



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC-20-28

November 2, 2020

MEMORANDUM

TO: Coastal Resources Commission
FROM: Daniel Govoni
SUBJECT: Fiscal Analysis, 15A NCAC 7J .0403 and .0404 Development
Period/Commencement/Continuation & Development Period Extension

In 1978, the Coastal Resources Commission (CRC) adopted 15A NCAC 07J .0403 and 15A NCAC 7J .0404 to define the commencement, continuation, and extension of development authorized by Coastal Area Management Act (CAMA) permits.

Over recent years, the Division of Coastal Management (DCM) has processed an increasing number of permit renewal requests, corresponding with the increase in coastal population and development. Currently, the Commission's rules for permit issuance and renewal allow for an inconsistent active time period. Major Permits are active until December 31st of the third year from the date of permit issuance and are allowed an automatic two-year renewal. The proposed amendments would lengthen the initial active period to five years from the date of permit issuance, extending the permit active period and thereby incorporate the existing automatic renewal period. Additionally, DCM has seen an increase in the number of large, publicly sponsored, multi-phased beach nourishment projects. The proposed change would acknowledge the longer implementation period of these projects and allow for an initial active period of ten years, with an additional ten-year renewal. Additionally, this rule change would clarify the definition of "substantial development".

DCM does not anticipate any negative economic impacts as a result of this proposed rule change. The proposed rule change will provide potential financial benefits to local, state, and private entities in terms of time and permit fees. These amendments will have no negative impacts on Department of Transportation projects, local governments or the federal government. DCM will be impacted due to the reduction in permit fees, however, would be mostly offset by the savings in staff time in processing those requests.

DEQ and OSBM have reviewed the fiscal analysis and determined the proposed rule amendments have little to no impact on state or local governments and no substantial economic impact. The CRC is also required to approve this fiscal analysis before the proposed amendments can proceed to public hearing. Staff is recommending approval of the fiscal analysis (fiscal analysis and proposed rule amendments are attached).

Fiscal Analysis

15A NCAC 7J .0403 Development Period/Commencement/Continuation &
15A NCAC 7J .0404 Development Period Extension

Prepared by

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October 26, 2020

Basic Information

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| Agency | DEQ, Division of Coastal Management (DCM) Coastal Resources Commission |
| Citations and Titles | 15A NCAC 7J .0403 – Development Period/ Commencement/Enforcement 15A NCAC 7J .0404 – Development Period Extension |
| Description of the Proposed Rules | Section 7J .0403 defines the conditions under which development authorized by Coastal Area Management Act (CAMA) permits shall commence and continue. The proposed rule change would allow for the extension of the active period of most major permits from three to five years and for large-scale, publicly funded beach nourishment projects from three years to ten years. Section 07J .0404 defines the conditions under which a permit can be extended beyond the initial expiration date. The proposed rule change would eliminate the ability to obtain a single two-year renewal when permitted development has not begun. This change would also clarify and consolidate the definition of “substantial development.” |
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| Authority | 113A-118; 113A-119; 113A-119.1; 113A-124(c)(8) |
| Necessity | The Coastal Resources Commission is proposing to amend its administrative rules to lengthen the initial expiration date of most Major Permits and other minor changes to the permit renewal process. |
| Impact Summary | State government: Yes Local government: Yes Private entities: Yes Substantial impact: No |

Summary

In 1978, the Coastal Resources Commission (CRC) adopted 15A NCAC 07J .0403 and 15A NCAC 7J .0404 to define the commencement, continuation, and extension of development authorized by Coastal Area Management Act (CAMA) permits.

Over recent years, the Division of Coastal Management (DCM) has processed an increasing number of permit renewal requests, commensurate with the increase in coastal population and development. Currently, the Commission's rules for permit issuance and renewal allow for an inconsistent active time period. Major Permits are active until December 31st of the third year from the date of permit issuance and are allowed an automatic two-year renewal. The proposed amendments would lengthen the initial active period to five years from the date of permit issuance, extending the permit active period and thereby incorporate the existing automatic renewal period. Additionally, DCM has seen an increase in the number of large, publicly sponsored, multi-phased beach nourishment projects. The proposed change would acknowledge the longer implementation period of these projects and allow for an initial active period of ten years, with an additional ten-year renewal. Additionally, this rule change would clarify the definition of "substantial development".

The fiscal impacts of this proposed rule change are benefits to state government in terms of efficiency in processing and staff time. While DCM would see an average of \$2,200 less in permit renewal fees, it is estimated that the loss of revenue would be offset by the savings in staff time involved in processing an "automatic" request.

The adoption of this rule language would allow the applicants, which include private entities, local governments, and other state agencies including North Carolina Department of Transportation (NC DOT), to save \$100 on the initial "automatic" permit renewal request fee. They would also experience a time savings from not having to develop and submit requests for an "automatic" permit action.

Description of Rule Amendment

Currently, 15A NCAC 07J .0403 requires that all Major permits expire on December 31st of the third year following the date of 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 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. To address the increased development and subsequent workload, the proposed rule change would lengthen the initial active period of most major permits and incorporate the “automatic” renewal. The amendments would also lengthen the initial active period of large, publicly funded beach nourishment projects and clarify the definition of substantial development.

The proposed amendments would change the initial expiration date for new Major Permits to five years from the date of permit issuance, as opposed to the current expiration date 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 permit 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.

This change would also 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.

The initial expiration date for publicly-sponsored, multi-phased beach nourishment projects would be lengthened to ten 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 projects to ten years. Subsequent renewals would then be issued for a period of ten years.

Lastly, the changes would consolidate and clarify language relating to when “substantial development” on a project has begun for the purposes of authorizing renewals.

Impact Analysis

Private Entities:

The fiscal impact of the proposed rule changes are financial benefits to private entities in terms of both time and fees. Permit renewal applications for the “automatic” renewal are typically approved. There are no known significant consequences of no longer receiving and reviewing the information presented in a permit renewal request as it is unlikely that environmental conditions have changed to such a significant degree that there would be any environmental or public use impact issues. Projects authorized through the major permit process are routinely monitored through aerial surveillance and site visits conducted by field representatives, so any issues of these type are likely to be addressed through compliance and monitoring. The adoption of this rule language would allow the applicant to avoid paying the \$100 renewal fee and save time by not developing a request for an “automatic” renewal. Private entities applied for 170 renewals in the last three years.

NC Department of Transportation (NC DOT):

The fiscal impact of the proposed rule changes are financial benefits to NC DOT in terms of both time and fees. The adoption of this rule language would allow NC DOT to avoid paying the \$100 renewal fee and save time by not developing a request for an “automatic” renewal. NCDOT applied for 2 renewals in the last three years.

Local Government:

The fiscal impact of the proposed rule changes are financial benefits to local governments in terms of both time and fees. The adoption of this rule language would allow local governments to avoid paying the \$100 renewal fee and save time by not developing a request for an “automatic” renewal. Local governments applied for 28 renewals in the last three years.

State Government:

The fiscal impact of the proposed rule changes are potential financial benefits to State agencies in terms of both time and fees. The adoption of this rule language would allow state agencies to avoid paying the \$100 renewal fee and save time by not developing a request for an “automatic” renewal. State agencies, excluding NCDOT, applied for 4 renewals in the last three years.

Division of Coastal Management (DCM):

DCM and other state/federal permit review agencies will realize a time-savings benefit by not having to process requests for an “automatic” renewal. Based on a review of renewal requests over the last three years from June 2016 through June 2019, DCM processed a total of 205 renewal requests. Each renewal request includes a \$100 permit fee, so the total fees collected in

the three year period were approximately \$20,500. If the proposed changes were implemented, 66 of those renewals would not have been processed resulting in the loss of approximately \$6,600 in permit fees over of the three-year period, or \$2,200 per year on average for 22 requests (Table 1). Given that the average processing time for a renewal request is roughly four hours, the reduction in permit fees would be mostly offset by the savings in staff time in processing those requests.

Cost/Benefits Summary

The proposed amended rules for the development period commencement and extension would apply to local, state, and private entities. The Division of Coastal Management has reviewed an average of approximately 68 CAMA Major permit renewal requests per year in the past three years. Changes to the initial active period and renewal request process is anticipated to result in a more equitable and predictable process.

The economic impacts of these proposed rule changes are potential financial benefits to local, state and private entities in terms of time and permit fees. Presently, applicants must pay a \$100 renewal request fee and develop a renewal request for what is essentially an “automatic” two-year renewal. Applicants include local and state government agencies, and private entities. The adoption of this rule language would allow the applicant to have an initial active period of five or ten years, based on project type, resulting in a \$100 savings per applicant. On average, private property owners as a group would save \$2,100 per year and local governments as a group would save approximately \$100 per year. Consequently, the Division of Coastal Management would incur a cost of \$2,200 per year, on average (Table 1). Project applicants will also realize a time savings as the proposed amendments will eliminate the need to develop the initial renewal request. The impact is not expected to be substantial.

Table 1. Fiscal Impact Summary

| Affected Party | Cost/Year | Savings/Year | Total/Year |
|---------------------------|------------------|----------------------------------|---------------------------|
| Property Owners | \$0 | \$2,100 plus time savings | \$2,100 plus time savings |
| NC DOT | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$100 plus time savings | \$100 plus time savings |
| Division of Coastal Mgmt. | \$2,200 | Staff time savings-up to \$2,200 | \$0 |

