



NORTH CAROLINA  
Environmental Quality

ROY COOPER  
Governor

MICHAEL S. REGAN  
Secretary

BRAXTON C. DAVIS  
Director

CRC-20-32

November 5, 2020

## **MEMORANDUM**

**TO:** Coastal Resources Commission  
**FROM:** Tara MacPherson  
**SUBJECT:** Amendments to 15A NCAC 7H .0306 – Elevating Oceanfront Structures

The Commission's rule at 15A NCAC 07H.0306(j) clarifies that the relocation of structures requires a Coastal Area Management Act (CAMA) permit, and that oceanfront structures relocated with public funds must meet applicable oceanfront setbacks. The Rule goes on to state that structures relocated entirely with private funding "shall be relocated the maximum feasible distance landward of the present location." Staff understands the intent of this rule to be that public funds should only be used to relocate structures entirely outside of the Ocean Hazard setback area, while the use of private funds to relocate a structure farther back, but still within the setback area, can be beneficial and is undertaken at the property owner's financial risk.

In the years following Hurricane Floyd (1999), a large number of houses were elevated for flood mitigation using public funds. Due to the volume of structures and large areas impacted, the Division determined that elevating structures within the Coastal Shoreline AEC within the same footprint is exempt from CAMA permitting. At that time, no distinction was made between the use of public or private funds. More recently, the Division has reviewed proposals to elevate oceanfront houses on pilings under procedures outlined at 15A NCAC 07J .0210, which exempts a project from CAMA permitting if it is determined to be "repair" vs. "replacement." Under 7J.0210, if the cost of the proposed work is less than half of the depreciated market value of the structure, the work is considered to be "repair" (as long as the structure is not expanded).

Staff have three primary concerns with these past approaches to determining permit requirements. First, if elevating a structure is automatically exempt from CAMA permitting, as was determined post-Hurricane Floyd, then even a structure located in the Ocean Hazard Area seaward of the vegetation line can be fortified against flooding and storm surge so that it is more likely to remain and continue impacting the public trust beach. Second, Staff's use of the "repair vs. replace" determination in 7J requires a high level of expertise related to the review of complex repair bids and appraisals of the depreciated replacement values for different structures. Third, approaching the elevation of structures in the same manner, regardless of AEC in which the structure is located, disregards the dynamic nature of the Ocean Hazard AEC.

For these reasons, the Division is asking the Commission for guidance on the rule language in 7H.0306(j). In particular, Staff recommend the Commission clarify that:



- Elevation of a structure's foundation, even in the same footprint, requires a CAMA permit;
- Houses or structures elevated with public funds need to meet the applicable Ocean Hazard Area development setback; and
- Houses or structures may be elevated with private funds within the setback, as long as they are relocated the maximum feasible distance landward on the lot.

Further, Staff recommend that the Commission specifically exempt from permitting the elevation of structures within the same footprint if located within the Coastal Shorelines Areas of Environmental Concern. In these cases, the elevation of a structure would be permissible under rules in 15A NCAC 7H.0208 as development over existing impervious surfaces. For this reason, and in order to expedite non-oceanfront flood mitigation projects, an exemption for elevating structures in the Coastal Shorelines AEC is warranted.

Attached are proposed amendments to 15A NCAC 7H.0306(j) and 15A NCAC 7K.0208 that are intended to accomplish these objectives. I look forward to discussing the proposed rule language at our November meeting.

## 15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(j) All relocation of ~~structures, structures~~ including the elevation of a structure on pilings, shall require permit approval. Structures relocated ~~or elevated~~ with public funds shall comply with the applicable ocean hazard setbacks ~~setback line~~ and other applicable AEC rules. Structures ~~that do not meet current applicable ocean hazard setbacks, including septic tanks and other essential accessories, relocated entirely with non-public funds, may shall~~ be relocated ~~entirely with non-public funds landward~~ the maximum feasible distance landward of ~~its the~~ present location. Septic tanks shall not be ~~relocated located~~ oceanward of the primary structure. ~~All relocation of structures shall meet all other applicable local and state rules.~~

## 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 is at least 40 feet from waters classified as ORW.

(d) Before beginning any work under this exemption, the CAMA local permit officer or the Department of 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.

~~(g) The elevation of existing structures within the Coastal Shorelines AEC is exempt from CAMA permit requirements as long as the structure is elevated entirely within the existing footprint and is consistent with all other applicable permit standards, local land use plans and rules in effect at the time the exemption is granted.~~