *See Graham*, 287 N.C. App. at 486, 882 S.E.2d at 727; *Thompson*, 261 N.C. App. at 292, 819 S.E.2d at 627.

C. Reasonably Necessary to Implement or Interpret Law

As RRC determines whether a rule is reasonably necessary to implement or interpret an enactment of the General Assembly, it may object to a rule if it deems it unnecessary. N.C. General Statute section 150B-19 restricts an agency from adopting a rule that simply repeats “the content of a law, a rule, or a federal regulation.” N.C. Gen. Stat. § 150B-19(4) (2025). Nevertheless, a “brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the ‘reasonably necessary’ standard of review set in [N.C. General Statute section] 150B-21.9(a)(3).” *Id.*

Although RRC references multiple rules it previously objected to on the basis of necessity, it does not provide specific arguments or reasons for each of the challenged rules. N.C. R. App. R. 28(b)(6). RRC did not present specific arguments; instead, it generally argued the rules are not necessary because of “repeated statutory language.” Each rule requires its own reason and/or argument, and this Court will not make arguments for an appellant. Therefore, these issues are abandoned on appeal. *See Town of Forest City v. Florence Redevelopment Partners, LLC*, 292 N.C.

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App. 86, 98, 896 S.E.2d 653, 660 (2024). Therefore, we affirm the trial court's conclusion that DEQ and CRC have "statutory authority to adopt rules that provide brief statements of law to give context to or aid in understanding that rule or other rules."

III. Conclusion

Regarding the ambiguous basis arguments RRC actually made, we reverse the trial court as we hold those challenged rules were unclear. As RRC failed to make arguments to this Court about any other specific objections on the basis of ambiguity, RRC abandoned them; accordingly, we affirm the trial court to that extent. Of the remaining RRC objections concerning an excess of statutory authority that have not already been determined as unclear/ambiguous, the trial court improperly concluded, for this case, there is no meaningful distinction between rules and policies for CRC. We hold that conclusion was error and remand the remaining fourteen objections based on an excess of statutory authority so the trial court may conduct further proceedings to distinguish rules and policies consistent with this opinion. Finally, RRC also abandoned its objections to rules challenged for necessity as it did not make specific arguments to address them. Therefore, we affirm the trial court to the extent its order was based on the objection of reasonable necessity.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Judge CARPENTER concurs.

Judge ARROWOOD concurs in part and dissents in part by separate opinion.

ARROWOOD, Judge, concurring in part and dissenting in part.

I concur with affirming the trial court’s ruling as to the issues that RRC abandoned by failing to make specific arguments on appeal. I also concur in result with the majority’s conclusion to remand for a determination of which proposed rules are “rules” under the APA. However, I write separately to clarify the relationship between CAMA and the APA, and CRC’s authority to adopt certain policies as “rules.” Additionally, I conclude that the following rules are not unclear or ambiguous: 15A N.C. Admin. Code 07H.0508, 15A N.C. Admin. Code 07H.0509, 15A N.C. Admin. Code 07M.0202, 15A N.C. Admin. Code 07M.0401, 15A N.C. Admin. Code 07M.0403, 15A N.C. Admin Code 07J.0204, and 15A N.C. Admin Code 07M.0701. I respectfully dissent from the majority’s decision to reverse on this basis.

I. CRC’s Authority to Include Policies in the Code

The trial court erred by resolving several of RRC’s objections by merely stating that “[DEQ and CRC] have statutory authority to establish enforceable standards, guidelines and policies through rulemaking” instead of making individualized determinations. However, RRC’s argument that CRC lacks authority to adopt any policies as rules to be included in the Code is without merit.

The APA defines a “rule,” in relevant part, as:

Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes

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the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
- b. Budgets and budget policies and procedures
- c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
- d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
- e. Statements of agency policy made in the context of another proceeding, including:
 1. Declaratory rulings under G.S. 150B-4.
 2. Orders establishing or fixing rates or tariffs.

N.C.G.S. § 150B-2(8a) (2025).

Meanwhile, a policy is defined as:

Any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency that is intended and used purely to assist a person to comply with the law, such as a guidance document.

Id. § 150B-2(7a).

The APA directs that agencies “shall not seek to implement or enforce against any person a policy, guideline, or other interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other interpretive statement has not been adopted as a rule in accordance with this Article.”

Id. § 150B-18. RRC contends that under these provisions, CRC's readopted rules which include policy statements fall outside of the APA's definition of a rule, and therefore may not be included in the Code through the rulemaking process. RRC's argument hinges on its assessment that "mere policy statements" cannot be rules. However, in my view, RRC's argument overlooks the central inquiry for determining whether something is a rule, and the clear pathway set by the APA and CAMA for CRC to adopt policy statements as binding rules.

Whether something is a rule depends on whether it is "generally applicable" and implements or interprets an act of the government. *N.C. Dep't of Env't Quality v. N.C. Farm Bureau Fed'n Inc.*, 388 N.C. 366, 374–76 (2025) (interpreting N.C.G.S. § 150B-2(8a)). Certain policies are excluded from the definition of a rule, such as internal or nonbinding statements, budget policies, and policies made in the context of other proceedings. N.C.G.S. § 150B-2(8a)(a)–(e). However, there is no blanket exclusion of policy statements. *See id.* On the contrary, § 150B-18 anticipates that policies may meet the definition of a rule and requires that they be adopted as rules in order to be enforceable. Thus, if a policy is generally applicable and interprets or implements an act of the General Assembly, it can be a "rule" under the APA and become binding.

Moreover, CAMA specifically directs CRC to adopt policies as rules. CRC is responsible "for the preparation, adoption, and amendment of the State guidelines." N.C.G.S. § 113A-107(b). The guidelines "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.” N.C.G.S. § 113A-107(a) (emphasis added). The guidelines are “used in the review of applications for permits[,]” indicating that they should be binding on the public. *See id.* Moreover, CAMA requires CRC to “review its rules establishing guidelines for the coastal area” every five years and make the guidelines available on the DEQ’s website by posting either “(i) the guidelines in their entirety; or (ii) a link to the guidelines in [the Code]”. *Id.* § 113A-107(f)–(g).

Thus, the plain language of CAMA clearly provides CRC with the authority to adopt policies within its guidelines, include them in the Code, and apply them to the public. CAMA works in harmony with the APA such that CRC’s binding and generally applicable policies may be included in the Code so long as they go through the rulemaking process. Accordingly, I would conclude that CRC’s readopted rules are not out of compliance with the APA simply because they are “mere policy statements.” Otherwise, I concur with remanding the readopted rules that RRC objected to on that ground for an individual determination of whether each rule falls under the APA’s definition of a “rule.”

II. Clarity and Ambiguity

A. Significant Adverse Impact

With the exception of 15A N.C. Admin. Code 07H.2305, I would also conclude that the phrase “significant adverse impact” is not ambiguous or unclear. The plain language of the standalone phrase, which the majority appropriately constructed as

“large harmful influence,” is easily understood. The phrase, “significant adverse impact” has been used or interpreted on several occasions by this Court,³ the General Assembly,⁴ and most notably throughout the CAMA rules⁵ with no apparent difficulty or confusion. Indeed, the General Assembly has utilized the phrase when directing the CRC to assess applications and issue permits. *See* N.C.G.S. § 113A-115.1(f)(4) (providing that the CRC shall issue permits that “will not result in significant adverse impacts to private property or to the public recreational beach.”); N.C.G.S. § 113-229 (providing that applications for a dredge and fill permit may be denied upon finding that it would cause “significant adverse effect” on wildlife or the use of water by the public, among other factors).

Moreover, the objected to uses of “significant adverse impact” become even more clear and unambiguous when read in the context of the entire rule and the surrounding regulatory scheme. To start, 15A N.C. Admin. Code 07H.0508 and 15A N.C. Admin. Code 7H.0509 both provide descriptions of what type of adverse impacts must be avoided and how that consideration influences whether a permit will be approved. The readopted version of 15A N.C. Admin. Code 07H.0508 reads in part:

³ *See, e.g., State ex rel. Utils. Comm’n v. Carolina Water Serv., Inc. of N.C.*, 225 N.C. App. 120, 129 (2013) (considering whether a commission’s finding that the transfer of water and sewer facilities would have a “significant adverse impact” on ratepayers was supported by competent evidence); *Stark v. N.C. Dep’t of Env’t & Nat. Res., Div. of Land Res.*, 224 N.C. App. 491, 512 (2012) (discussing lack of significant adverse impact on groundwater).

⁴ *See, e.g.,* N.C.G.S. § 143-215.120 (listing criteria for permits for proposed wind energy facilities); N.C.G.S. § 143-355.7 (listing criteria for water supply alternatives).

⁵ *See, e.g.,* 15A N.C. Admin. Code 7H.0205; 15A N.C. Admin. Code 7H.0208; 15A N.C. Admin. Code 7H.0209; 15A N.C. Admin. Code 7K.0103.

ARROWOOD, J., concurring in part and dissenting in part

Permits for development in designated fragile coastal natural or cultural resource areas shall be approved upon finding that:

(1) The proposed design and location shall not cause significant adverse impacts to the stated values of a particular resource. One or more of the following values shall be considered depending upon the stated significance of the resource:

(a) Development shall preserve the values of the individual resource as it functions as a critical component of a natural system.

(b) Development shall not cause significant adverse impacts to the values of the resource as a unique scientific, associative, or educational resource.

Thus, section .0508 specifies that developments should not cause large harm to the stated values of a particular resource. Subsection (1)(b) further specifies that, if applicable, the development shall not cause large harm to the scientific, associative, and educational value of resources. By identifying what features the development must not harm, the rule provides sufficient information for the CRC to consider permits and for the public to know what is required to develop in those coastal areas.

Similarly, 15A N.C. Admin. Code 07H.0509, which pertains to significant coastal archaeological resources, provides that one of CRC's policies is to "give the highest priority to . . . development which shall not have significant adverse impacts on the archaeological resource." It later states that "[a]ctivities which would damage or destroy the contents of a designated site's surface or subsurface shall be prohibited until an archaeological investigation and resource management plan has been implemented by the applicant. The investigation and management plan shall be

developed in full consultation with the Department of Natural and Cultural Resources.” Phase III of the investigation concerns “mitigation of significant adverse impacts to recognized areas of importance.”

In this rule, both uses of “significant adverse impact” are clear. The first is a general statement that CRC’s objective is to prioritize those developments that will not cause large harm to archaeological resources. The second identifies the mitigation of any large negative influences as part of archaeological investigations. The description of the investigation need not be any more detailed in the rule because the investigation itself is developed in conjunction with the Department of Natural and Cultural Resources.

The next group of readopted rules, 15A N.C. Admin. Code 07M.0202, 15A N.C. Admin. Code 07M.0401, and 15A N.C. Admin. Code 07M.0403, use the phrase “significant adverse impact” as part of policy statements. All three rules fall under Subchapter 7M, “General Policy Guidelines for the Coastal Area.” 15A N.C. Admin. Code 07M.0202, titled “Policy Statements,” falls under the section for shoreline erosion policies and states that “[b]each restoration and sand renourishment and disposal projects may be allowed when . . . [the project is] determined to be socially and economically feasible and cause no significant adverse impacts.” It also identifies broader policy goals such as “avoid[ing] impacts to North Carolina’s natural heritage[,]” avoiding adverse effects to estuarine and marine productivity, and protecting the public right to use and enjoy the ocean beaches.

15A N.C. Admin. Code 07M.0401, titled “Declaration of General Policy,” falls under the section for coastal energy policies and states that in order to balance the benefits of energy development with the need to protect coastal resources, “the exercise of regulatory authority, and determinations of consistency with the North Carolina Coastal Management Program shall assure that the development of energy facilities and energy resources shall avoid significant adverse impact upon coastal resources or uses, public trust areas and public access rights.”

15A N.C. Admin. Code 07M.0403, titled “Policy Statements” falls under the same section for coastal energy policies. It states that shoreline siting of energy facilities “shall be acceptable only if it can be demonstrated that there are no significant adverse impacts to coastal resources, public trust waters, and the public’s right to access will not be restricted, and all mitigating measures have been taken to minimize impacts to AECs.” It also states that energy facilities shall avoid “[s]ignificant adverse impacts to existing or traditional uses, such as fishing, navigation and access to public trust areas, and areas with high biological or recreational value such as those listed in Subparagraphs (f)(10)(A) and (H) of this Rule[.]”⁶

Like 15A N.C. Admin. Code 07H.0508 and 07H.0509, each of these rules

⁶ 15A N.C. Admin. Code 07M.0403 contains several more mentions of “significant adverse impact.” RRC did not challenge those specific uses of the phrase within the rule, so discussion of each instance in which it is used would be impractical and unnecessary. However, I would conclude each use is unambiguous and clear for similar reasons.

provide descriptions of what areas and resources should not be harmed, providing the public with information as to how the regulations will apply. Furthermore, the purpose of these provisions is not to outline exact procedures but to identify policies for economic development of the coastal area and preservation of natural resources. As discussed above, the General Assembly specifically directed CRC to establish such policies. *See* N.C.G.S. §§ 113A-102(b)(4), 113A-107. These specific policy statements provide sufficient information for CRC and the public to understand the purpose of the rules and priorities which will be applied in issuing permits.

The majority concludes that the phrase “significant adverse impact” is ambiguous because it could have various meanings in different contexts and reasonable minds could differ as to what rises to the level of “significant.” However, in my view, the phrase operates to be broad enough to allow the rules to be applied on a case-by-case basis while still being specific enough to allow the public to know what considerations are being made in issuing permits and other decision-making. These rules apply to a broad range of developments which can affect coastal resources in numerous ways. Requiring the CRC to foresee and identify every potential effect of development on the coast and define at what point it becomes significant is unworkable and would undermine CAMA.

As CRC notes, case-by-case discretion is not only necessary in order to effectively implement CAMA, but it is anticipated by the General Assembly. N.C.G.S. § 113A-124(a)(1) grants the Secretary of the DEQ the power “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.” The readopted rules are not ambiguous just because they leave room for discretion and balanced, individual judgment.

That said, I concur with the majority’s conclusion that the use of “significant adverse impact” in 15A N.C. Admin. Code 07H.2305 is ambiguous. 15A N.C. Admin. Code 07H.2305 lists conditions for general permits for replacement of existing bridges. It states that “[e]xisting roadway deck width shall not be expanded to create additional lanes, with the exception than an existing one lane bridge may be expanded to two lanes provided the proposed project does not create significant adverse impacts.” Unlike the previously mentioned rules, 15A N.C. Admin. Code 07H.2305 is intended to identify specific conditions for a general permit and provides no additional information as to what kinds of adverse impacts may be considered. Without additional context, I agree that the rule is unclear.

B. Other Ambiguity Challenges

As to the three remaining rules that RRC specifically contested and argued on appeal, I would affirm the trial court’s ruling that they are unambiguous. Similar to the previously mentioned rules, 15A N.C. Admin Code 07J.0204, allows appropriate case-by-case discretion while still providing clear policies and requirements. Meanwhile, 15A N.C. Admin Code 07M.0401, and 07M.0701 are clear when read in

the context of the entire rule and surrounding regulatory scheme.

First, 15A N.C. Admin Code 07J.0204 lists what must be included in an application for a major development or dredge and fill permit. RRC challenges the catch-all provision that requires inclusion of “any other information the Department or local permit officer deems necessary to review the application and make a balanced judgment per G.S. 113A-124(a)(1), on whether to issue the requested permit.” Again, this rule has a broad application so the catch-all provision is appropriate in order to ensure that permits are issued only according to the policies outlined in CAMA and the rules established by CRC. Moreover, subsection .0204 also provides that if an application is deemed incomplete, it will be returned to the applicant with an explanation. This added practice resolves RRC’s primary concerns of informing the public of what is necessary for their specific application and preventing the CRC from continuously or arbitrarily deeming applications incomplete.

Second, as discussed above, 15A N.C. Admin Code 07M.0401 is the declaration of general coastal policies. RRC takes issue with the final portion of this rule which reads that “[a]ll permit applications, plans and assessments related to exploration or development of [Outer Continental Shelf] resources and other energy facilities shall contain information to allow analysis of the consistency of all proposed activities with these Rules.” RRC contends that this phrase does not provide enough specificity about what information must be included. However, RRC takes this phrase out of context.

15A N.C. Admin. Code 07M.0401(b) explains that under federal law, any federal projects on the Outer Continental Shelf must also be consistent with the enforceable policies North Carolina Coastal Management Program. It specifies that the “[e]nforceable policies applicable to [Outer Continental Shelf] activities include all the provisions of this Subchapter as well as any other federally approved components of the North Carolina Coastal Management Program.” It then requires that permit applications contain information to allow analysis of the consistency with the rules. Thus, subsection .0401(b) provides sufficient information to put permit applicants on notice that they must consult the other federally approved components of the North Carolina Coastal Management Program and demonstrate consistency. The information that is needed in order to demonstrate that consistency can be discerned from the other rules.

Finally, 15A N.C. Admin Code 07M.0701 contains the declaration of general mitigation policies. It states that “[i]t is the policy of the State of North Carolina to require that adverse impacts to coastal lands and waters be mitigated or minimized through planning, site selection, compliance with standards for development, and creation or restoration.” The majority concludes that this language is vague because it does not adequately indicate who is to mitigate adverse impacts, the manner in which to minimize/mitigate such impacts, or the sufficiency of mitigation. However, in my view the surrounding subsections provide sufficient clarity on that point. Subsection .0701 is simply the opening rule for CRC’s mitigation regulations. The

later subsections define mitigation, discuss mitigation candidacy, and provide more specific policy statements. *See* 15A N.C. Admin Code 07M.0701—.0705. Together, these subsections demonstrate that the mitigation policies apply to those seeking to develop in coastal areas and can be achieved through several specific methods including “[c]reation or restoration of an area with an area of similar ecological utility and potential biological value than that destroyed or altered.” *Id.*

III. Conclusion

For the foregoing reasons, I concur with remanding for a determination as to which challenged rules meet the definition of a “rule,” but note that the CRC does have the authority to adopt and enforce certain policies as rules under the APA. I further agree with the majority that RRC waived review of the remaining rules that it did not specifically address on appeal, and concur with affirming the trial court’s order overruling RRC’s objections to those rules. I respectfully dissent from the majority’s conclusion that the readopted rules are ambiguous, and with the exception of 15A N.C. Admin. Code 07H.2305, I would affirm the trial court’s conclusion that the readopted rules are not unclear or ambiguous.