

## **Fiscal & Regulatory Impact Analysis**

### **Excavation of Upland Basins**

Amendments to 15A NCAC 7H .1501 & .1505

General Permit for Excavation within or Connecting to Existing Canals, Channels, Basins or  
Ditches in Estuarine Waters, Public Trust Waters, and Estuarine Shoreline AECs  
Purpose & Specific Conditions

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## Basic Information

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Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission (CRC).
Title	General Permit for Excavation within or Connecting to Existing Canals, Channels, Basins or Ditches in Estuarine Waters, Public Trust Waters, and Estuarine Shoreline AECs
Citation	15A NCAC 7H .1501 & .1505
Description of the Proposed Rule	7H .1500 authorizes excavation within existing canals, channels, basins and ditches in estuarine and public trust waters for the purpose of maintaining previous water depths and creating new boat basins from non-wetland areas that will be used for private, non-commercial activities. The permit is limited to development off of existing manmade systems.
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Authority	113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(c1).
Necessity	The CRC is proposing to amend its rules governing excavation of upland basins. The CRC is seeking to provide financial and administrative relief to applicants who wish to perform upland excavation in conjunction with stabilization of the basin shoreline. The amendments will allow both activities to occur under a single General Permit instead of two.
Impact Summary	State government: Yes Local government: No Substantial impact: No Federal government: No Private property owners: Yes

## Summary

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The CRC is proposing to amend its rules in section 7H .1500 on obtaining a General Permit for Excavation to:

- 1) allow for the construction of a bulkhead around the newly excavated boat basin,
- 2) allow for excavation of boat basins adjacent to primary nursery areas with coordination with the appropriate fishery resource personnel, and
- 3) extend the time frame of the permit from 90 days to 120 days to provide greater flexibility in the use of the General Permit associated with upland boat basins.

Currently under the CRC's rules, construction of a boat basin up to 50' by 50' off a manmade system is allowable under this permit. Generally this means the property owner is digging up their own high ground to put in a boat slip and in most cases the newly excavated area is bulkheaded to prevent sloughing of the bank into the basin. Also under the current rules, a bulkhead general permit is also required in addition to the excavation general permit resulting in a total permit fee of \$800 for the work. In addition, this general permit does not allow for any new basin excavation within or with connections to Primary Nursery Areas (PNA). After consulting with staff from the NC Wildlife Resources Commission as well as DCM's Fishery Resource Specialists, it was the consensus of the aforementioned agency staff that new excavation in a PNA could be allowable, with coordination to determine whether any type of moratorium should be required for the project. A third component that was discussed at the last CRC meeting was modifying the expiration date of this general permit from the current 90 days to 120 days to make it consistent with other general permits.

Based on a review of permitting activity over the past six years, a total of three projects would have been eligible to receive the benefit of conducting both activities under the single general permit. Staff does not anticipate any increased rate of utilization following the amendments.

The economic impacts of this proposed rule change are potential benefits to property owners will be a \$400 saving in permit fees per project. Property owners will also receive a time benefit as the general permit will be valid for 120 days instead of 90. Total cost savings will be \$1,200 over six years, or an average of \$200 per year. Assuming an annual maximum savings of \$200, the 10-year net present value of the proposed rule change is approximately \$1,400.

These amendments will have no impact on Department of Transportation projects, local governments or the federal government. There will be an insignificant impact on Division of Coastal Management permit receipts.

The proposed effective date of these amendments is July 1, 2015.

## Description of Rule Amendment

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15A NCAC 7H SECTION .1500 is the section title and the agency is amending to include the changes discussed above, as well as reformatting it and clarifying that the section applies to the Coastal Shoreline Area of Environmental Concern:

- 7H .1501 is being amended for grammar.

- 7H .1502 is being amended to extend the permit validity from 90 days to 120 days, to be consistent with the CRC's other general permits.
- 7H .1504 is being amended to allow new basins with connections to primary nursery areas (PNAs), subject to coordination with the Division of Marine Fisheries or Wildlife Resources Commission. Staff does not recall any proposed basin excavation projects that were denied because they would have connected to PNAs; therefore, this amendment merely codifies the existing practice of coordinating with the appropriate agencies in order to permit the proposed development. The agency is also amending this rule to reflect that the Division of Marine Fisheries is the agency that sets closure policy for shellfish waters.
- 7H .1505 is being amended for the following reasons:
  1. To clarify that the agency will use the definition of submerged aquatic vegetation that is adopted by the Marine Fisheries Commission;
  2. To remove the provision that the Division of Coastal Management establishes development moratoria to protect biological activity;
  3. To codify that excavation may be permitted within or with connections to PNAs following consultation with the Division of Marine Fisheries of the Wildlife Resources Commission;
  4. To allow for the construction of bulkheads to stabilize the basin shoreline under the same general permit;
  5. To establish the maximum waterward alignment of bulkheads under this general permit;
  6. To codify allowable bulkhead materials;
  7. To establish sources and procedures for backfilling bulkheads, consistent with general permit 7H .1100; and
  8. To establish the maximum bulkhead length that can be permitted under this general permit. The maximum total length that can be constructed under this general permit is 500 feet, consistent with general permit 7H .1100.

## **Cost or Neutral Impacts**

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### Private Property Owners:

The proposed rule amendments would apply to riparian property owners seeking a Coastal Area Management Act (CAMA) permit for the excavation of upland basins in conjunction with shoreline stabilization. In the past six years, there have been approximately three projects that would have been eligible to receive a single permit for the two activities. The average number of permit applications over this timeframe (0.5 per year) is considered to be typical and it is assumed that this rate will continue into the future. A general permit under 7H .1100 for the construction of a bulkhead for shoreline stabilization is \$400, while a permit for a riprap revetment under the same rule is either \$200 or \$400 depending on the location of the revetment relative to normal high water or normal water level. For the purpose of this analysis staff assumes that bulkheads will continue to be the stabilization method most commonly used in conjunction with upland basin excavation.

In order to estimate the potential cost savings to property owners, it is assumed that the property owners who perform upland basin excavations will always choose to install bulkheads at the

same time. The \$400 difference in permit fees is estimated to save property owners \$200 per year. No other cost savings to private property owners is anticipated.

Consistent with other general permits, development activity under this general permit will be extended from 90 days to 120 days. The additional 30 days is an added convenience to property owners, but a financial impact of the additional time cannot be quantified.

#### NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, the agency declares that the proposed amendments to 15A NCAC 7H .1500 will not affect environmental permitting for the NC Department of Transportation. While NCDOT would be eligible for the general permit and its associated uses, it is unlikely that NCDOT will be involved in such a project. In the past six years, there have been no permits issued to NCDOT for this activity.

#### Local Government:

While local governments would be eligible for the general permit and its associated uses, they are typically not involved in projects of this scale. In the past six years, there have been no general permits issued to local governments for this activity. Local governments do not receive revenues from general permit application fees, and will not experience any loss of revenue from this action.

#### Division of Coastal Management:

The Division of Coastal Management's permit review process will not be changed by these amendments as property owners will still need to obtain a CAMA general permit. The Division will experience a \$200 per year decrease in permit receipts but this is not seen as significant, and will realize a modest time-savings benefit by not having to review two separate applications and issue two separate permits. This streamlining is consistent with the intent of the General Permit process.

### **Cost/Benefits Summary**

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#### Private Citizens:

The amended basin excavation rule would apply when riparian property owners are seeking a Coastal Area Management Act (CAMA) permit for the construction of an upland basin that also includes the construction of an erosion control structure typically permitted under 7H .1100. Based on a review of CAMA Major Permits for the past six years, a total of three projects could have benefitted from having both activities authorized under a single permit.

The economic impacts of this proposed rule change are potential benefits to property owners which will be an average of \$200 per year in permit fees. Property owners will also receive a time benefit as the time allowed for construction under general permit 7H .1500 will be extended from 90 days to 120 days. Assuming an annual maximum savings of \$200, the 10-year net present value of the proposed rule change is approximately \$1,400.

## APPENDIX A

### **SECTION .1500 - GENERAL PERMIT FOR EXCAVATION WITHIN OR CONNECTING TO EXISTING CANALS, CHANNELS, BASINS, OR DITCHES IN ESTUARINE WATERS, PUBLIC TRUST WATERS, CANALS, CHANNELS, BASINS, OR DITCHES IN ESTUARINE WATERS, PUBLIC TRUST WATERS, AND ESTUARINE COASTAL SHORELINE AEC'S AECS**

#### **15A NCAC 07H .1501 PURPOSE**

This permit will allow excavation within existing canals, channels, basins and ditches in estuarine and public trust waters for the purpose of maintaining previous water depths and creating new boat basins from non-wetland areas that will be used for private, non-commercial activities. This general permit ~~is being~~ was developed according to the procedures outlined in Subchapter 7J .1100, and ~~will apply~~ applies to the estuarine waters and public trust waters areas of environmental concern.

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);  
Eff. July 1, 1984;  
Amended Eff. December 1, 1987.  
Amended Eff. July 1, 2015.*

#### **15A NCAC 07H .1502 APPROVAL PROCEDURES**

(a) The applicant must contact the Division of Coastal Management and complete an application form requesting approval for development. Applicants shall provide their name and address, the site location and the dimensions of the project area.

(b) The applicant must provide:

- (1) Confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) Confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice should instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within ten days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff will review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the applicant will be notified that he must submit an application for a major development permit.

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to inspect and mark the proposed area of excavation and spoil disposal. Written authorization to proceed with the proposed development can be issued during this site visit. All excavation must be completed within ~~90~~ 120 days of the date of permit issuance, or the general authorization expires.

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);  
Eff. July 1, 1984;  
Amended Eff. January 1, 1990; December 1, 1987.  
Amended Eff. July 1, 2015.*

#### **15A NCAC 07H .1504 GENERAL CONDITIONS**

(a) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time necessary to ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(b) This general permit will not be applicable to proposed maintenance excavation when the Department determines that the proposed activity will adversely affect adjacent property.

(c) This permit will not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

~~(d) New basins within or with connections to primary nursery areas are not allowed.~~

~~(e)~~(d) No new basins will be allowed that result in closure of shellfish waters according to the closure policy of the Division of ~~Environmental Health~~ Marine Fisheries.

~~(f)~~(e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization, nor, to abide by regulations adopted by any federal or other state agency.

~~(g)~~(f) Development carried out under this permit must be consistent with all local requirements, AEC rules, and local Land Use Plans current at the time of authorization.

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);  
Eff. July 1, 1984;  
Amended Eff. May 1, 1990; December 1, 1987;  
RRC Objection due to ambiguity Eff. May 19, 1994;  
Amended Eff. August 1, 1998; July 1, 1994.  
Amended Eff. July 1, 2015.*

### 15A NCAC 07H .1505 SPECIFIC CONDITIONS

Proposed maintenance excavation must meet each of the following specific conditions to be eligible for authorization by this general permit.

- (1) New basins will be allowed only when they are located entirely in highground and join existing manmade canals or basins.
- (2) New basins will be no larger than 50' in either length or width and no deeper than the waters they join.
- (3) New basins must be for the private non-commercial use of the land owner.
- (4) Maintenance excavation must involve the removal of no more than 1,000 cubic yards of material as part of a single and complete project.
- (5) All excavated material must be placed entirely on high ground above the mean high tide or ordinary high water line, and above any marsh or other wetland.
- (6) All spoil material must be stabilized or retained so as to prevent any excavated material from reentering the surrounding waters, marsh or other wetlands.
- (7) The proposed project must not involve the excavation of any marsh, submerged aquatic vegetation (as defined by the Marine Fisheries Commission), or other wetlands.
- (8) Maintenance excavation must not exceed the original dimensions of the canal, channel, basin or ditch and in no case be deeper than 6 feet below mean low water or ordinary low water, nor deeper than connecting channels.
- ~~(9) No excavation may occur during times designated by the N.C. Division of Coastal Management for protection of fish, shellfish or wildlife resources.~~
- ~~(10)~~(9) No maintenance excavation may take place within prime shellfish areas as designated by the N.C. Division of Marine Fisheries.
- ~~(11)~~(10) Proposed excavation must not promote or provide the opportunity for a change in existing land use at the time of project review.
- ~~(12)~~(11) New basins and canals must maintain required setbacks between septic tank systems and surface waters.
- (12) Maintenance excavation as well as excavation of new basins shall not be allowed within or with connections to primary nursery areas without prior approval from the Division of Marine Fisheries or Wildlife Resources Commission (whichever is applicable).
- (13) Bulkheads shall be allowed as a structural component on one or more sides of the permitted basin to stabilize the shoreline from erosion.
- (14) The bulkhead shall not exceed a distance of two feet waterward of the normal high water or normal water level at any point along its alignment.
- (15) Bulkheads shall be constructed of vinyl or steel sheet pile, concrete, stone, timber, or other suitable materials approved by the Division of Coastal Management.
- (16) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208. The bulkhead shall be constructed prior to any backfilling activities and shall be structurally tight so as to prevent seepage of backfill materials through the structure.
- (17) Construction of bulkhead authorized by this general permit in conjunction with bulkhead authorized under 15A NCAC 07H .1100 shall be limited to a combined maximum shoreline length of 500 feet.

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);  
Eff. July 1, 1984;  
Amended Eff. September 1, 1988; December 1, 1987.  
Amended Eff. July 1, 2015.*