



ROY COOPER  
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*Secretary*

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*Director*

**CRC-18-02**

January 31, 2018

**MEMORANDUM**

**TO:** Coastal Resources Commission  
**FROM:** Daniel Govoni  
**SUBJECT:** Fiscal Analysis, 15A NCAC 7K .0208 Single Family Residence Exempted

The Estuarine and Ocean System includes the Coastal Shorelines category of Areas of Environmental Concern (AEC). 15A NCAC 07K .0208 is the exemption which allows for the construction of single family residences within the Coastal Shorelines AEC as long as the proposed development and all land disturbing activities (with the exception of a six-foot-wide generally perpendicular water access) are located more than 40 feet landward of normal high water or normal water level.

On November 8, 2017, the CRC voted in support of amending 15A NCAC 7K .0208 in order to correct an inconsistency with other exemptions within 15A NCAC 07K .0100 which allow local permit officers the ability to be notified, review and grant these exemptions before beginning any work. This proposed rule amendment would allow local permit officers the ability to grant this authorization which has been the current practice in the implementation of this rule.

The CRC also voted in support of amending 07H .0209(f)(1)(A), which prohibits the use of a stormwater collection system within an Outstanding Resource Water (ORW) Coastal Shoreline. This prohibition is in direct conflict with the Environmental Management Commission's (EMC) Coastal Stormwater rule 15A NCAC 02H .1019 that specifically allows stormwater collection systems within ORW Coastal Shorelines. This proposed amendment deletes 15A NCAC 07H .0209(f)(1)(A) to address the inconsistency with the EMC's Coastal Stormwater rules. This same rule language (prohibiting the use of stormwater collection system with an ORW Coastal Shoreline) is also found within 15A NCAC 7K .0208 Single Family Residence Exempted. The CRC's proposed rule amendment would also delete 15A NCAC 07K .0208(c)(1) in order to address the inconsistency with the EMC's Coastal Stormwater rules.

DCM does not anticipate any economic impacts as a result of this proposed rule change. The proposed amendment does not affect permitting costs nor add additional regulatory burden. These amendments will have no impact on Department of Transportation projects, local governments or the federal government. There will be no impact on the Division of Coastal Management permit receipts.

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. The fiscal analysis and proposed rule amendments are attached.

# **Fiscal & Regulatory Impact Analysis**

## **Single Family Residence Exempted 15A NCAC 07K .0208**

Prepared by

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January 17, 2018

## Basic Information

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Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission (CRC).
Title	Single Family Residences Exempted
Citation	15A NCAC 07K .0208
Description of the Proposed Rule	15A NCAC 07K .0208 is the Coastal Resources Commission's (CRC) rule which allows for the construction of single family residences within the Coastal Shorelines Area of Environmental Concern. The proposed rule amendments would allow local permit officers (LPOs) the ability to authorize this exemption, and deletes the prohibition of stormwater collection systems within Outstanding Resource Water (ORW) Coastal Shorelines.
Agency Contact	Daniel Govoni Coastal Policy Analyst Daniel.Govoni@ncdenr.gov (252) 808-2808 ext 233
Authority	113A-107(a) & (b); 113A-113(b)(1); 113A-124.
Necessity	The CRC is proposing to amend its rule governing single family residences exemption to become consistent with other CRC exemptions and with Environmental Management Commission standards.
Impact Summary	State government: No Local government: No Substantial impact: No Federal government: No Private property owners: No

## Introduction/Summary

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The Estuarine and Ocean System includes the Coastal Shorelines category of Areas of Environmental Concern (AEC). 15A NCAC 07K .0208 is the exemption which allows for the construction of single family residences within the Coastal Shorelines AEC as long as the proposed development and all land disturbing activities (with the exception of a six-foot-wide generally perpendicular water access) are located more than 40 feet landward of normal high water or normal water level.

The Environmental Management Commission (EMC) has the legislative authority to adopt rules and standards for stormwater management, including within the 20 CAMA counties, and the CRC has historically incorporated the EMC's standards into rule by reference. The CRC's rule 15A NCAC 07K .0208(c)(1) prohibits the use of a stormwater collection system within Coastal Shorelines adjacent to waters classified by the EMC as Outstanding Resource Waters (ORW). This is in direct conflict with the EMC's Coastal Stormwater rule 15A NCAC 02H .1019 that allows stormwater collection systems within ORW Coastal Shorelines. The CRC's proposed rule amendment would delete 15A NCAC 07K .0208(c)(1) in order to become consistent with the EMC's Coastal Stormwater rule 15A NCAC 02H .1019.

Additionally, 15A NCAC 07K .0208(d) requires that before beginning any work under this exemption, a representative of the Division of Coastal Management shall be notified prior to authorization. The proposed rule amendment would allow LPOs the ability to be notified, review and grant this authorization which has been the current practice of the implementation of this rule. This proposed rule amendment will make it consistent with other exemptions within 15A NCAC 07K .0100 including 15A NCAC 07K .0103 Maintenance and Repair, and 15A NCAC 07K .0207 Structural Accessways Over Frontal Dunes Exempted.

DCM does not anticipate any economic impacts as a result of these proposed rule changes. These amendments do not require any affected party to take or avoid any specific action. The proposed amendment does not affect permitting costs nor add additional regulatory burden.

These amendments will have no impact on Department of Transportation projects, local governments or the federal government. There will be no impact on Division of Coastal Management permit receipts.

The proposed effective date of these amendments is September 01, 2018.

## Description of Rule Amendment

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15A NCAC 07K .0208 is the exemption which allows for the construction of single family residences within the Coastal Shorelines AEC. The proposed rule amendments would create consistency with other CRC exemptions and with EMC standards:

- 15A NCAC 07K .0208(c)(1) is being amended to become consistent with EMC rule 15A NCAC 02H .1019 which allows the use of a stormwater collection system within Coastal Shorelines adjacent to waters classified as ORW. The proposed rule amendment deletes 15A NCAC 07K .0208(c)(1).

- 15A NCAC 07K .0208(d) is being amended to allow LPOs the ability to review and authorize the exemptions set forth in this rule. LPOs have historically granted this authorization and the proposed rule amendment will make it consistent with other exemptions within 15A NCAC 07K.0100. The proposed rule amendment adds LPOs to 15A NCAC 07K .0208(d).

## **Affected Parties**

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### Private Property Owners:

The proposed rule amendments would apply to property owners seeking a CAMA permit exemption for construction of a single-family residence, however, there is no permit fee associated with stormwater collection systems, nor will property owners be required by this rule to install one. Therefore, DCM does not anticipate any increased costs to private property owners as a result of the proposed rule amendments.

### NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, the agency declares that the proposed amendments to 15A NCAC 07K .0208 will not affect environmental permitting for the NC Department of Transportation (DOT). While DOT would be eligible for the exemption and its associated uses, it is unlikely DOT would be involved in the construction of single-family residences, or associated stormwater collection systems.

### Local Government:

DCM does not anticipate any increased costs to local governments as a result of the proposed rule amendments. LPOs are already issuing authorizations under this exemption through contractual agreements between DCM and local governments with LPO programs, so there is no anticipated increase in local government responsibilities. There will not be any increase in permit revenues since there is no permit fee associated with stormwater collection systems, and no anticipated increase in the number of site visits to authorize construction under the exemption.

### Division of Coastal Management:

DCM permit review process will not be changed by this amendment, and the Division will not experience any change in permit receipts. These amendments do not reflect a significant change in how projects are reviewed and/or exempted.

## **Cost/Benefits Summary**

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The Division of Coastal Management does not anticipate any increase in expenditures in the government or private sector as a result of this action. The proposed amendments will become consistent with other CRC exemptions and with Environmental Management Commission standards.

## APPENDIX A

### 15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES EXEMPTED

- (a) All single family residences constructed within the Coastal Shorelines Area of Environmental Concern that are more than 40 feet landward of normal high water or normal water level, and involve no land disturbing activity within the 40 feet buffer area are exempted from the CAMA permit requirement as long as this exemption is consistent with all other applicable CAMA permit standards and local land use plans and rules in effect at the time the exemption is granted.
- (b) This exemption allows for the construction of a generally shore perpendicular access to the water, provided that the access shall be no wider than six feet. The access may be constructed out of materials such as wood, composite material, gravel, paver stones, concrete, brick, or similar materials. Any access constructed over wetlands shall be elevated at least three feet above any wetland substrate as measured from the bottom of the decking.
- (c) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters (ORW), no CAMA permit shall be required if the proposed development is a single-family residence that has a built upon area of 25 percent or less and:
- ~~(1) has no stormwater collection system; and~~
  - ~~(2)~~(1) is at least 40 feet from waters classified as ORW.
- (d) Before beginning any work under this exemption, CAMA local permit officer or the Department of Environment and Natural Resources Environmental Quality representative shall be notified of the proposed activity to allow on-site review. Notification may be by telephone at (252) 808-2808, in person, or in writing to the North Carolina Division of Coastal Management, 400 Commerce Ave., Morehead City, NC 28557. Notification shall include:
- (1) the name, address, and telephone number of the landowner and the location of the work, including the county, nearest community, and water body; and
  - (2) the dimensions of the proposed project, including proposed landscaping and the location of normal high water or normal water level.
- (e) In eroding areas, this exemption shall apply only when the local permit officer has determined that the house has been located the maximum feasible distance back on the lot but not less than forty feet.
- (f) Construction of the structure authorized by this exemption shall be completed by December 31 of the third year of the issuance date of this exemption.

*History Note: Authority G.S. 113A-103(5) c;*

*Eff. November 1, 1984;*

*Amended Eff. May 1, 2015; December 1, 2006; December 1, 1991; May 1, 1990;*

*October 1, 1989.*