

SECTION .2600 – GENERAL PERMIT FOR CONSTRUCTION OF MITIGATION BANKS AND IN-LIEU FEE MITIGATION PROJECTS

15A NCAC 07H .2601 PURPOSE

The general permit in this Section shall allow for the construction of mitigation banks and in-lieu fee mitigation projects. This permit shall be applicable only for activities resulting in net increases in aquatic resource functions and services. These activities include:

- (1) restoration;
- (2) enhancement;
- (3) establishment of tidal and non-tidal wetlands and riparian areas;
- (4) restoration and enhancement of non-tidal streams and other non-tidal open waters; and
- (5) rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters.

This permit shall not apply within the Ocean Hazard System of Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

*History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004;
Amended Eff. October 1, 2014.*

15A NCAC 07H .2602 APPROVAL PROCEDURES

(a) The applicant shall contact the Division of Coastal Management and request approval for development. The applicant shall provide information in writing on site location, a mitigation plan outlining the proposed mitigation activities, and the applicant's name and address.

(b) The applicant shall provide either confirmation that a written statement has been obtained and signed by the adjacent riparian property owners indicating that they have no objections to the proposed work, or confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notices shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response shall be interpreted as no objection.

(c) The Division of Coastal Management shall review all comments received from adjacent property owners and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project meets the requirements of the rules in this Section.

(d) No work shall begin until a meeting is held with the applicant and the Division of Coastal Management and written authorization to proceed with the proposed development is issued in compliance with this Rule. Construction of the mitigation site shall start within 365 days of the issue date of the general permit or the general permit shall expire and it shall be necessary to re-examine the proposed development for any changes to determine if the general permit shall be reissued.

*History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004;
Amended Eff. October 1, 2014.*

15A NCAC 07H .2603 PERMIT FEE

The applicant shall pay a permit fee of four hundred dollars (\$400.00). This fee shall be paid by check or money order made payable to the Department.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;
Eff. October 1, 2004;
Amended Eff. September 1, 2006.*

15A NCAC 07H .2604 GENERAL CONDITIONS

- (a) The permit in this Section authorizes only those activities associated with the construction of mitigation banks and in-lieu fee mitigation projects.
- (b) Individuals shall allow representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions of the rules of this Section.
- (c) There shall be no interference with navigation or use of the waters by the public. No attempt shall be made by the permittee to prevent the use by the public of all navigable waters at or adjacent to the development authorized pursuant to the rules of this Section.
- (d) This permit shall not be applicable to proposed construction where the Division of Coastal Management has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.
- (e) At the discretion of the Division of Coastal Management, review of individual project requests shall be coordinated with the Department of Environment and Natural Resources to determine if a construction moratorium during periods of significant biological productivity or critical life stages of fisheries resources is necessary to protect those resources.
- (f) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.
- (g) Development carried out under this permit shall be consistent with all local rules, regulations, laws, or land use plans of the local government in which the development takes place.

*History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004;
Amended Eff. October 1, 2014.*

15A NCAC 07H .2605 SPECIFIC CONDITIONS

- (a) The general permit in this Section shall be applicable only for the construction of mitigation banks or in-lieu fee mitigation projects.
- (b) No excavation or filling of any submerged aquatic vegetation shall be authorized by this general permit.
- (c) The crossing of wetlands in transporting equipment shall be avoided or minimized to the maximum extent practicable. If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary, track and low pressure equipment or temporary construction mats shall be utilized for the area(s) to be crossed. The temporary mats shall be removed immediately upon completion of construction.
- (d) No permanent structures shall be authorized by this general permit, except for signs, fences, water control structures, or those structures needed for site monitoring or shoreline stabilization.
- (e) This permit does not convey or imply approval of the suitability of the property for compensatory mitigation for any particular project. The use of any portion of the site as compensatory mitigation for future projects shall be determined in accordance with applicable regulatory policies and procedures.
- (f) The development authorized pursuant to this general permit shall result in a net increase in coastal resource functions and values.
- (g) The entire mitigation bank or in-lieu fee project site shall be protected in perpetuity in its mitigated state through conservation easement, deed restriction or other appropriate instrument attached to the title for the subject property and shall be owned by the permittee or its designee.
- (h) The Division of Coastal Management shall be provided copies of all monitoring reports prepared by the permittee or its designee for the authorized mitigation bank or in-lieu fee project site.
- (i) If water control structures or other hydrologic alterations are proposed, such activities shall not increase the likelihood of flooding any adjacent property.
- (j) Appropriate sedimentation and erosion control devices, measures or structures such silt fences, diversion swales or berms, sand fences, etc. shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses and property.
- (k) If one or more contiguous acre of property is to be graded, excavated or filled, the applicant shall submit an erosion and sedimentation control plan with the Division of Energy, Mineral, and Land Resources, Land Quality Section. The plan shall be approved prior to commencing the land-disturbing activity.
- (l) All fill material shall be free of any pollutants, except in trace quantities.

*History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004;
Amended Eff. October 1, 2014; August 1, 2012 (see S.L. 2012-143, s.1.(f)).*