



NORTH CAROLINA
Environmental Quality

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CRC-19-12

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MEMORANDUM

TO: Coastal Resources Commission

FROM: Courtney Spears

SUBJECT: Major Permit Renewals

As currently written, 15A NCAC 07J .0403 requires that all issued Major permits expire on December 31st of the third year following permit issuance. For example, all Major permits issued in 2019 carry an expiration date of December 31, 2022. 15A NCAC 07J .0404 allows for one relatively automatic two-year permit renewal, with additional renewals available for projects where substantial development, either within or outside the Area of Environmental Concern, has begun and is continuing on a permitted project.

The number of active CAMA Major permits is increasing each year, as new permits are issued and permits for existing long-term development projects (i.e. subdivisions, large-scale-commercial development, multi-phased beach nourishment projects, maintenance dredging projects) continue to be renewed. The increasing number of active projects is leading to an additional workload for Division staff, as there is a corresponding increase in the number of permit renewals that must be processed each year. The Division therefore recommends that the Commission consider the following changes to the Rules governing permit renewals:

- a) **Lengthen the initial expiration date for most new Major Permits to five years from the date of permit issuance, as opposed to the current expiration dates of December 31st of the third year following permit issuance.** This rule change would benefit permittees by giving them more time to initiate or complete their projects. This lengthened expiration date would also reduce workloads of Division staff, by reducing the number of renewal requests processed each year. Finally, by changing the expiration date calculation to five years from the date of issuance, all permits would be valid for the same amount of time, as opposed to the current system whereby the amount of time a permit is active is dependent on when during a given year the permit is issued. For example, a new permit issued in early January of 2019 will be valid until December 31,



2022 or almost 4 full years, whereas a new permit issued in late December of 2019 will also be valid until December 31, 2022, or slightly more than three years.

- b) **Eliminate the ability to obtain a single two-year renewal when permitted development has not begun.** Under existing rules, 15A NCAC 07J .0404(b), a single two-year renewal may be issued to a permit holder in cases where development has not been initiated prior to the original expiration date of the permit, essentially allowing a permit holder five years from the date of permit issuance to initiate the permitted development. The proposed rule change extending the expiration date of a permit to five years from the date of issuance effectively incorporates this two-year renewal, and eliminates the necessity that a permit holder apply for this first renewal.
- c) **Lengthen the initial expiration date for publicly-sponsored, multi-phased beach nourishment projects to 10 years from the date of permit issuance, and allow for 10-year renewals.** This rule change would acknowledge the multi-phased nature of these types of projects, some of which are designed to be implemented for periods up to 50 years, by extending the original expiration date for these types of projects to 10 years. Subsequent renewals would then be issued for 10 years.
- d) **Eliminate the provisions of 15A NCAC 07J .0404(b), which allow for the circulation of renewal requests to commenting State agencies when the requests do not meet the criteria for permit renewal.** Staff believe this provision is unworkable given the length of time some of these permits may have been active, possible alterations of site characteristics over the active life of the permit, and the lack of any defined criteria upon which to make a determination on whether or not to issue the renewal following agency re-circulation. In addition, the work involved in reviewing and compiling documentation that needs to be circulated to other state and federal agencies is, in many cases, similar to that required for the circulation of a new permit application.
- e) **Consolidate and clarify language relating to when “substantial development” on a project has begun for the purposes of authorizing renewals.**

15A NCAC 07J .0403 DEVELOPMENT PERIOD/COMMENCEMENT/CONTINUATION

(a) New dredge and fill permits and CAMA permits, ~~excepting Major permits shall expire five years from the date of permit issuance, with the exception of publicly-sponsored, multi-phased beach nourishment projects, which shall expire ten years from the date of permit issuance. Minor permits, except those authorizing~~ beach bulldozing when authorized through issuance of a CAMA minor permit, shall expire on December 31 of the third year following the year of permit issuance.

(b) ~~Pursuant to Subparagraph (a) of this Rule, a minor permit~~ CAMA minor permits authorizing beach bulldozing shall expire 30 days from the date of permit issuance ~~when issued to a property owner(s) issuance.~~ Following permit expiration, the applicant permit holder is entitled to request an extension in accordance with Rule .0404(a) of this Section.

(c) Development After Permit Expiration Illegal. Any development ~~done undertaken~~ after permit expiration shall be considered unpermitted and shall constitute a violation of G.S. 113A-118 or G.S. 113-229. Any development ~~to be done to be undertaken~~ after permit expiration shall require either a new permit, or renewal of the original permit according to ~~15A NCAC 7J .0404 with the exception of Paragraph (e) of this Rule. 15A NCAC 7J .0404~~

(d) Commencement of Development in Ocean Hazard AEC. No development shall begin until the oceanfront setback requirement can be established. When the possessor of a permit or a ruling of exception is ready to begin ~~construction, he~~ development, ~~they~~ shall arrange a meeting with the appropriate permitting authority at the site to determine the oceanfront setback. This setback determination shall replace the one done at the time the permit was processed and approved and construction must begin within a period of 60 days from the date of that meeting. In the case of a major shoreline change within that ~~period-period,~~ a new setback determination will be required before construction begins. Upon completion of the measurement, the permitting authority will issue a written statement to the permittee certifying the same.

~~(e) Continuation of Development in the Ocean Hazard AEC. Once development has begun under proper authorization, development in the Ocean Hazard AEC may continue beyond the authorized development period if, in the opinion of the permitting authority, substantial progress has been made and is continuing according to customary and usual building standards and schedules. In most cases, substantial progress begins with the placement of foundation pilings, and proof of the local building inspector's certification that the installed pilings have passed a floor and foundation inspection.~~

~~(f)~~(e) Any permit that has been suspended pursuant to G.S. 113A-121.1 as a result of a contested case petition ~~or~~ by order of superior court for a period longer than six months shall be extended at the applicant's permit holder's written request for a period equivalent to the period of permit suspension, but not to exceed the development period authorized under ~~Paragraph Paragraph~~ (a) ~~or (b)~~ of this Rule.

~~(g)~~(f) An applicant A permit holder may voluntarily suspend development under an active permit that is the subject of judicial review by filing a written notice with the Department once the review has started. ~~An applicant A~~ permit holder shall obtain an extension of said permit if the permitting authority finds:

- (1) That the applicant permit holder notified the permitting authority in writing of the voluntary suspension;
- (2) The period during which the permit had been subject to judicial review is greater than six months;
- (3) The applicant permit holder filed a written request for an extension of the development period once the judicial review had been completed; and
- (4) The applicant permit holder undertook no development after filing the notice of suspension. The period of permit extension shall be equivalent to the length of the judicial review proceeding, but not to exceed the development period authorized under Paragraph (a) of this Rule.

*History Note: Authority G.S. 113A-118;
Eff. March 15, 1978;
Amended Eff. August 1, 2002; April 1, 1995; July 1, 1989; March 1, 1985; November 1, 1984.*

15A NCAC 07J .0404 DEVELOPMENT PERIOD EXTENSION

(a) For CAMA minor permits authorizing beach bulldozing, the applicant permit holder is entitled to request a one-time ~~30-day 30-day~~ permit extension. No additional extensions shall be granted after the 30-day extension has expired. Notwithstanding this Paragraph, the applicant permit holder is eligible to apply for another minor permit authorizing beach bulldozing following expiration of the ~~30 days 30-day~~ permit extension.

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(b) Where no development has been initiated during the development period, the permitting authority shall extend the authorized development period for no more than two years upon receipt of a signed and dated request from the applicant containing the following:

- (1) a statement of the intention of the applicant to complete the work within a reasonable time;
- (2) a statement of the reasons why the project will not be completed before the expiration of the current permit;
- (3) a statement that there has been no change of plans since the issuance of the original permit other than changes that would have the effect of reducing the scope of the project, or, previously approved permit modifications;
- (4) notice of any change in ownership of the property to be developed and a request for transfer of the permit if appropriate; and
- (5) a statement that the project is in compliance with all conditions of the current permit.

Where substantial development, either within or outside the AEC, has begun and is continuing on a permitted project, the permitting authority shall grant as many two year extensions as necessary to complete the initial development. For the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permittee can show that development has progressed beyond basic site preparation, such as land clearing and grading, and construction has begun and is continuing on the primary structure or structures authorized under the permit. For purposes of residential subdivision, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial development. Renewals for maintenance and repairs of previously approved projects may be granted for periods not to exceed 10 years.

(e) When an extension request has not met the criteria of Paragraph (b) of this Rule, the Department may circulate the request to the commenting state agencies along with a copy of the original permit application. Commenting agencies will be given three weeks in which to comment on the extension request. Upon the expiration of the commenting period the Department will notify the applicant promptly of its actions on the extension request.

(d) Notwithstanding Paragraphs (b) and (e) of this Rule, an extension request may be denied on making findings as required in either G.S. 113A-120 or G.S. 113-229(e). Changes in circumstances or in development standards shall be considered and applied to the maximum extent practical by the permitting authority in making a decision on an extension request.

(e) The applicant for a major development extension request must submit, with the request, a check or money order payable to the Department in the sum of one hundred dollars (\$100.00).

(f) Modifications to extended permits may be considered pursuant to 15A NCAC 07J .0405.

(b) All other CAMA permits may be extended where substantial development, either within or outside the AEC, has begun and is continuing. The permitting authority shall grant as many two-year extensions as necessary to complete the initial development, with the exception that projects involving publicly-sponsored, multi-phased beach nourishment projects, shall be granted ten-year extensions to allow for continuing project implementation. Renewals for maintenance of previously approved dredging projects may be granted for periods not to exceed 10 years. For the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permittee can show that development has progressed beyond basic site preparation, such as land clearing and grading, and construction has begun and is continuing on the primary structure or structures authorized under the permit. In Ocean Hazard Areas, substantial development begins with the placement of foundation pilings, and proof of the local building inspector's certification that the installed pilings have passed a floor and foundation inspection. For residential subdivisions, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial development.

(c) To request extension pursuant to Paragraphs (a) and (b) of this Rule, the permit holder shall submit a signed and dated request containing the following:

- (1) a statement of the completed and remaining work;
- (2) a statement that there has been no change of plans since the issuance of the original permit other than changes that would have the effect of reducing the scope of the project, or, previously approved permit modifications;
- (3) notice of any change in ownership of the property to be developed and a request for transfer of the permit if appropriate; and
- (4) a statement that the project is in compliance with all conditions of the current permit

*History Note: Authority G.S. 113A-119; 113A-119.1; 113A-124(c)(8);
Eff. March 15, 1978;
Amended Eff. August 1, 2002; August 1, 2000; April 1, 1995; March 1, 1991; March 1, 1985;
November 1, 1984.*