

**Implementation and Standards Committee
November 17, 2005
Blockade Runner Beach Resort
Wrightsville Beach, NC**

Bob Emory, Chair

CAMA General Permit Fee Adjustments (I&S-05-09)

Mike Lopazanski introduced staff recommendations for increasing CAMA General Permit fees. The Division had been anticipating a significant reduction in state appropriations, which fortunately did not materialize. However, the DCM has experienced a reduction in state funds of over \$605,000 over the past five years plus an additional \$200,000 reversion. DCM also saw a \$40,000 reduction in federal funds for the first time in the program's history. CAMA authorizes the collection of permit fees to offset the costs associated with the permitting and enforcement program. Permit fees have been capped at \$400 since 1989 and fees have not increased since 2000.

Lopazanski advised the Committee that FY 04-05 receipts totaled \$425,000 supporting 31 permitting positions with personnel cost of \$1.7 million. While GPs are a relatively fast permitting process for common, low-impact projects, there are still costs associated with site visits, record keeping and enforcement activities. Staff estimates that the costs associated with the issuance of a General Permit exceeds over \$200.

The fee schedule presented by staff is basically a doubling of the General Permit fees. There are several deviations from this doubling which reflect the review, processing and coordination costs associated with more complicated projects. The recommended fee schedule also included a modest attempt to address a CHPP recommendation by charging a higher fee for bulkheads sited below normal high water, which also entails a more complex review, as opposed to siting it above normal high water.

It is anticipated that the increased fees will generate an additional \$388,000 that could be used to support two additional regulatory positions in addition to other regulatory operations. Mike emphasized that the increase fee will need approval of the Joint Legislative Commission on Governmental Operations. Raising General Permit fees will also necessitate seeking legislative authority to raise Major Permit fees.

Spencer Rogers moved that the language of 7H .1000 for Bulkheads and Riprap be amended to require a higher fee for all stabilization projects placed below normal high water. He also moved that the fee for beach bulldozing found in 7H .1800 be increased to \$400. The motion was seconded and approved unanimously. A motion was then made to recommend that the presented fee schedule with amendments be sent to the full CRC for approval. The motion was seconded and approved unanimously. Joan Weld suggested that the committee look more closely at others ways that the Committee could support such a permit fee increase for which there was a general agreement.

15A NCAC 07H .1103 PERMIT FEE

The applicant **must shall** pay a permit fee of **one two** hundred dollars ~~(\$100.00)~~ **(\$200.00)** for riprap and bulkhead structures sited above normal high water or normal water level, or a permit fee of four hundred dollars **(\$400.00)** for bulkhead and riprap structures sited below normal high water or normal water level. Permit fees shall be paid by check or money order payable to the Department.

History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113-119.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. August 1, 2000; March 1, 1991.

15A NCAC 07H .1803 PERMIT FEE

The applicant **must shall** pay a permit fee of **one four** hundred dollars ~~(\$100.00)~~ **(\$400.00)** by check or money order payable to the Department.

History Note: Authority G.S. 113-229(c1); 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1;
Eff. December 1, 1987;
Amended Eff. August 1, 2000; March 1, 1991.

Proposed Changes to 7K .0208, Use Standards (I&S-05-18)

Mike Lopazanski presented a correction to NCAC 7K .0208(c)(2) Single Family Residence Exemption. Prior to 2002, DCM staff or Local Permitting Officers could issue a permit exemption for private bulkheads, riprap or piers. Since the majority of these types of projects were authorized under the General or Major Permit process, the Commission repealed the exemption, however there is still a reference to similar structures in the exemption for Single Family Residences. For consistency, the reference to piers, bulkhead and riprap should to be deleted. Also at this time staff recommends several minor amendments including changing “mean high water” to “normal high water”, adding a one-year time limit on the permit, and requiring notification of adjacent property owners. Dr. Leutze moved that the recommended changes be sent to the full Commission for approval. The motion was seconded and approved unanimously.

15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES EXEMPTED

(a) All single family residences constructed within the Estuarine Shoreline Area of Environmental Concern **which are more than 40 feet landward of the mean normal high water mark or normal water level, and** involve no land disturbing activity within the 40 feet buffer area are exempted from the CAMA permit requirement as long as this exemption is consistent with all other applicable CAMA permit standards and local land use plans and/or rules in effect at the time the exemption is granted. This exemption does allow for the construction of an access to the water **not exceeding six feet in width in accordance with Rule 7H .0209(d)(10).**

(b) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters (ORW), no CAMA permit will be required if the proposed development is a single-family residence which has a built upon area of 25 percent or less and:

- (1) has no stormwater collection system; and
- (2) is at least 40 feet from waters classified as ORW.

(c) **Before beginning any work under this exemption, the Department of Environment, Health, Environment** and Natural Resources representative must be notified of the proposed activity to allow on-site review. Notification may be by telephone, in person or in writing. Notification must include:

- (1) the name, address, and telephone number of the landowner and the location of the work, including the county, nearest community and water body;
 - (2) the dimensions of the proposed project, including proposed landscaping and the location of normal high water or normal water level pier, bulkhead with backfill or the area dimensions to be covered by placement of riprap material;
 - (3) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners indicating that they have no objections to the proposed work. (These statements do not have to be presented at the time of notification of intent to perform work, but the permittee must make it available to CRC agents at their request.)
- (d) In eroding areas, this exemption shall apply only when, when in the opinion of the local permit officer, officer has determined that the house has been located the maximum feasible distance back on the lot but not less than forty feet.
- (e) Construction of the structure shall be completed within one year of the issuance date of this permit or the general authorization expires.

*History Note: Authority G.S. 113A-103(5) c;
Eff. November 1, 1984;
Amended Eff. December 1, 1991; May 1, 1990; October 1, 1989.*

Estuarine Shoreline Erosion Control Policy (I&S-05-19)

Tancred Miller asked the Committee to consider the issue of estuarine shoreline erosion control policy. This issue is a part of the Commission's CHPP Implementation Plan (Recommendation 3.4). Specifically, Recommendation 3.4 specifies that the CRC will establish a CRC/CRAC Estuarine Shoreline Stabilization Subcommittee by January 2006. The Committee voted unanimously to ask the Chairman to appoint a multi-stakeholder Stabilization Policy Subcommittee, comprised of CRC and CRAC appointees, as well as appropriate industry and scientific representatives. Melvin Shepard suggested that Tracy Skrabal be asked to participate on the subcommittee. Chuck Bissette also volunteered to participate. The recommendation was made to take the proposal to the Chairman, with decisions on Subcommittee size and composition left to his discretion.

Growth-inducing Expenditure of Public Funds

Doug Huggett explained that an issue has recently arisen concerning 15A NCAC 7H.0306(c). This rule states that in Ocean Hazard Areas, "growth-inducing public facilities", such as sewers, waterlines, roads, and bridges, that will be supported by public funds shall be permitted only when such facilities are of public benefit, do not increase existing hazards or damage natural buffers, and are safe from flood and erosion-related damage. Doug explained that DCM staff have interpreted this rule to include a prohibition on the use of public funds for both the construction and perpetual maintenance of these facilities. Doug further explained that this rule was originally developed at a time when Ocean Hazard AECs were mostly comprised of the ocean beach areas, while now the Ocean Hazard Area encompasses much larger areas as a result of the increased V zones.

In an effort to ensure consistency with this use standard, staff have been including a condition on major permits for subdivisions within Ocean Hazard Areas requiring that all costs of construction and perpetual maintenance be the responsibility of the developers and/or the subdivision property owners. Developers routinely pay for the initial construction costs for roads and utilities. The issue then arises after construction, when developers turn the facilities over to the local municipality for upkeep and long-term maintenance. The local governments who are trying to adhere to the rule then find it difficult, if not impossible to comply with.

After some discussion on the original intent of this Rule, and its usefulness today, the staff was directed to examine potential consequences of doing away with this Rule and to report back to the Committee at the January 2006 meeting.

Draft Sediment Criteria Rules (I&S-05-22)

Jeff Warren introduced the draft rule language for beach fill project sediment criteria. DCM staff developed the rule language based on the Science Panel recommendations in addition to taking into account additional data analysis and stakeholder input. Warren stated that DCM actively solicited comment from more than 418 stakeholders including State and Federal agencies, municipal and county governments, non-governmental organizations, private citizens and twelve engineering firms actively involved in beach fill projects. Warren reminded the Committee that the purpose of the evaluation period approved by the Committee and the CRC at their January 2005 meeting was to establish a solid dataset to backup the Science Panel sediment criteria recommendations and to evaluate how recent “incompatible” beach fill projects would have fared and how future beach fill projects might fare under the proposed sediment criteria draft rule language.

Patrick Limber then reviewed the data analysis of sediment data from Atlantic Beach (Brandt Island pump-out), Pine Knoll Shores, Emerald Isle and Oak Island (turtle habitat restoration project). All four of these projects would have been disallowed, altered or mitigated based on the draft rules. In addition, proposed projects on Topsail Island and at Nags Head would provide compatible material based on preliminary data and, therefore, not be disallowed by the rule language. Warren presented data from interviews with 8 coastal engineering firms involved with North Carolina beach fill projects that showed the new draft rule language would not create any major cost increases in project design or execution. Many of these firms were already employing methods that were more stringent than those required by the draft rules.

Harry Simmons suggested that the Committee move forward with the rule-making process with the draft language presented. Spencer Rogers was concerned that the application of these sediment criteria as rules without a trial period to see how they would affect beach fill projects might be too restrictive. Melvin Shepherd made a motion to follow DCM staff’s suggestion to send the draft rule language in back to stakeholder input and for final draft rule language to be presented to the Committee at their January 2006 meeting. Joan Weld seconded the motion and it passed 7 to 1. In January, the

Committee will have the opportunity to initiate the rule-making process with the final draft rule language.

Oak Island Alternative Vegetation Line
Ocean Isle Beach Alternative Vegetation Line
Establishment of Pre-nourishment Vegetation Line

Warren provided results of the alternative vegetation line (AVL) studies from Ocean Isle Beach and Oak Island and indicated the time and labor commitment for DCM staff to complete these studies was approximately 1000 man-hours (over six months). Because Ocean Isle had retracted their request in lieu of a friendly amendment at the April 2004 CRC meeting and Oak Island's request had been delayed for a calendar year at the August 2004 CRC meeting, there were no official request pending and, therefore, no action required by the CRC. The results of the study provided accurate results for Ocean Isle but created a situation at Oak Island where the statistical AVL was more restrictive than the existing static vegetation line already in use. Warren stated his concern with the single methodology provided for the AVL calculation outlined in 15A NCAC 07H.0305(g) as it did not appear to work in all circumstances. Further, Warren was concerned that it was an impossibility for a storm-mitigated vegetation line such as the AVL to be more restrictive than the post-storm static line already in use. Warren used these concerns with the methodology and the Rule in general to address the static vegetation lines. Warren reminded the Committee that there were obvious complicated issues with this Rule as observed earlier in the day during the Darrigrand contested case from Oak Island. Some of the concerns regarding this entire Rule were based on: 1) large-scale versus small-scale beach fill projects; 2) having a static line be applied "in perpetuity"; 3) post-project ground surveys versus pre-project validation of these surveys based on historic aerial photography; 4) ongoing maintenance of beach fill projects versus one-time dredge disposal events (933 projects); and 5) the loss of property on non-conforming lots from events other than coastal hazards (such as fire). Warren suggested that it might be appropriate for DCM staff to open up the entire rule to address some of these issues. Joan Weld made a motion for DCM staff to open up 15A NCAC 07H.0305 for review and Harry Simmons seconded. The motion was unanimously approved (9 to 0).