

JOSH STEIN
Governor
D. REID WILSON
Secretary
TANCRED MILLER
Director



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MEMORANDUM

CRC-25-02

TO: Coastal Resources Commission
FROM: Gregg Bodnar
SUBJECT: Agency Review and the CAMA Process Follow-up Questions

Following the August 2024 CRC meeting staff where presented a report on Agency Review and the Umbrella Permitting Process (CRC-24-13). Commissioner Andrew stated that he had been in discussions with a number of stakeholders regarding the umbrella process and would provide some feedback and recommendations at a later date concerning those discussions. The feedback is presented below, followed by staff's responses. We are grateful to the stakeholders for the thoughtful feedback and constructive recommendations.

Staff agree that there are areas of improvement and will continue to identify those areas and seek Commission and public input on rule language. As an environmental regulatory agency with a mandate under G.S. 113A-102, to establish policies, guidelines and standards for protection, preservation, orderly development, and management of the coastal area of North Carolina, DCM works to balance competing coastal pressures to protect, conserve and manage the state's resources while ensuring the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation.

Our enabling statutes provide a broad framework for the umbrella process to inform state and federal agencies of coastal development within their areas of expertise and allows us to use each agency's expertise to satisfy the requirements in statute. The umbrella process provides an applicant with a single regulatory point of contact for their proposed development with the CAMA Major Permit application serving as the application for a 401 certification from the Division of Water Resources and a Section 10 or Section 404 permit from the US Army Corps of Engineers. The permit pathways of these two agencies require a public notice and the DCM public notice satisfies that requirement realized a cost and times savings for the applicant. The umbrella process also acts as notification for the state's Stormwater and Sedimentation & Erosion Control permit processes. Overall, the umbrella process coordinates the permitting and resource agencies into a streamlined framework with a shared application and timeline, avoiding duplication and allowing all authorizations to be issued concurrently and more quickly than if the agencies were all operating independently. Below you will find discussion to the specific sections with background, comment and options moving forward to address each section. DCM is committed to improve upon the process and increase efficiency.



STAKEHOLDER COMMENTS

Pros and Cons of DCM as a Permitting Clearinghouse

Pros:

- **Streamlined Process:** A single point of contact can simplify the permitting process for developers, reducing time and costs associated with navigating multiple agencies.
- **Consistent Standards:** DCM can ensure that all projects in coastal counties adhere to consistent standards and regulations, promoting environmental protection and equitable development.
- **Enhanced Coordination:** By acting as a central hub, DCM can improve coordination among various agencies involved in coastal development, reducing conflicts and delays.
- **Increased Efficiency:** DCM can leverage its expertise and resources to expedite the permitting process, supporting economic growth and development.
- **Public Involvement:** DCM can facilitate public input into the permitting process, ensuring that community concerns are addressed and promoting transparency.

Cons:

- **Potential Overburden:** DCM often becomes overwhelmed with the volume of permits and applications, leading to delays and inefficiencies.
- **Reduced Agency Autonomy:** Some agencies may feel that their authority and expertise are diminished when DCM acts as a clearinghouse, leading to potential conflicts or resistance.
- **Limited Specialization:** While DCM has expertise in coastal management, it may not have the same level of specialization in all areas relevant to coastal development, potentially affecting the quality of permit reviews.
- **Increased Bureaucracy:** There have been many cases where the additional layers of bureaucracy from other state and federal agencies introduced substantial costs, delays, governmental overreach, and complexities into the permitting process.
- **Potential for Overreach:** There are several cases where DCM, serving as the enforcement mechanism for nonregulatory state agencies who review CAMA permit applications, has exercised too much control over coastal development, causing significant delays, limiting innovation, and adversely impacting NC's coastal economic growth. When DCM serves as the regulatory authority for non-regulatory agencies within an umbrella permitting process, several potential problems have arisen. Most significantly, pressure from other state agencies that do not have regulatory authority has put pressure on DCM to exceed its authority by denying permits, imposing permit conditions, and/or taking enforcement actions that are not directly related to coastal management or even outside of the areas of environmental concern. This can stifle innovation, DCM's administrative and regulatory flexibility and autonomy, and adversely impacts economic development in coastal areas.

Agency Autonomy and Expertise:

- **Erosion of Authority:** Non-regulatory agencies may feel that their expertise and authority are diminished when DCM oversees their permitting decisions. This can lead to suboptimal decisions as agencies may not fully exercise their specialized knowledge.



Inconsistent Standards:

- **Conflicting Regulations:** DCM may impose regulations (e.g., overlapping rules) that conflict with those of the non-regulatory agencies, creating confusion and uncertainty for permit applicants. Likewise, the other agencies and overlapping rules have created problems for applicants and projects underway. The lack of harmonization can hinder the efficient and effective implementation of environmental protection measures as well as provide a streamlined and efficient permitting process.

Increased Bureaucracy:

- **Additional Layers:** The addition of having other nonregulatory agencies involved in the permitting process, especially those not especially trained to review permits and understand development methods or processes, can introduce additional layers of bureaucracy, slowing down the permitting process and increases costs. This can place a heavy burden on both permit applicants and the other agencies involved.

Reduced Efficiency:

- **Decision Delays:** The need for coordination and approval from multiple agencies can lead to delays in the permitting process.
- **Resource Constraints:** DCM does not have the resources to effectively oversee the permitting and ‘enforcement’ activities for the non-regulatory agencies.

Public Perception:

- **Lack of Trust:** The public may perceive the DCM as a one-stop shop that is not fully committed to its specific goals, but rather the specific goals of the other state and federal individual agencies. This can erode public trust in the regulatory system as a whole.



STAKEHOLDER RECOMMENDATIONS

To mitigate these problems, it is important to establish clear guidelines and procedures for DCM's role as a regulatory authority. This includes:

- **Defining Clear Boundaries:** Clearly defining the scope of DCM's authority and the responsibilities involving the non-regulatory agencies.
- **Promoting Transparency and Collaboration:** Fostering collaboration and transparent information sharing between DCM, other state and federal environmental resource agencies, the non-regulatory agencies, and the permit applicants.
- **Ensuring Consistency:** Developing mechanisms to ensure that regulations are consistent, not overlapping, and aligned with the goals of both the CRC/DCM and non-regulatory agencies.
- **Streamlining Processes:** Implementing innovative, efficient, and streamlined processes for permit review and approval.
- **Involving the Public:** Providing more and improved opportunities for public input and participation in the permitting process, and then acknowledging and being responsive to the public's input.

Overall, the effectiveness of DCM as a permitting clearinghouse will depend on several factors, including:

- The quality of its training, staff, and having adequate resources
- The degree of cooperation among participating agencies, and their training and availability of resources
- The effectiveness of its public involvement processes
- The ability to balance environmental protection with economic development
- Providing checks and balances to prevent the potential for overreach or for other agencies to use DCM as their means of enforcement
- Providing clearly defined scope of responsibilities and involvement with DCM's use of enforcement for non-regulatory agencies

By carefully considering these factors, DCM can, and does, play a valuable role in streamlining the permitting process and promoting sustainable coastal development, but being able to adapt to changes and shifts in the way it does business is critical to an effective process.

To enhance our effectiveness as a permitting clearinghouse, DCM can implement several strategies:

1. Streamline Processes and Procedures:

- **Simplify Application Forms:** Develop user-friendly and streamlined application forms to reduce the administrative burden on permit applicants.
- **Utilize Technology:** Implement better online permitting systems to streamline the application, review, and approval processes.
- **Clear Communication:** Provide clear guidelines and **timelines** for the permitting process to minimize confusion and delays.



2. Enhance Collaboration and Coordination:

- **Interagency Agreements:** Establish formal agreements and scope of responsibilities with other state and local agencies to streamline communication and decision-making.
- **Joint Permit Reviews:** Conduct joint permit reviews to expedite the process and ensure consistency in standards.
- **Shared Data Platforms:** Develop shared data platforms to facilitate information sharing and reduce redundancy.

3. Invest in Staff Training and Development:

- **Specialized Training:** Provide staff with specialized training in coastal management, environmental regulations, and permitting procedures.
- **Continuous Learning:** Encourage or require ongoing professional development and education to stay updated on industry trends and best practices.

4. Improve Public Engagement:

- **Transparent Communication:** Provide clear and timely information to the public about the permitting process and decision-making.
- **Public Hearings:** Hold regular public hearings to allow for input and feedback from stakeholders.
- **Online Platforms:** Utilize innovative online platforms to facilitate public engagement and access to information.

5. Leverage Data and Analytics:

- **Data Collection:** Collect and analyze data on permit applications, approvals, and project outcomes.
- **Performance Metrics:** Develop performance metrics to measure the effectiveness of the permitting process and identify areas for improvement.
- **Data-Driven Decision Making:** Use data-driven insights to inform decision-making and optimize processes.

6. Foster Innovation and Flexibility:

- **Adaptive Management:** Adopt an adaptive and flexible management approach to respond to changing conditions and emerging challenges.
- **Pilot Programs:** Implement pilot programs to test new and innovative approaches and learn from experiences.
- **Incentivize Sustainable Development:** Develop incentives (e.g., less bureaucracy) to encourage sustainable development practices and minimize environmental impacts.



STAFF RESPONSE

Since the inception of the CAMA, DCM has utilized a paper-based application and filing system. This required an applicant to describe potentially complex projects within a few lines of a form. The application, along with supporting documents and work plans, were printed out by the applicant, for processing. Technical review was done by mail and permit file documentation was filed away in cabinets, with files containing only copies of some documentation and susceptible to loss or damage over time. With the updated ePermit system, access to data is immediate across offices, and DCM is constantly updating and improving the ePermit application system by incorporating user feedback into the process. Prior to the ePermitting General Permit application process launch, DCM removed several questions from the application that were determined to be not applicable. DCM recently upgraded the GP application's format and will be implementing those changes into the MP application. This upgrade presents the development activities in a table format rather than the current scroll through format, which has been a request of applicants. This will significantly improve the usability of the system and was not available until a recent update to the Microsoft Dynamics system. We are continuously look for improvements and updates to the system. Applicants can view the status of their application in the portal dashboard and access the application in a read only format to view previously submitted documents. They can also request modifications, renewals and transfers, and pay permit fees online. The ePermitting program is an excellent example of a large-scale program that, as feedback and use reveal areas for improvement, staff can implement to improve its efficiency and effectiveness.

An acknowledgement letter is provided to each applicant detailing the "accepted as complete" date and the 75-day date for Major Permit applications and staff are always available to assist applicants and answer questions. Staff notify resource agencies of comment deadlines and contacts agencies routinely as the deadline nears. Just before the 75-day deadline staff consults with the applicant to determine if the applicant wishes to continue the review process for outstanding permits like DWR and USACE or move forward with a final decision from DCM with those agencies conditioned out and requiring separate authorization prior to construction. Most applicants choose the hold/extension route after weighing the options.

As part of the umbrella process, staff coordinate with agencies as necessary to address comments provided. With the two permitting agencies most closely tied to the umbrella process (DWR and USACE), there are agreements in place to establish scope and process. For USACE, the 291 regional general permit uses the DCM application as their application, including the public notice, for a complete application. This informs the DWR on the appropriate permitting pathway and reduces application processing times, though it requires the USACE to make a processing pathway determination before DWR can certify. With DWR, the DCM has had an MOA in place since 2001 under the direction of Governor Hunt's Executive Order 15 that created a framework for water quality certifications and major permit actions to be reviewed and coordinated, including fee splits. Currently staff are consulting with the DWR and USACE on updating the existing MOAs on how renewals and transfers are coordinated to assist the DWR and USACE in streamlining their ability to process these permit actions. In 2020 the EPA's interpretation of water quality certifications ended the ability for the DWR to independently review projects under general certifications. As a result, the DWR was required to create individual general certifications to correspond with each federal permit action (regional general permits or



nationwide permits) requiring the DWR to receive the federal review pathway (RGP or NWP) prior to review, resulting in increased review times.

As part of the umbrella process, DCM does offer applicants the option to hold interagency scoping meetings, coordinated by DEQ, prior to submitting their application, to present their project to resource agencies and solicit feedback. Since these meetings are not required by statute or rule, an applicant can decline the option but then may run into issues in permitting and delays that could have been avoided had a scoping meeting been held.

Review agencies have access to the ePermit system for commenting and as a database for archived permits. As with the application, staff are making improvements as user feedback becomes available. As part of the umbrella process, staff are always available to assist the applicant and coordinate with resource agencies. Each agency's statutory jurisdiction or resource of concern involves data or other products that are available via each agency's website or by request. These include submerged aquatic vegetation and primary nursery areas layers from the NC DMF or NC WRC, harbor lines and federal setbacks from the USACE or water quality classifications from the DWR. As a caveat, the N.C. Department of Natural and Cultural Resources (DNCR) does not publish their archaeological datasets due to concerns with potential for that data to be used for artifact hunting or removal. The NC DNCR is available to assist applicants or landowners upon request.

DCM does ongoing staff training on the ePermit system. Staff participate in a variety of in-house training and meetings by program and higher-level meetings such as weekly regulatory staff meetings. DCM coordinates quarterly Coastal Habitat Protection Plan (CHPP) interagency meetings that focus on permitting and using the ePermitting system, and holds regional Local Permit Officer (LPO) trainings to provide comprehensive training to new and experienced LPOs. Staff will continue to look for options and methods to increase staff and LPO training in these areas and remain open to any ideas to accomplish this.

Currently within DCM's Regulatory Section there is one Major Permits Coordinator, two Assistant Major Permits Coordinators, three NCDOT staff, and a Beach and Inlet Management Coordinator that collectively handle approximately 150 Major Permits, 70 modifications and 60 renewal and transfers per year. There are 4 District Managers and 16 Field Representatives that handle approximately 2,500 General Permits, 1,450 Minor Permits and conduct approximately 3,800-4,000 site visits per year. Our Field Representatives process Minor Permits in communities without LPOs. With the workload and nature of the jobs, training for new staff is typically done in the field. Despite recent increased turnover and the time required to train new staff, DCM makes every effort to meet statutory deadlines, maintain consistency across the program, and provide the best possible customer service to the public. DCM will continue to look for ways to improve and provide training and development opportunities.

DCM prioritizes delivering excellent customer service and will continue to answer any questions the public or applicants have. Our public presence in the field and transparent contact information make staff available to serve the public. Provided there are no unforeseen issues, staff return correspondence within a day on average. To solicit customer service feedback staff are looking into inserting a survey link in our email signatures to provide the public with a direct link to provide feedback on any issues of concern. The public is free to contact staff directly at



any time with comments, concerns and questions, and public comment times at CRC meetings provide another avenue for public input.

The ePermit portal has a public section that allows the public to find their field representative and submit compliance concerns. Additional platforms and related web services will require DEQ assistance, as DCM does not have dedicated IT staff.

The current ePermit system is building out the ability to process metrics. This will provide staff with the ability to provide the public with information concerning development over time or area and assist with questions concerning permit times and development. The report function will also assist in metrics of permit timing that will be useful in identifying areas of improvement. Staff also provide legislative and federal reporting on permit times that are reviewed for improvements.

Staff strives always to be flexible and willing to work through challenges to find equitable solutions. Currently DCM has permit pathways that require limited or no agency review. DCM has always placed time limits on the return of comments from review agencies and no longer holds a permit decision beyond 75 days to wait for another agency's input unless the applicant agrees to do so. DCM works with DWR and USACE for their respective authorizations under the umbrella process prior to the issuance of the CAMA or D&F permit, as it reduces the potential for issues with compliance and provides a comprehensive permitting avenue for the applicant to receive all necessary authorizations. Without the umbrella process applicants will be required to coordinate separately with each permitting agency, updating plans with each one as changes are made to the project during review and possibly having to modify permits if one agency requests changes after the other agencies have issued their permits.

Again, staff value public engagement in our mission and work, and appreciate the constructive review and recommendations provided by these stakeholders on the permitting process. We look forward to working with the Commission, Advisory Council, and other interested parties to continue to increase efficiency in our permit processing to meet the needs of the public.

