Burgos, Alexander N

Subject: FW: RRC - Tech Change Requests
Attachments: 15A NCAC 07H .1101 for readoption_2022.01.07 ML.docx; 15A NCAC 07H .1103 for readoption_2022.01.07 ML.docx; 15A NCAC 07H .1104 for readoption_2022.01.07 ML.docx; 15A NCAC 07H .1801 for readoption_2022.01.07 ML.docx

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From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Wednesday, March 9, 2022 4:11 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopazanski@ncdenr.gov>
Subject: RE: RRC - Tech Change Requests

Hello Brian,

Attached are the last remaining CRC rules that include your technical change requests. Ready for RRC review.

Thanks!

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614
https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules

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From: Lopazanski, Mike <mike.lopazanski@ncdenr.gov>
Sent: Friday, January 14, 2022 11:33 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Subject: RE: RRC - Tech Change Requests

Attached are edits and responses to the tech corrections and questions.

Burgos, Alexander N

Subject: FW: RRC - Tech Change Requests

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Monday, March 7, 2022 6:07 PM
To: Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopazanski@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>
Subject: RE: RRC - Tech Change Requests

Hi Christy,

I think with these changes, I can recommend approval of all rules in the packet to RRC at the upcoming meeting.

I've noted three minor formatting errors that need changing. First, in R. 1802, you added what is now subparagraph (b)(1), so the (1) should be highlighted. What is now (b)(2) was originally (b)(1), so it needs to look like this ~~(1)~~(2). Same for (3), which was originally (2). Second, in .1805, in (e), line 13, add the oxford comma following "existing". Third, in any rule where post-publication changes were made, please amend the intro statement to say "…is readopted as published in [cite to register] with changes as follows:"

If you'd please make these final, minor changes, I think you're ready to submit the final versions and the updated Submission of Permanent Rule Forms to oah.rules@oah.nc.gov. Please copy me and Alex Burgos when you do.

Thanks!
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

From: Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Sent: Monday, March 7, 2022 2:54 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Lopazanski, Mike <mike.lopazanski@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>
Subject: RE: RRC - Tech Change Requests

Hi Brian-
Thanks for your feedback. Our responses are in Purple below each of your latest comments in blue.

Rule .1102
In my original tech changes, I asked the following questions:

Also, generally to this Rule, I do not see anything telling the applicant how and when the application will be approved, or what factors CSC will consider in deciding to approve or deny a permit.
The Division issues three types of permits, Major, Minor and General. General permits are used for routine projects (docks/piers/bulkheads/riprap) that usually pose little or no threat to the environment. General permits are issued on-site by Division Staff upon meeting with the property owner or their agent.

While you've answered the "how and when" an application will be approved, I don't think this is responsive on the second part of that question, which asks what factors you use to determine whether to approve or deny a permit. In your statutes, 113A-120 lays out some guidelines, but I am not certain whether these apply to general permits. If so, please reference these standards in your rule. Moreover, while you're telling me here that the permit will be issued on site following the meeting, that is not clear from the text of the rule. Please consider making a change, perhaps in (c), to clarify this. **Please note I have the same concern with Rule .1802, and my question applies there as well.**

113A-120 outlines the standards for issuing (or denying) all types of CAMA permits, including General Permits. We have not included it in the language of any of the other General Permits, and have concerns that if we add it here, does that obligate the CRC to add it to all of its rules to be consistent? Is that limited to just the GPs or does that also have to be added elsewhere for Majors and Minors as well, and if so, where would it be added for that? It's been added to the legislative authority at the end of the rule- why isn't this sufficient?

The CRC also has rules at 15A NCAC 7J. 1100 which describe the CRC's process for developing different GPs through rulemaking specific to that GP development process (i.e. having the CRC/DCM look at what development activities are regular with known impacts that would be appropriate for a GP to be created). In 7J .1105, the CRC indicates that each GP created (through rulemaking) shall spell out within its text, what is needed from an applicant to be considered for a GP (notice, fee, drawings, etc.). When a GP will be issued is not driven by a permit time clock like Majors and Minors, but can be issued once all of the items required in the language of the GP rules are satisfied, and once DCM staff have been on site. This process is faster than a Major permit since the notice requirements are different. So there's not a clear way to say this other than the current language in 7J.1102(c), lines 23-25 "A General Permit to proceed with the proposed development shall be issued if DCM representative find that the application meets all the requirements of this rule."

OK, it seems like the answer was that the standards for granting/denying at permit are indeed at 113A-120. Does your regulated public understand that? If so, I think this will be fine as drafted.

Yes. Our regulated public understands that the standard for making permit decisions is at 113A-120. Thanks for letting this go forward.

In (b)(2), lines 16-17, what are the "guidelines established by the General Permit Process," and how would an applicant know whether or not his or her project exceeds them? Are these contained in another Rule?

In response, you have made edits which are indeed consistent with your other GP rules, and which contain language that was recently approved by RRC in November 2021. While I certainly do not wish to create a situation where you're being told different things by two different commission counsel, I have concerns with the new language. In particular, this passage: "If DCM finds that the comments are worthy of more in-depth review, DCM shall notify the applicant that an application for a major development permit shall be required." First, I think the phrase "finds that the comments are worthy of more in-depth review" is ambiguous without some description of what factors or circumstances DCM will consider in determining whether a comment is "worthy." I believe the previous language, "determined that the project exceed the guidelines established by the General Permit Process" is actually less ambiguous, as long as you can point to what those guidelines are, either in another Rule or statute. Are the guidelines laid out in G.S. 113A-120 the "guidelines established by the General Permit Process"? Second, I am concerned with the use of "shall" here, in that it seems like you're saying that if there are any comments worthy of in-depth review, rather than receive that review, the applicant is simply kicked upstairs to the major permit level. **Please note these same concerns are repeated in Rule .1802, which uses the same language.**

We changed the language to mirror that of the other GPs so that the language is consistent. The issue in this part of (b)(2) is whether a proposed project is appropriate for a GP or should be processed through the Major Permit process described above. The Major Permit process is more money and more time, and the GA allowed for a GP process for projects where the impacts are localized and understood. An applicant may start down the GP path but if comments/objections come in (usually by the adjacent neighbors after getting notice) that raise issues that impact a wider location than just the adjacent neighbors and/or if the comments raise issues which would benefit from the larger resource agency review in a Major Permit process, this rule allows DCM to use its agency expertise to make this discretionary call (which is a more in-depth review but does not mean the permit will be denied in the end). The use of "shall" is appropriate here where if the comments are worthy as described above, this rule DOES require being "kicked upstairs to the major permit level" where the comments DO receive that in-depth review. As this is ultimately a discretionary call based on DCM's expertise in understanding the comments raised, and if they raise issues where a wider review is necessary, I'm not sure how we find a non-discretionary term to use--- and then being consistent throughout all the GPs seems like the best language to use.

With respect to the first issue, the "worthy" language, I note that this is not extensively used throughout Subchapter 07H, and the earlier "determined that the project exceed the guidelines established by the General Permit Process" language is just as common. I further noted that in 07H .2202, which was amended fairly recently (1/1/18), the language used is "If the Division of Coastal Management determines that the project exceeds the guidelines established by the General Permit process provided in 15A NCAC 07J .1100…" In my opinion, this language is less ambiguous than the current formulation with "worthy," and I would be comfortable recommending approval if it were changed accordingly. **Note this applies for the identical language in R. 1802 as well.**

That change is made per your request and the revised draft is attached.

Rule .1802

"Worthy" language changed here too as directed in your discussion above for .1102. Revised draft attached.

New correction. In (a), lines 6-7, I think the sentence "The applicant shall provide… name and address." was moved to (a)(1), line 9, and is now redundant here. Suggest deletion.

Deleted as requested. Revised draft is attached.

In my original tech changes, I asked, and you responded:

Generally to this Rule, I do not see anything telling the applicant how and when the application will be approved, or what factors CSC will consider in deciding to approve or deny a permit.
Re-written to be consistent with other general permits.

While you've answered the "how and when" an application will be approved in your responses to R. 1102, I don't think this is responsive on the second part of that question, which asks what factors you use to determine whether to approve or deny a permit. In your statutes, 113A-120 lays out some guidelines, but I am not certain whether these apply to general permits. Moreover, here, 113A-120 is not in your history note. If so, please reference these standards in your rule and add to the history note. Finally, while you're telling me here that the permit will be issued on site following the meeting, that is not clear from the text of the rule. Please consider making a change, perhaps in (c), to clarify this.

(as in 1102 above…with history note updated)
113A-120 outlines the standards for issuing (or denying) all types of CAMA permits, including General Permits. We have not included it in the language of any of the other General Permits, and have concerns that if we add it here, does that obligate the CRC to add it to all of its rules to be consistent? Is that limited to just the GPs or does that also have to be added elsewhere for Majors and Minors as well, and if so, where would it be added for that? It's been added to the legislative authority at the end of the rule- why isn't this sufficient?

OK, it seems like the answer was that the standards for granting/denying at permit are indeed at 113A-120. Does your regulated public understand that? If so, I think this will be fine as drafted.

Yes. Our regulated public understands that the standard for making permit decisions is at 113A-120. Thanks for letting this go forward.

In (b)(2), line 13, where is your statutory authority for the 10 day objection period? G.S. 113-229(d) allows owners to file objections with the Department for 30 days after service.
Re-written to be consistent with other general permits

The changes made to the text do not appear to touch on the 10 day period. While it is consistent with your other GP rules, many of those rules do not cite G.S. 113-229 as authority. As I see it, 113-229 covers dredging and filling, and may not be applicable to other areas of permitting, such as the recent Rule .1202 that was approved by the Commission in November 2021, which contained this same language, but dealt with docks, rather than beach bulldozing. Here is the relevant language from 113-229(d):

An applicant for a permit, other than an emergency permit, shall notify the owner of each tract of riparian property that adjoins that of the applicant. An applicant may satisfy the required notification of adjoining riparian property owners by either (i) obtaining from each adjoining riparian property owner a signed statement that the adjoining riparian property owner has no objection to the proposed project or (ii) providing a copy of the applicant's permit application to each adjoining riparian property owner by certified mail. If the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, publication in accordance with the rules of the Commission shall serve to satisfy the notification requirement. **An owner may file written objections to the permit with the Department for 30 days after the owner is served with a copy of the application by certified mail**. In the case of a special emergency dredge or fill permit the applicant must certify that the applicant took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in subsection (e) of this section, upon the express understanding from the applicant that the applicant will be entirely liable and hold the State harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given. (emphasis added)

Yet, your rule states that "The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management **within 10 days of receipt of the notice** and indicate that no response will be interpreted as no objection." (emphasis added) I continue to question what statutory grounds you have for limiting the time to file objections when 113-229 explicitly defines that period. **Please note that this is also a concern for Rule .1102, which uses the same language and also cites 113-229 for statutory authority.** Does 113-229 not apply here? Is there another statute on point that provides you with authority to set the period? To that end, I see 113A-118.1(c) does allow CRC to "impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues." However, I see 113-229 as a much more specific statute than 113A-118.1, and as you know, the specific governs over the general.

The more narrow State Dredge and Fill law of 1969 regulates Dredging and Filling, which is one type of coastal "development"—See 113A-103(5)a. which defines "development" and includes D&F plus many other activities. That law was the pre-cursor to the more-broad authority of the CAMA of 1974. Following the CAMA and establishment of the CRC, the GA amended the D&F law to add in 113-229(c1) and (c2) [hence the wonky numbering] to allow some proposed developments which include D&F like bulkhead/riprap GP (.1100) and beach bulldozing GP (.1800) to be processed as GP's once the CRC established such GPs through rulemaking. This language in the D&F mirrors 113A-118.1. D&F (c1) and (c2) seem to allow D&F activities to be authorized through GP's and allow the reduced notice/comment periods in the same way 113A-118.1 allow under CAMA.

I added 113-229(c2) to the history note and (c1) was already there.

I see now how the statutory authority runs, and how 113A-118.1 applies specifically here. I feel comfortable recommending approval of the current language.

Thanks, Brian.

Rule .1804

Further, we had this exchange:
In (a), line 8, please define or delete "immediately."
Added "upon discovery of the shipwreck".

Unfortunately, I don't think this edit actually adds anything, and in fact is redundant. As originally stated, the sentence already required work to stop "[i]f a shipwreck is unearthed." Put differently, what is the practical difference between "immediately" and "upon discovery of a shipwreck"? What period of time between discovery and report to DCM is too long?

The purpose of the rule is that if a shipwreck is discovered/unearthed, that work stop immediately so that no damage to the wreck occurs and then to have experts from DNCR come evaluate the wreck before work is undertaken again. So I changed the language to focus on the immediate stop of work if a shipwreck is discovered and then a duty to contact DCM before work can resume.

The CAMA aims to protect cultural resources such as shipwrecks. Do we need to add in statutory references to the history note? I'm looking at 113A-120(a)(4) which would be a basis for denial if the wreck were known about before development started….once found, we would need to pull in DNCR to evaluate the wreck for cultural significance.

I am inferring from these responses that "immediately" has no particular meaning in this context outside of its generally accepted meaning, and so I am comfortable recommending approval with that term included. With respect to protection of shipwrecks, I agree you need a statutory reference, and I think the appropriate citation for the History Note would be 113A-102(b)(4)(e), which states that one of CAMA's goals is to establish policies, guidelines, and standards for "preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area[.]"

I think the language added in re contacting DNCR is unnecessary and not relevant to what this particular rule is doing, so I would suggest deleting it.

Changes made and history note change made as suggested. Revised Draft attached.

Rule .1805
In my original tech changes, I asked:
In (e), line 12, what does "in such a manner that the damage to existing vegetation is minimized" mean? What is the acceptable level of damage?

You responded "clarified," and added to the existing rule:

"Adding sand to dunes shall be accomplished in such a manner that the damage to existing vegetation by burial is minimized."

I do not have a problem with this change, if that's what you want to do, but I don't think it is responsive to what I asked. The question isn't *how* the damage is caused, but *how much* damage can be caused before it is no longer "minimized" and thus out of compliance.

This GP is for bulldozing and so the primary way vegetation could be damaged would be through burial of existing vegetation and so we thought that would clarify the type of damage we aim to minimize. We are sticking with "minimized" since it would be difficult to completely prevent some burial of vegetation while using such a large tool as a backhoe. The "how much" question would be **site specific and based on the tools used, what vegetation is existing, and how much was buried**, and so is difficult to set an amount that would fairly apply to all sites.

I think if you added a little more formally worded version of the language I've underlined and bolded in your response to the Rule, it would reduce the ambiguity, and I would be comfortable recommending approval.

Done. Revised Draft attached.

Please let me know when you've determined that these are ready for the March RRC meeting with your recommendation of approval.
Thanks-
Christy

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sherriff's Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0405

DEADLINE FOR RECEIPT: Thursday, March 10, 2022

***NOTE:* This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please correct the introductory statement in accordance with 26 NCAC 02C .0404. Specifically, please add the information regarding the Register publication. Done – sorry about that!

In (a), are the substantive requirements of the Report of Separation set forth elsewhere in rule or statute? If not, please do so here. Please see G.S. 150B-2(8a)d. Please see "new" section "b."

What is the overall intent of (b)? Is this just intended to provide a "may" standard to the employing agency? Yes (this is now under "c").

In (c), please change "will" to "shall" done

Paragraph (a) references an F-5. Paragraph (c) references an F-5 and an F-5T. Please clarify (and also ensure that the substantive requirements of both are provided.) done

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: February 24, 2022

DCM/CRC Responses to 1-15-22 email of RRC Counsel Brian Liebman Laying out Mr. Liebman's remaning questions/comments

New DCM/CRC response in Green

Rule .1102

In current (b)(2), line 17, did you intend to create a new paragraph with the language starting with "DCM shall review all comments…" ? If so, please fix the formatting, and move the left margin over so there is no indent.

No new paragraph intended so I fixed the formatting and continued the paragraph.

In (c), line 24, I believe you intended to replace "written authorization" with "General Permit." As written it says "A permit Written authorization to proceed…." Please correct. Also, throughout (c), please be consistent with the capitalization of "general permit," as it is capitalized in (a), and also in other rules.

Capitalized General Permit and removed written authorization.

In my original tech changes, I asked the following questions:

Also, generally to this Rule, I do not see anything telling the applicant how and when the application will be approved, or what factors CSC will consider in deciding to approve or deny a permit.

The Division issues three types of permits, Major, Minor and General. General permits are used for routine projects (docks/piers/bulkheads/riprap) that usually pose little or no threat to the environment. General permits are issued on-site by Division Staff upon meeting with the property owner or their agent.

While you've answered the "how and when" an application will be approved, I don't think this is responsive on the second part of that question, which asks what factors you use to determine whether to approve or deny a permit. In your statutes, 113A-120 lays out some guidelines, but I am not certain whether these apply to general permits. If so, please reference these standards in your rule. Moreover, while you're telling me here that the permit will be issued on site following the meeting, that is not clear from the text of the rule. Please consider making a change, perhaps in (c), to clarify this. **Please note I have the same concern with Rule .1802, and my question applies there as well.**

113A-120 outlines the standards for issuing (or denying) all types of CAMA permits, including General Permits. We have not included it in the language of any of the other General Permits, and have concerns that if we add it here, does that obligate the CRC to add it to all of its rules to be consistent? Is that limited to just the GPs or does that also have to be added elsewhere for Majors and Minors as well, and if so, where would it be added for that? It's been added to the legislative authority at the end of the rule- why isn't this sufficient?

The CRC also has rules at 15A NCAC 7J. 1100 which describe the CRC's process for developing different GPs through rulemaking specific to that GP development process (i.e. having the CRC/DCM look at what development activities are regular with known impacts that would be appropriate for a GP to be created). In 7J .1105, the CRC indicates that each GP created (through rulemaking) shall spell out

within its text, what is needed from an applicant to be considered for a GP (notice, fee, drawings, etc.). When a GP will be issued is not driven by a permit time clock like Majors and Minors, but can be issued once all of the items required in the language of the GP rules are satisfied, and once DCM staff have been on site. This process is faster than a Major permit since the notice requirements are different. So there's not a clear way to say this other than the current language in 7J.1102(c), lines 23-25 "A General Permit to proceed with the proposed development shall be issued if DCM representative find that the application meets all the requirements of this rule."

In (b)(2), line 14-15, what does "based on their relevance to the potential impacts of the proposed project" mean? What factors will the DCM or CRC use to determine whether the project can be approved by a General Permit?

As noted in the last answer, 113A-120 outlines the standards for issuing (or denying) all types of CAMA permits, including General Permits. So if DCM receives comments while considering a possible GP issuance that relate to the factors in 113A-120, DCM will consider if those issues raised by the comments would be fleshed out if DCM instead required the proposed project to be reviewed under the CAMA Major Process (where over a dozen state/federal resource agencies also review, and there is wider public notice- newspaper and site posting vs. nextdoor neighbors). If the issues raised wouldn't be aided by Major Permit process (i.e. where the issue is specific to the neighbor and not wider public and/or where the issue is tied to the resource concerns in 113A-120 and wider resource agency comment could be helpful, a Major wouldn't likely be helpful).

In (b)(2), lines 16-17, what are the "guidelines established by the General Permit Process," and how would an applicant know whether or not his or her project exceeds them? Are these contained in another Rule?

In response, you have made edits which are indeed consistent with your other GP rules, and which contain language that was recently approved by RRC in November 2021. While I certainly do not wish to create a situation where you're being told different things by two different commission counsel, I have concerns with the new language. In particular, this passage: "If DCM finds that the comments are worthy of more in-depth review, DCM shall notify the applicant that an application for a major development permit shall be required." First, I think the phrase "finds that the comments are worthy of more in-depth review" is ambiguous without some description of what factors or circumstances DCM will consider in determining whether a comment is "worthy." I believe the previous language, "determined that the project exceed the guidelines established by the General Permit Process" is actually less ambiguous, as long as you can point to what those guidelines are, either in another Rule or statute. Are the guidelines laid out in G.S. 113A-120 the "guidelines established by the General Permit Process"? Second, I am concerned with the use of "shall" here, in that it seems like you're saying that if there are any comments worthy of in-depth review, rather than receive that review, the applicant is simply kicked upstairs to the major permit level. **Please note these same concerns are repeated in Rule .1802, which uses the same language.**

We changed the language to mirror that of the other GPs so that the language is consistent. The issue in this part of (b)(2) is whether a proposed project is appropriate for a GP or should be processed through the Major Permit process described above. The Major Permit process is more money and more time, and the GA allowed for a GP process for projects where the impacts are localized and understood. An applicant may start down the GP path but if comments/objections come in (usually by the adjacent neighbors after getting notice) that raise issues that impact a wider location than just the adjacent

neighbors and/or if the comments raise issues which would benefit from the larger resource agency review in a Major Permit process, this rule allows DCM to use its agency expertise to make this discretionary call (which is a more in-depth review but does not mean the permit will be denied in the end). The use of "shall" is appropriate here where if the comments are worthy as described above, this rule DOES require being "kicked upstairs to the major permit level" where the comments DO receive that in-depth review. As this is ultimately a discretionary call based on DCM's expertise in understanding the comments raised, and if they raise issues where a wider review is necessary, I'm not sure how we find a non-discretionary term to use--- and then being consistent throughout all the GPs seems like the best language to use.

Rule .1105

In (j), p. 2 line 3, please edit to say "do not enter adjacent wetlands…" done

In (j), lines 4-5, where you've eliminated the parenthetical, please edit for clarity. As written, it looks like you're saying that silt fences, diversion swales, berms, or sand fences are *property* rather than sedimentation and erosion control devices. Consider the following: "Sedimentation and erosion control devices, measures, or structures such as silt fences, diversion swales or berms, and sand fences, shall be implemented…" In any event, please refrain from using "e.g." and "etc." in the text of the rule. Done

In (k), line 7, I believe "and" prior to "a delegated program" should be deleted. Done

In my original tech changes, I asked, and you responded:
What is the difference between the "appropriate sedimentation and erosion control devices" required in (j) and the "erosion and sedimentation control plan" required by (k)?
Not all projects require a plan, BMP measures such as silt fences may all that is required in some instances.

While I appreciate the answer, I don't think this is responsive to my question. Please take another look and let me know what, if any, differences there are between "sedimentation erosion control devices" and a "sedimentation control plan."

If the site is an acre or more, that triggers the requirement to get an approved plan from DEQ-DEMLR. That plan may include one or a combination or more than one different engineered methods to control stormwater (i.e. swales and infiltration trenches). DCM/CRC may require appropriate devices to control sedimentation to prevent suspended sediments in adjacent waters even for projects less than an acre. The first lists various types of tools to reduce stormwater while the plan is the coordinated use of these tools to reduce stormwater to an amount required by DEMLR in state stormwater rules.

Rule .1802

I noticed that you've made a change to (a), line 5, that was not made in response to a tech change request. Can you please explain why you omitted the language on Line 5?

That language and rule cite sent applicants to the Morehead City headquarters address when they should actually contact the appropriate district office instead. It was just to avoid confusion. We have plenty of information on the website about the district offices and their territory. DCM Offices & Program Areas | NC DEQ

Is the sentence beginning (b)(2), lines 12-14, redundant with the sentence ending (b)(1)? The way I read it, both are requiring the applicant to provide written statements from the adjacent riparian property owners. Please omit one, if so. Done

In my original tech changes, I asked, and you responded:

Generally to this Rule, I do not see anything telling the applicant how and when the application will be approved, or what factors CSC will consider in deciding to approve or deny a permit.
Re-written to be consistent with other general permits.

While you've answered the "how and when" an application will be approved in your responses to R. 1102, I don't think this is responsive on the second part of that question, which asks what factors you use to determine whether to approve or deny a permit. In your statutes, 113A-120 lays out some guidelines, but I am not certain whether these apply to general permits. Moreover, here, 113A-120 is not in your history note. If so, please reference these standards in your rule and add to the history note. Finally, while you're telling me here that the permit will be issued on site following the meeting, that is not clear from the text of the rule. Please consider making a change, perhaps in (c), to clarify this.

(as in 1102 above…with history note updated)
113A-120 outlines the standards for issuing (or denying) all types of CAMA permits, including General Permits. We have not included it in the language of any of the other General Permits, and have concerns that if we add it here, does that obligate the CRC to add it to all of its rules to be consistent? Is that limited to just the GPs or does that also have to be added elsewhere for Majors and Minors as well, and if so, where would it be added for that? It's been added to the legislative authority at the end of the rule- why isn't this sufficient?

In (b)(2), line 13, where is your statutory authority for the 10 day objection period? G.S. 113-229(d) allows owners to file objections with the Department for 30 days after service.
Re-written to be consistent with other general permits

The changes made to the text do not appear to touch on the 10 day period. While it is consistent with your other GP rules, many of those rules do not cite G.S. 113-229 as authority. As I see it, 113-229 covers dredging and filling, and may not be applicable to other areas of permitting, such as the recent Rule .1202 that was approved by the Commission in November 2021, which contained this same language, but dealt with docks, rather than beach bulldozing. Here is the relevant language from 113-229(d):

An applicant for a permit, other than an emergency permit, shall notify the owner of each tract of riparian property that adjoins that of the applicant. An applicant may satisfy the required notification of adjoining riparian property owners by either (i) obtaining from each adjoining riparian property owner a signed statement that the adjoining riparian property owner has no objection to the proposed project or (ii) providing a copy of the applicant's permit application to each adjoining riparian property owner by certified mail. If the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, publication in accordance with the rules of the Commission shall serve to satisfy the notification requirement. **An owner may file written objections to the permit with the Department for 30 days after the owner is served with a copy of the**

application by certified mail. In the case of a special emergency dredge or fill permit the applicant must certify that the applicant took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in subsection (e) of this section, upon the express understanding from the applicant that the applicant will be entirely liable and hold the State harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given. (emphasis added)

Yet, your rule states that "The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management **within 10 days of receipt of the notice** and indicate that no response will be interpreted as no objection." (emphasis added) I continue to question what statutory grounds you have for limiting the time to file objections when 113-229 explicitly defines that period. **Please note that this is also a concern for Rule .1102, which uses the same language and also cites 113-229 for statutory authority.** Does 113-229 not apply here? Is there another statute on point that provides you with authority to set the period? To that end, I see 113A-118.1(c) does allow CRC to "impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues." However, I see 113-229 as a much more specific statute than 113A-118.1, and as you know, the specific governs over the general.

The more narrow State Dredge and Fill law of 1969 regulates Dredging and Filling, which is one type of coastal "development"—See 113A-103(5)a. which defines "development" and includes D&F plus many other activities. That law was the pre-cursor to the more-broad authority of the CAMA of 1974. Following the CAMA and establishment of the CRC, the GA amended the D&F law to add in 113-229(c1) and (c2) [hence the wonky numbering] to allow some proposed developments which include D&F like bulkhead/riprap GP (.1100) and beach bulldozing GP (.1800) to be processed as GP's once the CRC established such GPs through rulemaking. This language in the D&F mirrors 113A-118.1. D&F (c1) and (c2) seem to allow D&F activities to be authorized through GP's and allow the reduced notice/comment periods in the same way 113A-118.1 allow under CAMA.

I added 113-229(c2) to the history note and (c1) was already there.

Similarly, I have the same concerns as in Rule .1102, which uses the same "worthy of more in-depth" review language, and also appears to state that any time the Division finds the comments worthy of further review, the applicant "shall" be required to file for a major development permit.

From 1102 above:
We changed the language to mirror that of the other GPs so that the language is consistent. The issue in this part of (b)(2) is whether a proposed project is appropriate for a GP or should be processed through the Major Permit process described above. The Major Permit process is more money and more time, and the GA allowed for a GP process for projects where the impacts are localized and understood. An applicant may start down the GP path but if comments/objections come in (usually by the adjacent neighbors after getting notice) that raise issues that impact a wider location than just the adjacent neighbors and/or if the comments raise issues which would benefit from the larger resource agency review in a Major Permit process, this rule allows DCM to use its agency expertise to make this discretionary call (which is a more in-depth review but does not mean the permit will be denied in the end). The use of "shall" is appropriate here where if the comments are worthy as described above, this

rule DOES require being "kicked upstairs to the major permit level" where the comments DO receive that in-depth review. As this is ultimately a discretionary call based on DCM's expertise in understanding the comments raised, and if they raise issues where a wider review is necessary, I'm not sure how we find a non-discretionary term to use--- and then being consistent throughout all the GPs seems like the best language to use.

Rule .1804

In my original tech changes, we had this question and response:

In (a), you say that the permit "shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary…" G.S 113A-119 states that the ***Secretary of DEQ*** *"****shall*** *issue public notice" "upon receipt of* ***any*** *application…" I am having a hard time reconciling the statute and the Rule here. Is there other statutory authority for this provision? Assuming that there is statutory authority, what factors does "the Department" use to make the determination that notice and review is necessary? Who is "the Department"? I could not find a Rule in this Subchapter defining "the Department," although I assume it's DEQ. If so, please make clear.*

For (a), G.S. 113A-118.1(b) says that general permits are not subject to the notice provisions in 113A-119, but here these permits may be subject to 113A-119. In (a), is there a determination that the permit is not a general permit? If not, where is your statutory authority? Please clarify.
The rule is acknowledging that DCM has been tapped by the Commission (as the permitting staff) to decide whether using this general permit authorization is warranted (where notice is only required to adjacent riparian property owners) or if the proposed development warrants wider notice to the public anticipated by GS 113A-119 (Please note- this past session the GA removed (i) from GS 113A-119 through SL 2021-158, sec 2- available here: SL 2021-158 (SB 389) (ncleg.gov)). Examples of such projects that should be "elevated" to the regular CAMA Major with 119 notice are proposed developments or sites which may have impacts to more than just the nextdoor neighbors. Making this determination has been delegated by the Commission to DCM staff via the rules of this general permit (which are CRC rules that went through rulemaking, as well as through 15A NCAC 7J .0201 which is the CRC telling citizens that if they want to develop on the coast, they have to get a CAMA permit from the Department, which is sub-delegated from DEQ to DCM).

In the revised rule you've highlighted but not changed "Department has determined." Did you intend to say "the Division of Coastal Management has determined" to bring this in line with .1104?

Yes. Change made.

Further, we had this exchange:

In (a), line 8, please define or delete "immediately."
Added "upon discovery of the shipwreck".

Unfortunately, I don't think this edit actually adds anything, and in fact is redundant. As originally stated, the sentence already required work to stop "[i]f a shipwreck is unearthed." Put differently, what is the practical difference between "immediately" and "upon discovery of a shipwreck"? What period of time between discovery and report to DCM is too long?

The purpose of the rule is that if a shipwreck is discovered/unearthed, that work stop immediately so that no damage to the wreck occurs and then to have experts from DNCR come evaluate the wreck before work is undertaken again. So I changed the language to focus on the immediate stop of work if a shipwreck is discovered and then a duty to contact DCM before work can resume.

The CAMA aims to protect cultural resources such as shipwrecks. Do we need to add in statutory references to the history note? I'm looking at 113A-120(a)(4) which would be a basis for denial if the wreck were known about before development started….once found, we would need to pull in DNCR to evaluate the wreck for cultural significance.

Rule .1805

In my original tech changes, I asked:

In (e), line 12, what does "in such a manner that the damage to existing vegetation is minimized" mean? What is the acceptable level of damage?

You responded "clarified," and added to the existing rule:

"Adding sand to dunes shall be accomplished in such a manner that the damage to existing vegetation by burial is minimized."

I do not have a problem with this change, if that's what you want to do, but I don't think it is responsive to what I asked. The question isn't *how* the damage is caused, but *how much* damage can be caused before it is no longer "minimized" and thus out of compliance.

This GP is for bulldozing and so the primary way vegetation could be damaged would be through burial of existing vegetation and so we thought that would clarify the type of damage we aim to minimize. We are sticking with "minimized" since it would be difficult to completely prevent some burial of vegetation while using such a large tool as a backhoe. The "how much" question would be site specific and based on the tools used, what vegetation is existing, and how much was buried, and so is difficult to set an amount that would fairly apply to all sites.

Finally, in (f), I asked the following question, and you had this response:

In (f), line 16, does the requirement that the applicant get "prior approval" of the DCM between 4/1 and 11/15 mean another level of approval other than the permit? If so, how is that obtained? During this time period, DCM will consult with the Wildlife Resources Commission, USF&W and the USACE regarding the presence of turtle prior to approving a beach bulldozing project.

Additionally, you deleted "prior" from the phrase "prior approval." While I appreciate the response, I don't think the changes to the rule reflect what you're saying here, and I still am left to wonder whether this is another level of approval beyond the permit itself. In other words, what are the processes and standards involved in consulting with WRC, USF&W, and USACE? Is it that between 4/1 and 11/15, before the permit is approved, CRC will consult with these various agencies to determine if turtles and/or their nests are present, and only issue the permit if no significant adverse impact to the turtles is possible? Does the applicant have to interact with these agencies at all?

DCM can place conditions on General Permits, and prior approval is intended to acknowledge that the turtle-specific agencies have a widely referenced turtle moratorium period they suggest as a CAMA permit condition, but that depending on the work proposed, the turtle mitigation measures

implemented, and the location, sometimes they will change their proposed conditions to allow some work during the usual moratorium. In a CAMA Major Permit process, these turtle agencies would be review agencies and would comment with suggested conditions through that process. While those same agencies participated in the creation of this beach bulldozing GP, the timing issue is so site specific and condition specific that it can't be a standard condition….but with prior consultation for a particular site, the turtle agencies agreed to this GP. The process is a less formal version of the CAMA Major but includes the same process of reaching out to the turtle agencies and understanding their concerns about work that is during the usual moratorium but could be undertaken in a location/in a way that is still safe for turtles.

15A NCAC 07H .1102 is readopted as published in 34:09 NCR 758 as follows:

15A NCAC 07H .1102 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development. ~~The applicant shall provide information on site location, dimensions of the project area, and the applicant's name and address.~~

(b) The applicant shall provide:

(1) provide site location, dimensions of the project area, and the applicant's name and address, confirmation that the applicant has obtained a written ~~statement~~ statement, ~~has been obtained~~ signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or

(2) confirmation that the applicant has notified adjacent riparian property owners ~~have been notified~~ by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide written comments on the proposed development to ~~the Division of Coastal Management~~ DCM within 10 days of receipt of the ~~notice, and,~~ notice and indicate that no response shall be interpreted as no objection. DCM shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If ~~the Division of Coastal Management~~ DCM finds that the comments are worthy of more in-depth review, ~~determines that the project exceeds the guidelines established by the General Permit Process,~~ DCM shall notify the applicant that an application for a major development permit shall be required.

(c) No work shall begin until an on-site meeting is held with the applicant and a ~~Division of Coastal Management~~ DCM representative so that the proposed alignment may be marked. A General Permit ~~Written authorization~~ to proceed with the proposed development shall be issued if ~~the Division~~ DCM representative finds that the application meets all the requirements of this Rule. ~~Subchapter~~. Construction of the bulkhead or riprap revetment shall be completed within 120 days of the issuance of the general permit ~~authorization~~ or the authorization shall expire and it shall be necessary to re-examine the structure alignment to determine if the general permit ~~authorization~~ may be reissued.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; 113A-118; 113A-120; 113-229*

Eff. March 1, 1984;
Amended Eff. July 1, 2009; October 1, 2007; September 1, 2006; January 1, 1990; December 1, 1987;
Readopted February 1, 2022.

15A NCAC 07H .1105 is readopted as published in 34:09 NCR 758 as follows:

15A NCAC 07H .1105 SPECIFIC CONDITIONS

(a) Along shorelines void of wetland vegetation:

(1) New bulkheads shall have an average approximation of normal high water or normal water level. The bulkhead position shall not exceed a distance of five feet waterward of normal high water or normal water level at any point along its alignment.

(2) New bulkheads or riprap revetments on shorelines within manmade upland basins, canals, and ditches, shall be positioned so as not to exceed an average distance of two feet and maximum distance of five feet waterward of normal high water or normal water level.

(3) When replacing an existing bulkhead, the new alignment shall be positioned so as not to exceed a maximum distance of two feet waterward of the current bulkhead alignment. To tie into a like structure on the adjacent property, replacement bulkhead position shall not exceed a maximum distance of five feet waterward of the current bulkhead alignment. When replacing a bulkhead where lands landward of the bulkhead were lost in the last year, bulkheads shall be positioned a maximum of two feet waterward of the ~~original/existing~~ original or existing alignment.

(4) Riprap revetments shall be positioned so as not to exceed a maximum distance of 10 feet waterward of the normal high water or normal water level at any point along its alignment.

(b) Along shorelines with wetland vegetation, bulkheads and riprap revetments shall be positioned so that all construction is to be accomplished landward of such vegetation.

(c) Bulkheads shall be constructed of vinyl, ~~or~~ steel sheet pile, concrete, stone, timber, or other ~~suitable~~ materials approved by the Division of Coastal Management.

(d) Riprap revetments shall be constructed of granite, marl, concrete without exposed rebar, or other ~~suitable~~ materials approved by the Division of Coastal Management.

(e) Revetment material shall be free from loose dirt or other materials not approved by the Division of Coastal Management. ~~pollutants~~.

(f) Revetment material shall be of ~~sufficient~~ size approved by the Division of Coastal Management to prevent movement of the material from the site by wave action or currents.

(g) Construction design for riprap revetments shall take into consideration the height of the area to be protected ~~(i.e.~~ i.e., bulkhead height, escarpment height, water ~~depth)~~ depth, and the alignment shall allow for a slope no flatter than three feet horizontal per one foot vertical and no steeper than 1½ feet horizontal per one foot vertical.

(h) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208. The bulkhead or riprap revetment shall be constructed prior to any backfilling activities and shall be structurally tight so as to prevent seepage of backfill materials through the structure.

(i) No excavation, grading or fill shall be permitted except for that which may be required for the construction of the bulkhead or riprap revetment. This permit shall not authorize any excavation waterward of the approved alignment.

(j) Runoff from construction shall not ~~visibly~~ increase the amount of suspended sediments in adjacent waters. ~~Appropriate~~ ~~sedimentation~~ Sedimentation and erosion control devices, ~~measures~~ measures, or structures such as silt fences, diversion swales or berm, sand fences, or other similar controls, shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses and property. ~~(e.g. property, e.g. silt fence, diversion swales or berms, sand fence, etc.). etc.~~

(k) If one contiguous acre or more of property is to be excavated or filled, an erosion and sedimentation control plan shall be filed with and approved by the Division of Energy, Mineral, and Land Resources, or ~~appropriate~~ local government having ~~jurisdiction.~~ a delegated program ~~This plan shall be approved~~ prior to commencing the land-disturbing activity.

(l) For the purposes of these Rules, the Atlantic Intracoastal Waterway (AIWW) is considered a natural shoreline.

(m) Construction authorized by this general permit shall be limited to a maximum shoreline length of 500 feet.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; 113-229*
Eff. March 1, 1984;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); July 1, 2009; April 1, 2005; December 1, 1991; January 1, 1989; December 1, 1987;
Readopted Eff. February 1, 2022.

15A NCAC 07H .1802 is readopted as published in 34:09 NCR 759 as follows:

15A NCAC 07H .1802 APPROVAL PROCEDURES

(a) An ~~The~~ applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management ~~at the address provided in 15A NCAC 07A .0101and .0101 and complete an application requesting~~ request approval for development. The applicant shall provide information on site location, dimensions of the project area, and their name and address.

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and their name and address; ~~confirmation that the applicant has obtained a written statement, signed by the adjacent riparian property owners, stating that they have no objections to the proposed work, has been obtained; work; or~~

(2) confirmation that a written statement has been obtained signed by the the adjacent riparian property owners indicating that they have no objections to ~~have been notified~~ ~~by certified mail of~~ the proposed ~~work.~~ work or; ~~Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the DCM within 10 days of receipt of the notice, and state that no response shall be interpreted as no objection. DCM staff shall review all comments and determine, based upon their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff determines that the project exceeds the Rules established for the General Permit process, DCM shall notify the applicant that an application for a major permit shall be required.~~

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response will be interpreted as no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and DCM representative. All bulldozing shall be completed within 30 days of the date of permit issuance.

History Note: *Authority G.S. ~~113-229(c1);~~ 113-229(c1); 113-229(c2); 113A-107; 113A-113(b); 113A-118.1; 113A-120;*
Eff. December 1, 1987;
Amended Eff. September 1, 2016; January 1, 1990;

Readopted Eff. February 1, 2022.

15A NCAC 07H .1804 is readopted as published in 34:09 NCR 759 as follows:

15A NCAC 07H .1804 GENERAL CONDITIONS

(a) This General P~~p~~ermit shall not be applicable to proposed construction where the ~~Department~~ Division of Coastal Management has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights. If a shipwreck is unearthed, all work shall stop immediately and the Division of Coastal Management shall be contacted ~~immediately.~~ and can contact the Department of Natural and Cultural Resources to examine the shipwreck before work may resume.

(b) This General P~~p~~ermit shall not eliminate the need to obtain any other required ~~state,~~ State, ~~local~~ local, or federal authorization.

(c) Development carried out under ~~this~~ permit set forth in this Section shall be consistent with all State, federal and local requirements, ~~Commission rules,~~ and local Land Use Plans in effect at the time of authorization.

History Note: *Authority G.S. ~~113-229(e);~~ 113-229(c1); 113A-107;113A-113(b); 113A-118.1;*
Eff. December 1, 1987;
Amended Eff. May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. September 1, 2016; August 1,1998; July 1, 1994;
Readopted Eff. February 1, 2022.

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, March 4, 2022 6:18 PM
To: Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopazanski@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>
Subject: RE: RRC - Tech Change Requests

Good afternoon, everyone,

Thank you for your thorough responses, and if I haven't said this before, I am sorry if I'm asking questions that are obvious to y'all – this is my first foray into these rules, which aren't exactly simple. I think you've answered most of my concerns. I have a few follow-up questions and one new—and thankfully minor—correction. I'm just going to copy/paste our earlier exchanges and add my final questions/comments in blue.

Rule .1102
In my original tech changes, I asked the following questions:

Also, generally to this Rule, I do not see anything telling the applicant how and when the application will be approved, or what factors CSC will consider in deciding to approve or deny a permit.
The Division issues three types of permits, Major, Minor and General. General permits are used for routine projects (docks/piers/bulkheads/riprap) that usually pose little or no threat to the environment. General permits are issued on-site by Division Staff upon meeting with the property owner or their agent.

While you've answered the "how and when" an application will be approved, I don't think this is responsive on the second part of that question, which asks what factors you use to determine whether to approve or deny a permit. In your statutes, 113A-120 lays out some guidelines, but I am not certain whether these apply to general permits. If so, please reference these standards in your rule. Moreover, while you're telling me here that the permit will be issued on site following the meeting, that is not clear from the text of the rule. Please consider making a change, perhaps in (c), to clarify this. **Please note I have the same concern with Rule .1802, and my question applies there as well.**

113A-120 outlines the standards for issuing (or denying) all types of CAMA permits, including General Permits. We have not included it in the language of any of the other General Permits, and have concerns that if we add it here, does that obligate the CRC to add it to all of its rules to be consistent? Is that limited to just the GPs or does that also have to be added elsewhere for Majors and Minors as well, and if so, where would it be added for that? It's been added to the legislative authority at the end of the rule- why isn't this sufficient?

The CRC also has rules at 15A NCAC 7J. 1100 which describe the CRC's process for developing different GPs through rulemaking specific to that GP development process (i.e. having the CRC/DCM look at what development activities are regular with known impacts that would be appropriate for a GP to be created). In 7J .1105, the CRC indicates that each GP created (through rulemaking) shall spell out within its text, what is needed from an applicant to be considered for a GP (notice, fee, drawings, etc.). When a GP will be issued is not driven by a permit time clock like Majors and Minors, but can be issued once all of the items required in the language of the GP rules are satisfied, and once DCM staff have been on site. This process is faster than a Major permit since the notice requirements are different. So there's not a clear way to say this other than the current language in 7J.1102(c), lines 23-25 "A General Permit to proceed with the proposed development shall be issued if DCM representative find that the application meets all the requirements of this rule."

OK, it seems like the answer was that the standards for granting/denying at permit are indeed at 113A-120. Does your regulated public understand that? If so, I think this will be fine as drafted.

In (b)(2), lines 16-17, what are the "guidelines established by the General Permit Process," and how would an applicant know whether or not his or her project exceeds them? Are these contained in another Rule?

In response, you have made edits which are indeed consistent with your other GP rules, and which contain language that was recently approved by RRC in November 2021. While I certainly do not wish to create a situation where you're being told different things by two different commission counsel, I have concerns with the new language. In particular, this passage: "If DCM finds that the comments are worthy of more in-depth review, DCM shall notify the applicant that an application for a major development permit shall be required." First, I think the phrase "finds that the comments are worthy of more in-depth review" is ambiguous without some description of what factors or circumstances DCM will consider in determining whether a comment is "worthy." I believe the previous language, "determined that the project exceed the guidelines established by the General Permit Process" is actually less ambiguous, as long as you can point to what those guidelines are, either in another Rule or statute. Are the guidelines laid out in G.S. 113A-120 the "guidelines established by the General Permit Process"? Second, I am concerned with the use of "shall" here, in that it seems like you're saying that if there are any comments worthy of in-depth review, rather than receive that review, the applicant is simply kicked upstairs to the major permit level. **Please note these same concerns are repeated in Rule .1802, which uses the same language.**

We changed the language to mirror that of the other GPs so that the language is consistent. The issue in this part of (b)(2) is whether a proposed project is appropriate for a GP or should be processed through the Major Permit process described above. The Major Permit process is more money and more time, and the GA allowed for a GP process for projects where the impacts are localized and understood. An applicant may start down the GP path but if comments/objections come in (usually by the adjacent neighbors after getting notice) that raise issues that impact a wider location than just the adjacent neighbors and/or if the comments raise issues which would benefit from the larger resource agency review in a Major Permit process, this rule allows DCM to use its agency expertise to make this discretionary call (which is a more in-depth review but does not mean the permit will be denied in the end). The use of "shall" is appropriate here where if the comments are worthy as described above, this rule DOES require being "kicked upstairs to the major permit level" where the comments DO receive that in-depth review. As this is ultimately a discretionary call based on DCM's expertise in understanding the comments raised, and if they raise issues where a wider review is necessary, I'm not sure how we find a non-discretionary term to use--- and then being consistent throughout all the GPs seems like the best language to use.

With respect to the first issue, the "worthy" language, I note that this is not extensively used throughout Subchapter 07H, and the earlier "determined that the project exceed the guidelines established by the General Permit Process" language is just as common. I further noted that in 07H .2202, which was amended fairly recently (1/1/18), the language used is "If the Division of Coastal Management determines that the project exceeds the guidelines established by the General Permit process provided in 15A NCAC 07J .1100…" In my opinion, this language is less ambiguous than the current formulation with "worthy," and I would be comfortable recommending approval if it were changed accordingly. **Note this applies for the identical language in R. 1802 as well.**

Rule .1802

New correction. In (a), lines 6-7, I think the sentence "The applicant shall provide… name and address." was moved to (a)(1), line 9, and is now redundant here. Suggest deletion.

In my original tech changes, I asked, and you responded:

Generally to this Rule, I do not see anything telling the applicant how and when the application will be approved, or what factors CSC will consider in deciding to approve or deny a permit.
Re-written to be consistent with other general permits.

While you've answered the "how and when" an application will be approved in your responses to R. 1102, I don't think this is responsive on the second part of that question, which asks what factors you use to determine whether to approve or deny a permit. In your statutes, 113A-120 lays out some guidelines, but I am not certain whether these apply to general permits. Moreover, here, 113A-120 is not in your history note. If so, please reference these standards in your rule and add to the history note. Finally, while you're telling me here that the permit will be issued on site following the meeting, that is not clear from the text of the rule. Please consider making a change, perhaps in (c), to clarify this.

(as in 1102 above…with history note updated)
113A-120 outlines the standards for issuing (or denying) all types of CAMA permits, including General Permits. We have not included it in the language of any of the other General Permits, and have concerns that if we add it here, does that obligate the CRC to add it to all of its rules to be consistent? Is that limited to just the GPs or does that also have to be added elsewhere for Majors and Minors as well, and if so, where would it be added for that? It's been added to the legislative authority at the end of the rule- why isn't this sufficient?

OK, it seems like the answer was that the standards for granting/denying at permit are indeed at 113A-120. Does your regulated public understand that? If so, I think this will be fine as drafted.

In (b)(2), line 13, where is your statutory authority for the 10 day objection period? G.S. 113-229(d) allows owners to file objections with the Department for 30 days after service.
Re-written to be consistent with other general permits

The changes made to the text do not appear to touch on the 10 day period. While it is consistent with your other GP rules, many of those rules do not cite G.S. 113-229 as authority. As I see it, 113-229 covers dredging and filling, and may not be applicable to other areas of permitting, such as the recent Rule .1202 that was approved by the Commission in November 2021, which contained this same language, but dealt with docks, rather than beach bulldozing. Here is the relevant language from 113-229(d):

An applicant for a permit, other than an emergency permit, shall notify the owner of each tract of riparian property that adjoins that of the applicant. An applicant may satisfy the required notification of adjoining riparian property owners by either (i) obtaining from each adjoining riparian property owner a signed statement that the adjoining riparian property owner has no objection to the proposed project or (ii) providing a copy of the applicant's permit application to each adjoining riparian property owner by certified mail. If the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, publication in accordance with the rules of the Commission shall serve to satisfy the notification requirement. **An owner may file written objections to the permit with the Department for 30 days after the owner is served with a copy of the application by certified mail**. In the case of a special emergency dredge or fill permit the applicant must certify that the applicant took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in subsection (e) of this section, upon the express understanding from the applicant that the applicant will be entirely liable and hold the State harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given. (emphasis added)

Yet, your rule states that "The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management **within 10 days of receipt of the notice** and indicate that no response will be interpreted as no objection." (emphasis added) I continue to question what statutory grounds you have for limiting the time to file objections when 113-229 explicitly defines that period. **Please note that this is also a concern for Rule .1102, which uses the same language and also cites 113-229 for statutory authority.** Does 113-229 not apply here? Is there another statute on point that provides you with authority to

set the period? To that end, I see 113A-118.1(c) does allow CRC to "impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues." However, I see 113-229 as a much more specific statute than 113A-118.1, and as you know, the specific governs over the general.

The more narrow State Dredge and Fill law of 1969 regulates Dredging and Filling, which is one type of coastal "development"—See 113A-103(5)a. which defines "development" and includes D&F plus many other activities. That law was the pre-cursor to the more-broad authority of the CAMA of 1974. Following the CAMA and establishment of the CRC, the GA amended the D&F law to add in 113-229(c1) and (c2) [hence the wonky numbering] to allow some proposed developments which include D&F like bulkhead/riprap GP (.1100) and beach bulldozing GP (.1800) to be processed as GP's once the CRC established such GPs through rulemaking. This language in the D&F mirrors 113A-118.1. D&F (c1) and (c2) seem to allow D&F activities to be authorized through GP's and allow the reduced notice/comment periods in the same way 113A-118.1 allow under CAMA.

I added 113-229(c2) to the history note and (c1) was already there.

I see now how the statutory authority runs, and how 113A-118.1 applies specifically here. I feel comfortable recommending approval of the current language.

Rule .1804

Further, we had this exchange:
In (a), line 8, please define or delete "immediately."
Added "upon discovery of the shipwreck".

Unfortunately, I don't think this edit actually adds anything, and in fact is redundant. As originally stated, the sentence already required work to stop "[i]f a shipwreck is unearthed." Put differently, what is the practical difference between "immediately" and "upon discovery of a shipwreck"? What period of time between discovery and report to DCM is too long?

The purpose of the rule is that if a shipwreck is discovered/unearthed, that work stop immediately so that no damage to the wreck occurs and then to have experts from DNCR come evaluate the wreck before work is undertaken again. So I changed the language to focus on the immediate stop of work if a shipwreck is discovered and then a duty to contact DCM before work can resume.

The CAMA aims to protect cultural resources such as shipwrecks. Do we need to add in statutory references to the history note? I'm looking at 113A-120(a)(4) which would be a basis for denial if the wreck were known about before development started….once found, we would need to pull in DNCR to evaluate the wreck for cultural significance.

I am inferring from these responses that "immediately" has no particular meaning in this context outside of its generally accepted meaning, and so I am comfortable recommending approval with that term included. With respect to protection of shipwrecks, I agree you need a statutory reference, and I think the appropriate citation for the History Note would be 113A-102(b)(4)(e), which states that one of CAMA's goals is to establish policies, guidelines, and standards for "preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area[.]"

I think the language added in re contacting DNCR is unnecessary and not relevant to what this particular rule is doing, so I would suggest deleting it.

Rule .1805
In my original tech changes, I asked:
In (e), line 12, what does "in such a manner that the damage to existing vegetation is minimized" mean? What is the acceptable level of damage?

You responded "clarified," and added to the existing rule:

"Adding sand to dunes shall be accomplished in such a manner that the damage to existing vegetation by burial is minimized."

I do not have a problem with this change, if that's what you want to do, but I don't think it is responsive to what I asked. The question isn't *how* the damage is caused, but *how much* damage can be caused before it is no longer "minimized" and thus out of compliance.

This GP is for bulldozing and so the primary way vegetation could be damaged would be through burial of existing vegetation and so we thought that would clarify the type of damage we aim to minimize. We are sticking with "minimized" since it would be difficult to completely prevent some burial of vegetation while using such a large tool as a backhoe. The "how much" question would be **site specific and based on the tools used, what vegetation is existing, and how much was buried**, and so is difficult to set an amount that would fairly apply to all sites.

I think if you added a little more formally worded version of the language I've underlined and bolded in your response to the Rule, it would reduce the ambiguity, and I would be comfortable recommending approval.

Thanks again for your hard work here, and I look forward to your responses.

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

From: Liebman, Brian R
Sent: Wednesday, March 2, 2022 11:41 AM
To: Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopazanski@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Lucasse, Mary L
Subject: RE: RRC - Tech Change Requests

Hi Christy,

Thank you for getting these responses back to me.

With respect to your request for a phone conversation on these rules, pursuant to our new policy, all further communication about currently pending rules should be conducted via email, which will be placed on the Commission's monthly agenda. Once I've had an opportunity to review your submission, I will reach out via email with any further questions I may have.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948

brian.liebman@oah.nc.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

From: Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Sent: Tuesday, March 1, 2022 4:09 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Lopazanski, Mike <mike.lopazanski@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>
Subject: RE: RRC - Tech Change Requests

Hi Brian-

Attached, please find a word document of your additional questions below, as well as our answers in green. Please also find updated copies of the four rules below with additional changes (the other rules which were not a part of your additional requests were sent in January….please let us know if those need to be re-sent).

In my Monday email, I asked if you were available Thursday morning between 9-11 or Thursday 3-5 to do a call/Teams to discuss any remaining questions. Those times continue to work for us- just let us know.

Thanks for your help on these rules-
Christy

Christine A. Goebel
Assistant General Counsel, Office of General Counsel
North Carolina Department of Environmental Quality
919.707.8554 (Office)
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From: Liebman, Brian R
Sent: Saturday, January 15, 2022 12:17 PM
To: Lopazanski, Mike <mike.lopazanski@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Subject: RE: RRC - Tech Change Requests

Good afternoon all,

Thank you for your hard work on these tech changes. I have a few more edits and questions about several of the Rules, which I've outlined below. Because of the holiday and our tight schedule going into the meeting on Thursday, I will need your responses **no later than 12:00 p.m. on Tuesday, 1/18/22.** As a few of the issues I've identified below may require significant editing/discussion, please consider the possibility of requesting an extension, so that we have additional time

to work on these rules. As I do think I can recommend approval of some of these rules to the RRC, but continue to have questions about others, I wonder if there are any interconnectivity issues raised if one or more of the rules can't be finalized before Tuesday? Please let me know.

Rule .1102

In current (b)(2), line 17, did you intend to create a new paragraph with the language starting with "DCM shall review all comments…" ? If so, please fix the formatting, and move the left margin over so there is no indent.

In (c), line 24, I believe you intended to replace "written authorization" with "General Permit." As written it says "A permit Written authorization to proceed…." Please correct. Also, throughout (c), please be consistent with the capitalization of "general permit," as it is capitalized in (a), and also in other rules.

In my original tech changes, I asked the following questions:

Also, generally to this Rule, I do not see anything telling the applicant how and when the application will be approved, or what factors CSC will consider in deciding to approve or deny a permit.
The Division issues three types of permits, Major, Minor and General. General permits are used for routine projects (docks/piers/bulkheads/riprap) that usually pose little or no threat to the environment. General permits are issued on-site by Division Staff upon meeting with the property owner or their agent.

While you've answered the "how and when" an application will be approved, I don't think this is responsive on the second part of that question, which asks what factors you use to determine whether to approve or deny a permit. In your statutes, 113A-120 lays out some guidelines, but I am not certain whether these apply to general permits. If so, please reference these standards in your rule. Moreover, while you're telling me here that the permit will be issued on site following the meeting, that is not clear from the text of the rule. Please consider making a change, perhaps in (c), to clarify this. **Please note I have the same concern with Rule .1802, and my question applies there as well.**

In (b)(2), line 14-15, what does "based on their relevance to the potential impacts of the proposed project" mean? What factors will the DCM or CRC use to determine whether the project can be approved by a General Permit?

In (b)(2), lines 16-17, what are the "guidelines established by the General Permit Process," and how would an applicant know whether or not his or her project exceeds them? Are these contained in another Rule?

In response, you have made edits which are indeed consistent with your other GP rules, and which contain language that was recently approved by RRC in November 2021. While I certainly do not wish to create a situation where you're being told different things by two different commission counsel, I have concerns with the new language. In particular, this passage: "If DCM finds that the comments are worthy of more in-depth review, DCM shall notify the applicant that an application for a major development permit shall be required." First, I think the phrase "finds that the comments are worthy of more in-depth review" is ambiguous without some description of what factors or circumstances DCM will consider in determining whether a comment is "worthy." I believe the previous language, "determined that the project exceed the guidelines established by the General Permit Process" is actually less ambiguous, as long as you can point to what those guidelines are, either in another Rule or statute. Are the guidelines laid out in G.S. 113A-120 the "guidelines established by the General Permit Process"? Second, I am concerned with the use of "shall" here, in that it seems like you're saying that if there are any comments worthy of in-depth review, rather than receive that review, the applicant is simply kicked upstairs to the major permit level. **Please note these same concerns are repeated in Rule .1802, which uses the same language.**

Rule .1105

In (j), p. 2 line 3, please edit to say "do not enter adjacent wetlands…"

In (j), lines 4-5, where you've eliminated the parenthetical, please edit for clarity. As written, it looks like you're saying that silt fences, diversion swales, berms, or sand fences are *property* rather than sedimentation and erosion control

devices. Consider the following: "Sedimentation and erosion control devices, measures, or structures such as silt fences, diversion swales or berms, and sand fences, shall be implemented…" In any event, please refrain from using "e.g." and "etc." in the text of the rule.

In (k), line 7, I believe "and" prior to "a delegated program" should be deleted.

In my original tech changes, I asked, and you responded:
What is the difference between the "appropriate sedimentation and erosion control devices" required in (j) and the "erosion and sedimentation control plan" required by (k)?
Not all projects require a plan, BMP measures such as silt fences may all that is required in some instances.

While I appreciate the answer, I don't think this is responsive to my question. Please take another look and let me know what, if any, differences there are between "sedimentation erosion control devices" and a "sedimentation control plan."

Rule .1802
I noticed that you've made a change to (a), line 5, that was not made in response to a tech change request. Can you please explain why you omitted the language on Line 5?

Is the sentence beginning (b)(2), lines 12-14, redundant with the sentence ending (b)(1)? The way I read it, both are requiring the applicant to provide written statements from the adjacent riparian property owners. Please omit one, if so.

In my original tech changes, I asked, and you responded:

Generally to this Rule, I do not see anything telling the applicant how and when the application will be approved, or what factors CSC will consider in deciding to approve or deny a permit.
Re-written to be consistent with other general permits.

While you've answered the "how and when" an application will be approved in your responses to R. 1102, I don't think this is responsive on the second part of that question, which asks what factors you use to determine whether to approve or deny a permit. In your statutes, 113A-120 lays out some guidelines, but I am not certain whether these apply to general permits. Moreover, here, 113A-120 is not in your history note. If so, please reference these standards in your rule and add to the history note. Finally, while you're telling me here that the permit will be issued on site following the meeting, that is not clear from the text of the rule. Please consider making a change, perhaps in (c), to clarify this.

In (b)(2), line 13, where is your statutory authority for the 10 day objection period? G.S. 113-229(d) allows owners to file objections with the Department for 30 days after service.
Re-written to be consistent with other general permits

The changes made to the text do not appear to touch on the 10 day period. While it is consistent with your other GP rules, many of those rules do not cite G.S. 113-229 as authority. As I see it, 113-229 covers dredging and filling, and may not be applicable to other areas of permitting, such as the recent Rule .1202 that was approved by the Commission in November 2021, which contained this same language, but dealt with docks, rather than beach bulldozing. Here is the relevant language from 113-229(d):

An applicant for a permit, other than an emergency permit, shall notify the owner of each tract of riparian property that adjoins that of the applicant. An applicant may satisfy the required notification of adjoining riparian property owners by either (i) obtaining from each adjoining riparian property owner a signed statement that the adjoining riparian property owner has no objection to the proposed project or (ii) providing a copy of the applicant's permit application to each adjoining riparian property owner by certified mail. If the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, publication in accordance with the rules of the Commission shall serve to satisfy the notification requirement. **An owner may file written objections to the permit with the**

Department for 30 days after the owner is served with a copy of the application by certified mail. In the case of a special emergency dredge or fill permit the applicant must certify that the applicant took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in subsection (e) of this section, upon the express understanding from the applicant that the applicant will be entirely liable and hold the State harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given. (emphasis added)

Yet, your rule states that "The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management **within 10 days of receipt of the notice** and indicate that no response will be interpreted as no objection." (emphasis added) I continue to question what statutory grounds you have for limiting the time to file objections when 113-229 explicitly defines that period. **Please note that this is also a concern for Rule .1102, which uses the same language and also cites 113-229 for statutory authority.** Does 113-229 not apply here? Is there another statute on point that provides you with authority to set the period? To that end, I see 113A-118.1(c) does allow CRC to "impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues." However, I see 113-229 as a much more specific statute than 113A-118.1, and as you know, the specific governs over the general.

Similarly, I have the same concerns as in Rule .1102, which uses the same "worthy of more in-depth" review language, and also appears to state that any time the Division finds the comments worthy of further review, the applicant "shall" be required to file for a major development permit.

Rule .1804

In my original tech changes, we had this question and response:

In (a), you say that the permit "shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary…" G.S 113A-119 states that the ***Secretary of DEQ*** *"****shall*** *issue public notice" "upon receipt of* ***any*** *application…" I am having a hard time reconciling the statute and the Rule here. Is there other statutory authority for this provision? Assuming that there is statutory authority, what factors does "the Department" use to make the determination that notice and review is necessary? Who is "the Department"? I could not find a Rule in this Subchapter defining "the Department," although I assume it's DEQ. If so, please make clear.*

For (a), G.S. 113A-118.1(b) says that general permits are not subject to the notice provisions in 113A-119, but here these permits may be subject to 113A-119. In (a), is there a determination that the permit is not a general permit? If not, where is your statutory authority? Please clarify.

The rule is acknowledging that DCM has been tapped by the Commission (as the permitting staff) to decide whether using this general permit authorization is warranted (where notice is only required to adjacent riparian property owners) or if the proposed development warrants wider notice to the public anticipated by GS 113A-119 (Please note- this past session the GA removed (i) from GS 113A-119 through SL 2021-158, sec 2- available here: SL 2021-158 (SB 389) (ncleg.gov)). Examples of such projects that should be "elevated" to the regular CAMA Major with 119 notice are proposed developments or sites which may have impacts to more than just the nextdoor neighbors. Making this determination has been delegated by the Commission to DCM staff via the rules of this general permit (which are CRC rules that went through rulemaking, as well as through 15A NCAC 7J .0201 which is the CRC telling citizens that if they want to develop on the coast, they have to get a CAMA permit from the Department, which is sub-delegated from DEQ to DCM).

In the revised rule you've highlighted but not changed "Department has determined." Did you intend to say "the Division of Coastal Management has determined" to bring this in line with .1104?

Further, we had this exchange:

In (a), line 8, please define or delete "immediately."

Added "upon discovery of the shipwreck".

Unfortunately, I don't think this edit actually adds anything, and in fact is redundant. As originally stated, the sentence already required work to stop "[i]f a shipwreck is unearthed." Put differently, what is the practical difference between "immediately" and "upon discovery of a shipwreck"? What period of time between discovery and report to DCM is too long?

Rule .1805
In my original tech changes, I asked:
In (e), line 12, what does "in such a manner that the damage to existing vegetation is minimized" mean? What is the acceptable level of damage?

You responded "clarified," and added to the existing rule:

"Adding sand to dunes shall be accomplished in such a manner that the damage to existing vegetation by burial is minimized."

I do not have a problem with this change, if that's what you want to do, but I don't think it is responsive to what I asked. The question isn't *how* the damage is caused, but *how much* damage can be caused before it is no longer "minimized" and thus out of compliance.

Finally, in (f), I asked the following question, and you had this response:
In (f), line 16, does the requirement that the applicant get "prior approval" of the DCM between 4/1 and 11/15 mean another level of approval other than the permit? If so, how is that obtained?
During this time period, DCM will consult with the Wildlife Resources Commission, USF&W and the USACE regarding the presence of turtle prior to approving a beach bulldozing project.

Additionally, you deleted "prior" from the phrase "prior approval." While I appreciate the response, I don't think the changes to the rule reflect what you're saying here, and I still am left to wonder whether this is another level of approval beyond the permit itself. In other words, what are the processes and standards involved in consulting with WRC, USF&W, and USACE? Is it that between 4/1 and 11/15, before the permit is approved, CRC will consult with these various agencies to determine if turtles and/or their nests are present, and only issue the permit if no significant adverse impact to the turtles is possible? Does the applicant have to interact with these agencies at all?

Thank you for your attention to these questions, and have a great weekend.

Brian Liebman
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Office of Administrative Hearings
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brian.liebman@oah.nc.gov

From: Lopazanski, Mike <mike.lopazanski@ncdenr.gov>
Sent: Friday, January 14, 2022 1:22 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Subject: RE: RRC - Tech Change Requests

Missed an attachement.

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, January 14, 2022 1:19 PM
To: Lopazanski, Mike <mike.lopazanski@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Subject: RE: RRC - Tech Change Requests

Thanks. Additionally, I noticed that in your first email, you mentioned "edits and responses." I have gone through the rules you sent me, and a number of my questions were not addressed. Were there additional responses you intended to send?

Brian Liebman
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From: Lopazanski, Mike <mike.lopazanski@ncdenr.gov>
Sent: Friday, January 14, 2022 12:58 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Subject: RE: RRC - Tech Change Requests

Angela will be getting those to you.

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, January 14, 2022 11:37 AM
To: Lopazanski, Mike <mike.lopazanski@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Subject: RE: RRC - Tech Change Requests

Hi Mike,

Thanks for getting these back to me. I will look through and let you know if I have further questions or changes. I did notice that I asked about the date of your public hearing as reflected in your Submission for Permanent Rule forms for all of the rules in this packet. I don't see any updated forms here, so are you planning to provide those separately?

Thanks,
Brian

Brian Liebman
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From: Lopazanski, Mike <mike.lopazanski@ncdenr.gov>
Sent: Friday, January 14, 2022 11:33 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Subject: RE: RRC - Tech Change Requests

Attached are edits and responses to the tech corrections and questions.

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, January 4, 2022 10:52 AM
To: Lopazanski, Mike <mike.lopazanski@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RRC - Tech Change Requests

Good morning,

I am the attorney who reviewed the rules submitted by WRC for the RRC's January meeting. The RRC will formally review the rules at its meeting on Thursday, January 20, 2022. The meeting will begin at 9 a.m. The meeting will be a hybrid meeting of in-person and WebEx attendance.

Please submit the revised rules to me via email by 5 p.m. on Friday, January 14, 2022.

Please confirm receipt of this email, and please let me know if you have any questions or concerns regarding the attached. I am always happy to help!

Thanks,

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