

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

15A NCAC 07H .2601 PURPOSE

Persons seeking to construct mitigation banks and in-lieu fee mitigation projects shall apply for a General Permit according to the rules in this Section. This permit shall be applicable only for activities resulting in net increases in aquatic resource functions and services per 73 FR 19670 and federal Clean Water Act, at 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; and Pub. L. 108-136. 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. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

*History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004;
Amended Eff. October 1, 2014;
Readopted Eff. October 1, 2022.*

15A NCAC 07H .2602 APPROVAL PROCEDURES

(a) The applicant shall contact the Division of Coastal Management at the Regional Office indicated on the map located at <https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51> and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

- (1) the site location, dimensions of the project area, and his or her name and address; and
- (2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work; or
- (3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until a meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction of the mitigation site permitted under this Section shall start within 365 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit shall be reissued.

(d) Any modification or addition to the permitted project shall require approval from the Division of Coastal Management.

*History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004;
Amended Eff. October 1, 2014;
Readopted Eff. October 1, 2022.*

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 of Environmental Quality.

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

Amended Eff. September 1, 2006;
Readopted Eff. October 1, 2022.
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) Permittees shall allow representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under authority of this General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.
- (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 required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.
- (e) At the discretion of the Division of Coastal Management, review of individual project requests shall be coordinated with the Department of Environmental Quality 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.

History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004;
Amended Eff. October 1, 2014;
Readopted Eff. October 1, 2022.

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 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) 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 aquatic resource functions and services per 73 FR 19670 and federal Clean Water Act, at 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; and Pub. L. 108-136.
- (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 as silt fences, diversion swales or berms, and sand fences 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.

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));
Readopted Eff. October 1, 2022.