

ROY COOPER
Governor

DIONNE DELLI-GATTI
Secretary

BRAXTON DAVIS
Director



CRC-21-13

April 16, 2021

MEMORANDUM

TO: Coastal Resources Commission
FROM: Jonathan Howell
SUBJECT: Amendments to 15A NCAC 7J .0405 – Permit Modifications

After a CAMA Major permit is issued, it is common for an applicant 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 have taken place since that time, including the processes by which other agencies approve modifications of CAMA major permits. This has resulted in a need to update your rule language to incorporate changes in other agencies' processes and fees, as well as updates to the parameters for determining the type of modification required. The Division recommends that the Commission consider the following changes to the Rules governing permit renewals:

- a) **Remove language specific to bulkheads, piers, docks, boathouses and boat ramps.** Modifications to permits are site-specific and project-specific. 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.
- b) **Add language that interacts with new rule language in 15A NCAC 7J .0404 and 15A NCAC 7J .0406.**
In keeping with ongoing rulemaking related to oceanfront setback exceptions, communities that have an adopted beach management plan are provided benefits for being proactive in local and regional planning of future beach projects. These communities may not be subject to the same modification requirements for projects outlined in Commission-approved beach management plans.



c) Update the fee schedule.

As 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 (written vs. non-written concurrence), the Division of Water Resources requires a fee split in conjunction with a Memorandum of Agreement (MOA) established in 2001. When a fee split is required, the DCM should be charging \$400 for a major modification to allow for the fee split as outlined in the MOA.

I look forward to discussing these proposed changes at your April 2021 meeting.



1 **15A NCAC 07J .0405 PERMIT MODIFICATION**

2 (a) An applicant permit holder may apply for a major or minor modification modify his permitted of an active major
3 development permit and/or dredge and fill permit project only after approval by the Department. In order to modify
4 an active permitted project major development permit and/or dredge and fill permit the applicant permit holder must
5 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, based on the Divisions assessment of the potential impacts to coastal
8 resources or use conflicts are considered major, will shall require a new application and shall follow the major permit
9 procedures defined in 15A NCAC 7J .0200. Modification requests are subject to the same processing procedure
10 applicable to original permit applications. Modification request which, based on the Divisions assessment of potential
11 impacts on coastal resources or use conflicts, are considered minor shall require a permit drawing and project narrative
12 and shall A permit need not be circulated to those all agencies commenting on the original application and/or adjacent
13 riparian property owners where, based on the Divisions assessment of the impacts of the proposed changes, potential
14 exist for additional impacts on coastal resources or use conflicts. if the Commission determines that the modification
15 is so minor that circulation would serve no purpose.

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

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

22 (1) for bulkheads:

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

26 (B) All backfill must come from an upland source; and

27 (C) No marsh area may be excavated or filled; and

28 (D) Work must be undertaken because of the necessity to prevent significant loss of private
29 residential property due to erosion; and

30 (E) The bulkhead must be constructed prior to any backfilling activities; and

31 (F) The bulkhead must be constructed so as to prevent seepages of backfill materials through
32 the bulkhead; and

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

34 (2) for piers, docks and boathouses:

35 (A) The modification or addition may not be within 150 feet of the edge of a
36 federally maintained channel; and

37 (B) The structure, as modified, must be 200 feet or less in total length offshore; and

1 (C) The structure, as modified, must not extend past the four feet mean low water contour line
2 (four feet depth at mean low water) of the waterbody; and

3 (D) The project as modified, must not exceed six feet in width; and

4 (E) The modification or addition must not include an enclosed structure; and

5 (F) The project shall continue to be used for private, residential purposes;

6 (3) for boatramps:

7 (A) The project, as modified, would not exceed 10 feet in width and 20 feet offshore; and

8 (B) The project shall continue to be used for private, residential purposes.

9 ~~(c)~~ (c) At the discretion of the Division of Coastal Management a permit holder with a Commission-approved beach
10 management plan per 15A NCAC 7J 1200 may not be subject to all requirements in part (a) and (b) of this rule for
11 project components outlined in the approved beach management plan.

12 (d) An applicant permit holder may modify hisan active permitted minor development project permit only after
13 approval by the local permit-letting authority, or by the Division of Coastal Management if the Local Government
14 does not have a delegated minor permit program pursuant to 15A NCAC 071. In order to modify a permitted project,
15 the applicant permit holder must make a written request to the local minor permit-letting authority, or the Division of
16 Coastal Management, showing in detail the proposed modifications. The request shall be approved reviewed in
17 consultation with the appropriate Division of Coastal Management field consultant and granted if all of the following
18 provisions are met:

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

21 ~~(2)~~(1) A signed, written statement is obtained from all adjacent riparian property owners indicating they
22 have no objections to the proposed modifications; and

23 ~~(3)~~(2) The proposed modifications are consistent with all local, state, and federal standards and local Land
24 Use Plans in effect at the time of the modification requests; and

25 ~~(4)~~(3) The type or nature of development is not changed.

26 Failure to meet these provisions shall necessitate the submission of a new permit application.

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

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33 *History Note:* Authority G.S. 113A-119; 113A-119.1; 113A-124(c)(5); 113-229;
34 Eff. March 15, 1978;

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