



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

DIONNE DELLI-GATTI
Secretary

BRAXTON DAVIS
Director

CRC-21-41

October 29, 2021

MEMORANDUM

TO: Coastal Resources Commission
FROM: Curt Weychert
SUBJECT: Fiscal Analysis - 15A NCAC 7J .0405 Permit Modifications

Changes to your rules governing modification to existing major permits (15A NCAC 7J .0405–Permit Modifications) were approved removing language specific to bulkheads, piers, docks, boathouses, and boat ramps which would be considered minor modifications to major development and would not require a new permit application. The proposed rule amendment would limit the previous language of 15A NCAC 07J. 0405 (c)(1-3) and instead, broaden the Division of Coastal Management’s (DCM) ability to evaluate project modifications based on impacts to coastal resources as the primary factor rather than focusing on the permitted structure.

DCM’s analysis found that this rule action will result in a no change to private property owners, local or state governments requesting minor modifications to existing major permits. DCM’s analysis also found that the adoption of this rule language would increase the fee for “major modifications” to private property owners by \$2,550 per year, on average. Local governments would see an increase of \$150 per year and DOT would see an increase of \$300 per year. This would result in an increase of permit fees to DCM of \$15,000 over a 5-year period. This fee increase would be split between DCM and DWR in accordance with the present MOA resulting in an increase to DCM of \$9,000 over a 5-year period. This change would be below the threshold for being considered substantial which is defined as \$500,000 or more in a 12-month period.

Staff has drafted the required fiscal analysis (attached). The Department has approved the fiscal analysis, and it is currently under review at the Office of State Budget and Management (OSBM). OSBM may require more information prior to receiving their approval however Staff do not believe there will be substantial changes. Staff are recommending conditional approval of the fiscal analysis pending final approval by OSBM.

I look forward to continuing discussions on these amendments at our upcoming meeting in Beaufort.



North Carolina Department of Environmental Quality | Division of Coastal Management
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Fiscal Analysis

**CAMA Permit Major and Minor Modifications to
Minor/Major Development and/or Dredge and Fill**
Amendments to 15A NCAC 7J .0405

Prepared by

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October 25, 2021

Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission
Title	CAMA Permit Major and Minor Modifications to Minor/Major Development and/or Dredge and Fill
Citation	15A NCAC 7J .0405 Permit Modification: Major Development/Dredge and Fill
Description of the Proposed Rule	Section 7J .0405 outlines the parameters for determining whether the proposed changes to an approved major permit should be accomplished through a “major modification” or a “minor modification” process, as well as the fees associated with the processing. The proposed rule change would remove language specific to bulkheads, piers, docks, boathouses, and boat ramps as scope of the modification, not the structure, is the primary factor. Additionally, this rule change would update the fee schedule for “major modifications” from \$250 to \$400 in accordance with an agreement between the Division of Coastal Management and the Division of Water Resources.
Agency Contact	Curt Weychert Curt.Weychert@ncdenr.gov (252) 808-2808
Authority	113A-119; 113A-119.1; 113A-124(c)(5); 113-229
Impact Summary	State government: Yes Local government: Yes Substantial impact: No Private entities: Yes
Necessity	The Coastal Resources Commission (CRC) is proposing to amend its administrative rules to incorporate changes in other agencies’ processes and fees, as well as updates to the parameters for determining the type of modification required for changes to approved major permits.

Summary

After a CAMA Major permit is issued, it is common for the permittee to request modifications of the active permit. This can be due to issues ranging from changes in construction methodology to a permittee's desire to change the size or type of development. 15A NCAC 7J .0405 outlines the parameters for determining whether processing of the proposed changes should be accomplished through a "major" modification or a "minor" modification process, as well as the fees associated with the processing.

The criteria associated with permit modifications were originally established in 1978. A number of changes having taken place since that time, including the processes by which other agencies approve modifications of CAMA major permits resulting in a need to update rule language to incorporate these changes, as well as update the parameters for determining the type of modification required.

The Division of Water Resources and The Division of Coastal Management have an established Memorandum of Agreement in 2001 regarding the fee-split schedule of application fees and modification fees of project applications. This agreement states that any projects which do not meet specific general concurrence language of the Division of Water Resources and require additional review and written concurrence, shall receive 40% of the \$400 modification fee. This would only impact "major" modifications as they are the only modifications which always require written concurrence.

The fiscal impacts of this proposed rule change benefit state review agencies in terms of efficiency in processing and staff time. As 15A NCAC 07J .0405 is currently written, a minor modification has a \$100 processing fee, and a major modification has a \$250 processing fee. Depending on the type of 401 certification required from the Division of Water Resources (DWR), written vs. non-written concurrence, the DWR requires a fee split in conjunction with a Memorandum of Agreement (MOA) established in 2001(attached). When a fee split is required, the DCM incorporates a \$400 fee for a major modification to allow for the fee split as outlined in the MOA. Based on internal information over a five (5) year period of "major" modifications, DCM would see an average of \$1,800 more in permit modification fees, attributed to the process requirements of a fee split between DCM and the DWR as per the Memorandum of Agreement (MOA) established in 2001.

There would not be any change in the fiscal impacts of "minor" modifications to existing major development permits and/or dredge and fill projects.

Description of Rule Amendment

Currently, 15A NCAC 07J .0405 requires that all approved major development and/or dredge and fill permits which require modifications be classified into "major" or "minor" modifications. Minor modifications to existing permitted projects may be submitted by showing, in detail, the changes to a project on the originally approved application and plat. Major modifications require a new permit application.

The proposed rule amendment removes language specific to bulkheads, piers, docks, boathouses, and boat ramps which would be considered minor modifications to major development and would not require a new permit application. The proposed rule amendment would limit the previous language of 15A NCAC 07J. 0405 (c)(1-3) and instead, broaden the Department's ability to evaluate project modifications based on environmental impacts as the primary factor rather than the permitted structure. Modifications to permits are site-specific and project specific. For example, projects that may be permitted under a minor modification for the NC Dept. of Transportation may be processed through a major modification for a single-family dwelling. The scope of the original project is considered as part of the final determination.

Rather than specify specific structures, the proposed rule change will focus on modifications that have potential impacts on adjoining properties, or on coastal resources such as water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources or public trust rights. Based on the Division's assessment of potential impacts, the permittee may be required to provide a permit drawing and project narrative to be circulated to the agencies which commented on the original application and the adjacent property owners.

Major modifications to major development and/or dredge and fill projects would have a fee schedule which would be increased from \$250 to \$400. This is necessary due to a 2001 Memorandum of Agreement (MOA) between the Division of Water Resources and the DCM that set the combined cost for a project requiring a written 401 Water Quality Certification and a CAMA Major permit modification at \$400. When both agencies require a permit, the fee is split between DCM and DWR 60% and 40% respectfully. This is a cost saving to the applicant whereas prior the implementation of the MOA, the applicant would have to pay a separate fee to DCM (\$250) and DWR (\$240 or \$570).

In the case of permitted minor development, currently, a permittee may request a modification and would be required to show under NCAC 07J .0405 (d)(1-4):

- (1) The project has not expanded more than 20% from the originally permitted proposal
- (2) Receive a signed written statement from adjacent riparian property owners
- (3) Maintain consistency with all local, state, federal, and land use standards
- (4) Demonstrate that the modification does not change the type or nature of development

The proposed amendments would remove the requirement for the permittee to show that the project has not changed more than 20% from the original proposal. The proposed amendments would also remove the requirement that the permittee obtain a signed written statement of no objection to the modifications and instead require that the adjacent riparian property owners be notified of the changes. This change would be consistent with the notification requirements of originally permitted minor development projects and remove the higher burden of riparian notification for modifications as opposed to the original minor permit notification. These rule amendments would benefit permittees seeking modifications to minor development by reducing the time necessary to obtain written statements of no objection. The amendments would not change the requirements for modifications to maintain consistency with all local, State, federal, and land use standards.

Impact Analysis

Private Entities:

The proposed rule changes will have a financial impact on private entities seeking a “major” modification to major development and/or dredge and fill projects. The current fee of a “major” modification to major development and/or dredge and fill is \$250; the proposed rule changes will increase that fee to \$400 for projects requiring written concurrence from the DWR. Based on internal data based on averages from the last five years, DCM has processed approximately 17 “major” modification to existing private entity projects per year that would require an increase in the fee costing private entities \$2,550 per year (17 x \$150 increase). The fiscal impact of the proposed rule changes for all “minor” modifications to major development and/or dredge and fill projects as well as minor development will have no impact as the fees will remain the same. However, private entities will realize a benefit from reduced notification requirements and faster decision making related to their modification requests.

NC Department of Transportation (NC DOT):

The proposed rule changes have a financial impact to NC DOT seeking a “major” modification to major development and/or dredge and fill projects. The current fee of a “major” modification to major development and/or dredge and fill is \$250; the proposed rule changes will increase that fee to \$400. Based on internal DCM data based on averages from the last five years, DCM has processed approximately two “major” modification to existing NC DOT projects per year resulting in an increase of \$300 per year to NC DOT (2 x \$150 increase). The fiscal impact of the proposed rule changes for all “minor” modifications to major development and/or dredge and fill projects as well as minor development will have no impact as the fees will remain the same. However, NC DOT will realize a benefit from reduced notification requirements and faster decision making related to their modification requests.

Local Government:

The proposed rule changes have a financial impact to local governments seeking a “major” modification to major development and/or dredge and fill projects. The current fee of a “major” modification to major development and/or dredge and fill is \$250; the proposed rule changes will increase that fee to \$400 for projects that require written concurrence from DWR. Based on internal DCM data based on averages from the last five years, DCM has processed approximately 1 “major” modification to existing local government projects per year resulting in an increase of \$150 to local governments (1 x \$150 increase). The fiscal impact of the proposed rule changes for all “minor” modifications to major development and/or dredge and fill projects as well as minor development will have no impact as the fees will remain the same. However, local governments will realize a benefit from reduced notification requirements and faster decision making related to their modification requests.

State Government:

The proposed rule changes have a financial impact to State commenting agencies, specifically the Division of Water Resources. The proposed amendments would allow the Division of Water Resources the appropriate percentage of the fee schedule for review of “major” modifications to projects which would fall under the DEQ MOU between DCM and DWR which was signed in 2001. This will result in an increase of \$1200 in permit fees to DWR (40% of the \$400 processing fee of “major” modifications). The fiscal impact of the proposed rule changes for all “minor” modifications

to major development and/or dredge and fill projects as well as minor development will have no impact as the fees will remain the same.

Division of Coastal Management (DCM):

DCM and other state/federal permit review agencies will realize an increase in permitting fees associated with “major” modifications. While these fees will be appropriately split between DCM and DWR according to the 2001 DEQ MOU, the total amount of increased fees based on a five-year average is approximately \$3,000. This total is the sum of all private entities, local governments, and NC DOT projects during that time period. The fiscal impact of the proposed rule changes for all “minor” modifications to major development and/or dredge and fill projects as well as minor development will have no impact as the fees will remain the same. The Division would not be impacted by any intangible benefits such as time-savings because the proposed rule change will only affect fee amounts, without the time involved in review of modifications.

Cost/Benefits Summary

The Division of Coastal Management has reviewed an average of approximately 77 CAMA “major” modification requests per year in the past five years. Changes to the rule are expected to result in a more equitable distribution of fees between State commenting agencies. The fiscal impact of the proposed rule changes for all “minor” modifications to major development and/or dredge and fill projects as well as minor development will have no impact as the fees will remain the same. However, permittees requesting modifications of their projects will realize a benefit from reduced notification requirements and faster decision making related to their modification requests.

The proposed rule change has an economic impact on applicants requesting “major” modifications. Applicants include local and state government agencies, and private entities. Presently, applicants must pay a \$250 “major” modification fee. The adoption of this rule language would increase the fee for “major” modifications from \$250 to a total of \$400. On average, private property owners as a group would pay an additional \$2,550 per year, local governments as a group would pay an additional \$150 per year and DOT would pay an additional \$300 per year. Consequently, the Division of Coastal Management would incur an increase of \$1,800 per year, on average (Table 1). The Division of Water Resources will also realize an increase in fees as the proposed amendments will increase the appropriate application percentage that is reflected in the 2001 MOU between DCM and DWR.

Table 1. Fiscal Impact Summary

Affected Party	Cost/Year	Savings/Year	Total/Year
Property Owners	\$4,250	\$0	\$-2,550
NC DOT	\$300	\$0	\$-300
Local Governments	\$150	\$0	\$-150

15A NCAC 07J .0405 PERMIT MODIFICATION

1
2 (a) ~~An applicant~~ A permit holder may apply for a major or minor modification ~~modify his permitted of an active~~
3 major development permit and/or dredge and fill permit. ~~project only after approval by the Department.~~ In order to
4 modify an active a permitted project major development or dredge and fill permit the permit holder applicant must
5 shall make a written request to the ~~Department~~ Division of Coastal Management showing ~~in detail~~ the proposed
6 modifications. ~~Minor modifications may be shown on the existing approved application and plat. Modification~~
7 ~~requests which, in the opinion of the Department that require notice and review pursuant to G.S. 113A-119 based off~~
8 ~~the Divisions assessment of unresolved questions concerning the proposed activity's impact on adjoining properties~~
9 ~~or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources or public trust~~
10 ~~rights are considered major will and shall require a new application.~~ application and shall follow the major permit
11 procedures defined in NCAC 07J .0200. ~~Modification requests are subject to the same processing procedure~~
12 ~~applicable to original permit applications.~~ Modification requests that, based on the Division's assessment of
13 potential impacts to adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites,
14 wildlife, fisheries resources or public trust rights, are considered minor shall require a permit drawing and project
15 narrative and shall ~~A permit need not be circulated to all those agencies commenting on the original application and~~
16 ~~adjacent riparian property owners.~~ if the Commission determines that the modification is so minor that circulation
17 would serve no purpose.

18 (b) Modifications to a permitted project ~~which that~~ are imposed or ~~made at the request of or requested by~~ the U.S.
19 Army Corps of Engineers or other federal agencies ~~must shall~~ be approved by the ~~Department~~ Division of Coastal
20 Management under provisions of Paragraph (a) of this Rule. ~~Rule dealing with permit modification procedures.~~

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

24 (1) ~~for bulkheads:~~

25 (A) ~~Bulkhead bulkhead must shall~~ be positioned so as not to extend more than an average
26 distance of two feet waterward of the mean high water contour; ~~contour and in no place~~
27 ~~shall the bulkhead be more than five feet waterward of the mean high water contour; and~~

28 (B) ~~All all~~ backfill must shall come from an upland source; and

29 (C) ~~No no~~ marsh area may be excavated or filled; and

30 (D) ~~Work work~~ must shall be undertaken because of the necessity to prevent significant loss
31 of private residential property due to erosion; and

32 (E) ~~The the~~ bulkhead must shall be constructed prior to any backfilling activities; and

33 (F) ~~The the~~ bulkhead must shall be constructed so as to prevent seepages of backfill materials
34 through the bulkhead; and

35 (G) ~~The the~~ bulkhead may not be constructed in the Ocean Hazard AEC;

36 (2) ~~for piers, docks and boathouses:~~

*Proposed Amendments to 15A NCAC 7J .0405 – Permit Modifications
October 29, 2021*

1 (A) — ~~The the modification or addition may shall not be within 150 feet of the edge of a~~
2 ~~federally maintained channel; and~~

3 (B) — ~~The the structure, as modified, must shall be 200 feet or less in total length offshore; and~~

4 (C) — ~~The the structure, as modified, must shall not extend past the four feet mean low water~~
5 ~~contour line (four feet depth at mean low water) of the waterbody; and~~

6 (D) — ~~The the project as modified, must shall not exceed six feet in width; and~~

7 (E) — ~~The the modification or addition must shall not include an enclosed structure; and~~

8 (F) — ~~The the project shall continue to be used for private, residential purposes;~~

9 (3) — ~~for boatramps:~~

10 (A) — ~~The the project, as modified, would shall not exceed 10 feet in width and 20 feet~~
11 ~~offshore; and~~

12 (B) — ~~The the project shall continue to be used for private, residential purposes.~~

13 ~~(d)(c)~~ A permit holder may modify his an active permitted minor development project permit only
14 after approval by the local permit-letting authority, authority, or the Division of Coastal Management if the local
15 government does not have a delegated minor permit program pursuant to G.S. 113A-117 and 15A NCAC 07L. In
16 order to modify a permitted project project, the applicant must permit holder shall make a written request to the local
17 minor permit-letting authority or the Division of Coastal Management showing in detail the proposed modifications.
18 The request shall be reviewed approved in consultation with the appropriate Division of Coastal Management field
19 consultant and granted if all of the following provisions are met:

20 (1) — ~~The size of the project is expanded less than 20 percent of the size of the originally permitted~~
21 ~~project; and~~

22 (2)(1) ~~A a signed, written statement is obtained from all adjacent riparian property owners indicating~~
23 ~~they have no objections to the proposed modifications; and the permit holder notifies the adjacent~~
24 ~~property owners in accordance with 15A NCAC 7J .0204 (b)(5)(B); and~~

25 (3)(2) ~~The the proposed modifications are consistent with all local, state, State, and federal standards and~~
26 ~~local Land Use Plans in effect at the time of the modification requests; and~~

27 (4)(3) ~~The the type or nature of development is not changed.~~

28 Failure to meet ~~these the~~ provisions of this Paragraph shall necessitate the submission of a new permit application.

29 ~~(e)(d)~~ The applicant for a minor modification of a major permit shall submit with the request a check or money
30 order payable to the Department of Environmental Quality (\$100). The applicant for a major permit modification of
31 a major permit must shall submit with the request a check or money order payable to the Department in the sum of
32 one hundred dollars (\$100.00) for a minor modification and two hundred fifty dollars (\$250.00) or (\$400) in cases
33 where fees are consolidated with the N.C. Division of Water Resources. for a major modification.

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35 *History Note: Authority G.S. 113A-119; 113A-119.1; ~~113A-124(e)(5)~~; 113-229; 113A-124(c)(8);*

36 *Eff. March 15, 1978;*

37 *Amended Eff. August 1, 2000; March 1, 1991; August 1, 1986; November 1, 1984;*

***Proposed Amendments to 15A NCAC 7J .0405 – Permit Modifications
October 29, 2021***

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Readopted Eff. April 1, 2021.