



NORTH CAROLINA
Environmental Quality

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Governor

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Director

November 6, 2019

MEMORANDUM

CRC-19-36

TO: Coastal Resources Commission
FROM: Jonathan Howell
SUBJECT: Refinement of Amendments to 15A NCAC 07J .0403; .0403 Development Period/Commencement & Development Period Extension

At the September 2019 CRC meeting, the Commission approved the fiscal analysis associated with 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.

Since that meeting, the Division has encountered several situations where a CAMA Major permit was about to expire and there was some question as whether enough work had been completed in order to meet the criteria for renewal. As these were fairly large projects that were delayed due to the recession, the Division utilized the provisions of 7J .0404(c) and (d) to recirculate the permits to the applicable review agencies for any changes in rules or site conditions that would preclude renewal of the permit. In one case, the US Army Corps of Engineers objected based on changes in site conditions therefore requiring a new permit due to required modifications.

While the Division believes applicants and review agencies will realize a time savings as the proposed amendments will eliminate the need to develop a new application, DCM has solicited comment on this process from the reviewing agencies.

I will report on the comments from other agencies and discuss the refinements to these amendments at the upcoming meeting in Emerald Isle.



PROPOSED AMENDMENT TO 15A NCAC 7J .0403 & 7J .0404 NOVEMBER 6, 2019

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)~~(c) 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.

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.*

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.

(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.

~~(e)~~(d) 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~~30 days 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)~~(e) Notwithstanding Paragraphs (b) and ~~(e)~~(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 to the maximum extent practical by the permitting authority in making a decision on an extension request.

~~(e)~~(f) 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.

*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.*