

ROY COOPER
Governor

DIONNE DELLI-GATTI
Secretary

BRAXTON DAVIS
Director



CRC-21-14

April 15, 2021

MEMORANDUM

TO: Coastal Resources Commission
FROM: Daniel Govoni
SUBJECT: Fiscal Analysis, 15A NCAC 7H .0306 and 15A NCAC 7K .0208 Elevated Structures

At your last meeting, proposed amendments to 15A NCAC 7H .0306(j) requiring a permit for the elevation of structures within the Ocean Hazard Area of Environmental Concern, and the permit exemption for the elevation of structures in the Coastal Shoreline Areas of Environmental Concern (15A NCAC 7K .0208), were approved for public hearing. Additional amendments to 15A NCAC 7H .0306(j) include prohibiting the elevation of structures seaward of the vegetation line in the Ocean Hazard Area of Environmental Concern.

The Division of Coastal Management (DCM) does not anticipate any increase in expenditures by property owners in the Coastal Shorelines AEC as these amendments codify existing policy. There will be modest annual cost impacts to private property owners within the Ocean Hazard AEC (\$500) through the requirement of a CAMA Minor Permit for the elevation of structures based on an estimated five projects per year and a \$100 Minor Permit fee. Local governments will be similarly affected and there will be no anticipated impacts to NCDOT permitting from the proposed amendments.

Regarding the prohibition on elevating structures within the Ocean Hazard Area and seaward of the vegetation line, DCM estimates approximately only one request per year has been made based on records of the past five years. It is difficult for the Division to determine how much loss may be incurred when a single structure is considered non-conforming because resale value is influenced by a wide range of factors, including amenities, location, proximity to sandbag structures, and the overall willingness of the buyer to take risks. Similarly, the economic benefits to oceanfront property owners who elect to elevate their structures is tied to complex factors, like amenities and the presence of sandbags, that drive local, regional, national, and global real estate markets, and any attempt to estimate them would be speculative on the part of the Division.

DCM permit review process will not be changed by these amendments and DCM anticipates a modest increase in annual permitting receipts (\$500) due to the proposed action.



This fiscal analysis is currently under review by OSMB, and the Division expects to have comments by the time of our April 28th meeting. The commission has the option of conditionally approving the fiscal analysis at your upcoming meeting, subject to changes that may be requested by OSBM, which will allow the rules to proceed to public hearing. I look forward to discussing the details of the fiscal analysis and the status of OSMB comments.



North Carolina Department of Environmental Quality | Division of Coastal Management
Morehead City Office | 400 Commerce Avenue | Morehead City, North Carolina 28557
252.808.2808

Fiscal Analysis

15A NCAC 7H .0306 Elevating Oceanfront Structures
15A NCAC 7K. .0208 Single Family Residences Exempted

Prepared by

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NC Division of Coastal Management
(252) 808-2808

April 15, 2021

Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission
Citations and Titles	15A NCAC 7H .0306(j) Elevating Oceanfront Structures & 15A NCAC 7K .0208 Single Family Residences Exempted
Description of the Proposed Rules	Proposed amendments include requiring a permit for the elevation of structures within the Ocean Hazard Area of Environmental Concern while the elevation of structures in the Coastal Shoreline Areas of Environmental Concern is exempt from permitting. Additional amendments include prohibiting the elevating structures seaward of the vegetation line in the Ocean Hazard Area of Environmental Concern.
Agency Contact	Mike Lopazanski Deputy Director Mike.Lopazanski@ncdenr.gov (252) 808-2808
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 clarify when an permit is needed for the elevation of structures.
Impact Summary	State government: Yes Local government: Yes Private entities: Yes Substantial impact: No

Summary

The proposed amendments to 15A NCAC 7H .0306(j) require a permit for the elevation of structures within the Ocean Hazard Area of Environmental Concern while the elevation of structures in the Coastal Shoreline Areas of Environmental Concern (15A NCAC 7K .0208) is exempt from permitting. The amendments to 15A NCAC 7H .0306(j) also clarify that structures relocated with public funds must meet the applicable oceanfront setback while relocation of structures with non-public funds shall be sited the maximum feasible distance landward. Additional amendments to 15A NCAC 7H .0306(j) include prohibiting the elevating structures seaward of the vegetation line in the Ocean Hazard Area of Environmental Concern.

The proposed amendments will have no impacts to property owners in the Coastal Shorelines AEC as these amendments codify existing policy. There will be modest cost impacts on private property owners within the Ocean Hazard AEC (\$500) through the requirement of a CAMA Minor Permit for the elevation of structures. Local governments will be similarly affected and there will be no anticipated impacts to NCDOT permitting from the proposed amendments. Regarding the prohibition on elevating structures within the Ocean Hazard Area but seaward of the vegetation line, is difficult to determine how much loss may be incurred when a structure is considered non-conforming since resale value is influenced by a wide range of factors, such as amenities, location, proximity to sandbag structures, and the overall willingness of the buyer to take risks. Similarly, the benefit to oceanfront property owners who elect to elevate their structures is tied to complex factors, like amenities and the presence of sandbags, that drive local, regional, national, and global real estate markets, and any attempt to estimate them would be speculative on the part of the Division.

The Division of Coastal Management's (DCM) permit review process will not be changed by these amendments and DCM anticipates a modest increase in permitting receipts (\$500) due to the proposed action.

Description of Proposed Actions

CRC rule 15A NCAC 07H.0306(j) states that the relocation of structures within Ocean Hazard Areas requires a Coastal Area Management Act (CAMA) permit, and that oceanfront structures relocated with public funds must meet applicable oceanfront setbacks. The rule further states that structures relocated entirely with private funding "shall be relocated the maximum feasible distance landward of the present location." The intent of this rule is 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, while beneficial, 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 Commission determined that elevating structures within the Coastal Shoreline AEC within the same footprint is exempt from CAMA permitting and no distinction was made between the use of public or private funds. The CRC also outlines procedures under 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).

The Commission is concerned that 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. The CRC is also concerned that the use of the “repair vs. replace” determination in 7J .0210 requires a high level of expertise related to the review of complex repair bids and appraisals of the depreciated replacement values for different structures. Applying these approaches to 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 Commission is amending 7H.0306(j) to clarify that:

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

The Commission is also specifically codifying exempting 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 7K.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 proposed.

Summary of Rule Changes

15A NCAC 7H. 0306(j) General Use Standards for Ocean Hazard Areas

- Clarifies that both relocation and elevation of existing structures requires a CAMA permit.
- Clarifies that structures relocated with public funds must meet the applicable oceanfront setback while relocation of structures with non-public funds shall be sited the maximum feasible distance landward.
- Prohibits the elevation of structures located seaward of the vegetation line.

15A NCAC 7K .0208 Single Family Residences Exempted

- Clarifies that the elevation of existing structures within their existing footprint is exempt from CAMA permitting.

Anticipated Impacts

Private Entities:

These amendments would apply to property owners wishing to elevate their structures within the Ocean Hazard or Coastal Shorelines AECs. In the case of properties owners within the Coastal Shoreline AEC, there will be no impact as the amendment clarifying that the elevation of structures is exempt is codification of existing practice. Similarly, there will be no impact to property owners

relocating structures with public or private funds as this activity currently requires a CAMA permit.

The primary impact to private property owners will be the requirement of a CAMA Minor Permit for the elevation of structures within the Ocean Hazard AEC. The Division estimates this number of property owners undertaking elevation projects to be approximately five structures per year coast-wide based on records of the past five years. Given the \$100 Minor Permit fee, the total impact to these property owners would be \$500 per year. Regarding the prohibition of elevating structures seaward of the vegetation line, the Division estimate that one property per year may be affected based on activity over the past five years. It is difficult to determine how much loss may be incurred when a structure is considered non-conforming since resale value is influenced by a wide range of factors, such as amenities, location, proximity to sandbag structures, and the overall willingness of the buyer to take risks.

Similarly, the benefit to oceanfront property owners who elect to elevate their structures is tied to complex factors, like amenities and the presence of sandbags, that drive local, regional, national, and global real estate markets, and any attempt to estimate them would be speculative on the part of the Division.

NC Department of Transportation (NC DOT):

Pursuant to G.S. 150B-21.4, no impacts to NCDOT permitting are anticipated from the proposed amendments. The new and amended rules do not create any new procedures or restrictions that would affect NCDOT permits. Development such as roads, parking lots, and other public infrastructure such as utilities continue to have a minimum setback factor of sixty feet (60) or thirty (30) times the shoreline erosion rate (whichever is greater) as defined by 07H.0306(a)(2)(I). In the event NCDOT needs to build or maintain a road located within an Ocean Hazard AEC, the proposed amendments will not change the CRC's approach to permitting that activity.

Local Government:

Public infrastructure (e.g., parking lots and public utilities) has a minimum setback factor of sixty (60) feet or thirty (30) times the shoreline erosion rate (whichever is greater) as defined by 07H.0306(a)(2)(I). In the event that local governments need to replace or rebuild public infrastructure within an Ocean Hazard AEC, the proposed amendments will not change the CRC's approach to permitting that activity. If a local government needs to elevate a structure within the Ocean Hazard or Coastal Shorelines AECs, they would be subject to the same requirements or exception as applicable. DCM has not had any requests by local governments to elevate structures within the last five years.

Division of Coastal Management (DCM):

In the Coastal Shorelines AEC, the Division of Coastal Management's permit review process will not be changed by these amendments and DCM does not anticipate changes in permitting receipts due to the proposed action. For the Ocean Hazard AEC, the Division estimates an additional five permits per year for a total of \$500 increase in permits fees (5 permits x \$100). The Division believes any increased cost for staff's time as a direct result of the proposed rules and amendments will be insignificant.

Cost/Benefits Summary

The proposed amendments will have no impacts to property owners in the Coastal Shorelines AEC as these amendments codify existing policy. There will be modest cost impacts on private property owners through the requirement of a CAMA Minor Permit (\$100) for the elevation of structures within the Ocean Hazard AEC. The Division estimates five requests per year for a total impact of \$500 per year. Regarding the prohibition of elevating structures seaward of the vegetation line, the Division estimate that one property per year may be affected based on activity over the past five years. It is difficult to determine how much loss may be incurred when a structure is considered non-conforming since resale value is influenced by a wide range of factors, such as amenities, location, proximity to sandbag structures, and the overall willingness of the buyer to take risks.

Local governments will be similarly affected and there will be no anticipated impacts to NCDOT permitting from the proposed amendments. The Division of Coastal Management's permit review process will not be changed by these amendments and DCM and anticipates a modest increase in permitting receipts (\$500) due to the proposed action. Any increased cost for Division staff's time as a direct result of the proposed rules and amendments will be insignificant.

15A NCAC 07H .0306 General Use Standards For Ocean Hazard Areas

(j) ~~All The~~ relocation or elevation of structures shall require permit approval.

(1) Structures relocated landward with public funds shall comply with the applicable ocean hazard setbacks setback line and other applicable AEC rules.

(2) Structures, ~~including septic tanks and other essential accessories,~~ relocated landward entirely with non-public funds that do not meet current applicable ocean hazard setbacks shall may be relocated 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.

(3) Existing Structures shall not be elevated if any portion of the structure is located seaward of the Vegetation Line.

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 rule in effect at the time the exemption is granted.