



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. **Rule-Making Agency:** Coastal Resources Commission

2. **Rule citation & name:** 15A NCAC 07J .0203 Standards for Work Plats

3. **Action:** Adoption Amendment Repeal

4. **Was this an Emergency Rule:** Yes No **Effective date:** January 3, 2024

5. **Provide dates for the following actions as applicable:**

- a. **Proposed Temporary Rule submitted to OAH:** December 14, 2023
- b. **Proposed Temporary Rule published on the OAH website:** December 20, 2023
- c. **Public Hearing date:** January 9 and 10, 2024
- d. **Comment Period:** January 3, 2024 through February 22, 2024
- e. **Notice pursuant to G.S. 150B-21.1(a3)(2):** December 19, 2023
- f. **Adoption by agency on:** March 13, 2024
- g. **Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3:**

6. **Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.**

- A serious and unforeseen threat to the public health, safety or welfare.**
- The effective date of a recent act of the General Assembly or of the U.S. Congress.**
Cite: S.L. 2023-134 s 21.2(m)
Effective date: October 3, 2023
- A recent change in federal or state budgetary policy.**
Effective date of change:
- A recent federal regulation.**
Cite:
Effective date:
- A recent court order.**
Cite order:
- Other:**

Explain: Pursuant to NC Session Law 2023-134, the Rules Review Commission returned rules to the CRC on October 5, 2023 and the Codifier removed those rules from the Code the same day. Until the effective date of this session law, only an agency could request the return of its rules. As a result, the State of North Carolina cannot not rely on the rules removed from the Code for permitting and enforcement decisions. In addition, the State of North Carolina can no longer review certain federal projects for consistency with State law based on these rules. The removal of the rules from the Code severely impacts the CRC's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. In addition, there is a serious threat to public safety and welfare because the removal of these rules results in the loss of protection of coastal lands and waters, which the General Assembly has deemed "among North Carolina's most valuable resources." N.C. Gen. Stat. 113A-102(a). In summary, this rule provides necessary information on what DCM requires in a work plat submitted in support a dredge and fill permit application or a major permit application. This rule also provides information on must be included with an application for a CAMA or Dredge and Fill permit and explains how a permit will be conditioned with the information provided and when a modification or new permit application is required.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The CRC incorporates the explanation provided in response in Block 6 of this form. In addition, the CRC contends that immediate adoption of the rule is required instead of a more extended notice and hearing requirements. The CRC has received numerous public comments with the significant majority in favor of adopting the temporary rules. Specifically, the CRC has held three public hearings and extended the public comment period to February 22, 2024 in order to widely solicit comments not only from the general public and the regulated public but also through a direct appeal to the Coastal Resources Advisory Council. The CRC has received comments from a diverse group of commenters including, among others coastal towns and counties, civic groups, environmental groups, businesses, visitors' bureaus, a group of high school students, and numerous private citizens. During the public comment period, the CRC received 239 comments including 1 petition with 651 signatures in support of adopting the rules. Of the comments received 3 were neutral, 6 included concerns, 2 provided recommendations for changes which the CRC has decided to consider during permanent rulemaking, and the remaining 228 comments were in support of adopting the rules. Immediate adoption of the rule is required to provide clear direction to the regulated public about what is required for an application and protect NC's coastal resources.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes
Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Jennifer Everett

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Agency contact, if any: Mike Lopazanski

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10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Renee Cahoon

Title: CRC Chair

E-Mail: Renee.Cahoon@deq.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0203

DATE ISSUED: April 5, 2024

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

The above-captioned temporary rule contains requirements for project plans or work plats submitted as part of a permit application. In addition to staff's objection to this rule for failure to show justification for temporary rulemaking, staff recommends objection to this rule for lack of statutory authority and lack of clarity.

It appears that the statutes cited as authority for this Rule are insufficient for all of its provisions. G.S. 113-229(n)(3) merely contains the definition of "marshland." G.S. 113-230(a) gives the Secretary of DEQ authority to issue orders regarding activities in "coastal wetlands". Both appear to be inapposite. G.S. 113A-119 allows the Secretary and the CRC to set the form and content of Coastal Area Management Act (CAMA) permits, but is silent as to Dredge and Fill permits. Finally, G.S. 113A-124 contains several "additional powers and duties" granted to the Secretary of DEQ and the CRC, but does not appear to explicitly reach the issuance and

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Commission Counsel

conditioning of either CAMA or Dredge and Fill permits, as regulated by paragraph (d) of this Rule. Thus, to the extent that the statutes cited in the History Note are inapposite or insufficient, it is staff's opinion that the agency has failed to meet its burden of showing statutory authority for this Rule. To be clear, staff is not of the opinion that the agency lacks statutory authority to set the contents of a Dredge and Fill permit or to condition and issue both CAMA and Dredge and Fill permits; rather, the agency has merely failed to properly cite to the applicable statutes.

However, it is staff's opinion that the agency lacks statutory authority for this Rule to the extent that the CRC would require approval for projects that are outside the scope of its permitting authority. The final sentence of paragraph (d) permits an applicant to proceed with work outside an AEC "that is determined by the Division of Coastal Management to not have a *direct impact* on the AEC" (emphasis added) while the permit application is pending. Pursuant to G.S. 113A-118(a), CAMA permits are required only "before undertaking any development *in* any area of environmental concern" (emphasis added). Similarly, G.S. 113-229(a) states that dredge and fill permits are required only in "estuarine waters, tidelands, marshlands, or State-owned lakes[.]" The CRC is not authorized by Article 7 of Chapter 113A or by G.S. 113-229 to require developers to seek government approval for projects that are *outside* of an AEC, or which do not involve dredging or filling in the waters and lands enumerated above. Although the language of the Rule appears to conform to this principle, a careful reading shows the opposite; applicants are prohibited from proceeding with work outside an AEC until the Division of Coastal Management determines that no "direct impact" will occur in an AEC.

* * * * *

Beyond these issues with statutory authority, this Rule contains significant ambiguities. As an initial matter, it is unclear which kind of permit applications this Rule governs. To staff's knowledge, CAMA authorizes three kinds of permits, Major permits, Minor permits, and General permits. Additionally, G.S. 113-229 authorizes Dredge and Fill permits. The Rule appears to set additional requirements for CAMA Major and Dredge and Fill permits in paragraph (c), which supports an inference that the balance of the rule applies to all permits. However, Rule 07J .0204(c)(2) contains the separate requirement that "a work plan shall be attached to all CAMA minor permit applications" which largely echoes the requirements found in paragraph (a) of the instant Rule. Thus, it is unclear whether this Rule applies to all permits issued by the CRC, or only to CAMA Major and Dredge and Fill permits.

In paragraph (c), the CRC requires that applications for a Major or Dredge and Fill permit “include” a list of three types of information. Because the term “include” connotes an open-ended requirement, it is unclear whether this list of required information is exclusive, or whether CRC may augment its requirements on a case-by-case basis. Additionally, item (c)(3) contains the requirement that the applicant disclose the “amount of ground disturbance in the AEC measured in acres or square feet.” The term “ground disturbance” is undefined, and it is also unclear whether the term encompasses “ground disturbance” resulting from the development, or whether it refers to an existing quality “in the AEC”.

In paragraph (d), the Rule states that “[f]ollowing review of the permit application, a permit may be issued conditioned in accordance with G.S. 143B-279.4.” The use of the passive tense obscures *who* reviews and issues the permit, and *who* places the conditions on the permit. Given the contents of Rules 07J .0207 and .0208, which would permit the CRC to circulate permit applications to an unspecified universe of State, federal, and local agencies for review, comment, and “recommendations” for permit conditions, the failure to specify who issues and conditions the permit here is particularly problematic. Adding complexity to the ambiguity, a review of G.S. 143B-279.4 reveals that this statute provides only that the Secretary of Environmental Quality is the head of the Department of Environmental Quality, and that he or she may appoint two Deputy Secretaries. G.S. 143B-279.4 contains no mention of the conditioning of permits.

Finally, as mentioned above, the final sentence of paragraph (d) permits an applicant to proceed with work outside an AEC “that is determined by the Division of Coastal Management to not have a *direct impact* on the AEC” (emphasis added) while the permit application is pending. The term “direct impact” is undefined, and it is unclear what level of “impact” a project must have on an AEC before the applicant is allowed to proceed. More importantly, the Rule is silent as to the grounds the Division of Coastal Management will use to make its determination.

Based on the foregoing, staff recommends objection to this Rule pursuant to G.S. 150B-21.9(a)(1) for lack of statutory authority, and pursuant to G.S. 150B-21.9(a)(2) for lack of clarity.

§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.

(a) Except as hereinafter provided before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or State-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department. Granting of the State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The Department shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(b) All applications for such permits shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel, the disposal area, and a copy of the deed or other instrument under which the applicant claims title to the property adjoining the waters in question, (or any land covered by waters), tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title plus written permission from the owner to carry out the project on his land.

(c) In lieu of a deed or other instrument referred to in subsection (b) of this section, the agency authorized to issue such permits may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(c1) The Coastal Resources Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider all of the following:

- (1) The size of the development.
- (2) The impact of the development on areas of environmental concern.
- (3) How often the class of development is carried out.
- (4) The need for on-site oversight of the development.
- (5) The need for public review and comment on individual development projects.

(c2) General permits may be issued by the Commission as rules under the provisions of G.S. 113A-118.1. Individual development carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of this section. The Commission may impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues. The variance, appeals, and enforcement provisions of this Article shall apply to any individual development projects undertaken under a general permit.

(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.

(e) Applications for permits except special emergency permit applications shall be circulated by the Department among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted subject to such conditions as may be reasonably necessary to protect the public interest. The Coastal Resources Commission shall coordinate the issuance of permits under this section and G.S. 113A-118 and the granting of variances under this section and G.S. 113A-120.1 to avoid duplication and to create a single, expedited permitting process. The Coastal Resources Commission may adopt rules interpreting and applying the provisions of this section and rules specifying the procedures for obtaining a permit under this section. Maintenance work as defined in this subsection shall be limited to such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act on an application for permit within 75 days after the completed application is filed, provided the Department may extend such deadline by not more than an additional 75 days if necessary properly to

consider the application, except for applications for a special emergency permit, in which case the Department shall act within two working days after an application is filed, and failure to so act shall automatically approve the application.

(e1) The Secretary is empowered to issue special emergency dredge or fill permits upon application. Emergency permits may be issued only when life or structural property is in imminent danger as a result of rapid recent erosion or sudden failure of a man-made structure. The Coastal Resources Commission may elaborate by rule upon what conditions the Secretary may issue a special emergency dredge or fill permit. The Secretary may condition the emergency permit upon any reasonable conditions, consistent with the emergency situation, he feels are necessary to reasonably protect the public interest. Where an application for a special emergency permit includes work beyond which the Secretary, in his discretion, feels necessary to reduce imminent dangers to life or property he shall issue the emergency permit only for that part of the proposed work necessary to reasonably reduce the imminent danger. All further work must be applied for by application for an ordinary dredge or fill permit. The Secretary shall deny an application for a special dredge or fill permit upon a finding that the detriment to the public which would occur on issuance of the permit measured by the five factors in G.S. 113-229(e) clearly outweighs the detriment to the applicant if such permit application should be denied.

(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the issuance of a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit.

(g) G.S. 113A-122 applies to an appeal of a permit decision under subsection (f).

(h) Repealed by Session Laws 1987, c. 827, s. 105.

(h1) Except as provided in subsection (h2) of this section, all construction and maintenance dredgings of beach-quality sand may be placed on the affected downdrift ocean beaches or, if placed elsewhere, an equivalent quality and quantity of sand from another location shall be placed on the downdrift ocean beaches.

(h2) Clean, beach quality material dredged from navigational channels within the active nearshore, beach or inlet shoal systems shall not be removed permanently from the active nearshore, beach or inlet shoal system. This dredged material shall be disposed of on the ocean beach or shallow active nearshore area where it is environmentally acceptable and compatible with other uses of the beach.

(i) Subject to subsections (h1) and (h2) of this section, all materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.

(j) None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

(k) Any person, firm, or corporation violating the provisions of this section shall be guilty of a Class 2 misdemeanor. Each day's continued operation after notice by the Department to cease shall constitute a separate offense. A notice to cease shall be served personally or by certified mail.

(l) The Secretary may, either before or after the institution of proceedings under subsection (k) of this section, institute a civil action in the superior court in the name of the State upon the relation of the Secretary, for damages, and injunctive relief, and for such other and further relief in the premises as said court may deem proper, to prevent or recover for any damage to any lands or property which the State holds in the public trust, and to restrain any violation of this section or of any provision of a dredging or filling permit issued under this section. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this section for any violation of the same.

(m) This section shall apply to all persons, firms, or corporations, their employees, agents, or contractors proposing excavation or filling work in the estuarine waters, tidelands, marshlands and State-owned lakes within the State, and the work to be performed by the State government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the Department and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130A-346 through G.S. 130A-349. Provided, further, this section shall not impair the riparian right of ingress and egress to navigable waters.

(n) Within the meaning of this section:

- (1) "State-owned lakes" include man-made as well as natural lakes.
- (2) "Estuarine waters" means all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department and the Wildlife Resources Commission, within the meaning of G.S. 113-129.
- (3) "Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tidewaters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh

and marsh plant species: Smooth or salt water Cordgrass (*Spartina alterniflora*), Black Needlerush (*Juncus roemerianus*), Glasswort (*Salicornia* spp.), Salt Grass (*Distichlis spicata*), Sea Lavender (*Limonium* spp.), Bulrush (*Scirpus* spp.), Saw Grass (*Cladium jamaicense*), Cattail (*Typha* spp.), Salt-Meadow Grass (*Spartina patens*), and Salt Reed-Grass (*Spartina cynosuroides*). (1969, c. 791, s. 1; 1971, c. 1159, s. 6; 1973, c. 476, s. 128; c. 1262, ss. 28, 86; c. 1331, s. 3; 1975, c. 456, ss. 1-7; 1977, c. 771, s. 4; 1979, c. 253, ss. 1, 2; 1983, c. 258, ss. 1-3; c. 442, s. 2; 1987, c. 827, s. 105; 1989, c. 727, s. 107; 1993, c. 539, s. 844; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 777, s. 6(a), (b); 1995, c. 509, s. 55.1(a)-(c); 2000-172, ss. 3.1, 3.2; 2002-126, ss. 29.2(h)-(j); 2011-398, s. 36; 2013-413, s. 55.)

§ 113A-118. Permit required.

(a) After the date designated by the Secretary pursuant to G.S. 113A-125, every person before undertaking any development in any area of environmental concern shall obtain (in addition to any other required State or local permit) a permit pursuant to the provisions of this Part.

(b) Under the expedited procedure provided for by G.S. 113A-121, the permit shall be obtained from the appropriate city or county for any minor development; provided, that if the city or county has not developed an approved implementation and enforcement program, the permit shall be obtained from the Secretary.

(c) Permits shall be obtained from the Commission or its duly authorized agent.

(d) Within the meaning of this Part:

(1) A "major development" is any development which requires permission, licensing, approval, certification or authorization in any form from the Environmental Management Commission, the Department of Environmental Quality, the Department of Administration, the North Carolina Oil and Gas Commission, the North Carolina Pesticides Board, the North Carolina Sedimentation Control Board, or any federal agency or authority; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

(2) A "minor development" is any development other than a "major development."

(e) If, within the meaning of G.S. 113A-103(5)b3, the siting of any utility facility for the development, generation or transmission of energy is subject to regulation under this Article rather than by the State Utilities Commission or by other law, permits for such facilities shall be obtained from the Coastal Resources Commission rather than from the appropriate city or county.

(f) The Secretary may issue special emergency permits under this Article. These permits may only be issued in those extraordinary situations in which life or structural property is in imminent danger as a result of storms, sudden failure of man-made structures, or similar occurrence. These permits may carry any conditions necessary to protect the public interest, consistent with the emergency situation and the impact of the proposed development. If an application for an emergency permit includes work beyond that necessary to reduce imminent dangers to life or property, the emergency permit shall be limited to that development reasonably necessary to reduce the imminent danger; all further development shall be considered under ordinary permit procedures. This emergency permit authority of the Secretary shall extend to all development in areas of environmental concern, whether major or minor development, and the mandatory notice provisions of G.S. 113A-119(b) shall not apply to these emergency permits. To the extent feasible, these emergency permits shall be coordinated with any emergency permits required under G.S. 113-229(e1). The fees

associated with any permit issued pursuant to this subsection or rules adopted pursuant to this subsection shall be waived. (1973, c. 476, s. 128; c. 1282, ss. 23, 33; c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1979, c. 253, s. 5; 1981, c. 932, s. 2.1; 1983, c. 173; c. 518, s. 3; 1987, c. 827, s. 136; 1989, c. 727, s. 131; 1997-443, s. 11A.119(a); 2007-485, s. 5; 2012-143, s. 1(d); 2014-4, s. 4(c); 2015-241, s. 14.30(u).)

§ 113A-120. Grant or denial of permits.

- (a) The responsible official or body shall deny an application for a permit upon finding:
- (1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.
 - (2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).
 - (3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subdivisions a through c of G.S. 113A-113(b)(3).
 - (4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4).
 - (5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.
 - (6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.
 - (7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.
 - (8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.
 - (9) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources.
 - (10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through (9) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.
- (b) In the absence of such findings, a permit shall be granted. The permit may be conditioned upon the applicant's amending his proposal to take whatever measures or agreeing to carry out

whatever terms of operation or use of the development that are reasonably necessary to protect the public interest with respect to the factors enumerated in subsection (a) of this section.

(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- (1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with other federal and state laws, regulations, and rules for the protection of the environment.

(b2) For purposes of subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.

(c) Repealed by Session Laws 1989, c. 676, s. 7. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1; 1983, c. 518, ss. 4, 5; 1987, c. 827, s. 138; 1989, c. 51; c. 676, s. 7; 1997-337, s. 2; 1997-456, s. 55.2B; 1997-496, s. 2; 2000-172, s. 2.1.)

§ 113A-124. Additional powers and duties.

(a) The Secretary shall have the following additional powers and duties under this Article:

- (1) To conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.
- (2) To cooperate with the Secretary of the Department of Administration in drafting State guidelines for the coastal area.
- (3) Repealed by Session Laws 2021-158, s. 2(b), effective July 1, 2021, and applicable to permit applications received on or after that date.
- (4) To propose rules to implement this Article for consideration by the Commission.
- (5) To delegate such of his powers as he may deem appropriate to one or more qualified employees of the Department or to any local government, provided that the provisions of any such delegation of power shall be set forth in departmental rules.
- (6) To delegate the power to conduct a hearing, on his behalf, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the record of the hearing to the Secretary for decision or action.

(b) In order to carry out the provisions of this Article the Secretaries of Administration and of Environmental Quality may employ such clerical, technical and professional personnel, and consultants with such qualifications as the Commission may prescribe, in accordance with the State personnel rules and budgetary laws, and are hereby authorized to pay such personnel from any funds made available to them through grants, appropriations, or any other sources. In addition, the said secretaries may contract with any local governmental unit or lead regional organization to carry out the planning provisions of this Article.

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified

employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.

- (5) Repealed by Session Laws 1987, c. 827, s. 141.
 - (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
 - (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
 - (8) To adopt rules to implement this Article.
 - (9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.
- (d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-209, s. 5(a); 2021-158, s. 2(b).)

§ 113A-127. Coordination with the federal government.

All State agencies shall keep informed of federal and interstate agency plans, activities, and procedures within their area of expertise that affect the coastal area. Where federal or interstate agency plans, activities or procedures conflict with State policies, all reasonable steps shall be taken by the State to preserve the integrity of its policies. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07J .0203 is adopted under temporary procedures as follows:

2
3 **15A NCAC 07J .0203 STANDARDS FOR WORK PLATS**

4 (a) General. Project plans or work plats shall include a top or plan view and a cross-sectional view. All plats shall
5 have the standard north arrow. North shall be at the top of the plat. Work plats shall be drawn to a scale of 1" = 200'
6 or less.

7 (b) Details of Work Plats

8 (1) Top View or Plan View Work Plats. Such drawings shall show existing and proposed features such
9 as dune systems, shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas,
10 type and location of sewage treatment facilities and effluent outlets. Existing water depths shall be
11 indicated as Normal Water Level or Normal High Water Level unless work plats are by a
12 professional surveyor or engineer where water depths can be indicated using mean low water as
13 base or zero and shall be shown either as contours or spot elevation. Work plats shall indicate which
14 features are existing and which are proposed. Property boundaries, as they appear on the deed, and
15 the names of adjacent property owners shall be shown on the work plat. The work plat shall show
16 areas to be excavated and the exact site for disposal of the excavated material unless outside of the
17 Area of Environmental Concern, then an address may be provided. When fill material is to be placed
18 behind a bulkhead or dike, the plan shall show the exact location of such bulkheads, dikes and fill
19 areas and calculations showing that the bulkhead or dike has the capacity to confine the material.
20 Work Plats shall indicate Normal Water Level or Normal High-Water Level unless certified by a
21 professional surveyor or engineer where water depths can be shown as mean low and mean high
22 water lines. Work plats shall indicate the presence of wetlands in the area of proposed work. In
23 areas where the difference in daily low and high tides is less than six inches, mean water level as
24 certified by a professional surveyor or engineer or normal water level shall be used.

25 (2) Cross-Section Work Plats. A cross-sectional diagram showing depth and elevation of proposed
26 work relative to Normal Water Level or Normal High Water Level unless certified by a professional
27 surveyor or engineer where water depths can be shown as mean low and mean high water, shall be
28 included in the plan. First floor elevations shall be shown for any proposed structures.

29 (3) Title of Work Plats. Each work plat shall have a title block to identify the project or work, and
30 shall include name of applicant or project, date the plat was prepared, and scale of the plat. The date
31 of any revisions shall be noted. The applicant shall also include the name or initials of the person
32 who drew the plat.

33 (c) Any application for a CAMA Major or Dredge and Fill permit shall include a narrative of the proposed
34 development that shall include the following information:

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

36 (2) a description of the development activities proposed; and

37 (3) the amount of ground disturbance in the AEC measured in acres or square feet.

1 (d) Following review of the permit application, a permit may be issued conditioned in accordance with G.S.143B-
2 279.4. Any subsequent violation of these conditions shall be a permit violation. Any subsequent change in the
3 development which changes the parameters of the project shall be submitted to the Division of Coastal Management.
4 Nothing in this Rule would prohibit an applicant from proceeding with work outside an AEC that is determined by
5 the Division of Coastal Management to not have a direct impact on the AEC while a permit application for work in
6 the AEC is pending provided that all other necessary local, state, and federal permits have been obtained.

7
8 *History Note: Authority G.S. 113-229(n)(3); 113-230(a); 113A-119; 113A-124;*
9 *Temporary Adoption Eff. April 5, 2024.*



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Coastal Resources Commission
2. Rule citation & name: 15A NCAC 07J .0204 Processing the Application
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: January 3, 2024
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: December 14, 2023 b. Proposed Temporary Rule published on the OAH website: December 20, 2023 c. Public Hearing date: January 9 and 10, 2024 d. Comment Period: January 3, 2024 through February 22, 2024 e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 19, 2023 f. Adoption by agency on: March 13, 2024 g. Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2023-134 s 21.2(m) Effective date: October 3, 2023 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> Other: Explain: Pursuant to NC Session Law 2023-134, the Rules Review Commission returned rules to the CRC on October 5, 2023 and the Codifier removed those rules from the Code the same day. Until the effective date of this session law, only an agency could request the return of its rules. As a result, the State of North Carolina cannot not rely on the rules removed from the Code for permitting and enforcement decisions. In addition, the State of North Carolina can no longer review certain federal projects for consistency with State law based on these rules. The removal of the rules from the Code severely impacts the CRC's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. In addition, there is a serious threat to public safety and welfare because the removal of these rules results in the loss of protection of coastal lands and waters, which the General Assembly has deemed "among North Carolina's most valuable resources." N.C. Gen. Stat. 113A-102(a). In summary, this rule provides the process for processing permit applications. The rule further provides the clear and consistent requirements for what needs to be included in a permit application and for providing notice to adjacent riparian landowners for CAMA major and minor development permits.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The CRC incorporates the explanation provided in response in Block 6 of this form. In addition, the CRC contends that immediate adoption of the rule is required instead of a more extended notice and hearing requirements. The CRC has received numerous public comments with the significant majority in favor of adopting the temporary rules. Specifically, the CRC has held three public hearings and extended the public comment period to February 22, 2024 in order to widely solicit comments not only from the general public and the regulated public but also through a direct appeal to the Coastal Resources Advisory Council. The CRC has received comments from a diverse group of commenters including, among others coastal towns and counties, civic groups, environmental groups, businesses, visitors' bureaus, a group of high school students, and numerous private citizens. During the public comment period, the CRC received 239 comments including 1 petition with 651 signatures in support of adopting the rules. Of the comments received 3 were neutral, 6 included concerns, 2 provided recommendations for changes which the CRC has decided to consider during permanent rulemaking, and the remaining 228 comments were in support of adopting the rules. Immediate adoption of the rule is required to provide clear guidance to the regulated public about how an permit application is processed and the notice required and by doing so to protect NC's coastal resources.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on: December 15, 2023

Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8595

E-Mail: Jennifer.Everett@deq.nc.gov

Agency contact, if any: Mike Lopazanski

Phone: 252-515-5400

E-Mail: Mike.Lopazanski@deq.nc.gov

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Renee Cahoon

Title: CRC Chair

E-Mail: Renee.Cahoon@deq.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0204

DATE ISSUED: April 5, 2024

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

The above-captioned temporary rule contains requirements for permit applications and the process by which the CRC will process these applications. In addition to staff's objection to this rule for failure to show justification for temporary rulemaking, staff recommends objection to this rule for lack of clarity.

In paragraph (b)(1), the CRC lists the required information for an application for either a CAMA Major permit or a Major Modification to a Major permit. Among these, in (b)(1)(H), the applicant is required to state the "total ground disturbance resulting from the proposed development" However, the term "ground disturbance" is not defined, and in contrast to Rule .0203, it is unclear what units (i.e. acres or square feet) the applicant is to use. Additionally, the agency uses the term "land disturbance" in (c)(1)(F), again without definition and without noting what the difference is, if any, between these terms.

Brian Liebman
Commission Counsel

In paragraph (b)(1)(N), the CRC requires the applicant to provide “a signed AEC Hazard Notice if the project is in the Ocean Hazard AEC if applicable[.]” First, there is no reference to an AEC Hazard Notice in Subchapter 07 of CRC’s Rules, and staff could not find reference to that document in Article 7 of Chapter 113A of the General Statutes. It is unclear what this document is or who must sign it. Further, the use of “if applicable” at the end of the sentence creates further ambiguity as to when it is required to submit this document.

In paragraph (c)(1)(J), the applicant is required to submit a “project drawing that includes the details stated in 15A NCAC 07H .0204(2)[.]” That rule expired on April 1, 2018 and is no longer in the North Carolina Administrative Code. As such, the details of the required drawing are undefined.

In paragraph (c)(1)(M), the agency requires “indication” that the applicant is an owner of the property. It is unclear what would satisfy that requirement, and the term “indication” differs from the requirement in (b) that the applicant provide specific details from the property deed.

Based on the foregoing, staff recommends objection to this Rule pursuant to G.S. 150B-21.9(a)(2) for lack of clarity.

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

15A NCAC 07H .0204 AECS WITHIN THE ESTUARINE AND OCEAN SYSTEM

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-124;
Eff. September 9, 1977;
Amended Eff. August 1, 1998;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.

1 15A NCAC 07J .0204 is adopted under temporary procedures as follows:

2
3 **15A NCAC 07J .0204 PROCESSING THE APPLICATION**

4 (a) On receipt of a CAMA major development and/or dredge and fill permit application the Department shall send a
5 notification to the applicant acknowledging receipt.

6 (b) Processing for a Major Permit or Major Modification to a Major Permit application shall begin when an application
7 is accepted as complete. Before an application is accepted as complete, the requirements as listed in 15A NCAC 07J
8 .0204(b)(1) through (b)(5) shall be met. Any application not in compliance with these requirements shall be returned
9 to the applicant along with a notification explaining the deficiencies of the application and shall not be accepted as
10 complete until all required information is submitted.

11 (1) a current application form shall be submitted. The application form shall contain:

12 (A) application type (major, modification or general)

13 (B) name of entity on deed or first, middle, and last name(s) referenced on deed;

14 (C) phone number and email;

15 (D) physical and mailing address;

16 (E) project type and location;

17 (F) authorized agent contact information;

18 (G) description of existing conditions and development on the project location including lot
19 size, shoreline length, vegetation and erosion details;

20 (H) total ground disturbance resulting from the proposed development including clearing and
21 grading;

22 (I) applicable dimensions of proposed development activity including quantity, length, width,
23 elevation, slope, area, volume, distance waterward of NWL or NHW, average existing
24 depth, proposed final depth, impervious coverage, and sediment characteristics;

25 (J) applicable erosion and sedimentation control measures, fill source and environmental
26 mitigation efforts for the proposed development activity;

27 (K) general information concerning the use of the proposed development activity, including
28 boat type and length, proximity of structures to adjacent properties and other structures,
29 and waterbody width;

30 (L) type of proposed impacts and dimensions (i.e. shading, filling, excavating) to coastal
31 wetlands, submerged aquatic vegetation, shell bottom, non-coastal wetlands, and open
32 water from the proposed development activities;

33 (M) project narrative that includes a brief description of the project and any previous or active
34 state or federal permits issued on the property;

35 (N) a signed AEC Hazard Notice if the project is in the Ocean Hazard AEC if applicable; and

36 (O) acknowledgements to be attested to before submitting the application;

1 (i) I understand that any permit issued in response to this application will allow only
2 the development described in the application. The project will be subject to the
3 conditions and restrictions contained in the permit;

4 (ii) I certify that I am authorized to grant, and do in fact grant permission to
5 representatives of state and federal review agencies to enter on the aforementioned
6 lands in connection with evaluating information related to this permit application
7 and follow-up monitoring of the project;

8 (iii) I further certify that the information provided in this application is truthful to the
9 best of my knowledge; and

10 (iv) I certify that by clicking the submit button on this NC Division of Coastal
11 Management application I acknowledge that I am signing and dating the
12 application submitted therein.

13 (2) a work plan as described in 15A NCAC 07J .0203 shall be attached to all CAMA major development
14 or dredge and fill permit applications;

15 (3) a copy of a deed or other instrument under which the applicant claims title shall accompany a CAMA
16 major development or dredge and fill permit application;

17 (4) notice to adjacent riparian landowners of a CAMA Major Permit applicant shall be given as follows:

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

24 (5) the application fee shall be paid as set out in this Subparagraph:

25 (A) Major development permit application fees shall be in the form of an electronic funds
26 transfer or check or money order payable to the Department. The application fee for
27 private, non-commercial for-profit development shall be two hundred fifty dollars
28 (\$250.00). The application fee for a public or commercial for-profit project shall be four
29 hundred dollars (\$400.00).

30 (c) Minor permit application processing shall begin when an application is accepted as complete. Before an
31 application is accepted as complete, the requirements as listed in 15A NCAC 07J .0204((c)(1) through (c)(4) shall be
32 met. Any application not in compliance with these requirements shall be returned to the applicant along with a
33 notification explaining the deficiencies of the application and shall not be accepted as complete until all required
34 information is submitted.

35 (1) a current application form shall be submitted. The application form shall contain:

36 (A) first, middle, and last name of landowner;

37 (B) phone number and email;

- 1 (C) physical and mailing address;
2 (D) authorized agent first and last name and contact information;
3 (E) location of project including address, street name, directions to site and adjacent
4 waterbody;
5 (F) description of the proposed project, including a list of all proposed construction and land
6 disturbance;
7 (G) size of lot or parcel in square feet and acres;
8 (H) proposed use, if residential, single-family or multi-family, commercial, industrial or other;
9 (I) if proposed development is located in the Ocean Hazard Area of Environmental Concern,
10 total floor area of structure in square feet including air conditioned living space, parking
11 elevated above ground level, non-conditioned space elevated above ground level but
12 excluding non-load bearing attic space;
13 (J) project drawing that includes the details stated in 15A NCAC 07H .0204(2);
14 (K) if proposed development is located in the Coastal Shoreline Area of Environmental
15 Concern (AEC), size of building footprint and other impervious or built upon surfaces in
16 square feet including the area of the foundation of all buildings, driveways, covered decks,
17 concrete or masonry patios that are within the AEC. Calculations shall be attached to
18 project drawings;
19 (L) if the development is located in an area subject to a State stormwater management permit
20 issued by the NC Division of Energy, Mineral and Land Resources, the total built upon
21 area and impervious surfaces allowed for the lot or parcel in square feet; and
22 (M) indication that the applicant is an owner of the property.
23 (N) Minor development permit application fees shall be in the form of an electronic funds
24 transfer or check or money order payable to the permit-letting agency in the amount of one
25 hundred dollars (\$100.00). Monies so collected shall be used only in the administration of
26 the permit program.
27 (2) a work plan shall be attached to all CAMA minor permit applications that includes:
28 (A) Work plats shall include a top or planview, a cross-sectional view. All plats shall have the
29 standard north arrow. North should be at the top of the plat. Work plats shall be
30 accurately drawn to scale. A scale of 1" = 200' or less is required.
31 (B) Such drawings shall show existing and proposed features such as dune systems,
32 shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas, type
33 and location of sewage treatment facilities and effluent outlets. Property boundaries, as
34 they appear on the deed, and the names of adjacent property owners shall be shown on
35 the detailed plat.
36 (C) Cross-Section Drawing. A cross-sectional diagram showing elevation of proposed work
37 relative to existing ground level. Mean low and mean high water line shall be included in

1 the plan. The mean low water shall be the reference land elevations (i.e., mean low water
2 should be depicted as "Elevation 0.0 MLW"). First floor elevations relative to mean sea
3 level shall be shown for any proposed buildings.

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

8 (3) a copy of a deed or other instrument under which the applicant claims title shall accompany a CAMA
9 minor permit application.

10 (4) notice to adjacent property landowners of a CAMA Minor Permit application shall be given as
11 follows

12 (A) the applicant shall provide Certified return mail receipts (or copies thereof) indicating that
13 adjacent riparian landowners (as identified in the permit application) have been sent a copy
14 of the application for the proposed development for a CAMA minor development permit
15 application. Said landowners have 30 days from the date of notification in which to
16 comment. Such comments shall be considered by the Department in reaching a final
17 decision on the application.

18 (d) If the application is found to be incomplete or inaccurate after processing has begun by the Division of Coastal
19 Management, the Division of Coastal Management shall notify the applicant of the deficiency or inaccuracy and
20 processing shall be in abeyance pending receipt of the necessary information from the applicant. During the pendency
21 of any termination of processing, the permit processing period shall not run. If the changes or additional information
22 alters the scale or scope of the project proposal, the application shall be considered new and a new permit processing
23 period will commence on the date that the additional information is accepted as complete.

24 (e) Any CAMA or Dredge and Fill violation occurring at a proposed project site for which an application is being
25 reviewed shall be processed according to the procedures in 15A NCAC 07J .0409 through .0410. If the violation
26 altered the project site and restoration is required in accordance with G.S. 113A-126, the Division of Coastal
27 Management shall notify the applicant that processing of the application will be suspended pending compliance with
28 the notice of required restoration. Restoration of any unpermitted development at the project site shall require a
29 complete review of the application and an assessment of the project's potential impacts. The Division of Coastal
30 Management shall notify the applicant when permit processing has resumed, and of the new processing deadline that
31 has been established once the Division of Coastal Management or Local Permit Officer verifies that the required
32 restoration has been completed.

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

1

2 History Note: Authority G.S. 113-229; 113A-119; 113A-119.1; 113A-122(c); 113A-124;

3 Temporary Adoption Eff. April 5, 2024.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. **Rule-Making Agency:** Coastal Resources Commission

2. **Rule citation & name:** 15A NCAC 07J .0207 Review of Major Development and Dredge and Fill Applications

3. **Action:** Adoption Amendment Repeal

4. **Was this an Emergency Rule:** Yes No **Effective date:** January 3, 2024

5. **Provide dates for the following actions as applicable:**

- a. **Proposed Temporary Rule submitted to OAH:** December 14, 2023
- b. **Proposed Temporary Rule published on the OAH website:** December 20, 2023
- c. **Public Hearing date:** January 9 and 10, 2024
- d. **Comment Period:** January 3, 2024 through February 22, 2024
- e. **Notice pursuant to G.S. 150B-21.1(a3)(2):** December 19, 2023
- f. **Adoption by agency on:** March 13, 2024
- g. **Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3:**

6. **Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.**

- A serious and unforeseen threat to the public health, safety or welfare.**
- The effective date of a recent act of the General Assembly or of the U.S. Congress.**
Cite: S.L. 2023-134 s 21.2(m)
Effective date: October 3, 2023
- A recent change in federal or state budgetary policy.**
Effective date of change:
- A recent federal regulation.**
Cite:
Effective date:
- A recent court order.**
Cite order:
- Other:**

Explain: Pursuant to NC Session Law 2023-134, the Rules Review Commission returned rules to the CRC on October 5, 2023 and the Codifier removed those rules from the Code the same day. Until the effective date of this session law, only an agency could request the return of its rules. As a result, the State of North Carolina cannot not rely on the rules removed from the Code for permitting and enforcement decisions. In addition, the State of North Carolina can no longer review certain federal projects for consistency with State law based on these rules. The removal of the rules from the Code severely impacts the CRC's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. In addition, there is a serious threat to public safety and welfare because the removal of these rules results in the loss of protection of coastal lands and waters, which the General Assembly has deemed "among North Carolina's most valuable resources." N.C. Gen. Stat. 113A-102(a). In summary, this rule provides clear and consistent requirements for the agency review process for major development and dredge and fill permits.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The CRC incorporates the explanation provided in response in Block 6 of this form. In addition, the CRC contends that immediate adoption of the rule is required instead of a more extended notice and hearing requirements. The CRC has received numerous public comments with the significant majority in favor of adopting the temporary rules. Specifically, the CRC has held three public hearings and extended the public comment period to February 22, 2024 in order to widely solicit comments not only from the general public and the regulated public but also through a direct appeal to the Coastal Resources Advisory Council. The CRC has received comments from a diverse group of commenters including, among others, coastal towns and counties, civic groups, environmental groups, businesses, visitors' bureaus, a group of high school students, and numerous private citizens. During the public comment period, the CRC received 239 comments including 1 petition with 651 signatures in support of adopting the rules. Of the comments received 3 were neutral, 6 included concerns, 2 provided recommendations for changes which the CRC has decided to consider during permanent rulemaking, and the remaining 228 comments were in support of adopting the rules. Immediate adoption of this rule is required to provide clear and consistent requirements for the agency review process for major development and dredge and fill permits and in doing so, protect NC's coastal resources.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes
Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8595

E-Mail: Jennifer.Everett@deq.nc.gov

Agency contact, if any: Mike Lopazanski

Phone: 252-515-5400

E-Mail: Mike.Lopazanski@deq.nc.gov

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Renee Cahoon

Title: CRC Chair

E-Mail: Renee.Cahoon@deq.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0207

DATE ISSUED: April 5, 2024

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

The above-captioned temporary rule governs the process by which the CRC reviews applications for CAMA major permits, as well as fill and dredge permits issued under G.S. 113-229. In addition to staff's objection to this rule for failure to show justification for temporary rulemaking, staff recommends objection to this rule for lack of statutory authority and for lack of clarity.

The Rule states that, "[i]n order to comply with G.S. 113A-120(a)(4)," the Department of Environmental Quality "will circulate major development permit applications to the several state review agencies having expertise in the criteria enumerated in G.S. 113A-113(b)(1) through (b)(9)." Upon circulation, the Rule not only authorizes "each reviewing agency" to make an independent analysis of the project and submit recommendations to the Department

Brian Liebman
Commission Counsel

of Environmental Quality for use in the Department's review of a permit application, but to "request additional information" related to the project.

However, none of the statutes cited by the agency for statutory authority directs CRC to provide applications to any other state agency for review. While G.S. 113-229 states that CRC "shall" circulate fill and dredge permit applications "among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have" this statutory provision does not appear to reach CAMA permits issued under G.S. 113A-118.

The reference to G.S. 113A-120(a)(4) is also inapposite; far from authorizing CRC to circulate CAMA permits to any State agency it chooses, G.S. 113A-120(a)(4) states only that a permit shall be denied if the CRC or local permitting authority finds that the development will occur in a "fragile or historic area, or other area containing environmental or natural resources of more than local significance," and will result in "major or major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4)."

G.S. 113A-124(a)(1) provides that the Secretary of Environment Quality is empowered to "conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments." Nowhere within this language is the Secretary empowered to circulate permit applications to any number of unspecified State agencies.

Finally, G.S. 113A-127 requires only that State agencies "shall keep informed of federal and interstate agency plans, activities, and procedures" and take "reasonable steps . . . to preserve the integrity" of their policies where they conflict with federal or interstate agency plans. Again, the statute provides no authority to circulate permit applications to any other State agency for review. As such, it is staff's opinion that the agency lacks statutory authority for this Rule.

Assuming *arguendo* that the CRC possesses statutory authority for this Rule, there are many instances of unclear or ambiguous language which obscure its meaning. In Paragraph (b), the CRC states that the Department shall circulate major development permits to "the State review agencies having expertise in the criteria enumerated in G.S. 113A-113(b)(1)

through (b)(9). While G.S. 113A-113(b) mentions several agencies such as the Environmental Management Commission and the Wildlife Resources Commission, the language of the Rule does not make clear whether the agencies mentioned in G.S. 113-113(b) are the only agencies to which the Department will circulate permits, or how the Department determines that a particular agency has relevant expertise.

Similarly, in Paragraph (c), the Department is authorized to circulate dredge and fill permit applications to “the State review agencies having expertise in those matter enumerated in G.S. 113-229(e)(1) through (e)(5). Here, G.S. 113-229(e)(1) through (5) contains no explicit reference to another State agency, providing even less clarity as to which agencies the Department will select to review dredge and fill permits, and how those agencies will be chosen.

In Paragraph (e), the Rule states that if a “reviewing agency” submits a request for additional information that “is deemed necessary for a complete review of the application,” the applicant will be notified and “permit processing suspended according to 15A NCAC 07J .0204(d).” It is unclear who makes the determination that the request for additional information is “necessary” for review of the application. Given the interplay of several different State departments and agencies contemplated by this Rule, the lack of specificity here is particularly problematic.

Based on the foregoing, staff recommends objection to this Rule pursuant to G.S. 150B-21.9(a)(1) for lack of statutory authority, and pursuant to G.S. 150B-21.9(a)(2) for lack of clarity.

§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.

(a) Except as hereinafter provided before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or State-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department. Granting of the State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The Department shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(b) All applications for such permits shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel, the disposal area, and a copy of the deed or other instrument under which the applicant claims title to the property adjoining the waters in question, (or any land covered by waters), tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title plus written permission from the owner to carry out the project on his land.

(c) In lieu of a deed or other instrument referred to in subsection (b) of this section, the agency authorized to issue such permits may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(c1) The Coastal Resources Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider all of the following:

- (1) The size of the development.
- (2) The impact of the development on areas of environmental concern.
- (3) How often the class of development is carried out.
- (4) The need for on-site oversight of the development.
- (5) The need for public review and comment on individual development projects.

(c2) General permits may be issued by the Commission as rules under the provisions of G.S. 113A-118.1. Individual development carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of this section. The Commission may impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues. The variance, appeals, and enforcement provisions of this Article shall apply to any individual development projects undertaken under a general permit.

(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.

(e) Applications for permits except special emergency permit applications shall be circulated by the Department among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted subject to such conditions as may be reasonably necessary to protect the public interest. The Coastal Resources Commission shall coordinate the issuance of permits under this section and G.S. 113A-118 and the granting of variances under this section and G.S. 113A-120.1 to avoid duplication and to create a single, expedited permitting process. The Coastal Resources Commission may adopt rules interpreting and applying the provisions of this section and rules specifying the procedures for obtaining a permit under this section. Maintenance work as defined in this subsection shall be limited to such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act on an application for permit within 75 days after the completed application is filed, provided the Department may extend such deadline by not more than an additional 75 days if necessary properly to

consider the application, except for applications for a special emergency permit, in which case the Department shall act within two working days after an application is filed, and failure to so act shall automatically approve the application.

(e1) The Secretary is empowered to issue special emergency dredge or fill permits upon application. Emergency permits may be issued only when life or structural property is in imminent danger as a result of rapid recent erosion or sudden failure of a man-made structure. The Coastal Resources Commission may elaborate by rule upon what conditions the Secretary may issue a special emergency dredge or fill permit. The Secretary may condition the emergency permit upon any reasonable conditions, consistent with the emergency situation, he feels are necessary to reasonably protect the public interest. Where an application for a special emergency permit includes work beyond which the Secretary, in his discretion, feels necessary to reduce imminent dangers to life or property he shall issue the emergency permit only for that part of the proposed work necessary to reasonably reduce the imminent danger. All further work must be applied for by application for an ordinary dredge or fill permit. The Secretary shall deny an application for a special dredge or fill permit upon a finding that the detriment to the public which would occur on issuance of the permit measured by the five factors in G.S. 113-229(e) clearly outweighs the detriment to the applicant if such permit application should be denied.

(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the issuance of a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit.

(g) G.S. 113A-122 applies to an appeal of a permit decision under subsection (f).

(h) Repealed by Session Laws 1987, c. 827, s. 105.

(h1) Except as provided in subsection (h2) of this section, all construction and maintenance dredgings of beach-quality sand may be placed on the affected downdrift ocean beaches or, if placed elsewhere, an equivalent quality and quantity of sand from another location shall be placed on the downdrift ocean beaches.

(h2) Clean, beach quality material dredged from navigational channels within the active nearshore, beach or inlet shoal systems shall not be removed permanently from the active nearshore, beach or inlet shoal system. This dredged material shall be disposed of on the ocean beach or shallow active nearshore area where it is environmentally acceptable and compatible with other uses of the beach.

(i) Subject to subsections (h1) and (h2) of this section, all materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.

(j) None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

(k) Any person, firm, or corporation violating the provisions of this section shall be guilty of a Class 2 misdemeanor. Each day's continued operation after notice by the Department to cease shall constitute a separate offense. A notice to cease shall be served personally or by certified mail.

(l) The Secretary may, either before or after the institution of proceedings under subsection (k) of this section, institute a civil action in the superior court in the name of the State upon the relation of the Secretary, for damages, and injunctive relief, and for such other and further relief in the premises as said court may deem proper, to prevent or recover for any damage to any lands or property which the State holds in the public trust, and to restrain any violation of this section or of any provision of a dredging or filling permit issued under this section. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this section for any violation of the same.

(m) This section shall apply to all persons, firms, or corporations, their employees, agents, or contractors proposing excavation or filling work in the estuarine waters, tidelands, marshlands and State-owned lakes within the State, and the work to be performed by the State government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the Department and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130A-346 through G.S. 130A-349. Provided, further, this section shall not impair the riparian right of ingress and egress to navigable waters.

(n) Within the meaning of this section:

- (1) "State-owned lakes" include man-made as well as natural lakes.
- (2) "Estuarine waters" means all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department and the Wildlife Resources Commission, within the meaning of G.S. 113-129.
- (3) "Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tidewaters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh

and marsh plant species: Smooth or salt water Cordgrass (*Spartina alterniflora*), Black Needlerush (*Juncus roemerianus*), Glasswort (*Salicornia* spp.), Salt Grass (*Distichlis spicata*), Sea Lavender (*Limonium* spp.), Bulrush (*Scirpus* spp.), Saw Grass (*Cladium jamaicense*), Cattail (*Typha* spp.), Salt-Meadow Grass (*Spartina patens*), and Salt Reed-Grass (*Spartina cynosuroides*). (1969, c. 791, s. 1; 1971, c. 1159, s. 6; 1973, c. 476, s. 128; c. 1262, ss. 28, 86; c. 1331, s. 3; 1975, c. 456, ss. 1-7; 1977, c. 771, s. 4; 1979, c. 253, ss. 1, 2; 1983, c. 258, ss. 1-3; c. 442, s. 2; 1987, c. 827, s. 105; 1989, c. 727, s. 107; 1993, c. 539, s. 844; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 777, s. 6(a), (b); 1995, c. 509, s. 55.1(a)-(c); 2000-172, ss. 3.1, 3.2; 2002-126, ss. 29.2(h)-(j); 2011-398, s. 36; 2013-413, s. 55.)

§ 113A-118. Permit required.

(a) After the date designated by the Secretary pursuant to G.S. 113A-125, every person before undertaking any development in any area of environmental concern shall obtain (in addition to any other required State or local permit) a permit pursuant to the provisions of this Part.

(b) Under the expedited procedure provided for by G.S. 113A-121, the permit shall be obtained from the appropriate city or county for any minor development; provided, that if the city or county has not developed an approved implementation and enforcement program, the permit shall be obtained from the Secretary.

(c) Permits shall be obtained from the Commission or its duly authorized agent.

(d) Within the meaning of this Part:

(1) A "major development" is any development which requires permission, licensing, approval, certification or authorization in any form from the Environmental Management Commission, the Department of Environmental Quality, the Department of Administration, the North Carolina Oil and Gas Commission, the North Carolina Pesticides Board, the North Carolina Sedimentation Control Board, or any federal agency or authority; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

(2) A "minor development" is any development other than a "major development."

(e) If, within the meaning of G.S. 113A-103(5)b3, the siting of any utility facility for the development, generation or transmission of energy is subject to regulation under this Article rather than by the State Utilities Commission or by other law, permits for such facilities shall be obtained from the Coastal Resources Commission rather than from the appropriate city or county.

(f) The Secretary may issue special emergency permits under this Article. These permits may only be issued in those extraordinary situations in which life or structural property is in imminent danger as a result of storms, sudden failure of man-made structures, or similar occurrence. These permits may carry any conditions necessary to protect the public interest, consistent with the emergency situation and the impact of the proposed development. If an application for an emergency permit includes work beyond that necessary to reduce imminent dangers to life or property, the emergency permit shall be limited to that development reasonably necessary to reduce the imminent danger; all further development shall be considered under ordinary permit procedures. This emergency permit authority of the Secretary shall extend to all development in areas of environmental concern, whether major or minor development, and the mandatory notice provisions of G.S. 113A-119(b) shall not apply to these emergency permits. To the extent feasible, these emergency permits shall be coordinated with any emergency permits required under G.S. 113-229(e1). The fees

associated with any permit issued pursuant to this subsection or rules adopted pursuant to this subsection shall be waived. (1973, c. 476, s. 128; c. 1282, ss. 23, 33; c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1979, c. 253, s. 5; 1981, c. 932, s. 2.1; 1983, c. 173; c. 518, s. 3; 1987, c. 827, s. 136; 1989, c. 727, s. 131; 1997-443, s. 11A.119(a); 2007-485, s. 5; 2012-143, s. 1(d); 2014-4, s. 4(c); 2015-241, s. 14.30(u).)

§ 113A-120. Grant or denial of permits.

(a) The responsible official or body shall deny an application for a permit upon finding:

- (1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.
 - (2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).
 - (3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subdivisions a through c of G.S. 113A-113(b)(3).
 - (4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4).
 - (5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.
 - (6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.
 - (7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.
 - (8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.
 - (9) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources.
 - (10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through (9) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.
- (b) In the absence of such findings, a permit shall be granted. The permit may be conditioned upon the applicant's amending his proposal to take whatever measures or agreeing to carry out

whatever terms of operation or use of the development that are reasonably necessary to protect the public interest with respect to the factors enumerated in subsection (a) of this section.

(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- (1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with other federal and state laws, regulations, and rules for the protection of the environment.

(b2) For purposes of subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.

(c) Repealed by Session Laws 1989, c. 676, s. 7. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1; 1983, c. 518, ss. 4, 5; 1987, c. 827, s. 138; 1989, c. 51; c. 676, s. 7; 1997-337, s. 2; 1997-456, s. 55.2B; 1997-496, s. 2; 2000-172, s. 2.1.)

§ 113A-124. Additional powers and duties.

(a) The Secretary shall have the following additional powers and duties under this Article:

- (1) To conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.
- (2) To cooperate with the Secretary of the Department of Administration in drafting State guidelines for the coastal area.
- (3) Repealed by Session Laws 2021-158, s. 2(b), effective July 1, 2021, and applicable to permit applications received on or after that date.
- (4) To propose rules to implement this Article for consideration by the Commission.
- (5) To delegate such of his powers as he may deem appropriate to one or more qualified employees of the Department or to any local government, provided that the provisions of any such delegation of power shall be set forth in departmental rules.
- (6) To delegate the power to conduct a hearing, on his behalf, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the record of the hearing to the Secretary for decision or action.

(b) In order to carry out the provisions of this Article the Secretaries of Administration and of Environmental Quality may employ such clerical, technical and professional personnel, and consultants with such qualifications as the Commission may prescribe, in accordance with the State personnel rules and budgetary laws, and are hereby authorized to pay such personnel from any funds made available to them through grants, appropriations, or any other sources. In addition, the said secretaries may contract with any local governmental unit or lead regional organization to carry out the planning provisions of this Article.

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified

employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.

- (5) Repealed by Session Laws 1987, c. 827, s. 141.
 - (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
 - (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
 - (8) To adopt rules to implement this Article.
 - (9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.
- (d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-209, s. 5(a); 2021-158, s. 2(b).)

§ 113A-127. Coordination with the federal government.

All State agencies shall keep informed of federal and interstate agency plans, activities, and procedures within their area of expertise that affect the coastal area. Where federal or interstate agency plans, activities or procedures conflict with State policies, all reasonable steps shall be taken by the State to preserve the integrity of its policies. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07J .0207 is adopted under temporary procedures as follows:
2

3 **15A NCAC 07J .0207 REVIEW OF MAJOR DEVELOPMENT AND DREDGE AND FILL**
4 **APPLICATIONS**

5 (a) In order to determine the impact of the proposed project, the Department shall prepare a field report on each major
6 development and/or dredge and fill permit application accepted for processing. Such report shall be prepared after an
7 on-site investigation is completed. The report shall include project location, environmental setting, project description
8 and probable environmental impact.

9 (b) In order to comply with G.S. 113A-120(a)(4), the Department shall circulate major development permit
10 applications to the State review agencies having expertise in the criteria enumerated in G.S. 113A-113(b)(1) through
11 (b)9).

12 (c) In order to comply with G.S. 113A-120(a)(2), the Department shall circulate dredge and fill permit applications
13 to the State review agencies having expertise in those matters enumerated in G.S. 113- 229(e)(1) through (e)(5).

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

17 (e) Each reviewing agency may request additional information related to the scale and scope of the projects, such as
18 Stormwater Management Plans, from the applicant through the Division of Coastal Management if such information
19 is deemed necessary for a complete review of the application. The applicant shall be notified of the requirement for
20 additional information and permit processing will be suspended according to 15A NCAC 07J .0204(d).

21 (f) The Division of Coastal Management is one of the State agencies that comments on permit applications. In its
22 role as a commenting agency the Division shall use criteria in 15A NCAC 07H and local land use plans to assess
23 whether to recommend permit issuance, permit issuance with conditions, or permit denial.

24
25 History Note: Authority G.S. 113-229; 113A-120, 113A-124(a)(1); 113A-127;
26 Temporary Adoption Eff. April 5, 2024.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Coastal Resources Commission
2. Rule citation & name: 15A NCAC 07J .0208 Permit Conditions
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: January 3, 2024
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: December 14, 2023 b. Proposed Temporary Rule published on the OAH website: December 20, 2023 c. Public Hearing date: January 9 and 10, 2024 d. Comment Period: January 3, 2024 through February 22, 2024 e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 19, 2023 f. Adoption by agency on: March 13, 2024 g. Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2023-134 s 21.2(m) Effective date: October 3, 2023 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> Other: Explain: Pursuant to NC Session Law 2023-134, the Rules Review Commission returned rules to the CRC on October 5, 2023 and the Codifier removed those rules from the Code the same day. Until the effective date of this session law, only an agency could request the return of its rules. As a result, the State of North Carolina cannot not rely on the rules removed from the Code for permitting and enforcement decisions. In addition, the State of North Carolina can no longer review certain federal projects for consistency with State law based on these rules. The removal of the rules from the Code severely impacts the CRC's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. In addition, there is a serious threat to public safety and welfare because the removal of these rules results in the loss of protection of coastal lands and waters, which the General Assembly has deemed "among North Carolina's most valuable resources." N.C. Gen. Stat. 113A-102(a). In summary, this rule provides clear and consistent requirements for other agencies reviewing major development and dredge and fill permit applications on how to submit specific recommendations regarding the manner in which the requested work should be carried and any limitations requested to protect the public interest.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The CRC incorporates the explanation provided in response in Block 6 of this form. In addition, the CRC contends that immediate adoption of the rule is required instead of a more extended notice and hearing requirements. The CRC has received numerous public comments with the significant majority in favor of adopting the temporary rules. Specifically, the CRC has held three public hearings and extended the public comment period to February 22, 2024 in order to widely solicit comments not only from the general public and the regulated public but also through a direct appeal to the Coastal Resources Advisory Council. The CRC has received comments from a diverse group of commenters including, among others, coastal towns and counties, civic groups, environmental groups, businesses, visitors' bureaus, a group of high school students, and numerous private citizens. During the public comment period, the CRC received 239 comments including 1 petition with 651 signatures in support of adopting the rules. Of the comments received 3 were neutral, 6 included concerns, 2 provided recommendations for changes which the CRC has decided to consider during permanent rulemaking, and the remaining 228 comments were in support of adopting the rules. Immediate adoption of this rule is required to provide clear and consistent requirements for other agencies reviewing major development and dredge and fill permit applications on how to submit specific recommendations regarding the manner in which the requested work should be carried and any limitations requested to protect the public interest.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes
Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8595

E-Mail: Jennifer.Everett@deq.nc.gov

Agency contact, if any: Mike Lopazanski

Phone: 252-515-5400

E-Mail: Mike.Lopazanski@deq.nc.gov

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Renee Cahoon

Title: CRC Chair

E-Mail: Renee.Cahoon@deq.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0208

DATE ISSUED: April 5, 2024

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

The above-captioned temporary rule governs the process by which the CRC reviews applications for CAMA major permits under G.S. 113A-120, as well as fill and dredge permits issued under G.S. 113-229. In addition to staff's objection to this rule for failure to show justification for temporary rulemaking, staff recommends objection to this rule for lack of statutory authority and for lack of clarity.

The Rule states that, "[i]n compliance with G.S. 113A-120(a)(4) and G.S. 113A-120(a)(2), each of the State, federal, and local reviewing agencies" are empowered to submit specific recommendations as to the development, operation, and maintenance of a project, which may be enforced against the applicant by the Department of Environmental Quality as permit conditions.

Brian Liebman
Commission Counsel

While G.S. 113-229 states that CRC “shall” circulate fill and dredge permit applications “among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have” this statutory provision does not appear to reach CAMA permits issued under Article 7, Chapter 113A of the General Statutes, and none of the other statutes referenced by the agency appear to confer this authority.

The CRC references G.S. 113A-120(a) in the body of the Rule. To the extent the agency intends this reference to confer statutory authority, it fails.¹ Far from authorizing the Department to circulate CAMA permit applications to any State, federal, or local agency it chooses for the purpose of soliciting “specific recommendations” that could apply for the life of the completed project, G.S. 113A-120(a)(2) and (a)(4) impose specific grounds for the denial of a permit.

Similarly, G.S. 113A-120(b) provides only that a permit may be “conditioned upon whatever terms of operation or use of the development that are reasonably necessary to protect the public interest” It is silent as to *who* may impose those conditions, and as such does not empower the CRC or the Department to circulate permit applications and solicit permit conditions.

G.S. 113A-124(a)(1) provides that the Secretary of Environment Quality is empowered to “conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.” Nowhere within this language is the Secretary empowered to circulate permit applications to any number of unspecified State, federal, or local agencies.

Finally, G.S. 113A-127 requires only that State agencies “shall keep informed of federal and interstate agency plans, activities, and procedures” and take “reasonable steps . . . to preserve the integrity” of their policies where they conflict with federal or interstate agency plans. Again, the statute provides no authority to circulate permit applications to any other State agency for review. As such, it is staff’s opinion that the agency lacks statutory authority for this Rule.

¹ The agency cites G.S. 113A-120 in the History Note, but specifies paragraph (b), rather than (a).

Assuming *arguendo* that the CRC possesses statutory authority for this Rule, it also contains impermissibly vague and ambiguous language. In Paragraph (a), the CRC repeatedly references “each of the State, federal, and local reviewing agencies” without providing a list of these agencies. It should also be noted that this is broader language than used in 07H .0207, which referred only to “State review agencies having experience expertise” in the relevant subject matter. Here, that is seemingly expanded to *any* State, federal, or local agency to which CRC or the Department circulates the permit application.

Based on the foregoing, staff recommends objection to this Rule pursuant to G.S. 150B-21.9(a)(1) for lack of statutory authority, and pursuant to G.S. 150B-21.9(a)(2) for lack of clarity.

§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.

(a) Except as hereinafter provided before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or State-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department. Granting of the State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The Department shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(b) All applications for such permits shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel, the disposal area, and a copy of the deed or other instrument under which the applicant claims title to the property adjoining the waters in question, (or any land covered by waters), tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title plus written permission from the owner to carry out the project on his land.

(c) In lieu of a deed or other instrument referred to in subsection (b) of this section, the agency authorized to issue such permits may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(c1) The Coastal Resources Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider all of the following:

- (1) The size of the development.
- (2) The impact of the development on areas of environmental concern.
- (3) How often the class of development is carried out.
- (4) The need for on-site oversight of the development.
- (5) The need for public review and comment on individual development projects.

(c2) General permits may be issued by the Commission as rules under the provisions of G.S. 113A-118.1. Individual development carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of this section. The Commission may impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues. The variance, appeals, and enforcement provisions of this Article shall apply to any individual development projects undertaken under a general permit.

(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.

(e) Applications for permits except special emergency permit applications shall be circulated by the Department among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted subject to such conditions as may be reasonably necessary to protect the public interest. The Coastal Resources Commission shall coordinate the issuance of permits under this section and G.S. 113A-118 and the granting of variances under this section and G.S. 113A-120.1 to avoid duplication and to create a single, expedited permitting process. The Coastal Resources Commission may adopt rules interpreting and applying the provisions of this section and rules specifying the procedures for obtaining a permit under this section. Maintenance work as defined in this subsection shall be limited to such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act on an application for permit within 75 days after the completed application is filed, provided the Department may extend such deadline by not more than an additional 75 days if necessary properly to

consider the application, except for applications for a special emergency permit, in which case the Department shall act within two working days after an application is filed, and failure to so act shall automatically approve the application.

(e1) The Secretary is empowered to issue special emergency dredge or fill permits upon application. Emergency permits may be issued only when life or structural property is in imminent danger as a result of rapid recent erosion or sudden failure of a man-made structure. The Coastal Resources Commission may elaborate by rule upon what conditions the Secretary may issue a special emergency dredge or fill permit. The Secretary may condition the emergency permit upon any reasonable conditions, consistent with the emergency situation, he feels are necessary to reasonably protect the public interest. Where an application for a special emergency permit includes work beyond which the Secretary, in his discretion, feels necessary to reduce imminent dangers to life or property he shall issue the emergency permit only for that part of the proposed work necessary to reasonably reduce the imminent danger. All further work must be applied for by application for an ordinary dredge or fill permit. The Secretary shall deny an application for a special dredge or fill permit upon a finding that the detriment to the public which would occur on issuance of the permit measured by the five factors in G.S. 113-229(e) clearly outweighs the detriment to the applicant if such permit application should be denied.

(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the issuance of a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit.

(g) G.S. 113A-122 applies to an appeal of a permit decision under subsection (f).

(h) Repealed by Session Laws 1987, c. 827, s. 105.

(h1) Except as provided in subsection (h2) of this section, all construction and maintenance dredgings of beach-quality sand may be placed on the affected downdrift ocean beaches or, if placed elsewhere, an equivalent quality and quantity of sand from another location shall be placed on the downdrift ocean beaches.

(h2) Clean, beach quality material dredged from navigational channels within the active nearshore, beach or inlet shoal systems shall not be removed permanently from the active nearshore, beach or inlet shoal system. This dredged material shall be disposed of on the ocean beach or shallow active nearshore area where it is environmentally acceptable and compatible with other uses of the beach.

(i) Subject to subsections (h1) and (h2) of this section, all materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.

(j) None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

(k) Any person, firm, or corporation violating the provisions of this section shall be guilty of a Class 2 misdemeanor. Each day's continued operation after notice by the Department to cease shall constitute a separate offense. A notice to cease shall be served personally or by certified mail.

(l) The Secretary may, either before or after the institution of proceedings under subsection (k) of this section, institute a civil action in the superior court in the name of the State upon the relation of the Secretary, for damages, and injunctive relief, and for such other and further relief in the premises as said court may deem proper, to prevent or recover for any damage to any lands or property which the State holds in the public trust, and to restrain any violation of this section or of any provision of a dredging or filling permit issued under this section. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this section for any violation of the same.

(m) This section shall apply to all persons, firms, or corporations, their employees, agents, or contractors proposing excavation or filling work in the estuarine waters, tidelands, marshlands and State-owned lakes within the State, and the work to be performed by the State government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the Department and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130A-346 through G.S. 130A-349. Provided, further, this section shall not impair the riparian right of ingress and egress to navigable waters.

(n) Within the meaning of this section:

- (1) "State-owned lakes" include man-made as well as natural lakes.
- (2) "Estuarine waters" means all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department and the Wildlife Resources Commission, within the meaning of G.S. 113-129.
- (3) "Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tidewaters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh

and marsh plant species: Smooth or salt water Cordgrass (*Spartina alterniflora*), Black Needlerush (*Juncus roemerianus*), Glasswort (*Salicornia* spp.), Salt Grass (*Distichlis spicata*), Sea Lavender (*Limonium* spp.), Bulrush (*Scirpus* spp.), Saw Grass (*Cladium jamaicense*), Cattail (*Typha* spp.), Salt-Meadow Grass (*Spartina patens*), and Salt Reed-Grass (*Spartina cynosuroides*). (1969, c. 791, s. 1; 1971, c. 1159, s. 6; 1973, c. 476, s. 128; c. 1262, ss. 28, 86; c. 1331, s. 3; 1975, c. 456, ss. 1-7; 1977, c. 771, s. 4; 1979, c. 253, ss. 1, 2; 1983, c. 258, ss. 1-3; c. 442, s. 2; 1987, c. 827, s. 105; 1989, c. 727, s. 107; 1993, c. 539, s. 844; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 777, s. 6(a), (b); 1995, c. 509, s. 55.1(a)-(c); 2000-172, ss. 3.1, 3.2; 2002-126, ss. 29.2(h)-(j); 2011-398, s. 36; 2013-413, s. 55.)

§ 113A-118. Permit required.

(a) After the date designated by the Secretary pursuant to G.S. 113A-125, every person before undertaking any development in any area of environmental concern shall obtain (in addition to any other required State or local permit) a permit pursuant to the provisions of this Part.

(b) Under the expedited procedure provided for by G.S. 113A-121, the permit shall be obtained from the appropriate city or county for any minor development; provided, that if the city or county has not developed an approved implementation and enforcement program, the permit shall be obtained from the Secretary.

(c) Permits shall be obtained from the Commission or its duly authorized agent.

(d) Within the meaning of this Part:

(1) A "major development" is any development which requires permission, licensing, approval, certification or authorization in any form from the Environmental Management Commission, the Department of Environmental Quality, the Department of Administration, the North Carolina Oil and Gas Commission, the North Carolina Pesticides Board, the North Carolina Sedimentation Control Board, or any federal agency or authority; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

(2) A "minor development" is any development other than a "major development."

(e) If, within the meaning of G.S. 113A-103(5)b3, the siting of any utility facility for the development, generation or transmission of energy is subject to regulation under this Article rather than by the State Utilities Commission or by other law, permits for such facilities shall be obtained from the Coastal Resources Commission rather than from the appropriate city or county.

(f) The Secretary may issue special emergency permits under this Article. These permits may only be issued in those extraordinary situations in which life or structural property is in imminent danger as a result of storms, sudden failure of man-made structures, or similar occurrence. These permits may carry any conditions necessary to protect the public interest, consistent with the emergency situation and the impact of the proposed development. If an application for an emergency permit includes work beyond that necessary to reduce imminent dangers to life or property, the emergency permit shall be limited to that development reasonably necessary to reduce the imminent danger; all further development shall be considered under ordinary permit procedures. This emergency permit authority of the Secretary shall extend to all development in areas of environmental concern, whether major or minor development, and the mandatory notice provisions of G.S. 113A-119(b) shall not apply to these emergency permits. To the extent feasible, these emergency permits shall be coordinated with any emergency permits required under G.S. 113-229(e1). The fees

associated with any permit issued pursuant to this subsection or rules adopted pursuant to this subsection shall be waived. (1973, c. 476, s. 128; c. 1282, ss. 23, 33; c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1979, c. 253, s. 5; 1981, c. 932, s. 2.1; 1983, c. 173; c. 518, s. 3; 1987, c. 827, s. 136; 1989, c. 727, s. 131; 1997-443, s. 11A.119(a); 2007-485, s. 5; 2012-143, s. 1(d); 2014-4, s. 4(c); 2015-241, s. 14.30(u).)

§ 113A-120. Grant or denial of permits.

- (a) The responsible official or body shall deny an application for a permit upon finding:
- (1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.
 - (2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).
 - (3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subdivisions a through c of G.S. 113A-113(b)(3).
 - (4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4).
 - (5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.
 - (6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.
 - (7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.
 - (8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.
 - (9) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources.
 - (10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through (9) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.
- (b) In the absence of such findings, a permit shall be granted. The permit may be conditioned upon the applicant's amending his proposal to take whatever measures or agreeing to carry out

whatever terms of operation or use of the development that are reasonably necessary to protect the public interest with respect to the factors enumerated in subsection (a) of this section.

(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- (1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with other federal and state laws, regulations, and rules for the protection of the environment.

(b2) For purposes of subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.

(c) Repealed by Session Laws 1989, c. 676, s. 7. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1; 1983, c. 518, ss. 4, 5; 1987, c. 827, s. 138; 1989, c. 51; c. 676, s. 7; 1997-337, s. 2; 1997-456, s. 55.2B; 1997-496, s. 2; 2000-172, s. 2.1.)

§ 113A-124. Additional powers and duties.

(a) The Secretary shall have the following additional powers and duties under this Article:

- (1) To conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.
- (2) To cooperate with the Secretary of the Department of Administration in drafting State guidelines for the coastal area.
- (3) Repealed by Session Laws 2021-158, s. 2(b), effective July 1, 2021, and applicable to permit applications received on or after that date.
- (4) To propose rules to implement this Article for consideration by the Commission.
- (5) To delegate such of his powers as he may deem appropriate to one or more qualified employees of the Department or to any local government, provided that the provisions of any such delegation of power shall be set forth in departmental rules.
- (6) To delegate the power to conduct a hearing, on his behalf, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the record of the hearing to the Secretary for decision or action.

(b) In order to carry out the provisions of this Article the Secretaries of Administration and of Environmental Quality may employ such clerical, technical and professional personnel, and consultants with such qualifications as the Commission may prescribe, in accordance with the State personnel rules and budgetary laws, and are hereby authorized to pay such personnel from any funds made available to them through grants, appropriations, or any other sources. In addition, the said secretaries may contract with any local governmental unit or lead regional organization to carry out the planning provisions of this Article.

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified

employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.

- (5) Repealed by Session Laws 1987, c. 827, s. 141.
 - (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
 - (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
 - (8) To adopt rules to implement this Article.
 - (9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.
- (d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-209, s. 5(a); 2021-158, s. 2(b).)

§ 113A-127. Coordination with the federal government.

All State agencies shall keep informed of federal and interstate agency plans, activities, and procedures within their area of expertise that affect the coastal area. Where federal or interstate agency plans, activities or procedures conflict with State policies, all reasonable steps shall be taken by the State to preserve the integrity of its policies. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07J .0208 is adopted under temporary procedures as follows:

2
3 **15A NCAC 07J .0208 PERMIT CONDITIONS**

4 (a) In compliance with G.S. 113A-120(a)(4) and G.S. 113A-120(a)(2), each of the State, federal and local reviewing
5 agencies may submit specific recommendations regarding the manner in which the proposed development should be
6 accomplished including limitations on the development in order to protect the public interest with respect to the factors
7 enumerated in G.S. 113A-113(b)(1) through (b)(9) and 113-229(e)(1) through (e)(5). The State, federal and local
8 reviewing agencies also may submit specific recommendations regarding limitations to be placed on the operation and
9 maintenance of the completed project, to ensure continued protection of the public interest with respect to those
10 factors. Such limitations may be imposed by the Department on the project in the form of "permit conditions". Upon
11 the failure of the applicant to appeal a permit condition, the applicant shall be deemed to have amended his or her
12 permit to conform to the conditions imposed by the Department. Compliance with operational and maintenance
13 conditions shall continue for the life of the project.

14 (b) The local permit officer may condition a minor development permit upon amendment of the proposed project to
15 protect the public interest with respect to the factors enumerated in G.S. 113A-120. The applicant shall sign the
16 conditioned permit as an indication of amendment of the proposed project in a manner consistent with the conditions
17 set out by the local permit officer before the permit shall become effective.

18 (c) Failure to comply with permit conditions constitutes a violation of an order of the Commission under G.S.
19 113A-126.

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21 History Note: Authority G.S. 113-229; 113A-120(b); 113A-124(a)(1); 113A-127;
22 Temporary Adoption Eff. April 5, 2024.