

SECTION .0300 - HEARING PROCEDURE

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

(a) Under G.S. 113A-121.1(a), only the following persons are entitled to appeal a permit decision by filing a petition for a contested case hearing as provided in 15A NCAC 07J .0302:

- (1) any applicant for a minor or major development permit; and
- (2) the Secretary in the case of a decision by a local official on a minor development permit.

(b) 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 with the Chairman of the Coastal Resources Commission. The hearing request shall be filed with the Director, Division of Coastal Management, Department of Environment and Natural Resources (DENR), 400 Commerce Avenue, Morehead City, NC 28557, and a copy thereof shall be filed with the Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001. The Commission hereby delegates to the Chairman the authority to determine whether persons other than those entitled to a hearing shall be granted a hearing. The Chairman shall grant a hearing upon finding that the criteria in G.S. 113A-121.1(b) have been satisfied. A person whose hearing request is granted may file a petition for a contested case hearing as provided in 15A NCAC 07J .0302. A denial of a request for a hearing may be appealed as provided in G.S. 113A-121.1(b).

History Note: Authority G.S. 113-229; 113A-118(c); 113A-121.1; 113A-122; 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.

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

(a) Any person who is entitled or authorized to appeal a permit decision under Rule .0301(a) may file a petition for a contested case hearing with Office of Administrative Hearings, 6714 Mail Service Center, Raleigh NC 27699-6714. The petition shall be filed within 20 days of the permit decision being appealed as provided in G.S. 113A-121.1(a).

(b) Any person who has been granted a hearing by the Chairman of the Coastal Resources Commission under Rule .0301(b) may file a petition for a contested case hearing with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714. The petition shall be filed within 20 days after the Chairman's decision on the hearing request as provided in G.S. 113A-121.1(b).

(c) 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.

(d) 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(c); 113A-121.1; 113A-122; 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.

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.

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.

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.

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

(a) Whenever possible, the Commission encourages the resolution of disputes over the grant or denial of CAMA permits and dredge and fill permits.

(b) The Commission hereby delegates to the director the authority to enter into settlements of appeals concerning CAMA permits and dredge and fill permits prior to the time the administrative law judge opens the hearing on the permit appeal. The director may enter into a settlement without the Commission's approval. Such a settlement shall not be considered a final commission decision, but shall be subject to appeal pursuant to G.S. 113A-121.1 and G.S. 113-229(f). The Department shall provide public notice of any settlement entered into prior to the opening of the administrative hearing in the same manner as it provides public notice of permit decisions.

(c) The Commission further delegates to the director the authority to enter into negotiations concerning the settlement of any permit appeal after the opening of the hearing on it. Any settlement after the opening of the hearing on an appeal must be submitted to the Commission for adoption or rejection. All parties to a proposed settlement agreement shall waive the time limitation in G.S. 113A-122(c) so as to prevent the decision being appealed from becoming effective before the Commission's consideration of the proposed settlement. The Commission's adoption of any settlement shall constitute a final commission decision under G.S. 113A-123.

*History Note: Authority G.S. 113A-120; 113A-122; 113A-124;
Eff. April 1, 1987;
Amended Eff. July 1, 1989; October 1, 1988.*