



CRC-24-13

August 14, 2024

MEMORANDUM

TO: Coastal Resources Commission
FROM: Gregg Bodnar
SUBJECT: Report on Agency Review and the Umbrella Permitting Process

At the Commission's request, staff have prepared this overview of the CAMA and Dredge & Fill permitting process with a focus on the Major Permit process. This overview outlines statutory authority, interagency review, timeframes, and some recent statistics associated with the permitting process.

The Coastal Area Management Act (CAMA) and the Dredge & Fill Law provide for the following types of permits:

1. Major Permits

Needed for any development which requires permission, licensing, approval, certification or authorization in any form from the Environmental Management Commission, the Department of Environmental Quality, the Department of Administration, the NC Oil and Gas Commission, the NC Pesticides Board, the NC Sedimentation Control Board, or any federal agency or authority; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet (§ 113A-118(d)(1). Under § 113A-122(c) applications must be approved or denied within 75 days of receipt, or review may be extended up to an additional 75 days in "exceptional cases". Public notice through newspaper publication is required.

2. General Permits

An expedited major permit that applies to select classes of routine, small-scale development for which environmental impacts and the need for onsite review are minimal. Issued by DCM staff typically within 10 days and may be accompanied by a buffer authorization from the Division of Water Resources where applicable. General and specific conditions have been pre-approved by commenting agencies and projects do not require individual review by agencies, except in instances where water depths are marginal. While adjacent property notification is required, public notice is not required.



3. **Minor Permits**

Any permit other than a Major Permit. Issued by a Local Permit Officer or DCM staff. Required to be issued within 25 days of receipt of a complete application. Minor permits only pertain to work above the Normal/Normal High-Water Level and cannot impact wetlands.

4. **Dredge & Fill Permits**

Needed for excavation or filling in any estuarine waters, tidelands, marshlands, or State-owned lakes. Permits are issued by DCM staff. Applications must be circulated among all State agencies and appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project, and navigation projects must be coordinated with the Army Corps of Engineers. Under § 113-229(e) applications must be approved or denied within 75 days of receipt of a complete application, or review may be extended up to an additional 75 days if necessary. Special emergency permit applications must be approved or denied within two days. Notice to adjacent riparian landowners is required.

CAMA and Dredge & Fill require the Division to make a set of findings prior to issuing or denying a permit.

Dredge & Fill states the Division *may* deny a permit upon finding that there will be a significant adverse effect of the proposed dredging or filling on the use of the water by the public, on the value and enjoyment of the property of any riparian owners, on public health, safety, and welfare, on the conservation of public and private water supplies, or on wildlife, fresh water, or estuarine or marine fisheries. Permits that are granted may be conditioned (§ 113-229(e)).

CAMA states the Division:

1. *Shall* deny a permit application upon making any of the 10 findings listed at § 113A-120(a). In the absence of such findings the permit shall be issued and may be conditioned.
2. *May* deny a permit application upon making any of the 4 findings listed at § 113A-120(b1).

In order to make these findings, the Division has been delegated the authority under § 113A-124(a)(1) “to conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.”

For this investigation the Division utilizes an umbrella application and review process involving up to nine state and four federal agencies, and the local government in which the development is located to assist an applicant with navigating these multiple permit requirements. Each review agency is responsible for commenting on their specific area of expertise to assist the Division in the process. In addition to being commenting agencies, the Army Corps of Engineers and Division of Water Quality may also require their own permits. The list of review agencies includes:

- 1) NC Division of Coastal Management, Regulatory Section – responsible for ensuring consistency with CAMA and Dredge & Fill, and the CRC’s rules;
- 2) NC Division of Coastal Management, Policy & Planning Section – responsible for ensuring consistency with local land use plans;



- 3) Local government (municipality or county) – responsible for ensuring consistency with local ordinances;
- 4) US Army Corps of Engineers – responsible for federal Section 10 and 404 reviews and provides federal authorization. At the Corps' discretion federal review can involve the National Marine Fisheries Service, US Coast Guard, US Fish and Wildlife Service, Office of State Archaeology, NOAA Protected Resources Division, US EPA, and others;
- 5) Division of Water Resources, 401 Program – certifies the federal 401 program at the state level and provides a water quality certification;
- 6) Division of Water Resources, Public Water Supply Program – responsible for reviewing impacts to public water supply systems;
- 7) NC Department of Energy, Mineral and Land Resources, Erosion and Sediment Control – responsible for state erosion and sedimentation control and provides a separate state permit;
- 8) NC Department of Energy, Mineral and Land Resources, Stormwater Branch – responsible for state stormwater control and runoff and provides a separate state permit;
- 9) Department of Administration, State Property Office – responsible for state property management and submerged lands through a legal instrument;
- 10) NC Wildlife Resources Commission – responsible for reviewing for impacts to the state's fish and wildlife resources and habitat;
- 11) NC Division of Marine Fisheries, Habitat and Enhancement Section – responsible for reviewing for impacts to the state's marine and estuarine resources and habitat;
- 12) NC Division of Marine Fisheries, Shellfish Sanitation Program – responsible for administering the US FDA national shellfish program, classifying shellfish waters and issuing swimming advisories;
- 13) Department of Natural and Cultural Resources, State Historic Preservation Office – ensures protection of cultural and archaeological resources; surveys statewide archaeological resources and issues permits to individuals and groups for operations and salvage of land and sea properties;
- 14) Department of Natural and Cultural Resources, Natural Heritage Program – ensures public access to information to weigh the ecological significance of natural areas and to evaluate potential ecological impacts of conservation and development projects;
- 15) NC Department of Transportation – responsible for the review of applications concerning connection to state owned roads and highways.

The umbrella process provides an applicant with a single regulatory point of contact for their proposed development. This single point of contact facilitates a process wherein the CAMA Major Permit application serves 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, and satisfies the public notice requirements for those permits. The umbrella process also acts as notification for the state's Stormwater and Sedimentation & Erosion Control permit processes.

The permit application process begins when an applicant contacts the Division. DCM's Field Representatives are the initial contact point for applicants and depending on the scope and scale of the project may suggest an interagency scoping meeting to provide the applicant with some initial feedback on the proposed project. If an interagency scoping meeting is requested, the applicant will be asked to contact the Department of Environmental Assistance and Customer Service (DEACS) to set up the meeting where the applicant will meet with the review agencies listed above and receive feedback on the project for the purpose of understanding potential regulatory issues prior to submitting their application. If a scoping meeting is not requested the applicant will begin to fill out the permit application.



Once an application is submitted to DCM, the Field Representative and District Manager will review the application for completeness. If the application is complete, DCM will notify the applicant that processing has begun, or if not, will provide the applicant with corrections or additional information necessary for a complete application. DCM's internal deadline to perform the completeness review and respond to an applicant is 10 days.

When the application is accepted as complete, the permit processing time starts, and a field investigation report is created by the Field Representative that provides a summary of the existing conditions, proposed development, and habitat impacts. At approximately day 14 after the application is accepted as complete in the field office, the application is circulated to the review agencies and comments are requested to be returned to DCM within three weeks of receipt (approximately day 35). The Army Corps of Engineers Regional General Permit details a 45-day time period to coordinate a federal response, provided all Federal Agencies and the Corps are in agreement in position. This would result in comments returned to DCM at approximately day 59. At time of circulation, the application is forwarded to DCM's Major Permits Section at the Morehead City Headquarters. In accordance with G.S. 113-229(e) and G.S. 113A-122(c), DCM has 75 days to issue a final decision unless an additional 75 days is "... necessary to properly consider the application" (Dredge & Fill) or "in exceptional cases" (CAMA), to complete the review.

At this step in the process, "Technical Review" of the permit application by the resource agencies begins. Technical Review is the most time-consuming component of the umbrella process, and during Technical Review the agencies may request additional information from the applicant for a complete review and determination. Typical requests for more information or avoidance and minimization include: 1) submerged aquatic vegetation surveys, 2) realignment of bulkheads or reconfiguration of a docking facility to reduce habitat impacts, 3) revisions to meet a rule or statute, 4) navigation concerns, 5) reduction in a dredge template to avoid habitat impacts and 6) flushing models for upland basins.

As comments are returned, DCM's Major Permit staff evaluate the comments, and any comments of note are shared with the applicant. Comments can range from a "No Comment", a clarification request, avoidance and minimization, to objection. Depending on the nature of the comment, Major Permit staff may contact the applicant or the resource agency. This coordination may result in immediate changes to the application, the overriding of an agency comment by the Division, or additional meetings.

At the time of circulation, DCM asks review agencies to provide comments within three weeks. While review agencies are not bound to this deadline by rule or statute, DCM targets three weeks and continues to request comments from the review agencies periodically after this date has lapsed to meet the 75-day timeline as defined in statute. Although no longer a practice, in some cases where the statutory review period was close to expiring the Division would place an "agency hold" on the process to give the applicant time to respond to additional information requests or give another agency time to complete an unusually complex review that may impact the overall project design. The Division has also offered applicants the option to voluntarily place the application on "applicant hold" to give themselves more time to respond to agency comments, or to allow DCM to continue to coordinate with the other agencies on their behalf.

Agency and applicant holds suspend the statutory clock, allowing additional time for the applicant and agencies to design a project that will receive permit approval. Without the use holds on review timeline, it is possible that approved permits would include more conditions, or



that more applications would be denied before all issues can be resolved and the review time expiring. While the Division has historically utilized both agency and applicant holds, due to recent questions of authority to impose agency holds, as stated earlier, the Division now only utilizes voluntary applicant holds.

Additional information requests that result in a request for a hold are typically complex and may require redesign of the project. When a hold is requested, it allows the applicant the opportunity and time to review the request and determine a course of action, and in the case of a project that is inconsistent with rule or statute, prevent the project from being denied. In the case of the 48 projects that were placed on hold from January 2022 to March of 2024, the average hold time was 111 days, with a minimum hold time of 7 days and a maximum hold time of 388 days. Longer holds generally indicate more complex projects that require an unusual level of review and coordination. The extreme difference in hold times can be influenced by either an agency or an applicant delaying a response to a hold request, regardless of project complexity. Complex coordination can involve requests such as flushing models, mitigation, environmental impact statements, or Department-level coordination.

DCM's final determination on a permit application will be an approval, an approval with conditions, or a denial with explanation. The written determination includes regulatory and statutory citations upon which the decision to approve, condition, or deny the application was made. Below are average processing times by year for the given data set.

	Average # of days to process	
	Without Holds	With Holds
2022	108	107
2023	106	107
2024	97	93

Application Review Times January 2022 – March 2024

DCM analyzed Major Permit processing times for the period of January 2022 to March 2024 excluding projects that were placed on hold.

DCM issued 324 Major Permits between January 2022 and March 2024, 48 of which were placed on hold for various coordination needs. The average processing time from accepted as complete to issuance was 122 days. When the 48 permits placed on hold are removed, the average processing time for applications was 105 days.

Major Permits	w/ Hold	w/o Hold
Issued in < 75 days	13%	13%
Issued in < 90 days	27%	28%
Issued in < 100 days	42%	61%
Issued in < 115 days	54%	73%
Issued in < 130 days	63%	81%
15% = Percentage of Project Placed on Hold		



The average time for DCM to issue a permit decision after final agency comments were received was 21 days. This time is necessary to secure signed 401 certifications and Section 10 or 404 authorizations and to fulfill the purpose of the umbrella process. For comparison, NC Division of Water Resources has a processing timeframe of 60 days with the potential to extend up to 1 year. The USACE targets 120 days to process an Individual Permit application, though processing times may take longer depending on complexity and/or additional requirements.

DCM reviewed response times from the Division of Water Resources, Army Corps of Engineers, Division of Marine Fisheries, Wildlife Resources Commission and the State Historic Preservation Office during this period. This created 1620 possible comments (324 permits x 5 agencies). DCM found that 65 percent of (1,053) agency comments were received prior to the 75-day mark. During that same time period, 172 comments were not received prior to DCM making a permit decision. The below chart details percentage of permits issued including permits placed on hold.

Summary

The primary benefit of the CAMA umbrella permit process is that it coordinates the permitting and resource protection 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. Another benefit is that it creates a single point of contact at DCM that the applicant will use throughout the permitting process to communicate with the other agencies on the applicant's behalf to resolve any issues that might be identified. If the applicant wishes to withdraw from the umbrella process, they are free to do so and DCM will issue a final determination with the applicant having responsibility to pursue any other necessary state and federal authorizations on their own.

Without the CAMA umbrella permitting process complete applications for the CAMA/Dredge and Fill, NC DWR 401/buffer certification and the USACE Individual Permit would be required along with the associated application fees. The submission of separate applications to multiple agencies without coordination may create issues where the applicant makes changes to satisfy one agency's regulatory requirements, resulting in different versions of the design being authorized and opening the potential for non-compliance issues. Since responsibility for consistency of the application across all agencies throughout the process would rest with the applicant, any updates/revisions to the design would need to be submitted to each agency individually. This could create a spiraling situation where the applicant is continually revising projects to make the design consistent over multiple applications. Under the umbrella process, the applicant works with DCM to coordinate this process as seamlessly as possible across the agencies.

With regard to CAMA permits, if either the NC Division of Water Resources certification or the USACE permit review resulted in a revision to the proposal that was not captured in the CAMA/Dredge & Fill permit due to issuance before those outstanding permits were finalized, then the applicant would need to request a permit modification to the CAMA/D&F permit to account for those changes, further delaying construction and costing money.

While the CAMA umbrella process is optional, it is an efficient and simplified permitting process for the applicant that avoids having to submit multiple, duplicative permit applications and fees to multiple agencies.



Major Development Permit Process

