

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 426
Senate Agriculture, Energy, and Environment Committee Substitute Adopted 5/1/24
Third Edition Engrossed 5/9/24

Short Title: Various Environmental Amendments.

(Public)

Sponsors:

Referred to:

March 22, 2023

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE JOCKEY'S RIDGE AS AN AREA OF ENVIRONMENTAL CONCERN; TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO HOLD A PUBLIC HEARING AND CONSULT WITH THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS PRIOR TO GRANTING CERTAIN EASEMENTS ON STATE PROPERTY; AND TO CLARIFY THE APPLICABILITY OF STATUTORY BUILT-UPON AREA REQUIREMENTS FOR STATE AND LOCAL GOVERNMENT STORMWATER PROGRAMS AND SPECIFY THAT CERTAIN ARTIFICIAL TURF IS NOT BUILT-UPON AREA.

The General Assembly of North Carolina enacts:

DESIGNATE JOCKEY'S RIDGE AS AN AREA OF ENVIRONMENTAL CONCERN

SECTION 1. Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-113.1. Designation of Jockey's Ridge as an area of environmental concern.

(a) Description. – Jockey's Ridge is the tallest active sand dune (medano) along the Atlantic Coast of the United States. Located within the town of Nags Head in Dare County, between U.S. 158 and Roanoke Sound, Jockey's Ridge represents the southern extremity of a back barrier dune system which extends north along Currituck Spit into Virginia. Given the status of Jockey's Ridge as a State Park, State Nature Preserve, complex natural area, and an area containing a unique geological formation as identified by the State Geologist, the General Assembly designates Jockey's Ridge as a unique coastal geological formation area of environmental concern, as authorized by G.S. 113A-113(b)(4)g.

(b) Boundaries. – The boundaries of the Jockey's Ridge area of environmental concern shall be as depicted on a map approved by the Coastal Resources Commission on December 4, 1987. The Coastal Resources Commission may approve subsequent maps as needed to effectuate the protection of the Jockey's Ridge area of environmental concern consistent with subsection (c) of this section. The area of environmental concern includes the entire rights of way of U.S. 158 Bypass, SR 1221 (Sound Side Road), Virginia Dare Trail, and Conch Street where these roads bound this area.

(c) Use Standards. – Development within the Jockey's Ridge area of environmental concern shall be consistent with the following minimum use standards:

- (1) Development that requires the removal of greater than ten cubic yards of sand per year within the area of environmental concern boundary shall require a permit pursuant to this Article or rules adopted thereunder.



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1 (2) All sand that is removed from within the area of environmental concern
2 boundary in accordance with subdivision (1) of this subsection shall be
3 deposited at locations within the Jockey's Ridge State Park designated by the
4 Division of Coastal Management in consultation with the Division of Parks
5 and Recreation.

6 (3) Development activities shall not significantly alter or retard the free
7 movement of sand except when necessary for the purpose of maintaining or
8 constructing a road, residential or commercial structure, accessway, lawn or
9 garden, or parking area, unless allowed by the Management Plan of Jockey's
10 Ridge State Park as developed pursuant to G.S. 143-135.52."

11
12 **REQUIRE THE DEPARTMENT OF ADMINISTRATION TO HOLD A PUBLIC**
13 **HEARING AND CONSULT WITH THE JOINT LEGISLATIVE COMMISSION ON**
14 **GOVERNMENTAL OPERATIONS PRIOR TO GRANTING CERTAIN EASEMENTS**
15 **ON STATE PROPERTY**

16 **SECTION 2.(a)** Article 7 of Chapter 146 of the General Statutes is amended by
17 adding a new section to read:

18 **"§ 146-29.3. Disposition of easements for spoil disposal and dumping rights.**

19 Notwithstanding G.S. 146-11, if a proposed disposition is an easement for disposal of spoil
20 materials lawfully dug or dredged from navigable waters, or dumping rights for spoil materials
21 lawfully dug or dredged from navigable waters, the Department of Administration may not grant
22 the easement or dumping rights until it completes both of the following requirements:

23 (1) Hold a public hearing in the county where the proposed disposition is located.

24 (2) Following the public hearing, submit the proposed disposition for consultation
25 with the Joint Legislative Commission on Governmental Operations in
26 accordance with G.S. 120-76.1(b)."

27 **SECTION 2.(b)** This section becomes effective August 1, 2024, and applies to
28 requests for proposed dispositions submitted to the Department of Administration for approval
29 on or after that date.

30
31 **CLARIFY THE APPLICABILITY OF STATUTORY BUILT-UPON AREA**
32 **REQUIREMENTS FOR STATE AND LOCAL GOVERNMENT STORMWATER**
33 **PROGRAMS AND SPECIFY THAT CERTAIN ARTIFICIAL TURF IS NOT**
34 **BUILT-UPON AREA**

35 **SECTION 3.(a)** G.S. 143-214.7(b2) reads as rewritten:

36 "~~(b2) For purposes of implementing stormwater programs, "built-upon area" means~~
37 ~~impervious surface and partially impervious surface to the extent that the partially impervious~~
38 ~~surface does not allow water to infiltrate through the surface and into the subsoil. "Built upon~~
39 ~~area" does not include a slatted deck; the water area of a swimming pool; a surface of number 57~~
40 ~~stone, as designated by the American Society for Testing and Materials, laid at least four inches~~
41 ~~thick over a geotextile fabric; a trail as defined in G.S. 113A-85 that is either unpaved or paved~~
42 ~~as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters~~
43 ~~per second (1.41 inches per hour); or landscaping material, including, but not limited to, gravel,~~
44 ~~mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on~~
45 ~~portions of driveways and parking areas that will not be compacted by the weight of a vehicle,~~
46 ~~such as the area between sections of pavement that support the weight of a vehicle. The owner~~
47 ~~or developer of a property may opt out of any of the exemptions from "built-upon area" set out~~
48 ~~in this subsection. For State stormwater programs and local stormwater programs approved~~
49 ~~pursuant to subsection (d) of this section, all of the following shall apply:~~

50 (1) The volume, velocity, and discharge rates of water associated with the
51 one-year, 24-hour storm and the difference in stormwater runoff from the

1 predevelopment and postdevelopment conditions for the one-year, 24-hour
2 storm shall be calculated using any acceptable engineering hydrologic and
3 hydraulic methods.

4 (2) Development may occur within the area that would otherwise be required to
5 be placed within a vegetative buffer required by the Commission pursuant to
6 G.S. 143-214.1 and this section provided the stormwater runoff from the
7 entire impervious area of the development is collected, treated, and discharged
8 so that it passes through a segment of the vegetative buffer and is managed so
9 that it otherwise complies with all applicable State and federal stormwater
10 management requirements. For the purpose of this subdivision, the entire
11 impervious area of the development shall not include any portion of a project
12 that is within a North Carolina Department of Transportation or municipal
13 right-of-way.

14 (3) The requirements that apply to development activities within one-half mile of
15 and draining to Class SA waters or within one-half mile of Class SA waters
16 and draining to unnamed freshwater tributaries shall not apply to development
17 activities and associated stormwater discharges that do not occur within
18 one-half mile of and draining to Class SA waters or are not within one-half
19 mile of Class SA waters and draining to unnamed freshwater tributaries."

20 **SECTION 3.(b)** Article 21 of Chapter 143 of the General Statutes is amended by
21 adding a new section to read:

22 **"§ 143-214.7D. Limitations on built-upon area requirements.**

23 (a) As used in this section, the term "built-upon area" means impervious surface and
24 partially impervious surface to the extent that the partially impervious surface does not allow
25 water to infiltrate through the surface and into the subsoil.

26 (b) For the purposes of implementing State or local government stormwater programs,
27 none of the following surfaces shall be considered "built-upon area" or an impervious or partially
28 impervious surface:

29 (1) A slatted deck.

30 (2) The water area of a swimming pool.

31 (3) A surface of number 57 stone, as designated by the American Society for
32 Testing and Materials, laid at least 4 inches thick over a geotextile fabric.

33 (4) A trail as defined in G.S. 113A-85 that is either unpaved or paved as long as
34 the pavement is porous with a hydraulic conductivity greater than 0.001
35 centimeters per second (1.41 inches per hour).

36 (5) Landscaping material, including, but not limited to, gravel, mulch, sand, and
37 vegetation, placed on areas that receive pedestrian or bicycle traffic or on
38 portions of driveways and parking areas that will not be compacted by the
39 weight of a vehicle, such as the area between sections of pavement that support
40 the weight of a vehicle.

41 (6) Artificial turf, manufactured to allow water to drain through the backing of
42 the turf, and installed according to the manufacturer's specifications over a
43 pervious surface.

44 (c) The owner or developer of a property may opt out of any of the exemptions from
45 "built-upon area" set out in subsection (b) of this section.

46 (d) Except as specifically required by federal law, a local government may not enact,
47 implement, or enforce a local government ordinance, comprehensive plan, or stormwater
48 program that establishes a definition of "built-upon area" or impervious surface that does not
49 comply with subsection (b) of this section. This limitation shall apply regardless of any authority
50 granted by G.S. 143-214.5, G.S. 143-214.7, or Chapter 153A, 160A, or 160D of the General
51 Statutes.

1 (e) The Commission may adopt rules to implement this section."

2 **SECTION 3.(c)** Each unit of local government that operates a stormwater program
3 shall update its program to be consistent with G.S. 143-214.7D, as enacted by subsection (b) of
4 this section.

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6 **EFFECTIVE DATE**

7 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
8 law.