

**SUBCHAPTER 07J - PROCEDURES FOR PROCESSING AND ENFORCEMENT OF MAJOR AND
MINOR DEVELOPMENT PERMITS, VARIANCE REQUESTS, APPEALS FROM PERMIT DECISIONS,
DECLARATORY RULINGS, AND STATIC LINE EXCEPTIONS**

SECTION .0100 - DEFINITIONS

15A NCAC 07J .0101 STATUTORY DEFINITIONS

All definitions set out in G.S. 113A-100 through -128 and in G.S. 113-229 apply herein.

History Note: Authority G.S. 113-229; 113A-103(5)(a); 113A-118; 113A-124;
Eff. March 15, 1978;
Amended Eff. November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,
2018.

15A NCAC 07J .0102 GENERAL DEFINITIONS

The following definitions apply whenever these words are used in this Subchapter:

- (1) "Areas of Environmental Concern" (AECs) means geographic areas within the coastal area which the Coastal Resources Commission chooses to designate for special environmental and land use regulations. The types of areas which may be designated as AECs are described in G.S. 113A-113. Areas which have already been designated are defined in 15A NCAC 07H, "State Guidelines for Areas of Environmental Concern."
- (2) "Department" (DEQ) means the North Carolina Department of Environmental Quality.
- (3) "Excavation Project" means any moving, digging, or exposing of bottom materials, marshland substrate, or root or rhizome matter in the estuarine waters, tidelands, marshlands and State-owned lakes, regardless of the equipment or method used.
- (4) "Filling Project" means the placing of any materials in estuarine waters, tidelands, marshlands, and State-owned lakes so as to raise the elevation of the area upon which the material is placed. Structure placement does not constitute a filling or excavation project. The placement of shell material specifically for the purpose of oyster culture also shall not be considered a filling project.
- (5) "Local Management Program" means the local implementation and enforcement program of a coastal city or county that has undertaken to administer a permit program for minor development in areas of environmental concern located within such city or county.
- (6) "Local Permit Officer" refers to the locally designated official who will administer and enforce the minor development permit program in areas of environmental concern and all parts of the land use plan which the local government may wish to enforce over the entire planning area.
- (7) "Division" means the Division of Coastal Management.
- (8) "Permit" refers to CAMA major development permits, CAMA minor development permits and dredge and fill permits unless the context clearly indicates otherwise.
- (9) "Secretary" refers to the Secretary of Environment and Natural Resources.

History Note: Authority G.S. 113-229; 113A-116; 113A-117; 113A-118;
Eff. March 15, 1978;
Amended Eff. June 1, 2006; April 1, 1997; May 1, 1990; November 1, 1984;
Readopted Eff. October 1, 2022.

SECTION .0200 - APPLICATION PROCESS

15A NCAC 07J .0201 PERMIT REQUIRED

After March 1, 1978, every person wishing to undertake any development in an area of environmental concern shall obtain a permit from the Department, in the case of a major development or dredge and fill permit, or from the local permit officer, in the case of a minor development permit, unless such development is exempted by the Commission.

History Note: Authority G.S. 113-229; 113A-118; 113A-124;
Eff. March 15, 1978;
Amended Eff. November 1, 1984;

Readopted Eff. October 1, 2022.

15A NCAC 07J .0202 PERMIT APPLICATIONS

- (a) Any person seeking to obtain a permit for a major development and/or dredge and fill project is required to file with the Department an application completed in accordance with 15A NCAC 07J .0204(b)(1) through (7).
- (b) Any person seeking to obtain a permit for a minor development project is required to file with the local permit officer a completed application form as adopted and approved by the Coastal Resources Commission and in accordance with the minor permit provisions in 15A NCAC 07J .0204.
- (c) Regardless of whether any advice or information was provided by other persons, including department officials, the applicant is responsible for the accuracy and completeness of the information provided in the application.

*History Note: Authority G.S. 113-229; 113A-119; 113A-124(b);
Eff. March 15, 1978;
Amended Eff. December 1, 1985; May 1, 1985; November 1, 1984; November 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

15A NCAC 07J .0203 STANDARDS FOR WORK PLATS

*History Note: Authority G.S. 113-229(n)(3); 113-230(a); 113A-119; 113A-124;
Eff. March 15, 1978;
Amended Eff. July 1, 1989;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;
Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;
Emergency Adoption Eff. January 3, 2024;
Emergency Rule Expired Eff. May 13, 2024.*

15A NCAC 07J .0204 PROCESSING THE APPLICATION

*History Note: Authority G.S. 113-229; 113A-119; 113A-119.1; 113A-122(c); 113A-124;
Eff. March 15, 1978;
Amended Eff. November 1, 1991; March 1, 1991; July 1, 1990; July 1, 1989;
Temporary Amendment Eff. September 2, 1998;
Temporary Amendment Expired June 28, 1999;
Amended Eff. August 1, 2000;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07J .0205 ACCEPTANCE OF AN APPLICATION

*History Note: Authority G.S. 113A-118(c); 113A-122(a);
Eff. March 15, 1978;
Amended Eff. August 1, 1983; May 1, 1983;
Repealed Eff. November 1, 1983.*

15A NCAC 07J .0206 PUBLIC NOTICE REQUIREMENTS

*History Note: Authority G.S. 113A-119(b);
Eff. March 15, 1978;
Amended Eff. January 1, 1990; October 1, 1988; November 1, 1983;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;
Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;
Emergency Adoption Eff. January 3, 2024;
Emergency Rule Expired Eff. May 13, 2024.*

15A NCAC 07J .0207 REVIEW OF MAJOR DEVELOPMENT AND DREDGE AND FILL APPLICATIONS

History Note: Authority G.S. 113-229; 113A-120, 113A-124(a)(1); 113A-127;
Eff. March 15, 1978;
Amended Eff. July 1, 1989; October 1, 1988; September 1, 1985; November 1, 1984;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;
Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;
Emergency Adoption Eff. January 3, 2024;
Emergency Rule Expired Eff. May 13, 2024.

15A NCAC 07J .0208 PERMIT CONDITIONS

History Note: Authority G.S. 113-229; 113A-120(b); 113A-124(a)(1); 113A-127;
Eff. March 15, 1978;
Amended Eff. March 1, 1985; November 1, 1984;
RRC objection Eff. September 17, 2022 and rule returned to agency on October 5, 2023;
Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;
Emergency Adoption Eff. January 3, 2024;
Emergency Rule Expired Eff. May 13, 2024.

15A NCAC 07J .0209 ISSUANCE OF PERMITS

(a) The Commission hereby delegates to the Department the authority to issue or deny CAMA permits. The decision to issue or deny the permit will be based on the criteria set forth in G.S. 113A-120, the standards for development set forth in 15A NCAC, Subchapters 7H and 7M, and any other applicable rules adopted by the Commission. The Department may condition issuance of permits on such conditions as are considered necessary to ensure compliance with these criteria and standards. The Department's decisions to grant or deny CAMA permits may be appealed as provided in G.S. Chapter 150B, G.S. 113A-121.1, and 15A NCAC 7J Section .0300.

(b) The Department will make a final decision with respect to a dredge and fill permit application as provided in G.S. 113-229(e) upon considering the field investigation report, the comments of all interested state agencies, the comments of adjacent riparian landowners and the comments of other interested parties. The Department's decisions to grant or deny dredge and fill permits may be appealed as provided in G.S. Chapter 150B, G.S. 113-229, and 15A NCAC 7J Section .1000.

(c) In cities and counties that have developed local management programs, applications for minor development permits shall be considered by the local permit officer. The decision to issue or deny the permit will be based on the applicable criteria set forth in G.S. 113A-120, the applicable standards for development set forth in 15A NCAC, Subchapters 7H and 7M, and any other applicable rules adopted by the Commission. The local permit officer may condition issuance of a permit on such conditions as are considered necessary to ensure compliance with criteria and standards. A city's or county's decision to grant or deny a CAMA minor development permit may be appealed as provided in G.S. Chapter 150B, G.S. 113A-121.1, and 15A NCAC 7J Section .0300.

History Note: Authority G.S. 113-229; 113A-118(c); 113A-122(c); 113A-124;
Eff. March 15, 1978;
Amended Eff. October 1, 1988; November 1, 1984; September 6, 1979; March 5, 1979;
Readopted Eff. October 1, 2022.

15A NCAC 07J .0210 REPLACEMENT OF EXISTING STRUCTURES

Replacement of structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and requires CAMA permits. Replacement of structures shall be permitted if the replacement is consistent with current CRC rules. Repair of structures damaged by natural elements, fire or normal deterioration is not considered development and shall not require CAMA permits. The CRC shall use the following criteria to determine whether proposed work is considered repair or replacement.

- (1) **NON-WATER DEPENDENT STRUCTURES.** Proposed work is considered replacement if the Department determines that the cost to do the work exceeds 50 percent of the market value of an

existing structure either prior to a catastrophic event such as a fire or hurricane or if there is no catastrophic event, at the time of the request market value and costs are determined as follows:

- (a) The market value of the structure shall be determined by the Division based on information provided by the applicant that is no more than one year old as of the date the request is made. The market value of the structure shall not include the value of the land or value resulting from the location of the property, the value of accessory structures, or the value of other improvements located on the property. The information provided by the applicant may include any of the following:
 - (i) an appraisal;
 - (ii) the replacement cost with depreciation for age of the structure and quality of construction; or
 - (iii) the tax assessed value.
 - (b) The cost to do the work is the cost to return the structure to its pre-damaged condition, using labor and materials obtained at market prices, regardless of the actual cost incurred by the owner to restore the structure. It shall include the costs of construction necessary to comply with local and state building codes. The cost shall be determined by the Division utilizing any or all of the following provided by the applicant:
 - (i) an estimate provided by a North Carolina licensed contractor qualified by license to provide an estimate or bid with respect to the proposed work;
 - (ii) an insurance company's report itemizing the cost, excluding contents and accessory structures; or
 - (iii) an estimate provided by the local building inspections office.
- (2) **WATER DEPENDENT STRUCTURES.** The proposed work is considered replacement if it enlarges the existing structure in any dimension. The proposed work is also considered replacement if:
- (a) in the case of fixed docks, piers, platforms, boathouses, boatlifts, and free standing moorings, more than 50 percent of the framing and structural components (beams, girders, joists, stringers, or pilings) must be rebuilt in order to restore the structure to its pre-damage condition. Water dependent structures that are structurally independent from the principal pier or dock, such as boatlifts or boathouses, are considered as separate structures for the purpose of this Rule;
 - (b) in the case of boat ramps and floating structures such as docks, piers, platforms, and modular floating systems, more than 50 percent of the square feet area of the structure must be rebuilt in order to restore the structure to its pre-damage condition;
 - (c) in the case of bulkheads, seawalls, groins, breakwaters, and revetments, more than 50 percent of the linear footage of the structure must be rebuilt in order to restore the structure to its pre-damage condition.

History Note: Authority G.S. 113A-103(5)b.5.; 113A-107(a),(b);
Eff. July 1, 1990;
Amended Eff. August 1, 2007;
Readopted Eff. January 1, 2023.

15A NCAC 07J .0211 NON-CONFORMING DEVELOPMENT

A non-conforming structure is any structure within an AEC other than Ocean Hazard and Inlet Hazard AECs that is inconsistent with current CRC rules, and was built prior to the effective date(s) of the rule(s) with which it is inconsistent. Replacement of such structures shall be allowed when all of the following criteria are met:

- (1) the structure shall not be enlarged beyond its original dimensions;
- (2) the structure shall serve the same or similar use;
- (3) there are no alternatives for replacing the structure to provide the same or similar benefits to the structure owner in compliance with current rules; and
- (4) the structure will be rebuilt so as to comply with current rules to the maximum extent possible.

History Note: Authority G.S. 113A-107(a),(b);
Eff. July 1, 1990;
Amended Eff. December 1, 1991;

Readopted Eff. October 1, 2022.

SECTION .0300 - HEARING PROCEDURE

15A NCAC 07J .0301 WHO IS ENTITLED TO A CONTESTED CASE HEARING

Under G.S. 113A-121.1(b), persons other than those entitled to a contested case hearing on a permit decision under Paragraph (a) of this Rule may file a request for such a hearing and with the Director, Division of Coastal Management, Department of Environmental Quality (DEQ), 400 Commerce Avenue, Morehead City, NC 28557, and a copy shall be filed with the Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001. The Commission hereby delegates to the Chair the authority to determine whether persons other than those entitled to a hearing shall be granted a hearing.

History Note: Authority G.S. 113-229; 113A-118(a); 113A-121.1; 113A-124; Eff. March 15, 1978; Amended Eff. July 1, 1990; October 1, 1988; November 1, 1984; RRC Objection due to lack of Statutory Authority Eff. February 20, 1992; Amended Eff. March 31, 1992; RRC Objection due to lack of Statutory Authority Eff. March 19, 1992; Amended Eff. June 1, 2005; April 1, 1992; Readopted Eff. October 1, 2022.

15A NCAC 07J .0302 PETITION FOR CONTESTED CASE HEARING

(a) Any petition shall conform to the requirements of G.S. 150B-23. A copy of the petition shall be served on the Director, Division of Coastal Management, 400 Commerce Avenue, Morehead City NC 28557, and on the Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001. If a minor development permit is appealed, a copy of the petition shall also be served on the local permit officer. Failure to file any petition within the time period in G.S. 113A-121.1 (a) and (b) constitutes a waiver of the opportunity for a contested case hearing.

(b) Upon the request of the Director, the local permit officer shall submit a certified copy of the entire record of any minor permit decision which is being appealed to the Director. The record shall include the elements indicated in 15A NCAC 07I .0508(c).

History Note: Authority G.S. 113-229; 113A-118(a); 113A-121.1; 113A-124; Eff. March 15, 1978; Amended Eff. July 1, 1990; October 1, 1988; November 1, 1984; July 1, 1982; RRC Objection due to lack of Statutory Authority Eff. February 20, 1992; Amended Eff. March 31, 1992; RRC Objection due to lack of Statutory Authority Eff. March 19, 1992; Amended Eff. June 1, 2005; April 1, 1992; Readopted Eff. October 1, 2022.

15A NCAC 07J .0303 CONTESTED CASE HEARING PROCEDURES

(a) All contested case hearings shall be heard before an administrative law judge assigned by the Office of Administrative Hearings.

(b) All contested case hearings shall be governed by the procedures in Article 3 of Chapter 150B of the General Statutes and in Title 26 North Carolina Administrative Code except to the extent and in the particulars that Chapters 113 and 113A of the General Statutes make specific provision to the contrary.

History Note: Authority G.S. 113-229; 113A-122(b); 113A-124; Eff. March 15, 1978; Amended Eff. January 1, 1989; November 1, 1984; July 1, 1982; October 15, 1981; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .0304 VENUE

History Note: Authority G.S. 113A-124(c)(5); 150B-24;

Eff. March 15, 1978;
Amended Eff. July 1, 1982;
Repealed Eff. August 1, 1988.

15A NCAC 07J .0305 BURDEN OF PROOF

The burden of proof at any hearing on a permit appeal shall be as provided in G.S. 113A-122(b)(7).

History Note: Authority G.S. 113A-122(b)(7);
Eff. March 15, 1978;
Amended Eff. October 1, 1988; July 1, 1982; March 30, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .0306 ACTION PENDING FINAL DISPOSITION

Pending the final disposition of a hearing allowed under these rules, no action shall be taken which would be unlawful in the absence of an issued CAMA development and/or dredge and fill permit. In cases where the request for a hearing has been denied under Rule .0301(b), development authorized by the permit may be undertaken unless prohibited by an order of the superior court.

History Note: Authority G.S. 113A-121.1(d) and (e);
Eff. March 15, 1978;
Amended Eff. July 1, 1989; October 1, 1988; July 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .0307 PRE-HEARING CONFERENCES

15A NCAC 07J .0308 PRESENTATION OF EVIDENCE

15A NCAC 07J .0309 CONDUCT OF THE HEARING

15A NCAC 07J .0310 PROCEDURES FOR APPLICATION HEARINGS: NO PARTIES APPEAR

15A NCAC 07J .0311 POST HEARING PROCEDURES

History Note: Authority G.S. 113A-121(b)(4)(11); 113A-122(b)(3)(4)(8)(9); 113A-122(c)(5); 113A-124(c)(4)(5);
150B-25,24;
Eff. March 15, 1978;
Repealed Eff. July 1, 1982.

15A NCAC 07J .0312 SETTLEMENT

History Note: Authority G.S. 113A-120; 113A-122; 113A-124;
Eff. April 1, 1987;
Amended Eff. July 1, 1989; October 1, 1988;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

SECTION .0400 - FINAL APPROVAL AND ENFORCEMENT

15A NCAC 07J .0401 FINAL DECISION

15A NCAC 07J .0402 CRITERIA FOR GRANT OR DENIAL OF PERMIT APPLICATIONS

History Note: Authority G.S. 113-229; 113A-118(c); 113A-120(a)(b), and (c); 113A-122(b); 113A-122(b)(10);
113A-122(c); 113A-124;
Eff. March 15, 1978;
Amended Eff. January 1, 1992; July 1, 1989; October 1, 1988; September 1, 1988; November 1,
1984; November 1, 1983; August 1, 1983;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.

15A NCAC 07J .0403 DEVELOPMENT PERIOD/COMMENCEMENT/CONTINUATION

(a) New dredge and fill permits and CAMA Major permits shall expire five years from the date of permit issuance, with the exception of publicly-sponsored, multi-phased beach nourishment projects, which shall expire 10 years from the date of permit issuance. Minor permits, except those authorizing beach bulldozing when authorized through issuance of a CAMA minor permit, shall expire on December 31 of the third year following the year of permit issuance.

(b) CAMA minor permits authorizing beach bulldozing shall expire 30 days from the date of permit issuance. Following permit expiration, the permit holder is entitled to request an extension in accordance with Rule .0404(a) of this Section.

(c) Development After Permit Expiration. Any development undertaken after permit expiration shall be considered unpermitted and shall constitute a violation of G.S. 113A-118 or G.S. 113-229. Any development to be undertaken after permit expiration shall require a new permit or review in accordance with 15A NCAC 07J .0404(c) as determined by the Division.

(d) Commencement of Development in Ocean Hazard AEC. No development shall begin until the oceanfront setback requirement can be established in accordance with 15A NCAC 07H .0306. When the permit holder or an individual receiving an exception is ready to begin development, they shall arrange an onsite meeting with the Division of Coastal Management or Local Permitting Officer to determine the oceanfront setback. This setback determination shall replace the one completed at the time the permit was processed and approved and development shall begin within 60 days from the date of that meeting. In the case of a shoreline change that reduces the determined setback; a new setback determination may be required. To determine if a new setback is required, additional coordination with the Division of Coastal Management or Local Permitting Officer shall be required before development begins.

(e) Any permit that has been suspended as a result of litigation shall be extended at the permit holder's written request for a period equivalent to the period of permit suspension, but not to exceed the development period authorized under Paragraph (a) of this Rule.

*History Note: Authority G.S. 113A-118; 113A-124(c)(8); 113-229;
Eff. March 15, 1978;
Amended Eff. August 1, 2002; April 1, 1995; July 1, 1989; March 1, 1985; November 1, 1984;
Readopted Eff. August 1, 2021;
Amended Eff. August 1, 2022.*

15A NCAC 07J .0404 DEVELOPMENT PERIOD EXTENSION

(a) For CAMA minor permits authorizing beach bulldozing, the permit holder is entitled to request a one-time 30-day permit extension. No additional extensions shall be granted after the 30-day extension has expired. Notwithstanding this Paragraph, the permit holder is eligible to apply for another minor permit authorizing beach bulldozing following expiration of the 30-day permit extension.

(b) All other CAMA permits may be extended where substantial development, either within or outside the AEC, has begun or is continuing. The permitting authority shall grant as many two-year extensions as necessary to complete the initial development, with the exception that multi-phased beach nourishment projects may be granted ten-year extensions to allow for continuing project implementation. Renewals for maintenance of previously approved dredging projects may be granted for periods not to exceed five years. For the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permit holder can show that development has progressed beyond basic site preparation, such as land clearing and grading, and construction has begun and is continuing on the primary structure or structures authorized under the permit. For elevated structures in Ocean Hazard Areas, substantial development begins with the placement of foundation pilings, and proof of the local building inspector's certification that the installed pilings have passed a floor and foundation inspection. For residential subdivisions, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial development.

(c) To request an extension pursuant to Paragraphs (a) and (b) of this Rule, the permit holder shall submit a signed and dated request containing the following:

- (1) a statement of the completed and remaining work;
- (2) a statement that there has been no change of plans since the issuance of the original permit other than changes that would have the effect of reducing the scope of the project, or previously approved permit modifications;
- (3) notice of any change in ownership of the property to be developed and a request for transfer of the permit; and

- (4) a statement that the project is in compliance with all conditions of the current permit.
- (d) For extension requests where substantial development has not occurred in accordance with Paragraph (b) of this Rule, the Division of Coastal Management may circulate the request to the commenting State resource agencies along with a copy of the original permit application. Commenting State resource agencies will be given 30 days in which to comment on the extension request. Upon the expiration of the commenting period the Division of Coastal Management will notify the permit holder of its actions on the extension request.
- (e) Notwithstanding Paragraphs (b) and (d) of this Rule, an extension request may be denied on making findings as required in either G.S. 113A-120 or G.S. 113-229(e). Changes in circumstances or in development standards shall be considered and applied by the Division of Coastal Management in making a decision on an extension request.
- (f) The applicant for a major development extension request shall submit, with the request, a check or money order payable to the Department in the sum of one hundred dollars (\$100.00).

History Note: Authority G.S. 113A-119; 113A-119.1; 113A-120; 113A-124(c)(8); 113-229(e); Eff. March 15, 1978; Amended Eff. August 1, 2002; August 1, 2000; April 1, 1995; March 1, 1991; March 1, 1985; November 1, 1984; Readopted Eff. August 1, 2021; Amended Eff. August 1, 2022.

15A NCAC 07J .0405 PERMIT MODIFICATION

- (a) A permit holder may modify their permitted major development and/or dredge and fill project only after approval by the Division of Coastal Management. In order to modify a permitted project the permit holder shall make a written request to the Division of Coastal Management showing the proposed modifications. Minor modifications may be shown on the existing approved application and plat. Modification requests which, in the opinion of the Division of Coastal Management are major shall require a new application. Modification requests are subject to the same processing procedure applicable to original permit applications. A permit need not be circulated to all agencies commenting on the original application if the Commission determines that the modification is so minor that circulation would serve no purpose.
- (b) Modifications to a permitted project that are imposed or made at the request of the U.S. Army Corps of Engineers or other federal agencies shall be approved by the Division of Coastal Management under provisions of this Rule dealing with permit modification procedures.
- (c) Modifications of projects for the benefit of private waterfront property owners that meet the following criteria shall be considered minor modifications and shall not require a new permit application, but shall be approved under the provisions of Paragraph (a) of this Rule:
- (1) for bulkheads:
 - (A) bulkhead shall be positioned so as not to extend more than an average distance of two feet waterward of the mean high water and in no place shall the bulkhead be more than five feet waterward of the mean high water contour;
 - (B) all backfill must come from an upland source;
 - (C) no marsh area may be excavated or filled;
 - (D) work must be undertaken because of the necessity to prevent loss of private residential property due to erosion;
 - (E) the bulkhead must be constructed prior to any backfilling activities;
 - (F) the bulkhead must be constructed so as to prevent seepages of backfill materials through the bulkhead; and
 - (G) the bulkhead may not be constructed in the Ocean Hazard AEC;
 - (2) for piers, docks and boathouses:
 - (A) the modification or addition shall not be within 150 feet of the edge of a federally-maintained channel;
 - (B) the structure, as modified, must be 200 feet or less in total length offshore;
 - (C) the structure, as modified, must not extend past the four feet mean low water contour line (four feet depth at mean low water) of the waterbody;
 - (D) the project as modified, must not exceed six feet in width;
 - (E) the modification or addition must not include an enclosed structure; and
 - (F) the project shall continue to be used for private, residential purposes;
 - (3) for boattramps:

- (A) the project, as modified, shall not exceed 10 feet in width and 20 feet offshore; and
 - (B) the project shall continue to be used for private, residential purposes.
- (d) An applicant may modify his permitted minor development project only after approval by the local permit-letting authority. In order to modify a permitted project the applicant must make a written request to the local minor permit-letting authority showing in detail the proposed modifications. The request shall be reviewed in consultation with the appropriate Division of Coastal Management field consultant and granted if all of the following provisions are met:
- (1) the size of the project is expanded less than 20 percent of the size of the originally permitted project;
 - (2) a signed, written statement is obtained from all adjacent riparian property owners indicating they have no objections to the proposed modifications;
 - (3) the proposed modifications are consistent with all local, State, and federal standards and local Land Use Plans in effect at the time of the modification requests; and
 - (4) the type or nature of development is not changed.

Failure to meet this Paragraph shall necessitate the submission of a new permit application.

- (e) The applicant for a major permit modification shall submit with the request a check or money order payable to the Department in the sum of one hundred dollars (\$100.00) for a minor modification and two hundred fifty dollars (\$250.00) for a major modification.

*History Note: Authority G.S. 113A-119; 113A-119.1; 113-229;
Eff. March 15, 1978;
Amended Eff. August 1, 2000; March 1, 1991; August 1, 1986; November 1, 1984;
Readopted Eff. August 1, 2021.*

15A NCAC 07J .0406 PERMIT ISSUANCE AND TRANSFER

- (a) Upon the approval of an application and the issuance of the permit, the permit shall be delivered to the applicant, or to any person designated by the applicant to receive the permit, by hand, first class mail or any means.
- (b) Anyone holding a permit shall not assign, transfer, sell, or otherwise dispose of a permit to a third party, unless approval is granted by the Director of the Division of Coastal Management pursuant to Paragraph (c) of this Rule.
- (c) A permit may be transferred to a new party at the discretion of the Director of the Division of Coastal Management upon finding each of the following:
- (1) a written request from the new owner or developer of the involved properties;
 - (2) a deed, a sale, lease, or option to the proposed new party showing the proposed new party as having the sole legal right to develop the project;
 - (3) that the applicant transferee will use the permit for the purposes for which it was issued;
 - (4) no change in conditions, circumstances, or facts affecting the project;
 - (5) no change or modification of the project as proposed in the original application.
- (d) A person aggrieved by a decision of the Director as to the transfer of a permit may request a declaratory ruling by the Coastal Resources Commission as per 15A NCAC 07J .0600.
- (e) The applicant for a permit transfer shall submit with the request a check or money order payable to the Department in the sum of one hundred dollars (\$100.00).

*History Note: Authority G.S. 113A-118(c); 113A-119(a); 113A-119.1; 113A-124(c)(8);
Eff. March 15, 1978;
Amended Eff. August 1, 2000; March 1, 1991; March 1, 1990; October 15, 1981;
Readopted Eff. June 1, 2021.*

15A NCAC 07J .0407 PROJECT MAINTENANCE: MAJOR DEVELOPMENT/DREDGE AND FILL

- (a) No project previously requiring a major development or dredge and fill permit shall be maintained after the expiration of the authorized development period without approval from the Division of Coastal Management. Permits may contain provisions that allow the applicant to maintain the project after its completion. Persons wishing to maintain a project beyond the development period and whose permit contains no maintenance provision shall apply for a maintenance permit. This Rule does not apply to maintenance required by rule or by permit condition.
- (b) Maintenance Request. Persons desiring to initiate maintenance work on a project pursuant to the maintenance provisions of an existing permit shall file a request two weeks prior to the initiation of maintenance work with:

Department of Environmental Quality

Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

(c) Such requests shall include:

- (1) the name and address of the permittee;
- (2) the number of the original permit;
- (3) a description of proposed changes;
- (4) in the case of a dredge and fill maintenance request, a statement that no dimensional changes are proposed;
- (5) a copy of the original permit plat with cross-hatching indicating the area to be maintained, any area to be used as spoil, and the estimated amount of material to be removed; and
- (6) the date of map revision and the applicant's signature shown anew on the original plat.

(d) Conditions for Maintenance. All work undertaken pursuant to the maintenance provisions of a permit shall comply with the following conditions:

- (1) Maintenance work under a major development permit shall be limited to activities which are within the exemptions set forth by the Commission.
- (2) Maintenance under a dredge and fill permit shall be limited to excavation and filling which is necessary to maintain the project dimensions as found in the original permit.
- (3) Maintenance work is subject to all the conditions included in the original permit.
- (4) Spoil disposal shall be in the same locations as authorized in the original permit, provided that the person requesting the authority to maintain a project may request a different spoil disposal site if he or she first serves a copy of the maintenance request on all adjoining landowners.
- (5) The maintenance work is subject to any conditions determined by the Department to be necessary to protect the public interest with respect to the factors enumerated in G.S. 113A-120 or G.S. 113-229.

(e) The Division of Coastal Management may suspend or revoke the right to maintain a project in whole or in part upon a finding:

- (1) that the project area has been put to a different use from that indicated in the original permit application;
- (2) that there has been a change in the impacts associated with the permitted development affecting coastal resources listed in G.S. 113A-113 or G.S. 113A-120(a) that would justify denial of a permit; or
- (3) that there has been a violation of any of the terms or conditions of the original permit.

(f) Grant or Denial of Maintenance Request

- (1) Upon receipt of a complete maintenance request the Division of Coastal Management shall determine if there are grounds for revocation or suspension of the applicant's right to maintain based on the criteria in Paragraph (e) of this Rule. If there are grounds for revocation or suspension the applicant shall be notified of the suspension or revocation by certified mail, return receipt requested setting forth the findings on which the revocation or suspension is based.
- (2) If the Division of Coastal Management determines that the right to maintain should not be revoked or based on the criteria in Paragraph (e) of this Rule, a letter shall be issued which shall authorize the applicant to perform maintenance work. The letter shall set forth the terms and conditions under which the maintenance work is authorized.
- (3) If the maintenance request discloses changes in the dimensions of the original project, the Division of Coastal Management shall notify the applicant that a permit modification or renewal shall be required pursuant to the procedure set out in 15A NCAC 07J .0404 and .0405.
- (4) Appeal of the Division of Coastal Management action under this Section shall be in accordance with 15A NCAC 07J .0302.

*History Note: Authority G.S. 113A-103(5)c; 113A-120(b); 113A-124(c)(8);
Eff. March 15, 1978;
Amended Eff. June 1, 2005; December 1, 1991; May 1, 1990; March 1, 1985; November 1, 1984;
Readopted Eff. August 1, 2021.*

15A NCAC 07J .0408 VIOLATION OF A PERMIT

*History Note: Authority G.S. 113A-126;
 Eff. March 15, 1978;
 Amended Eff. January 25, 1980;
 Repealed Eff. August 1, 1989.*

15A NCAC 07J .0409 CIVIL PENALTIES

(a) Purpose and Scope. This Rule provides the procedures and standards governing the assessment, remission, settlement, and appeal of civil penalties assessed by the Coastal Resources Commission and the Director pursuant to G.S. 113A-126(d).

(b) Definitions. The terms used in this Rule shall be as defined in G.S. 113A-103 and as follows:

- (1) "Act" means the Coastal Area Management Act of 1974, G.S. 113A-100 through 134.
- (2) "Delegate" means the Director or other employees of the Division of Coastal Management, or local permit officers to whom the Commission has delegated authority to act pursuant to this Rule.
- (3) "Director" means the Director, Division of Coastal Management.
- (4) "Respondent" means the person to whom a notice of violation has been issued or against whom a penalty has been assessed.

(c) Investigative costs. In addition to any civil penalty, the costs incurred by the Division for any investigation, inspection, and monitoring associated with assessment the civil penalty may be assessed pursuant to G.S. 113A-126(d)(4a). The amount of investigative costs assessed shall be based upon factors including the amount of staff time required for site visits, investigation, enforcement action, interagency coordination, and for monitoring restoration of the site.

(d) Notice of Violation. The Commission authorizes employees of the Division of Coastal Management to issue in the name of the Commission notices of violation to any person engaged in an activity which constitutes a violation for which a civil penalty may be assessed.

(e) Procedures for Notification of Civil Penalty Assessment.

- (1) The Commission delegates to the Director the authority to assess civil penalties according to the procedures set forth in Paragraph (g) of this Rule.
- (2) If restoration of affected resources is not required, the Director shall issue a civil penalty assessment within 90 days from the date of the Notice of Violation. If restoration of affected resources is required, the Director may issue a civil penalty assessment within 60 days after the Division determines that restoration of the adversely impacted resources is complete or once the date restoration was required has passed without having been completed.

(f) Procedures for Determining the Amount of Civil Penalty Assessment.

- (1) Pursuant to G.S. 113A-126(d)(1), penalties for major development violations, including violations of permit conditions, shall be assessed as follows:
 - (A) Major development that could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee as set forth in Rule .0204 of this Subchapter, plus investigative costs.
 - (B) Major development that could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee, plus a penalty pursuant to Schedule A of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule A of this Rule, the penalties for each affected AEC shall be combined not to exceed ten thousand dollars (\$10,000) per G.S. 113A-126(d)(1). Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

SCHEDULE A
Major Development Violations

Penalties for Major Development Permit Violations By Size of Violation (sq. ft.)

Area of Environmental Concern Affected	≤ 100	101-500	501-1,000	1001-3000	3001-5000	5001-8000	8001-11,000	11,001-15,000	15,001-20,000	20,001-25,000	>25,000
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Estuarine Waters or Public Trust Areas (1)	\$250	\$375	\$500	\$1,500	\$2,000	\$3,500	\$5,000	\$7,000	\$9,000	\$10,000	\$10,000
Primary Nursery Areas	\$100	\$225	\$350	\$850	\$1,350	\$2,850	\$4,350	\$3,000	\$1,000	n/a	n/a
Mudflats and Shell Bottom	\$100	\$225	\$350	\$850	\$1,350	\$2,850	\$4,350	\$3,000	\$1,000	n/a	n/a
Submerged Aquatic Vegetation	\$100	\$225	\$350	\$850	\$1,350	\$2,850	\$4,350	\$3,000	\$1,000	n/a	n/a
Coastal Wetlands	\$250	\$375	\$500	\$1,500	\$2,000	\$3,500	\$5,000	\$7,000	\$9,000	\$10,000	\$10,000
Coastal Shorelines	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000
Wetlands (2)	\$100	\$200	\$300	\$700	\$1,100	\$2,300	\$3,500	\$4,750	\$2,750	\$750	n/a
ORW- Adjacent Areas	\$100	\$200	\$300	\$700	\$1,100	\$2,300	\$3,500	\$4,750	\$2,750	\$750	n/a
Ocean Hazard System (3)(4)	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000
Primary or Frontal Dune	\$100	\$200	\$300	\$700	\$1,100	\$2,300	\$3,500	\$4,750	\$2,750	\$750	n/a
Public Water Supplies (5)	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000
Natural and Cultural Resource Areas (6)	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000

- (1) Includes the Atlantic Ocean from the normal high water mark to three miles offshore.
- (2) Wetlands that are jurisdictional by the Federal Clean Water Act.
- (3) If the AEC physically overlaps another AEC, use the greater penalty schedule.
- (4) Includes the Ocean Erodible, Inlet Hazard Area, and Unvegetated Beach Area.
- (5) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.
- (6) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.
- (C) Assessments for violations by public agencies, i.e. towns, counties, and State agencies shall be determined in accordance with Parts (1)(A) and (B) of this Paragraph.
- (D) Willful and intentional violations. The penalty assessed in accordance with Parts (1)(A) and (B) of this Paragraph. shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed ten thousand dollars (\$10,000) or be less than two thousand dollars (\$2,000) for each separate violation. For the purposes of G.S. 113A-126(d)(2), the following actions shall be considered willful and intentional:
- (i) the person received written instructions from one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit;
 - (ii) the person received written instructions from one of the Commission's delegates that the proposed development was not permissible under the Commission's

- rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit;
- (iii) the person committed previous violations of the Commission's rules; or
 - (iv) the person refused or failed to restore a damaged area as ordered by one of the Commission's delegates.
- (E) Assessments against contractors. Any contractor, subcontractor, or person functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (D) of this Subparagraph and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.
- (F) Assessments for Continuing violations.
- (i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease or restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.
 - (ii) Refusal or failure to restore a damaged area as directed in the restoration order shall be considered a continuing violation and shall be assessed an additional penalty. When resources continue to be affected by the violation, the amount of the penalty shall be determined according to Part (B) of this Subparagraph. The continuing penalty period shall be calculated from the date specified in the restoration order which accompanies the notice of violation for the unauthorized activity to cease or restoration to be completed and run until:
 - (I) the Division determines that the terms of the restoration order are satisfied;
 - (II) the respondent enters into negotiations with the Division; or
 - (III) the respondent contests the Division's order in a judicial proceeding.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the Division.
- (2) Pursuant to G.S. 113A-126(d)(1), penalties for minor development violations, including violations of permit conditions, shall be assessed as follows:
- (A) Minor development that could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee, plus investigative costs.
 - (B) Minor development that could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee as set forth in Rule .0204 of this Subchapter, plus a penalty pursuant to Schedule B of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule B of this Rule, the penalties for each affected AEC shall be combined. Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

SCHEDULE B
Penalties for Minor Development Permit Violations By Size of Violation

Area of Environmental Concern Affected	Size of Violation (sq. ft.)										
	≤ 100	101-500	501-1,000	1001-3000	3001-5000	5001-8000	8001-11,000	11,001 -	15,001 -	20,001 -	>25,000
								-	-	-	
								15,000	20,000	25,000	

Coastal Shorelines	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000
ORW- Adjacent Areas	\$125	\$150	\$175	\$225	\$275	\$350	\$425	\$375	\$250	\$125	n/a
Ocean Hazard System (1)(2)	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000
Primary or Frontal Dune	\$125	\$150	\$175	\$225	\$275	\$350	\$425	\$375	\$250	\$125	n/a
Public Water Supplies (3)	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000
Natural and Cultural Resource Areas (4)	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000

- (1) Includes the Ocean Erodible, Inlet Hazard Area, and Unvegetated Beach Area.
- (2) If the AEC physically overlaps another AEC, use the greater penalty schedule.
- (3) Includes Small Surface Water Supply Watersheds, defined in 15A NCAC 07H .0404 and Public Water Supply Well Fields, defined in 15A NCAC 07H .0406.
- (4) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources as defined in 15A NCAC 07H .0505, .0506, .0509, and .0510.
- (C) Violations by public agencies , e.g., towns, counties, and State agencies, shall be handled by the local permit officer or one of the Commission's delegates within their respective jurisdictions except that in no case shall a local permit officer handle a violation committed by the local government they represent. Penalties shall be assessed in accordance with Parts (A) and (B) of this Subparagraph.
- (D) Willful and intentional violations. The penalty assessed under Parts (A) and (B) of this Subparagraph shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed one thousand dollars (\$1,000.00) for each separate violation. For the purposes of G.S. 113A-126(d)(2), the following actions shall be considered willful and intentional:
- (i) the person received written instructions from the local permit officer or one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit;
 - (ii) the person received written instructions from the local permit officer or one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit;
 - (iii) the person committed previous violations of the Commission's rules; or
 - (iv) the person refused or failed to restore a damaged area as ordered by the local permit officer or one of the Commission's delegates.
- (E) Assessments against contractors. Any contractor, subcontractor, or person functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (D) of this Subparagraph and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.
- (F) Assessments of Continuing violations.
- (i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.

- (ii) Refusal or failure to restore a damaged area as directed in the restoration order shall be considered a continuing violation and shall be assessed an additional penalty. The amount of the penalty shall be determined according to Part (B) of this Subparagraph. The continuing penalty period shall be calculated from the date specified in the restoration order which accompanies the notice of violation for the unauthorized activity to cease and restoration to be completed and run until:
 - (I) the Division determines that the terms of the restoration order are satisfied;
 - (II) the respondent enters into negotiations with the local permit officer or the Division; or
 - (III) the respondent contests the local permit officer's or the Division's order in a judicial proceeding.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the local permit officer or the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the local permit officer or the Division.

(g) Reports to the Commission. Action taken by the Director shall be reported to the Commission at the next regularly scheduled Commission meeting. Such reports shall include information on the following:

- (1) respondent(s) against whom penalties have been assessed;
- (2) respondent(s) who have paid a penalty, requested remission, or requested an administrative hearing;
- (3) respondent(s) who have failed to pay; and
- (4) cases referred to the Attorney General for collection.

(h) Settlements. The Commission hereby delegates to the Director the authority to enter into a settlement of an appeal of a civil penalty at any time prior to the issuance of a decision by the administrative law judge in a contested case under G.S. 150B-23, and shall not require the approval of the Commission. Any settlement agreement proposed subsequent to the issuance of a decision by the administrative law judge in a contested case under G.S. 150B-23 shall be submitted to the Commission for approval.

History Note: Authority G.S. 113A-124; 113A-124(c)(8); 113A-126(d); Eff. January 24, 1980; ARRC Objection August 18, 1988; Amended Eff. January 1, 1989; November 1, 1986; November 1, 1984; ARRC Objection Lodged Eff. January 18, 1991; Amended Eff. September 1, 2019; February 1, 2008; July 1, 1991; June 1, 1991; Readopted Eff. June 1, 2021.

15A NCAC 07J .0410 RESTORATION/MITIGATION

Any violation involving development that is inconsistent with rules for development within AECs, i.e. wetland fill, improper location of a structure, shall result in a notice of restoration from the Secretary or its delegate or a local government. The notice shall describe the extent of restoration necessary to recover lost resources, or to prevent further resource damage and a time for its completion. Failure to complete the restoration described in the notice may result in a court order as described in G.S. 113-126(a) and (b). Failure to act to complete the required restoration may be determined to constitute a separate violation, according to G.S. 113-126(d)(2), subject to the penalties in Rule .0409 of this Section. Any resources that cannot be recovered by restoration of the affected site shall be replaced in compliance with the goals of the Commission's mitigation policy described in 15A NCAC 07M .0701.

History Note: Authority G.S. 113A-126; 113A-124(c); 113A-124(c)(8); Eff. July 1, 1985; Readopted Eff. August 1, 2021.

SECTION .0500 - GENERAL PERMITS

15A NCAC 07J .0501 DEVELOPMENT INITIATED PRIOR TO MARCH 1, 1978

History Note: Authority G.S. 113A-118.1;
Eff. April 12, 1978;
Amended Eff. December 1, 1991;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.

15A NCAC 07J .0502 UNCONTESTED PERMIT APPLICATIONS

History Note: Authority G.S. 113A-124(c)(5);
Eff. April 12, 1978;
Amended Eff. September 11, 1978;
Repealed Eff. September 6, 1979.

SECTION .0600 - DECLARATORY RULINGS AND PETITIONS FOR RULEMAKING

15A NCAC 07J .0601 DECLARATORY RULINGS: GENERALLY

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Coastal Resources Commission may issue a declaratory ruling as provided in G.S. 150B-4.

History Note: Authority G.S. 113A-124; 150B-4;
Eff. June 1, 1979;
Amended Eff. October 1, 1992; October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .0602 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

(a) All requests for a declaratory ruling shall be filed with the Director, Division of Coastal Management, Department of Environmental Quality (DEQ), 400 Commerce Avenue, Morehead City NC 28557, and also the Attorney General's Office, 9001 Mail Service Center, Raleigh NC 27699-9001. All requests shall include the following: the aggrieved person's name and address; the rule, statute or order for which a ruling is desired; and a statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or statute; and certified mail receipts showing the request was sent to the owners of property adjacent to the property that is the subject of the declaratory ruling.

(b) A request for a ruling on the applicability of a rule, order, or statute shall include a description of the factual situation on which the ruling is to be based. A request for a ruling on the validity of a Commission rule shall state the aggrieved person's reasons for questioning the validity of the rule. A person may ask for both types of rulings in a single request. A request for a ruling shall include or be accompanied by:

- (1) a statement of facts proposed for adoption by the Commission; and
- (2) a draft of the proposed ruling.

History Note: Authority G.S. 113A-124; 150B-4;
Eff. June 1, 1979;
Amended Eff. June 1, 2005; October 1, 1992; November 1, 1991; July 1, 1990; May 1, 1990;
Readopted Eff. October 1, 2022.

15A NCAC 07J .0603 PROCEDURES: CONSIDERING REQUESTS FOR DECLARATORY RULINGS

(a) The Commission hereby delegates to the Chairman the authority to grant or deny requests for declaratory rulings and to determine whether notice of the declaratory ruling request should be provided to anyone other than the adjacent property owners. The Division of Coastal Management shall review each request for a declaratory ruling and shall prepare a recommendation for the Chairman as to whether the Commission should consent to issue a ruling or whether for good cause the request for a declaratory ruling should be denied. The Chairman shall deny a request for declaratory ruling on finding that:

- (1) the requesting party and the Division of Coastal Management cannot agree on a set of stipulated facts to support a ruling;
- (2) the matter is the subject of a pending contested case hearing; or

- (3) no genuine controversy exists as to the application of a statute or rule to a proposed project or activity.
- (b) After consenting to issue a ruling, the Commission shall place the declaratory ruling on the agenda for its next regularly scheduled meeting. The Commission shall provide notice of the declaratory ruling proceeding to the requesting party, the adjacent property owners, and other persons to whom the Commission decides to give notice no less than 10 days before the date for which the declaratory ruling is set. The requesting party and other persons to whom the Commission decides to give notice shall be allowed to submit written comments concerning the proposed declaratory ruling.
- (c) If a ruling is to be issued, the Chairman shall decide whether notice should be given to persons other than the party requesting the ruling and the adjacent property owners. In making such a decision, the Commission shall consider such factors as: whether additional public participation would aid the Commission in reaching a decision; whether any persons have requested in writing to be notified of proposed declaratory rulings; whether the property or personal rights of other persons might be directly affected by the requested ruling; and whether the proposed ruling would affect the application and interpretation of a rule in which other persons might be interested. All persons receiving notice of the declaratory ruling, including all members of the public who respond to a published notice of the proposed ruling, may submit written comments to the Commission concerning the proposed declaratory ruling pursuant to Paragraph (b) of this Rule at least five days prior to the date of the proposed ruling; all such comments shall be provided to the Commission and shall be included in the record of the declaratory ruling.
- (d) Unless the Department waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. The requesting party and the Department shall each be allowed 30 minutes to present oral arguments to the Commission. Neither party may offer testimony or conduct cross-examination before the Commission. The declaratory ruling shall be determined on the basis of the statement of undisputed facts submitted by the parties.
- (e) The Commission will keep a record of each declaratory ruling, which will include at a minimum the following items:
 - (1) the request for a ruling;
 - (2) any written comments by interested parties;
 - (3) the statement of undisputed facts on which the ruling was based;
 - (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
 - (5) any other matter considered by the Commission in making the decision; and
 - (6) the declaratory ruling together with the reasons therefore.
- (f) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.
- (g) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

*History Note: Authority G.S. 113A-124; 150B-4;
Eff. June 1, 1979;
Amended Eff. October 1, 1992; October 1, 1988;
Readopted Eff. October 1, 2022.*

15A NCAC 07J .0604 FEDERAL ACTIVITIES

- (a) At the request of any federal agency or of any state or local co-sponsor of a federal project with the written concurrence of the federal agency, the Commission shall issue a declaratory ruling concerning the consistency of a proposed federal activity with North Carolina's coastal management statutes and regulations unless the Chairman determines that no genuine controversy exists as to the application of a statute or rule to a proposed federal activity.
- (b) The request for ruling shall include:
 - (1) a statement identifying the rule, statute or order at issue;
 - (2) certified mail receipts indicating that notice of the request for ruling was sent to the owners of property adjacent to the property on which the proposed federal activity will take place;
 - (3) a statement of facts proposed for adoption by the Commission and any documentary evidence supporting the proposed statement of facts;
 - (4) a draft of the proposed ruling;

- (5) a statement indicating that the Division of Coastal Management has preliminarily determined that the project may be inconsistent with a coastal management statute or regulation; and
 - (6) a statement identifying the factual issues in dispute between the Department and the federal agency.
- (c) The Commission shall provide notice of the declaratory ruling proceeding to the adjacent property owners and to persons who have requested notice of proposed rulings. Notice shall be published in a newspaper of general circulation in the area of the proposed federal activity 10 days prior to the Commission's consideration of the declaratory ruling. Any person may submit written comments on the proposed declaratory ruling at least five days prior to the date the Commission will consider the declaratory ruling; such comments shall be provided to the Commission and shall be included in the record of the declaratory ruling.
- (d) The parties to a declaratory ruling shall be allowed 30 minutes to present oral arguments to the Commission. Unless the Division of Coastal Management waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. No party may offer testimony or conduct cross-examination before the Commission.

History Note: Authority G.S. 113A-124; 150B-4;
Eff. November 30, 1992.

15A NCAC 07J .0605 PETITIONS FOR RULEMAKING

- (a) Any person wishing to request the adoption, amendment, or repeal of a rule shall make this request in a petition addressed to the Division of Coastal Management. The petition shall specify it is filed pursuant to G.S. 150B-20 and shall contain the following information:
- (1) either a draft of the proposed rule or a summary of its contents;
 - (2) a statement of reasons for adoption of the proposed rule(s);
 - (3) a statement of the effect on existing rules or orders;
 - (4) any data in support of the proposed rule(s);
 - (5) a statement of the effect of the proposed rule on existing practices; and
 - (6) the name and address of the petitioner.
- (b) The petition will be placed on the agenda for the next regularly scheduled commission meeting, if received at least four weeks prior to the meeting, and the director shall prepare a recommended response to the petition for the Commission's consideration. Petitions will be considered in accordance with the requirements of G.S. 150B-20.

History Note: Authority G.S. 113A-124; 150B-20;
Eff. January 1, 1989;
Amended Eff. October 1, 1992;
Readopted Eff. October 1, 2022.

SECTION .0700 – PROCEDURES FOR CONSIDERING VARIANCE PETITIONS

15 NCAC 07J .0701 VARIANCE PETITIONS

- (a) Any person whose application for a CAMA major or minor development permit has been denied or issued with condition(s) that the person does not agree with may petition for a variance from the Commission by means of the procedure described in this Section. Before filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the property, and there must not be pending litigation between the petitioner and any other person which may make the request for a variance moot.
- (b) The procedure in this Section shall be used for all variance petitions except when:
- (1) the Commission determines that more facts are necessary; or
 - (2) there are controverted facts that are necessary for a decision on the variance petition.
- (c) Variance petitions shall be submitted on forms provided by the Department of Environmental Quality. The following information shall be submitted before a variance petition is considered complete:
- (1) the case name and location of the development as identified on the denied permit application;
 - (2) a copy of the deed to the property on which the proposed development would be located;
 - (3) a copy of the permit application and denial for the development in question;
 - (4) the date of the petition, and the name, address, and phone number of the petitioner and his or her attorney, if applicable;
 - (5) a complete description of the proposed development, including a site drawing with topographical and survey information;

- (6) a stipulation that the proposed project is inconsistent with the rule from which the petitioner seeks a variance;
- (7) notice of the variance petition sent via certified mail, return receipt requested to the adjacent property owners and persons who submitted written comments to the Division of Coastal Management or the Local Permit Officer during the permit review process and copies of the documents which indicate that the certified mail notices were received or that deliveries were attempted;
- (8) an explanation of why the petitioner believes that the Commission should make the following findings, all of which are necessary for a variance to be granted:
 - (A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;
 - (B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;
 - (C) that such hardships did not result from actions taken by the petitioner; and
 - (D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.
- (9) a proposed set of stipulated facts, for staff's consideration, containing all of the facts relied upon in the petitioner's explanation as to why he meets the criteria for a variance; and
- (10) proposed documents, for the staff's consideration, that the petitioner wants the Commission to consider.

(d) Petitions shall be mailed to the Director of the Division of Coastal Management, Department of Environmental Quality, 400 Commerce Avenue, Morehead City NC 28557 and to Air and Natural Resources Section, Environmental Division, Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001.

(e) A variance petition shall be considered by the Commission at a scheduled meeting. Petitions shall be scheduled in chronological order based upon the date of receipt of a complete variance petition by the Division of Coastal Management. A complete variance petition, as described in Paragraph (c) of this Rule, shall be received by the Division of Coastal Management at least six weeks in advance of a scheduled Commission meeting to be considered by the Commission at that meeting. If the petitioner seeks to postpone consideration of his or her variance request, the request shall be treated as though it was filed on the date petitioner requested postponement and scheduled for hearing after all then pending variance requests.

(f) Written notice of a variance hearing or Commission consideration of a variance petition shall be provided to the petitioner and the permit officer making the initial permit decision.

*History Note: Authority G.S. 113A-120.1; 113A-124;
 Eff. December 12, 1979;
 Amended Eff. December 1, 1991; May 1, 1990; March 1, 1988, February 1, 1983;
 Temporary Amendment Eff. December 20, 2001;
 Temporary Amendment Expired October 12, 2002;
 Temporary Amendment Eff. December 1, 2002;
 Amended Eff. March 1, 2009; June 1, 2005; August 1, 2004;
 Readopted Eff. October 1, 2022.*

15A NCAC 07J .0702 STAFF REVIEW OF VARIANCE PETITIONS

(a) The Division of Coastal Management, as staff to the Commission, shall review petitions to determine whether they are complete according to the requirements set forth in Rule .0701. Incomplete petitions and a description of the deficiencies shall be returned to the petitioner. Complete variance petitions shall be scheduled within two Commission meetings.

(b) The staff and the petitioner shall determine the facts that are relevant to the Commission's consideration of the variance petition. For all facts upon which staff and the petitioner agree, a document entitled Stipulated Facts shall be prepared and signed by both parties.

(c) After the facts agreed upon by the petitioner and staff, the staff shall prepare a written recommendation which shall be submitted to the Commission before the petition is considered. The staff recommendation shall include:

- (1) a description of the property in question;
- (2) a description of how the use of the property is restricted or otherwise affected by the applicable rules;

- (3) the Stipulated Facts;
- (4) staff's position on whether the petition meets or does not meet each of the requirements for a variance; and
- (5) petitioner's position on each of the variance criteria.

Copies of the staff recommendation shall be provided to the petitioner and the permit officer making the initial permit decision at the same time as it is provided to the Commission. If the Stipulated Facts are not agreed upon at least four weeks prior to a scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next scheduled Commission meeting.

(d) If the staff determines that agreement cannot be reached on sufficient facts on which to base a variance decision, the petition shall be considered by means of an administrative hearing to determine the relevant facts.

*History Note: Authority G.S. 113A-120.1; 113A-124;
 Eff. December 12, 1979;
 Amended Eff. December 1, 1991; May 1, 1990; October 1, 1988; March 1, 1988;
 Temporary Amendment Eff. December 20, 2001;
 Temporary Amendment Expired October 12, 2002;
 Temporary Amendment Eff. December 1, 2002;
 Amended Eff. July 3, 2008; August 1, 2004;
 Readopted Eff. October 1, 2022.*

15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS

- (a) The Commission may review the variance petition and staff recommendation and hear oral presentation by the petitioner, if any, in full session or may appoint a member or members to do so. In cases where a member or members are appointed, they shall report a summary of the facts and a recommended decision to the Commission.
- (b) The Commission or its appointed member or members shall be provided with copies of the petition, the stipulated facts, and the staff recommendation before considering the petition.
- (c) At the Commission's request, staff shall orally describe the petition to the Commission or its appointed member(s) and shall present comments concerning whether the Commission should make the findings necessary for granting the variance. The petitioner shall also be allowed to present oral arguments concerning the petition. The Commission may set time limits on such oral presentations.
- (d) The final decision of the Commission may be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by certified mail, return receipt requested within 30 days of the meeting at which the Commission reached its decision. In the event that the Commission cannot reach a final decision because it determines that more facts are necessary, it shall remand the matter to staff and the petitioner with instructions for the parties to either agree to the necessary fact(s) or to request a hearing in the Office of Administrative Hearings.
- (e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the Commission.

*History Note: Authority G.S. 113A-120.1; 113A-124;
 Eff. December 12, 1979;
 Amended Eff. December 1, 1991; March 3, 1981;
 Temporary Amendment Eff. December 20, 2001;
 Temporary Amendment Expired October 12, 2002;
 Temporary Amendment Eff. December 1, 2002;
 Amended Eff. March 1, 2009; August 1, 2004;
 Readopted Eff. October 1, 2022.*

SECTION .0800 - DREDGE AND FILL: PERMIT PROCESSING PROCEDURE: STANDARD

- 15A NCAC 07J .0801 DEFINITIONS**
- 15A NCAC 07J .0802 APPLICATION FORMS**
- 15A NCAC 07J .0803 PREPARATION OF WORK PLATS: GENERAL**
- 15A NCAC 07J .0804 PREPARATION OF WORK PLATS: SPECIFIC**
- 15A NCAC 07J .0805 ADJACENT RIPARIAN LANDOWNER NOTIFICATION**
- 15A NCAC 07J .0806 APPLICATION PROCESSING**

15A NCAC 07J .0807	FIELD INVESTIGATION
15A NCAC 07J .0808	AGENCY REVIEW AND COMMENTS
15A NCAC 07J .0809	CRITERIA FOR PROJECT PLANNING AND EVALUATION
15A NCAC 07J .0810	FINAL ACTION
15A NCAC 07J .0811	NOTICE OF DENIAL
15A NCAC 07J .0812	APPEAL OF DEPARTMENTAL ACTION
15A NCAC 07J .0813	PERMIT ISSUANCE AND TRANSFER
15A NCAC 07J .0814	PERMIT EXPIRATION
15A NCAC 07J .0815	PERMIT RENEWAL
15A NCAC 07J .0816	PERMIT MODIFICATION
15A NCAC 07J .0817	PERMIT CONDITIONS
15A NCAC 07J .0818	PROJECT MAINTENANCE
15A NCAC 07J .0819	MAINTENANCE REQUEST
15A NCAC 07J .0820	CONDITIONS FOR MAINTENANCE
15A NCAC 07J .0821	GRANT OR DENIAL OF MAINTENANCE REQUEST
15A NCAC 07J .0822	VIOLATION OF PERMIT

History Note: Authority G.S. 113A-118(c); 113A-119(a); 113A-124(c)(5); 113-229;
 Eff. February 1, 1976;
 Amended Eff. January 1, 1984; August 1, 1983; October 15, 1981; August 30, 1980;
 Repealed Eff. July 1, 1989.

SECTION .0900 - DREDGE AND FILL: EMERGENCY PERMIT PROCEDURE

15A NCAC 07J .0901	PURPOSE
15A NCAC 07J .0902	DEFINITIONS
15A NCAC 07J .0903	INITIATION OF EMERGENCY PROCESS: ON-SITE INVESTIGATION
15A NCAC 07J .0904	PROCEDURES FOR EXEMPTING EMERGENCY MAINTENANCE: REPAIRS
15A NCAC 07J .0905	APPLICABILITY OF EMERGENCY CAMA: DREDGE AND FILL PERMITS
15A NCAC 07J .0906	PREPARATION OF EMERGENCY PERMIT APPLICATION
15A NCAC 07J .0907	NOTIFICATION OF ADJACENT RIPARIAN LANDOWNERS

History Note: Authority G.S. 113A-103(5)b.5; 113A-118 1.c.; 113-229 (e1);
 Eff. February 1, 1976;
 Amended Eff. December 1, 1985; August 1, 1983; September 8, 1980; July 31, 1980;
 Repealed Eff. July 1, 1989.

15A NCAC 07J .0908	REVIEW AND ISSUANCE OF EMERGENCY PERMIT
15A NCAC 07J .0909	LIMITATION OF EMERGENCY WORK

History Note: Authority G.S. 113A-118 1.c.; 113A-119; 113A-229(e1);
 Eff. September 8, 1980;
 Amended Eff. December 1, 1985; September 1, 1983; August 1, 1983;
 Repealed Eff. July 1, 1989.

SECTION .1000 - DREDGE AND FILL: REVIEW HEARING PROCEDURES

15A NCAC 07J .1001	WHO IS ENTITLED TO HEARING
15A NCAC 07J .1002	PARTIES
15A NCAC 07J .1003	PROCEDURES

History Note: Authority G.S. 113-229; 150B, Article 3; 150B-26;
 Eff. February 1, 1976;
 Amended Eff. December 1, 1982; August 30, 1980;
 Repealed Eff. July 1, 1989.

15A NCAC 07J .1004	HEARING OFFICER
15A NCAC 07J .1005	REQUEST FOR HEARING
15A NCAC 07J .1006	TIME FOR HEARING
15A NCAC 07J .1007	VENUE
15A NCAC 07J .1008	PARTIES
15A NCAC 07J .1009	INTERVENTION
15A NCAC 07J .1010	NOTICE
15A NCAC 07J .1011	HEARING OPEN TO PUBLIC
15A NCAC 07J .1012	PRE-HEARING CONFERENCE
15A NCAC 07J .1013	SIMPLIFICATION OF ISSUES
15A NCAC 07J .1014	STIPULATIONS
15A NCAC 07J .1015	SUBPOENAS
15A NCAC 07J .1016	DEPOSITIONS AND DISCOVERY
15A NCAC 07J .1017	BURDEN OF PROOF
15A NCAC 07J .1018	NO EX PARTE COMMUNICATION: EXCEPTIONS
15A NCAC 07J .1019	PRESENTATION OF EVIDENCE
15A NCAC 07J .1020	CONDUCT OF THE HEARING
15A NCAC 07J .1021	POST HEARING PROCEDURE
15A NCAC 07J .1022	DECISION
15A NCAC 07J .1023	RECORD OF DEPARTMENT ACTION AND HEARING
15A NCAC 07J .1024	JUDICIAL REVIEW

History Note: Authority G.S. 113-229; 150B-23 through 150B-28;
150B-31 through 150B-36; 150B-43;
Eff. February 1, 1976;
Amended Eff. August 30, 1980; January 1, 1979;
Repealed Eff. December 1, 1982.

SECTION .1100 - GENERAL PERMIT PROCEDURE

15A NCAC 07J .1101 PURPOSE

The purpose of this Section is to establish a procedure for issuing general permits for development having insignificant impacts on areas of environmental concern and which should not require public review and comment. These Rules are established according to G.S. 113A-118.1 and G.S. 113-229(C)(1) and will apply to projects requiring either Dredge and Fill and/or CAMA Major or Minor development permits. The CRC may, after following the procedures set forth in these Rules, issue general permits for certain categories of development which require Dredge and Fill and/or CAMA Major or Minor development permits. After a general permit is issued, individual activities falling within these categories may be further authorized by the procedures set forth in these Rules.

History Note: Authority G.S. 113A-107; 113A-118.1; 113-229(c1);
Eff. September 1, 1983;
Amended Eff. December 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .1102 CATEGORIES OF DEVELOPMENT

The Commission shall include as candidates for general permits only those activities that are substantially similar in nature that cause only minimal adverse environmental impacts when performed separately, and that will have only a minimal adverse cumulative effect on the environment. In identifying these categories, 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 on-site oversight of the development; and
- (5) the need for public review and comment on individual development projects.

History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124(c)(5); 113-229(c)(1);
Eff. September 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,
2018.

15A NCAC 07J .1103 DESIGNATION PROCEDURES

The staff shall prepare all information needed to establish each category of general permit. This may include a generic description of the development, anticipated cumulative impacts, projected number of individual projects, and permit histories. The staff shall prepare a draft permit to include a clear and accurate description of the development to be authorized, implementation or processing procedures, general conditions, and special conditions. The draft permit shall be reviewed and issued according to provisions in G.S. 113A-107.

Recommendations for consideration of specific activities for inclusion in a general permit category may be made in writing to the Commission by any individual, organization, or agency. The Commission will assign the request to the staff for evaluation according to the procedures of this Rule within 90 days of its receipt.

History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124(c)(5); 113-229(c)(1);
Eff. September 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,
2018.

15A NCAC 07J .1104 PERMIT MODIFICATION

The Commission may modify at any time any category of general permit. Modification shall be made according to the provisions of G.S. 113A-107. The Commission may also revoke any general permit at any time according to the provisions of G.S. 113A-107 if it is determined that the permit is no longer in the public interest.

History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124(c)(5); 113-229(c)(1);
Eff. September 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,
2018.

15A NCAC 07J .1105 APPLICATION PROCEDURES

Authorization to initiate development covered by the general permit shall comply with the procedures outlined in each permit. The procedures shall be established to explain in detail the application process, notification requirements, and permit fees.

History Note: Authority G.S. 113A-107; 113A-118.1; 113-229(c2);
Eff. September 1, 1983;
Readopted Eff. December 1, 2021.

15A NCAC 07J .1106 PERMIT CONDITIONS

Each general permit shall have a set of general and specific conditions. Additionally, the Division of Coastal Management may add conditions to each instrument of authorization if necessary to protect the public interest. The Division of Coastal Management may, on a case-by-case basis, override the general permit and require an individual application and review if this individual review is deemed to be in the public interest. Provisions for individual review by State agencies of requests for general permit authorization may be made for each category if this review is deemed necessary to protect coastal resources or other aspects of public interest.

History Note: Authority G.S. 113A-107; 113A-118.1; 113-229(c2); 113-229(e); 113A-120(b);
Eff. September 1, 1983;
Readopted Eff. December 1, 2021.

15A NCAC 07J .1107 PERMIT COMPLIANCE

All development authorized through the general permit must be done in compliance with all conditions listed on the permit. Development undertaken without a Coastal Area Management Act or Dredge and Fill permit or in violation of permit conditions or failure to comply with operational permit conditions shall be a violation subject to the penalties set out in G.S. 113A-126 or G.S. 113-229.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113-229(c2);
Eff. September 1, 1983;
Amended Eff. March 1, 1985;
Readopted Eff. December 1, 2021.*

15A NCAC 07J .1108 GENERAL PERMIT REVIEW

The Commission shall review each category of general permit on an annual basis. This review shall include compilation and evaluation of the number of projects approved in each category and the impacts of these projects. The Commission may modify or revoke any permit subject to this review according to the provisions of Rule .1104 of this Section. A written summary of this review shall be sent to each state and federal agency included in the normal permit review process.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113-229(c1);
Eff. September 1, 1983;
Amended Eff. December 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

SECTION .1200 – BEACH MANAGEMENT PLAN APPROVAL PROCEDURES

15A NCAC 07J .1201 BEACH MANAGEMENT PLAN APPROVAL

(a) A petitioner subject to a pre-project vegetation line pursuant to 15A NCAC 07H .0305 may petition the Coastal Resources Commission to approve a Beach Management Plan in accordance with the provisions of this Section. A "petitioner" shall be defined as:

- (1) Any local government;
- (2) Any group of local governments involved in a regional beach fill project; or
- (3) Any qualified homeowner's association defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one mile of ocean shoreline.

(b) A petitioner shall be eligible to submit a request to approve a Beach Management Plan after the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a pre-project vegetation line(s). For a pre-project vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the pre-project vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A Beach Management Plan applies to all pre-project vegetation lines within the Ocean Hazard Area of the petitioner's jurisdiction.

(d) A complete Beach Management Plan shall consist of a comprehensive document with supporting appendices and data that includes the following:

- (1) A review of all beach fill projects in the area of the Beach Management Plan including the initial large-scale beach fill project associated with the pre-project vegetation line, subsequent maintenance of the initial large-scale project(s), and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys, and a project footprint;
- (2) A review of the maintenance needed to achieve a design life of no less than 30 years of shore protection. The plan shall include anticipated maintenance event volume triggers and schedules, long-term volumetric sand needs, annual monitoring protocols, an analysis of the impacts or any erosion control structures, and any relevant maps, tables, diagrams, studies, or reports. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;
- (3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army

Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and

- (4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project, over the project design life, such as a dedicated percentage of occupancy taxes, special tax districts, or anticipated federal funding.

(e) Public Comment Requirements. The local jurisdiction shall provide an opportunity for public comments on the Beach Management Plan prior to submission to the Coastal Resources Commission for approval. Written comments on the Beach Management Plan shall be submitted by the local jurisdiction to the Division along with the request to approve the Beach Management Plan.

(f) A request to approve a Beach Management Plan shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(g) The Coastal Resources Commission shall consider a request to approve a Beach Management Plan no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;
Amended Eff. April 1, 2016;
Readopted Eff. September 1, 2021;
Amended Eff. August 1, 2022.*

15A NCAC 07J .1202 REVIEW OF THE BEACH MANAGEMENT PLAN APPROVAL REQUEST

(a) The Petitioner shall provide a summary of the Beach Management Plan to be presented to the Coastal Resources Commission. This summary shall include all of the elements required in 15A NCAC 07J .1201.

(b) The Division of Coastal Management shall provide the Commission a review of the Beach Management Plan including a recommendation to grant or deny the request. The Division shall provide the petitioner requesting the approval of a Beach Management Plan an opportunity to review the recommendation prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;
Readopted Eff. September 1, 2021;
Amended Eff. August 1, 2022.*

15A NCAC 07J .1203 PROCEDURES FOR APPROVING A BEACH MANAGEMENT PLAN

(a) At the meeting at which approval of a Beach Management Plan is considered by the Coastal Resources Commission, the following shall occur:

- (1) The Petitioner shall orally present a summary of the Beach Management Plan described in 15A NCAC 07J .1202; and
- (2) The Division of Coastal Management shall orally present its review of the Beach Management Plan and its recommendation to grant or deny the approval request.

(b) The Coastal Resources Commission shall approve a Beach Management Plan if the request contains the information required and meets the criteria presented in 15A NCAC 07J .1201(d)(1) through (d)(4), the Division of Coastal Management recommendation, and public comments on the Beach Management Plan submitted with the request to approve the Beach Management Plan. The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to approve or deny a Beach Management Plan is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;*

*Readopted Eff. September 1, 2021;
Amended Eff. August 1, 2022.*

15A NCAC 07J .1204 REVIEW OF BEACH MANAGEMENT PLANS

(a) Progress Reports. The petitioner that received a Beach Management Plan approval shall provide a progress report to the Coastal Resources Commission every five years from date the Beach Management Plan is approved. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide the petitioner with written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission.

(b) The Coastal Resources Commission shall review a Beach Management Plan approved under 15A NCAC 07J .1203 every five years from the initial authorization in order to renew its findings for the conditions defined in 15A NCAC 07J .1201(d) through (e). The Coastal Resources Commission shall also consider the following conditions:

- (1) Updates to the Beach Management Plan, including performance of past projects and maintenance events, changes in conditions, and design changes to future projects, provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;
- (2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and
- (3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.
- (4) Local governments with an unexpired Static Line Exception approved by the Commission may petition the Commission for approval of a Beach Management Plan by supplementing information required under the Static Line Exception to be compliant with the provisions of 15A NCAC 07J .1200 prior to or upon the expiration of the previously approved Static Line Exception.

(c) The Petitioner shall orally present a summary of the progress report the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. The Division of Coastal Management shall provide the Coastal Resources Commission with a review and recommendation of the progress report on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the recommendation prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;
Readopted Eff. September 1, 2021;
Amended Eff. August 1, 2022.*

15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF BEACH MANAGEMENT PLAN APPROVAL

(a) Beach Management Plan approval shall be revoked if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the Beach Management Plan is authorized, as defined in 15A NCAC 07J .1201(d)(1) through (d)(4), are not being met.

(b) In the event a progress report is not received by the Division of Coastal Management five years from either the initial approval of the Beach Management Plan or the previous progress report, the Beach Management Plan approval shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.

(c) The revocation or expiration of a Beach Management Plan approval shall be a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;
Readopted Eff. September 1, 2021;
Amended Eff. August 1, 2022.

15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH APPROVED BEACH MANAGEMENT PLANS

A list of CRC approved Beach Management Plans and the conditions under which the pre-project vegetation lines exist, including the date(s) the pre-project vegetation line was defined, shall be maintained by the Division of Coastal Management. A list of Beach Management Plans and the conditions under which the Plans exist, including the date the Plan was approved, the dates the progress reports were received, the design life of the large-scale beach fill project, and the potential expiration dates for the Beach Management Plans shall be maintained by the Division of Coastal Management. Both the pre-project vegetation line list and the Beach Management Plan list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;
Readopted Eff. September 1, 2021;
Amended Eff. August 1, 2022.

SECTION .1300 – DEVELOPMENT LINE PROCEDURES

15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE

15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE

15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT LINES

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
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