



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC-19-25

September 3, 2019

MEMORANDUM

TO: Coastal Resources Commission

FROM: Courtney Spears

SUBJECT: Fiscal Analysis for 15A NCAC 07J .0403; .0403 Development Period/Commencement Within Coastal Shorelines and Ocean Hazard AECs

At the February 2019 CRC meeting, the Commission approved amendments to 15A NCAC 7J .0403 and 7J .0403 to lengthen the initial expiration date for most new Major Permits to five years from the date of permit issuance; eliminate the ability to obtain a single two-year renewal when permitted development has not begun; lengthen the initial expiration date for publicly-sponsored, multi-phased beach nourishment projects to 10 years from the date of permit issuance, and allow for 10-year renewals and; eliminate the provisions of 15A NCAC 07J .0404(b), which allow for the circulation of renewal requests to commenting State agencies when the requests do not meet the criteria for permit renewal.

As currently written, 15A NCAC 07J .0403 requires that all issued Major permits expire on December 31st of the third year following permit issuance. For example, all Major permits issued in 2019 carry an expiration date of December 31, 2022. The number of active CAMA Major permits is increasing each year, as new permits are issued and permits for existing long-term development projects (i.e. subdivisions, large-scale-commercial development, multi-phased beach nourishment projects, maintenance dredging projects) continue to be renewed. The increasing number of active projects is leading to an additional workload for Division staff, as there is a corresponding increase in the number of permit renewals that must be processed each year.

The proposed amended rules for the development period commencement and extension would apply to local, state, and private entities. The Division of Coastal Management has reviewed an average of approximately 68 CAMA Major permit renewal requests per year in the past three years. Changes to the initial active period and renewal request process is anticipated to result in a



more equitable and predictable process.

The economic impacts of these proposed rule changes are potential financial benefits to local, state and private entities in terms of time and permit fees. Presently, applicants must pay a \$100 renewal request fee and develop a renewal request for what is essentially an “automatic” two year renewal. Applicants include local and state government agencies, and private entities. The adoption of this rule language would allow the applicant to have an initial active period of five or ten years, based on project type, resulting in a \$100 savings per applicant. On average, private property owners as a group would save \$2,100 per year and local governments as a group would save approximately \$100 per year. Consequently, the Division of Coastal Management would incur a cost of \$2,200 per year, on average (Table 1). Project applicants will also realize a time savings as the proposed amendments will eliminate the need to develop the initial renewal request. In addition, local, state, and federal agencies will realize a time savings by not having to review projects under the recirculation clause. The impact is not expected to be substantial.

The fiscal analysis has been approved by both the Department and OSBM. Staff recommends approval for public hearing.

Fiscal Analysis

15A NCAC 7J .0403 Development Period/Commencement/Continuation &
15A NCAC 7J .0404 Development Period Extension

Prepared by

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August 30, 2019

Basic Information

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| Agency | DEQ, Division of Coastal Management (DCM) Coastal Resources Commission |
| Citations and Titles | 15A NCAC 7J .0403 – Development Period/ Commencement/Enforcement 15A NCAC 7J .0404 – Development Period Extension |
| Description of the Proposed Rules | Section 7J .0403 defines the conditions under which development authorized by Coastal Area Management Act (CAMA) permits shall commence and continue. The proposed rule change would allow for the extension of the active period of most major permits from three to five years and for large-scale, publicly funded beach nourishment projects from three years to ten years. Section 07J .0404 defines the conditions under which a permit can be extended beyond the initial expiration date. The proposed rule change would eliminate the ability to obtain a single two-year renewal when permitted development has not begun, and eliminate the re-circulation of expired projects. Changes to these two sections would also clarify and consolidate the definition of “substantial development.” |
| Agency Contact | Courtney Spears Assistant Major Permits Coordinator, Wilmington Regional Office Courtney.Spears@ncdenr.gov (910) 796-7426 |
| Authority | 113A-118; 113A-119; 113A-119.1; 113A-124(c)(8) |
| Necessity | The Coastal Resources Commission is proposing to amend its administrative rules to lengthen the initial expiration date of most Major Permits and other minor changes to the permit renewal process. |
| Impact Summary | State government: Yes Local government: Yes Private entities: Yes Substantial impact: No |

Summary

In 1978, the Coastal Resources Commission (CRC) adopted 15A NCAC 07J .0403 and 15A NCAC 7J .0404 to define the commencement, continuation, and extension of development authorized by Coastal Area Management Act (CAMA) permits.

Over recent years, the Division of Coastal Management (DCM) has processed an increasing number of permit renewal requests, commensurate with the increase in coastal population and development. Currently, the Commission's rules for permit issuance and renewal allow for an inconsistent active time period. Major Permits are active until December 31st of the third year from the date of permit issuance and are allowed an automatic two year renewal. The proposed amendments would lengthen the initial active period to five years from the date of permit issuance, extending the permit active period and thereby incorporate the existing automatic renewal period. Additionally, DCM has seen an increase in the number of large, publicly sponsored, multi-phased beach nourishment projects. The proposed change would acknowledge the longer implementation period of these projects and allow for an initial active period of ten years, with an additional ten year renewal. This rule change would also eliminate a permit review recirculation clause and clarify the definition of "substantial development".

The fiscal impacts of this proposed rule change are benefits to state government in terms of efficiency in processing and staff time. While DCM would see an average of \$2,200 less in permit renewal fees, it is estimated that the loss of revenue would be offset by the savings in staff time involved in processing an "automatic" request. Other state agencies would also potentially experience a benefit by reducing the number of projects that would be reviewed through the recirculation provision.

The adoption of this rule language would allow the applicants, which include private entities, local governments, and other state agencies including North Carolina Department of Transportation (NC DOT), to save \$100 on the initial "automatic" permit renewal request fee. They would also experience a time savings from not having to develop and submit requests for an "automatic" permit action. Local governments and state agencies, including NC DOT, play a role in permit review, and by elimination of the recirculation clause would experience a savings in time to process those requests.

Description of Rule Amendment

Currently, 15A NCAC 07J .0403 requires that all Major permits expire on December 31st of the third year following the date of permit issuance. For example, all Major permits issued in 2019 carry an expiration date of December 31, 2022. 15A NCAC 07J .0404 allows for one automatic two-year permit renewal, with additional renewals available for projects where substantial development, either within or outside the Area of Environmental Concern, has begun and is continuing on a permitted project.

The number of active CAMA Major permits is increasing each year, as new permits are issued and permits for existing long-term development projects (i.e. subdivisions, large-scale-commercial development, multi-phased beach nourishment projects, maintenance dredging projects) continue to be renewed. The increasing number of active projects is leading to an additional workload for Division staff, as there is a corresponding increase in the number of

permit renewals that must be processed each year. To address the increased development and subsequent workload, the proposed rule change would lengthen the initial active period of most major permits and incorporate the “automatic” renewal. The amendments would also lengthen the initial active period of large, publicly funded beach nourishment projects, eliminate a permit review recirculation clause, and clarify the definition of substantial development.

The proposed amendments would change the initial expiration date for most new Major Permits to five years from the date of permit issuance, as opposed to the current expiration date of December 31st of the third year following permit issuance. This rule change would benefit permittees by giving them more time to initiate or complete their projects. This lengthened expiration date would also reduce workloads of Division staff, by reducing the number of renewal requests processed each year. Finally, by changing the expiration date calculation to five years from the date of permit issuance, all permits would be valid for the same amount of time, as opposed to the current system whereby the amount of time a permit is active is dependent on when during a given year the permit is issued. For example, a new permit issued in early January of 2019 will be valid until December 31, 2022 or almost 4 full years, whereas a new permit issued in late December of 2019 will also be valid until December 31, 2022, or slightly more than three years.

This change would also eliminate the ability to obtain a single two-year renewal when permitted development has not begun. Under existing rules, 15A NCAC 07J .0404(b), a single two-year renewal may be issued to a permit holder in cases where development has not been initiated prior to the original expiration date of the permit, essentially allowing a permit holder five years from the date of permit issuance to initiate the permitted development. The proposed rule change extending the expiration date of a permit to five years from the date of issuance effectively incorporates this two-year renewal, and eliminates the necessity that a permit holder apply for this first renewal.

The initial expiration date for publicly-sponsored, multi-phased beach nourishment projects would be lengthened to ten years from the date of permit issuance, and allow for 10-year renewals. This rule change would acknowledge the multi-phased nature of these types of projects, some of which are designed to be implemented for periods up to 50 years, by extending the original expiration date for these projects to ten years. Subsequent renewals would then be issued for a period of ten years.

The proposed changes would also eliminate the provisions of 15A NCAC 07J .0404(b), which allow for the circulation of renewal requests to commenting State agencies when the requests do not meet the criteria for permit renewal. Staff believe this provision is unworkable given the length of time some of these permits may have been active, possible alterations of site characteristics over the active life of the permit, and the lack of any defined criteria upon which to make a determination on whether or not to issue the renewal following agency re-circulation. In addition, the work involved in reviewing and compiling documentation that needs to be circulated to other state and federal agencies is, in many cases, similar to that required for the circulation of a new permit application.

Lastly, the changes would consolidate and clarify language relating to when “substantial development” on a project has begun for the purposes of authorizing renewals.

Impact Analysis

Private Entities:

The fiscal impact of the proposed rule changes are financial benefits to private entities in terms of both time and fees. Permit renewal applications for the “automatic” renewal are typically approved. There are no known significant consequences of no longer receiving and reviewing the information presented in a permit renewal request as it is unlikely that environmental conditions have changed to such a significant degree that there would be any environmental or public use impact issues. Projects authorized through the major permit process are routinely monitored through aerial surveillance and site visits conducted by field representatives, so any issues of these type are likely to be addressed through compliance and monitoring. The adoption of this rule language would allow the applicant to avoid paying the \$100 renewal fee and save time by not developing a request for an “automatic” renewal. Private entities applied for 170 renewals in the last three years.

NC Department of Transportation (NC DOT):

The fiscal impact of the proposed rule changes are financial benefits to NC DOT in terms of both time and fees. The adoption of this rule language would allow NC DOT to avoid paying the \$100 renewal fee and save time by not developing a request for an “automatic” renewal. As a reviewing agency, NC DOT would also save time and resources by reducing the number of projects reviewed by elimination of the recirculation clause. NCDOT applied for 2 renewals in the last three years.

Local Government:

The fiscal impact of the proposed rule changes are financial benefits to local governments in terms of both time and fees. The adoption of this rule language would allow local governments to avoid paying the \$100 renewal fee and save time by not developing a request for an “automatic” renewal. As a reviewing agency, local governments would also save time and resources by reducing the number of projects reviewed by elimination of the recirculation clause. Local governments applied for 28 renewals in the last three years.

State Government:

The fiscal impact of the proposed rule changes are potential financial benefits to State agencies in terms of both time and fees. The adoption of this rule language would allow state agencies to avoid paying the \$100 renewal fee and save time by not developing a request for an “automatic” renewal. As a reviewing agency, state agencies would also save time and resources by reducing the number of projects reviewed by elimination of the recirculation clause. State agencies, excluding NCDOT, applied for 4 renewals in the last three years.

Division of Coastal Management (DCM):

DCM and other state/federal permit review agencies will realize a time-savings benefit by not having to process requests for an “automatic” renewal. Based on a review of renewal requests over the last three years from June 2016 through June 2019, DCM processed a total of 205 renewal requests. Each renewal request includes a \$100 permit fee, so the total fees collected in

the three year period were approximately \$20,500. If the proposed changes were implemented, 66 of those renewals would not have been processed resulting in the loss of approximately \$6,600 in permit fees over of the three year period, or \$2,200 per year on average for 22 requests (Table 1). Given that the average processing time for a renewal request is roughly four hours, the reduction in permit fees would be mostly offset by the savings in staff time in processing those requests. There would be additional savings in staff time through the elimination of the recirculation clause as there is no permit fee associated with that request.

Cost/Benefits Summary

The proposed amended rules for the development period commencement and extension would apply to local, state, and private entities. The Division of Coastal Management has reviewed an average of approximately 68 CAMA Major permit renewal requests per year in the past three years. Changes to the initial active period and renewal request process is anticipated to result in a more equitable and predictable process.

The economic impacts of these proposed rule changes are potential financial benefits to local, state and private entities in terms of time and permit fees. Presently, applicants must pay a \$100 renewal request fee and develop a renewal request for what is essentially an “automatic” two year renewal. Applicants include local and state government agencies, and private entities. The adoption of this rule language would allow the applicant to have an initial active period of five or ten years, based on project type, resulting in a \$100 savings per applicant. On average, private property owners as a group would save \$2,100 per year and local governments as a group would save approximately \$100 per year. Consequently, the Division of Coastal Management would incur a cost of \$2,200 per year, on average (Table 1). Project applicants will also realize a time savings as the proposed amendments will eliminate the need to develop the initial renewal request. In addition, local, state, and federal agencies will realize a time savings by not having to review projects under the recirculation clause. The impact is not expected to be substantial.

Table 1. Fiscal Impact Summary

| Affected Party | Cost/Year | Savings/Year | Total/Year |
|--------------------------|-----------|-----------------------------------|---------------------------|
| Property Owners | \$0 | \$2,100 plus time savings | \$2,100 plus time savings |
| NC DOT | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$100 plus time savings | \$100 plus time savings |
| Division of Coastal Mgmt | \$2,200 | Staff time savings- up to \$2,200 | \$0 |

APPENDIX A

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

(a) New dredge and fill permits and CAMA permits, ~~excepting~~ 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 ten 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) ~~Pursuant to Subparagraph (a) of this Rule, a minor permit~~ CAMA minor permits authorizing beach bulldozing shall expire 30 days from the date of permit issuance ~~when issued to a property owner(s) issuance~~. Following permit expiration, the ~~applicant permit holder~~ is entitled to request an extension in accordance with Rule .0404(a) of this Section.

(c) Development After Permit Expiration Illegal. Any development ~~done 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 done to be undertaken~~ after permit expiration shall require either a new permit, or renewal of the original permit according to ~~15A NCAC 7J .0404 with the exception of Paragraph (e) of this Rule. 15A NCAC 7J .0404~~

(d) Commencement of Development in Ocean Hazard AEC. No development shall begin until the oceanfront setback requirement can be established. When the possessor of a permit or a ruling of exception is ready to begin ~~construction, he development, they~~ shall arrange a meeting with the appropriate permitting authority at the site to determine the oceanfront setback. This setback determination shall replace the one done at the time the permit was processed and approved and construction must begin within a period of 60 days from the date of that meeting. In the case of a ~~major~~ shoreline change within that ~~period-period~~, a new setback determination will be required before construction begins. Upon completion of the measurement, the permitting authority will issue a written statement to the permittee certifying the same.

~~(e) Continuation of Development in the Ocean Hazard AEC. Once development has begun under proper authorization, development in the Ocean Hazard AEC may continue beyond the authorized development period if, in the opinion of the permitting authority, substantial progress has been made and is continuing according to customary and usual building standards and schedules. In most cases, substantial progress 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.~~

~~(f)(e)~~ Any permit that has been suspended ~~pursuant to G.S. 113A-121.1 as a result of a contested case petition or~~ by order of superior court for a period longer than six months shall be extended at the ~~applicant's 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~~ Paragraph (a) or (b) of this Rule.

~~(g)(f)~~ An applicant A permit holder may voluntarily suspend development under an active permit that is the subject of judicial review by filing a written notice with the Department once the review has started. ~~An applicant A permit holder~~ shall obtain an extension of said permit if the permitting authority finds:

- (1) That the ~~applicant permit holder~~ notified the permitting authority in writing of the voluntary suspension;
- (2) The period during which the permit had been subject to judicial review is greater than six months;
- (3) The ~~applicant permit holder~~ filed a written request for an extension of the development period once the judicial review had been completed; and
- (4) The ~~applicant permit holder~~ undertook no development after filing the notice of suspension. The period of permit extension shall be equivalent to the length of the judicial review proceeding, but not to exceed the development period authorized under Paragraph (a) of this Rule.

History Note: Authority G.S. 113A-118;

Eff. March 15, 1978;

Amended Eff. August 1, 2002; April 1, 1995; July 1, 1989; March 1, 1985; November 1, 1984.

15A NCAC 07J .0404 DEVELOPMENT PERIOD EXTENSION

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

(b) ~~Where no development has been initiated during the development period, the permitting authority shall extend the authorized development period for no more than two years upon receipt of a signed and dated request from the applicant containing the following:~~

- (1) a statement of the intention of the applicant to complete the work within a reasonable time;
- (2) a statement of the reasons why the project will not be completed before the expiration of the current permit;
- (3) 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;
- (4) notice of any change in ownership of the property to be developed and a request for transfer of the permit if appropriate; and
- (5) a statement that the project is in compliance with all conditions of the current permit.

Where substantial development, either within or outside the AEC, has begun and is continuing on a permitted project, the permitting authority shall grant as many two year extensions as necessary to complete the initial development. For the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permittee 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 purposes of residential subdivision, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial development. Renewals for maintenance and repairs of previously approved projects may be granted for periods not to exceed 10 years.

(e) When an extension request has not met the criteria of Paragraph (b) of this Rule, the Department may circulate the request to the commenting state agencies along with a copy of the original permit application. Commenting agencies will be given three weeks in which to comment on the extension request. Upon the expiration of the commenting period the Department will notify the applicant promptly of its actions on the extension request.

(d) Notwithstanding Paragraphs (b) and (e) 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 to the maximum extent practical by the permitting authority in making a decision on an extension request.

(e) The applicant for a major development extension request must submit, with the request, a check or money order payable to the Department in the sum of one hundred dollars (\$100.00).

(f) Modifications to extended permits may be considered pursuant to 15A-NCAC 07J .0405.

(b) All other CAMA permits may be extended where substantial development, either within or outside the AEC, has begun and is continuing. The permitting authority shall grant as many two-year extensions as necessary to complete the initial development, with the exception that projects involving publicly-sponsored, multi-phased beach nourishment projects, shall 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 10 years. For the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permittee 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. 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 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 if appropriate; and
- (4) a statement that the project is in compliance with all conditions of the current permit

(d) The applicant for a major development extension request must submit, with the request, a check or money order payable to the Department in the sum of one hundred dollars (\$100).

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