SUBCHAPTER 7J - PROCEDURES FOR PROCESSING AND ENFORCEMENT OF MAJOR AND MINOR DEVELOPMENT PERMITS, VARIANCE REQUESTS, APPEALS FROM PERMIT DECISIONS, AND DECLARATORY RULINGS

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.

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 7H, "State Guidelines for Areas of Environmental Concern."

(2) "Department" (DENR) means the North Carolina Department of Environment and Natural Resources.

(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

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.

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 7J .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 7J .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.

15A NCAC 07J .0203 PREPARATION OF WORK PLATS

(a) General. Project plans or work plats must include a top or planview, a cross-sectional view, and a location map. All plats must have the standard north arrow. North should be at the top of the plat. The prints must be neat and sufficiently clear to permit photographic reproduction. Originals are preferred as copies are often found to be unacceptable. The applicant should use as few sheets as necessary to show clearly what is proposed. Work plats must be accurately drawn to scale. A scale of 1" = 200' or less is normally required in order that project detail can be easily understood.
(b) Details of Work Plats

(1) Topview or Planview Plats. Such drawings must show existing and proposed features such as dune systems, shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas, type and location of sewage treatment facilities and effluent outlets. Existing water depths must be indicated using mean low water as base or zero. These can be shown either as contours or spot elevation. Care should be used in indicating which features are existing and which are proposed. Property boundaries, as they appear on the deed, and the names of adjacent property owners must be shown on the detailed plat. The work plat must clearly show any areas to be excavated and exact locality for disposal of the excavated material. When fill material is to be placed behind a bulkhead or dike, the plan must be sufficiently detailed to show the exact location of such bulkheads or dikes, and the adequacy of the bulkhead or dike to confine the material. Drawings must indicate approximate mean low and mean high water lines and the presence of marsh in the area of proposed work. In areas where the difference in daily low and high tides is less than six inches, only an average water level must be indicated.

(2) Cross-Section Drawing. A cross-sectional diagram showing depth and elevation of proposed work relative to existing ground level -- mean low and mean high water line must be included in the plan. The mean low water must be the reference for water depths and land elevations (i.e., mean low water should be depicted as "Elevation 0.0 MLW"). First floor elevations relative to mean sea level must be shown for any proposed buildings.

(3) Location Map. A map of small scale showing the location of the proposed work is also required. The location map must provide adequate information to locate the project site.

(4) Title of Drawing. Each drawing must have a simple title block to identify the project or work, and shall include name of applicant, date the plat was prepared, and scale of the plat. The date of any revisions must be clearly noted. The applicant must also include the name of the person who drew the plat.

(c) Applications are often made for permits to authorize projects that have a portion of the development outside Areas of Environmental Concern. Some information concerning plans for development outside AECs is necessary to determine compatibility with the local Land Use Plan and to be reasonably sure that such development will not adversely impact AECs. Therefore, any application for a CAMA or Dredge and Fill permit shall include, at a minimum, the following information:

(1) detailed information on any development located in or directly impacting an AEC;

(2) a plat showing the entire tract of land to be developed and possible access or roadway locations;

(3) maps or statements concerning the location of wetlands within the project area to the extent that a wetlands examination has been made by a private consultant or government agency. Each developer of a project is urged, for his own protection and planning, to procure such information prior to submission for a CAMA permit;

(4) a narrative description of the proposed development that shall include, at a minimum, the following information:

(A) the character of the development (i.e. residential, commercial, recreational, etc.);

(B) the maximum number of residential living units that will be permitted;

(C) the maximum acreage that will be utilized for non-residential purposes;

(D) a statement as to whether wastewater treatment is to be by municipal system, septic tank, or other on-site treatment system. A general description of any on-site treatment system shall be included;

(E) a statement that access, as required by all land use regulations, is available through the site to the Area of Environmental Concern without crossing any Section +404= wetland or, if such a crossing is required, a statement that said crossing is properly authorized. If the site contains significant wetlands, such statement may be required from a qualified private consultant or government agency, based on an examination of the property by such private consultant or government agency. The CAMA permit when issued may be conditioned upon the procurement of any required wetlands permit, if the need for such is disclosed by such statement;

(5) any maps or plans that have been prepared to meet other regulatory requirements such as stormwater management and sedimentation and erosion control.

Following review of the permit application, including the aforementioned supporting data (Subparagraphs 1-5), a permit may be issued conditioned upon compliance with the development parameters provided in the narrative statement accompanying the application. Any subsequent violation of these narrative standards as incorporated within the permit shall be a permit violation. No subsequent permit, permit modification, or other agency approval shall be required for any subsequent work performed outside the Area of Environmental Concern as long as such work is within the parameters described in the narrative statement presented with the permit, and included in the permit conditions. Any subsequent change in the development which changes the parameters of the narrative, statement shall be submitted to the staff, but no new permit or permit modification shall be required unless staff finds that the changes would have reasonable expectation of adversely affecting an Area of Environmental Concern or rendering the project inconsistent with Local Land Use Plans. Nothing in this Rule would prohibit an applicant from proceeding with work outside an AEC that cannot reasonably be determined to have a direct adverse impact on the AEC while a permit application for work in the AEC is pending provided that all other necessary local, state, and federal permits have been obtained.

History Note: *Authority G.S. 113A-119; 113A-124;*
Eff. March 15, 1978;
Amended Eff. July 1, 1989.

15A NCAC 07J .0204 PROCESSING THE APPLICATION

(a) On receipt of a CAMA major development and/or dredge and fill permit application by the Department, a letter shall be sent to the applicant acknowledging receipt.

(b) Application processing shall begin when an application is accepted as complete. Before an application will be accepted as complete, the following requirements must be met;

(1) a current application form must be submitted;

(2) all questions on the application form must be completed or the letters "N/A" must be placed in each section that does not apply;

(3) an accurate work plan as described in 15A NCAC 7J .0203 herein must be attached to all CAMA major development and/or dredge and fill permit applications;

(4) a copy of a deed or other instrument under which the applicant claims title must accompany a CAMA major development and/or dredge and fill permit application;

(5) notice to adjacent riparian landowners must be given as follows:

(A) Certified return mail receipts (or copies thereof) indicating that adjacent riparian landowners (as identified in the permit application) have been sent a copy of the application for the proposed development must be included in a CAMA major development and/or dredge and fill permit application. Said landowners have 30 days from the date of notification in which to comment. Such comments will be considered by the Department in reaching a final decision on the application.

(B) For CAMA minor development permits, the applicant must give actual notice of his intention to develop his property and apply for a CAMA minor development permit to all adjacent riparian landowners. Actual notice can be given by sending a certified letter, informing the adjoining property owner in person or by telephone, or by using any other method which satisfies the Local Permit Officers that a good faith effort has been made to provide the required notice;

(6) the application fee must be paid as set out in this Subparagraph:

(A) Major development permit - Application fees shall be in the form of a check or money order payable to the Department. The application fee for private, non-commercial development shall be two hundred fifty dollars ($250.00). The application fee for a public or commercial project shall be four hundred dollars ($400.00).

(B) Minor development permit - Application fees shall be in the form of a check or money order payable to the permit-letting agency in the amount of one hundred dollars ($100.00). Monies so collected may be used only in the administration of the permit program;

(7) any other information the Department or local permit officer deems necessary for a review of the application must be provided. Any application not in compliance with these requirements will be returned to the applicant along with a cover letter explaining the deficiencies of the application and will not be considered accepted until it is resubmitted and determined to be complete and sufficient. If a local permit officer receives an application for a permit that the local permit officer lacks authority to grant, the permit officer shall return the application with information as to how the application may be properly considered; and

(8) for development proposals subject to review under the North Carolina Environmental Policy Act (NCEPA), G.S. 113A-100 et. seq., the permit application will be complete only on submission of the appropriate environmental assessment document.

(c) Upon acceptance of a major development and/or dredge and fill permit as complete, the Department shall send a letter to the applicant setting forth the data on which acceptance was made.

(d) If the application is found to be incomplete or inaccurate after processing has begun or if additional information from the applicant is necessary to adequately assess the project, the processing shall be terminated pending receipt of the necessary changes or necessary information from the applicant. During the pendency of any termination of processing, the permit processing period shall not run. If the changes or additional information significantly alters the project proposal, the application shall be considered new and the permit processing period will begin to run from that date.

(e) Any violation occurring at a proposed project site for which an application is being reviewed shall be processed according to the procedures in 15A NCAC 7J .0408 - 0410. If the violation substantially altered the proposed project site, and restoration is deemed necessary, the applicant shall be notified that processing of the application will be suspended pending compliance with the notice of required restoration. Satisfactory restoration of any unauthorized development that has substantially altered a project site is deemed necessary to allow a complete review of the application and an accurate assessment of the project's potential impacts. The applicant shall be notified that permit processing has resumed, and that a new processing deadline has been established once the required restoration has been deemed satisfactory by the Division of Coastal Management or Local Permit Officer.

(f) If during the public comment period a question is raised as to public rights of access across the subject property, the Division of Coastal Management shall examine the access issue prior to making a permit decision. Any individual or governmental entity initiating action to judicially recognize a public right of access must obtain a court order to suspend processing of the permit application. Should the parties to legal action resolve the issue, permit processing shall continue.

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.

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 OF THE PROPOSED DEVELOPMENT

Within a reasonable time after receiving an application for a major development permit, a significant modification to an application for a major permit, or an application to modify substantially a previously issued major permit, the Division of Coastal Management shall issue public notice of the proposed development as provided in G.S. 113A-119(b). Any citizen or group will, upon request, be promptly sent a copy of the application upon payment of a reasonable fee to cover costs of copying, handling, and posting.

History Note: *Authority G.S. 113A-119(b);*
Eff. March 15, 1978;
Amended Eff. January 1, 1990; October 1, 1988; November 1, 1983.

15A NCAC 07J .0207 AGENCY REVIEW/COMMENTS: MAJOR DEVELOPMENT/DREDGE AND FILL

(a) In order to determine the impact of the proposed project, the Department shall prepare a field report on each major development and/or dredge and fill permit application accepted for processing. Such report shall be prepared after an on-site investigation is made, preferably in the presence of the applicant or his agent. The report will include such topics as project location, environmental setting, project description and probable environmental impact but will not include recommendations of the office.

(b) The Department will circulate major development permit applications to the several state review agencies having expertise in the criteria enumerated in G.S. 113A-120.

(c) The Department will circulate dredge and fill permit applications to the several state review agencies having expertise in those matters enumerated in G.S. 113- 229(e) (1) - (5).

(d) Each reviewing agency may make an independent analysis of the application and submit recommendations and comments to the Department. Such recommendations and comments will be considered by the Department in taking action on a permit application.

(e) Each reviewing agency may request additional information (including Stormwater Management Plans) from the applicant through the Division of Coastal Management if such information is deemed necessary for a thorough and complete review of the application. The applicant will be notified of the requirement for additional information and permit processing will be suspended according to 15A NCAC 7J .0204(d).

(f) The Division of Coastal Management is one of the state agencies that comments on dredge and fill project applications. In its role as a commenting agency the Division will use criteria in 15A NCAC 7H and local land use plans to assess whether to recommend permit issuance, permit issuance with conditions, or permit denial. Other commenting state agencies will make assessments, in accordance with Paragraph (c) of this Rule.

History Note: *Authority G.S. 113-229; 113A-124(a)(1);*
Eff. March 15, 1978;
Amended Eff. July 1, 1989; October 1, 1988; September 1, 1985; November 1, 1984.

15A NCAC 07J .0208 PERMIT CONDITIONS

(a) Each of the several state review agencies may submit specific recommendations regarding the manner in which the requested work should be carried out and suggest reasonable limitations on the work in order to protect the public interest

with respect to the factors enumerated in G.S. 113A-120 and/or G.S. 113-229(c). The several state review agencies also may submit specific recommendations regarding limitations to be placed on the operation and/or maintenance of the completed project, as necessary to ensure continued protection of the public interest with respect to those factors. Such limitations may be recommended by the Department or commission to be imposed on the project in the form of "permit conditions". Upon the failure of the applicant to appeal a permit condition, the applicant will be deemed to have amended his permit to conform to the conditions imposed by the Department. Compliance with operational and/or maintenance conditions must continue for the life of the project.
(b) The local permit officer may condition a minor development permit upon amendment of the proposed project to take whatever measures may be reasonably necessary to protect the public interest with respect to the factors enumerated in G.S. 113A-120. The applicant must sign the conditioned grant as an indication of amendment of the proposed project in a manner consistent with the conditions set out by the local permit officer before the permit shall become effective.
(c) Failure to comply with permit conditions constitutes a violation of an order of the Commission under G.S. 113A-126.

History Note: *Authority G.S. 113A-120(b); 113A-124(a)(1); 113A-124(c)(5);*
Eff. March 15, 1978;
Amended Eff. March 1, 1985; November 1, 1984.

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 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 Department may condition issuance of permits on such conditions as are considered necessary to ensure compliance with the applicable 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 applicable 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.

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 replacements 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 cost to do the work exceeds 50 percent of the market value of an existing structure immediately prior to the time of damage or the time of request. Market value and costs are determined as follows:

(a) Market value of the structure does not include the value of the land, value resulting from the location of the property, value of accessory structures, or value of other improvements located on the property. Market value of the structure shall be determined by the Division based upon information provided by the applicant using any of the following methods:

(i) appraisal;
(ii) replacement cost with depreciation for age of the structure and quality of construction; or
(iii) 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 and any improvements that the owner chooses to construct. The cost shall be determined by the Division utilizing any or all of the following:
(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. 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.

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 will not be enlarged beyond its original dimensions;
(2) the structure will serve the same or similar use;
(3) there are no practical alternatives for replacing the structure to provide the same or similar benefits 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.

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.

SECTION .0400 - FINAL APPROVAL AND ENFORCEMENT

15A NCAC 07J .0401 FINAL DECISION

(a) The Commission shall make a final decision on a permit appeal at a regularly scheduled meeting.
(b) The decision must be made by concurrence of a majority of those present.
(c) The parties shall have 30 days following the date of the recommended decision of the administrative law judge to file written exceptions with the Commission, and the Commission shall not make a final decision concerning an appeal without giving the parties an opportunity to file such exceptions. If all parties consent, the 30-day period may be shortened or waived.
(d) The Commission shall affirm, modify, or overrule the recommended findings and conclusions of the administrative law judge as provided in G.S. 150B-36.

History Note: Authority G.S. 113-229; 113A-118(c); 113A-122(b)(10); 113A-122(c); 113A-124;
Eff. March 15, 1978;
Amended Eff. October 1, 1988; November 1, 1984; November 1, 1983; August 1, 1983.

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

(a) In making a final decision on a permit appeal, the Commission shall consider only the official record, the written exceptions of the parties, and the oral arguments made before the Commission. The Commission shall grant the permit application unless it can make one or more of the findings in G.S. 113A-120(a) or (c) which justify a permit denial and the Commission may attach conditions to any permit it issues as provided in G.S. 113A-120(b).
(b) If the Department denies an application for a permit, the applicant shall be notified by registered mail, return receipt requested, of the action of the Department and the grounds for that action.

History Note: Authority G.S. 113A-120(a),(b), and (c); 113A-122(b);
Eff. March 15, 1978;
Amended Eff. January 1, 1992; July 1, 1989; September 1, 1988.

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

(a) New dredge and fill permits and CAMA permits, excepting 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 authorizing beach bulldozing shall expire 30 days from the date of permit issuance when issued to a property owner(s). Following permit expiration, the applicant is entitled to request an extension in accordance with Rule .0404(a) of this Section.
(c) Development After Permit Expiration Illegal. Any development done 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 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.
(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 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 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) 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 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.

(g) An applicant 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 shall obtain an extension of said permit if the permitting authority finds:

(1) That the applicant 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 filed a written request for an extension of the development period once the judicial review had been completed; and
(4) The applicant 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 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 applicant is eligible to apply for another minor permit authorizing beach bulldozing following expiration of the 30 days 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.

(c) 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 (c) 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.

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 .0405 PERMIT MODIFICATION

(a) An applicant may modify his permitted major development and/or dredge and fill project only after approval by the Department. In order to modify a permitted project the applicant must make a written request to the Department showing in detail the proposed modifications. Minor modifications may be shown on the existing approved application and plat. Modification requests which, in the opinion of the Department, are major will 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 which are imposed or made at the request of the U.S. Army Corps of Engineers or other federal agencies must be approved by the Department under provisions of
Paragraph (a) of this Rule dealing with permit modification procedures.

(c) Modifications of projects for the benefit of private waterfront property owners which meet the following criteria shall be considered minor modifications and shall not require a new permit application, but must be approved under the provisions of Paragraph (a) of this Rule:

(1) for bulkheads:
- (A) Bulkhead must be positioned so as not to extend more than an average distance of two feet waterward of the mean high water contour; in no place shall the bulkhead be more than five feet waterward of the mean high water contour; and
- (B) All backfill must come from an upland source; and
- (C) No marsh area may be excavated or filled; and
- (D) Work must be undertaken because of the necessity to prevent significant loss of private residential property due to erosion; and
- (E) The bulkhead must be constructed prior to any backfilling activities; and
- (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 may not be within 150 feet of the edge of a federally-maintained channel; and
- (B) The structure, as modified, must be 200 feet or less in total length offshore; and
- (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; and
- (D) The project as modified, must not exceed six feet in width; and
- (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 boatramps:
- (A) The project, as modified, would 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; and

(2) A signed, written statement is obtained from all adjacent riparian property owners indicating they have no objections to the proposed modifications; and

(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 these provisions shall necessitate the submission of a new permit application.

(e) The applicant for a major permit modification must 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; 113A-124(c)(5); 113-229;
Eff. March 15, 1978;
Amended Eff. August 1, 2000; March 1, 1991; August 1, 1986; November 1, 1984.

15A NCAC 07J .0406 PERMIT ISSUANCE AND TRANSFER

(a) Upon approval of an application and 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 first class mail or any appropriate means.

(b) Anyone holding a permit may not assign, transfer, sell, or otherwise dispose of a permit to a third party.

(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 substantial change in conditions, circumstances, or facts affecting the project;

(5) no substantial 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 7J .0600, et. seq.

(e) The applicant for a permit transfer must 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;
Eff. March 15, 1978;
Amended Eff. August 1, 2000; March 1, 1991; March 1, 1990; October 15, 1981.

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 Department. Permits may contain provisions which 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 at least two weeks prior to the initiation of maintenance work with:

Department of Environment and Natural Resources
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 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 Department 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; or

(2) that there has been a change of conditions in the area, newly found facts or newly reached opinions which 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 Department shall determine if there are grounds for revocation or suspension of the applicant's right to maintain. If there are grounds for revocation or suspension the applicant shall be notified of the suspension or revocation by registered letter setting forth the findings on which the revocation or suspension is based.

(2) If the Department determines that the right to maintain should not be revoked or suspended, 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 Department 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 department 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);*
Eff. March 15, 1978;
Amended Eff. June 1, 2005; December 1, 1991; May 1, 1990; March 1, 1985; November 1, 1984.

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. These Rules provide 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 herein 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, plus amendments.

(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 in its stead 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.

(5) "Person" is defined in the Coastal Area Management Act, G.S. 113A-103(9).

(c) Civil penalties may be assessed against any person who commits a violation as provided for in G.S. 113A-126(d)(1) and (2).

(d) Investigative costs. Pursuant to G.S. 113A-126(d)(4a) the Commission or Director may also assess a respondent for the costs incurred by the Division for investigation, inspection, and monitoring associated with assessment the civil penalty. Investigative costs shall be in addition to any civil penalty assessed. For a minor development violation, investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars ($1,000), whichever is less. For a major development violation, investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars ($2,500), whichever is less. The Division shall determine the amount of investigative costs to assess 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.

(e) Notice of Violation. The Commission hereby 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. Such notices shall set forth the nature of the alleged violation, shall order that the illegal activity be ceased and affected resources be restored in accordance with 15A NCAC 07J .0410. The notice shall specify the time by which the restoration shall be completed as ordered by the Division. The notice shall be delivered personally or by registered mail, return receipt requested.

(f) Civil Penalty Assessment.

(1) The Commission hereby delegates to the Director the authority to assess civil penalties according to the procedures set forth in Paragraph (g) of this Rule.

(2) The Director shall issue a notice of assessment within 30 days after the Division determines that restoration of the adversely impacted resources is complete.

(3) The notice of assessment shall specify the reason for assessment, how the assessment was calculated, when and where payment shall be made, and shall inform the respondent of the right to appeal the assessment by filing a petition for a contested case hearing with the Office of Administrative Hearings pursuant to G.S. 150B-23. The notice shall be delivered personally or by registered mail, return receipt requested.

(g) Amount of Assessment.

(1) Civil penalties shall not exceed the maximum amounts established by G.S. 113A-126(d).

(2) If any respondent willfully continues to violate by action or inaction any rule or order of the Commission after the date specified in a notice of violation, each day the violation continues or is repeated shall be considered a separate violation as provided in G.S. 113A-126(d)(2).

(3) In determining the amount of the penalty, the Commission or Director shall consider the factors contained in G.S. 113A-126(d)(4).

(4) Pursuant to Subparagraph (g)(3) of this Rule, penalties for major development violations, including violations of permit conditions, shall be assessed in accordance with the following criteria.

(A) Major development which 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) Major development which 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. 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

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
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, High Hazard Flood Area, 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 (g)(4)(A) and (B) of this Rule.

(D) Willful and intentional violations. The penalty assessed under Parts (g)(4)(A) and (B) of this Rule 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. A violation shall be considered to be willful and intentional when:

(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; or

(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; or

(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. If necessary, the Commission or Division shall seek a court order to require restoration.

(E) Assessments against contractors. Any contractor or subcontractor or person or group 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 (g)(4)(D) 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) 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 ordered 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 (g)(4)(B) of this Rule. The continuing penalty period shall be calculated from the date specified in the notice of violation for the unauthorized activity to cease or restoration to be completed and run until:

(I) the Division's order is satisfied, or

(II) the respondent enters into good faith negotiations with the Division, or

(III) the respondent contests the Division's order in a judicial proceeding by raising a justifiable issue of law or fact therein.

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.

(5) Pursuant to Subparagraph (g)(3) of this Rule, civil penalties for minor development violations, including violations of permit conditions, shall be assessed in accordance with the following criteria:

(A) Minor development which 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 which 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 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
Minor Development Violations

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

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, High Hazard Flood Area, 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, Watershed and Public Water Supply Well Fields.
(4) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.

(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 (g)(5)(A) and (B) of this Rule.

(D) Willful and intentional violations. The penalty assessed under Parts (g)(5)(A) and (B) of this Rule 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. A violation shall be considered to be willful and intentional when:

(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; or

(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; or

(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. If necessary, a court order shall be sought to require restoration.

(E) Assessments against contractors. Any contractor or subcontractor or person or group 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 (g)(5)(D) 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) 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 ordered shall be considered a continuing violation and shall be assessed an additional penalty. The amount of the penalty shall be determined according to Part (g)(5)(B) of this Rule. The continuing penalty period shall be calculated from the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed and run until:

(I) the Commission delegate's order is satisfied, or

(II) the respondent enters into good faith 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 by raising a justiciable issue of law or fact therein.

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.

(h) Hearings and Final Assessment. Final decisions in contested case hearings concerning assessments shall be made by the Commission. The final decision shall be based on evidence in the official record of the contested case hearing, the administrative law judge's recommended decision, any exceptions filed by the parties and oral arguments. Oral arguments shall be limited to the facts in the official record.

(i) Referral. If any civil penalty as finally assessed is not paid, the Director on behalf of the Commission shall request the Attorney General to commence an action to recover the amount of the assessment.

(j) Reports to the Commission. Action taken by the Director shall be reported to the Commission at the next 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.

(k) Settlements. The Commission hereby delegates to the Director the authority to enter into a settlement of a civil penalty appeal at any time prior to decision in an administrative contested case hearing. Such settlements shall not require the approval of the Commission and shall not be considered a final Commission decision for purposes of G.S. 113A-123.

(l) Any settlement agreement proposed subsequent to a final Commission decision in the contested case shall be submitted to the Commission for approval.

History Note: *Authority G.S. 113A-124; 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. February 1, 2008; July 1, 1991; June 1, 1991.

15A NCAC 07J .0410 RESTORATION/MITIGATION

Any violation involving development which is inconsistent with guidelines for development within AECs (i.e., wetland fill, improper location of a structure, etc.) must be corrected by restoring the project site to pre-development conditions upon notice by the Commission or its delegate that restoration is necessary to recover lost resources, or to prevent further resource damage. Said notice will describe the extent of restoration necessary and a time for its completion. 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 foregoing penalties. Any resources which cannot be recovered by restoration of the affected site shall be replaced in compliance with the goals of the Commission's mitigation policy.

History Note: *Authority G.S. 113A-126(d); 113A-124(c); 113A-124(c)(5);*
Eff. July 1, 1985.

SECTION .0500 - GENERAL PERMITS

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

The Coastal Resources Commission or the appropriate local designated official shall issue a general permit for any development located within an AEC for which as of March 1, 1978:

(1) All legally required permits have been obtained; or
(2) All legally required permits have been applied for and accepted in accordance with the applicable rules of the permit-letting agency, subject to the following conditions:
    (a) The CRC or local designated official will review the project and comment to agencies responsible for administering the pending permit(s).
    (b) The developer shall notify the CRC or local designated official as each pending permit application is approved or denied.
    (c) If any of the pending permit applications or the permits themselves expire or otherwise require reapplication, extension or renewal, a regular CAMA permit shall be required for the project.

For the purposes of this Rule, the term permit shall mean local, state, and federal certifications, authorizations, approvals or permits required before a development can legally proceed.

History Note: *Authority G.S. 113A-118.1;*
Eff. April 12, 1978;
Amended Eff. December 1, 1991.

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.

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 Environment and Natural Resources (DENR), 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.

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, any other directly affected persons, and the Division of Coastal Management cannot agree on a set of undisputed facts sufficient to support a meaningful 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.

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.

SECTION .0700 – PROCEDURES FOR CONSIDERING VARIANCE PETITIONS

15A NCAC 07J .0701 VARIANCE PETITIONS

(a) Any person who has received a final decision of an application for a CAMA major or minor development permit may petition for a variance from the CRC by means of the procedure described in this Section. In the case of a minor development permit, a decision shall not be considered final until all available local appeals have been exhausted.

(b) The procedure in this Section shall apply only to petitions for variances, and shall not apply to appeals of major or minor permit decisions. This procedure shall be used for all variance petitions except when:

(1) a petition is combined with an appeal of a major or minor permit decision concerning the same application, in which case the applicant may consolidate both matters for a single hearing as described in Section .0300 of this Subchapter;

(2) the Commission determines that more facts are necessary, in which case the petition may be heard by means of a hearing; or

(3) 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 Environment and Natural Resources or CAMA local permit officers or, if not on such forms shall provide the following information:

(1) the case name and location of the development as identified on the denied permit application;

(2) an explanation of why the applicant 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;

(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

(5) a complete description of the proposed development, including a site drawing with topographical and survey information.

(d) In order to have a petition for a variance considered under the procedures set forth in this Rule, a petitioner who has given notice of appeal of the permit decision concerning the development that is the subject of the variance appeal shall agree that the time required to consider the petition shall not be counted in calculating the 180 day time period allowed for disposition of the appeal. The time required to consider the petition shall be calculated from the date on which the petitioner requests to have the petition heard under these procedures until the date on which the petitioner resumes prosecution of the appeal.

(e) Petitions shall be mailed directly to the Director of the Division of Coastal Management, Department of Environment and Natural Resources, 400 Commerce Avenue, Morehead City NC 28557.

(f) A variance petition shall be considered by the Commission at a regularly scheduled meeting. Petitions shall be scheduled no later than the second regularly scheduled meeting following the date of receipt of the petition by the Division of Coastal Management, except when a later meeting is agreed upon by the petitioner and 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 four weeks in advance of a regularly scheduled commission meeting to be considered by the Commission at that meeting.

(g) Written notice of variance hearings or commission consideration of 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. June 1, 2005; August 1, 2004.

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 applications and a description of the deficiencies shall be returned to the petitioner. Complete requests shall be scheduled for the appropriate commission meeting.

(b) The staff shall prepare a written description of the variance petition which shall be presented to the Commission before the petition is considered. The written description 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) a discussion of whether the petition meets or does not meet each of the requirements for a variance including both the petitioner and the staff positions;

(4) and any other undisputed facts relevant to the findings set forth in G.S. 113A-120.1 which the Commission must make in order to grant a variance.

(c) The petitioner shall be provided an opportunity to review the written description prepared by the staff and to agree or disagree with the facts and statements therein. The written description presented to the Commission shall include only those facts and statements that have been agreed upon and stipulated to by both the petitioner and the staff. If the staff does not reach agreement with the petitioner and receive the petitioner's approval of the written description at least two weeks prior to a regularly scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next regularly scheduled commission meeting. If the staff determines that agreement cannot be reached on sufficient facts on which to base a meaningful variance decision, then the petition shall be considered by means of an administrative hearing. Copies of the agreed upon description shall be provided to the permit officer making the initial permit decision prior to commission consideration of the variance.

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. August 1, 2004.

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

(a) The Commission may review the variance petition and staff comments and hear any oral presentation by the petitioner 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 and any comments the staff deems necessary before considering the petition.

(c) The Commission 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 applicant 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 regularly scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail at the earliest feasible date after the final decision is reached.

(e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the Commission.

(f) Variances may only be granted following affirmative findings by the Commission on each of the following points:

(1) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;

(2) that such hardships result from conditions peculiar to the petitioner's property such as location, size, or topography;

(3) that such hardships did not result from actions taken by the petitioner; and

(4) 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.

History Note: *Authority G.S. 113A-120.1;*
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. August 1, 2004.

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 catagories 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.

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.

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 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.

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.

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. Individual developments carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of G.S. 113A-119.

History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124(c)(5); 113-229(c)(1);
Eff. September 1, 1983.

15A NCAC 07J .1106 PERMIT CONDITIONS

Each general permit shall have a set of general and specific conditions. Additionally, the implementing authority may add appropriate special conditions to each instrument of authorization if necessary to protect the public interest. The issuing authority 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; 113A-124(c)(5); 113-229(c)(1);*
Eff. September 1, 1983.

15A NCAC 07J .1107 PERMIT COMPLIANCE

All development authorized through the general permit must be done in compliance with all general, specific and special conditions. Development undertaken without proper authorization or in violation of permit conditions and/or failure to comply with operational permit conditions shall be a violation subject to the penalties set out in G.S. 113A-126 and/or G.S. 113-229.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-124(c)(5); 113-229(c)(1);*
Eff. September 1, 1983;
Amended Eff. March 1, 1985.

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.