

MEMORANDUM

Date: April 8, 2020

To: State Clearinghouse Files

From: Machel Sanders, Secretary, NC Department of Administration *Machel Sanders*

Subj: 01 NCAC 25 .0506 and .0605 Review Process

N.C.G.S. § 113A - 4(2) and - 4(2A) provide that every State agency obtain comments from any agency, unit of local government or other interested party that may be adversely affected with respect to any environmental impact in any action involving significant expenditure of public money or use of public land for projects and programs.

North Carolina Administrative Code, Title 01, Chapter 25 outlines the process by which every State agency is to obtain comments. Specifically, 01 NCAC 25 .0211 states

- (a) The Department of Administration shall maintain a clearinghouse to coordinate and administer the requirements of this Chapter.
- (b) Among its responsibilities the Clearinghouse shall:
 - (1) receive and circulate environmental documents for review and comment as provided by these Rules;
 - (2) forward all comments generated by the review process to the State Project Agency and, where appropriate, prepare a single integrated letter of response;
 - (3) retain a complete record of environmental documents, review documents, and other substantive materials related to the operation of the Clearinghouse;
 - (4) train review coordinators from within all state agencies; and
 - (5) coordinate the establishment of minimum criteria and ensure that thresholds are consistent among all agencies.

Additionally, 01 NCAC 25 .0506 requires the State agency to “submit 16 copies of the EA and FONSI to the Clearinghouse...” and 01 NCAC 25 .0605 requires that “[s]ixteen copies and any additional copies as may be requested shall be submitted by the State Project Agency” to be circulated by the Clearinghouse to the interested or affected parties.

Governor Cooper’s Executive Order 121 signed March 27, 2020 ordered all individuals to stay at home and all non-essential businesses and operations to cease except where essential to “the response to COVID-19, to the infrastructure of the State and nation, and to the day-to-day life of North Carolinians...” Executive Order 121 requires all essential businesses and operations “to cease all activities within the State except minimum basic operations” and employers are “directed, to the maximum extent possible, to direct employees to work from home or telework.”

Executive Order 121 defines essential Governmental Operations as all services provided by the State or any municipality, township, county, political subdivision, board, commission or agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Governmental Operations. Each government body shall determine its Essential Governmental Operations and identify employees and/or contractors necessary to the performance of those functions.

The State Clearinghouse process as described in G.S. § 113A and 01 NCAC 25 is an essential governmental operation as defined above. However, the operation of the State Clearinghouse within the Department of Administration may be conducted remotely. In furtherance of the remote operation of this governmental operation, the requirement set out in 01 NCAC 25 .0506 and .0605 to submit 16 copies to the State Clearinghouse will be temporarily amended to allow each submitting agency to file one copy of the required documentation electronically. The electronic submission should be sent to: State.Clearinghouse@doa.nc.gov

The provisions of this memorandum will remain in effect until Executive Order 121 has been rescinded or expires.