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CRC-23-10

March 31, 2023

MEMORANDUM

TO: Coastal Resources Commission
FROM: Mike Lopazanski
SUBJECT: Proposed Amendments to 15A NCAC 7H .0306 – Septic Tanks Siting and Replacement

At the last Commission meeting, Staff discussed with both the Coastal Resources Advisory Council and the Commission proposed amendments to several rules regarding the relocation of septic tanks, including allowances for relocation within the oceanfront setback area under certain conditions and specific provisions for systems relocated with public funds versus non-public funds. During the Advisory Council discussion, concerns were raised regarding the limitation on relocating septic tanks utilizing public funds, particularly funds associated with payouts from the National Flood Insurance Program (NFIP). Under the proposed rule language in 15A NCAC 7H .0306, septic tanks, pump tanks or components of a ground absorption system as defined in G.S. 130A-334 relocated with public funds would need to comply with the current oceanfront setback requirements. Advisory Council members were concerned that this language would discourage the relocation of septic tanks off the public beach if NFIP funds were involved. Staff has since learned from direct communications with the NFIP, that NFIP payouts are not considered public funds. However, so as not to preclude the possibility that state or federal funding may become available for the relocation of septic tanks, Staff has removed reference to septic tanks, pump tanks and ground absorption systems from this section of the proposed rule language.

Based on further review and public comments, Staff are also no longer proposing amendments to 7H .0305, Definition and Description of Landforms, referencing the components of a septic system as separate structures for repair/replace determinations. This language is now more appropriately incorporated into 7H .0306(f), maintaining the intent that if either structure cannot be repaired in place, they will be subject to the replacement/relocation provisions of 7H .0306.

A second issue raised by the by Advisory Council is concerning 7H .0306(g), in which there is a provision where imminently threatened structures must be removed within eight years of such a designation. The CRAC was concerned that this could allow septic tanks to remain on the beach for a significantly extended period of time. This rule language is routinely used as a condition that is placed on CAMA permits for oceanfront structures, most commonly oceanfront homes, and is included in the Ocean Hazard AEC notice. The eight-year time frame is consistent with the allowable timeframe for the use of sandbags and is intended to account for the time a local government may need to complete a beach nourishment project.



In accordance with existing rules at 7H .0308(a)(2), septic systems may be protected by sandbags. When an oceanfront home is relocated, dismantled, or destroyed, the proposed amendments include a provision that “When structures are relocated within the Ocean Hazard Area of Environmental Concern, all remaining debris, ancillary structures, or infrastructure shall be removed from the original location.”

During the Commission discussion, public comments submitted by the NC Septic Tank Association (NCSTA) were reviewed. Specifically, the NCSTA questioned the proposed amendments which allow the in-situ repair of septic tanks, pump tanks or components of a ground absorption system, but would require a CAMA permit if replacement of these structures was necessary. The NCSTA asserted that the “system” includes both the septic tank and the subsurface disposal field. However, it had been Staff’s experience that there is often a request to relocate and reconnect a damaged septic tank without repair/relocation of the disposal field (or vice versa). Also contrary to the NCSTA assertion, the siting of septic tanks and disposal field on the oceanfront have always been subject to CAMA permitting standards, as with any other structures located within the Ocean Hazard AEC, and are not an expansion of the CRC’s permitting authority in this area.

In addition to the above authorities, the proposed amendments include reference to the public trust areas of ocean beaches as defined in G.S. 77-20. Under this statute, Ocean Beaches are defined as *“...the area adjacent to the ocean and ocean inlets that is subject to public trust rights. This area is in constant flux due to the action of wind, waves, tides, and storms and includes the wet sand area of the beach that is subject to regular flooding by tides and the dry sand area of the beach that is subject to occasional flooding by tides, including wind tides other than those resulting from a hurricane or tropical storm. The landward extent of the ocean beaches is established by the common law as interpreted and applied by the courts of this State. Natural indicators of the landward extent of the ocean beaches include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line.”*

As discussed at the February CRC meeting, this definition will allow the Division to address areas where the siting of septic tanks, pump tanks, or components of a ground absorption system, as defined in G.S. 130A-334, often become problematic, most notably on the wet sand beach that is subject to regular flooding and the dry sand beach that is subject to irregular flooding. It will also direct the Division to make allowances for areas impacted by hurricanes and tropical storms, where septic systems may be damaged by overwash or burial of the vegetation line but can still be repaired or relocated so as not to affect their function or impact the public trust area. Addressing this concern (storm overwash) was one of the primary comments received by the Division in November 2022.

I look forward to discussing this proposal at our upcoming meeting in Manteo.

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

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the pre-project vegetation line, or the measurement line, whichever is applicable.
- (2) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
 - (A) The total square footage of heated or air-conditioned living space;
 - (B) The total square footage of parking elevated above ground level; and
 - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.
- (3) With the exception of those types of development defined in 15A NCAC 07H .0309(a), no development, including any portion of a building or structure, including septic tanks, pump tanks, or components of a ground absorption system, as defined in G.S. 130A-334, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:
 - (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
 - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
 - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
 - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
 - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
 - (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
 - (I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (K) Notwithstanding any other setback requirement of this Subparagraph, construction of a new building or other structure greater than or equal to 5,000 square feet in a community with an unexpired static line exception or Beach Management Plan approved by the Commission in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance,

whichever is greater. The setback shall be measured landward from either the vegetation line or measurement line, whichever is farthest landward; and

- (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of a structure with a total floor area no greater than 10,000 square feet shall be allowed provided that the structure meets the following criteria:
 - (i) the structure is in a community with an unexpired static line exception, Beach Management Plan approved by the Commission, or was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (4) If a primary dune exists in the AEC, on or landward of the lot where the development is proposed, the development shall be landward of the applicable ocean hazard setback and the crest of the primary dune. For existing lots where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, and shall not be located on or oceanward of a frontal dune. For the purposes of this Rule, "existing lots" shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.
- (5) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune or ocean hazard setback, whichever is farthest from the vegetation line, pre-project vegetation line, or measurement line, whichever is applicable.
- (6) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically but not be structurally attached to an existing structure that does not conform with current setback requirements.
- (7) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted, nor shall such development increase the risk of damage to public trust areas. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (8) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the pre-project vegetation line as defined in this Section, unless an unexpired static line exception or Beach Management Plan approved by the Commission has been approved for the local jurisdiction by the Coastal Resources Commission in accordance with 15A NCAC 07J .1200.
- (9) A local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for approval of a "Beach Management Plan" in accordance with 15A NCAC 07J .1200. If the request for a Beach Management Plan is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the pre-project vegetation line under the following conditions:
 - (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(3) of this Rule;
 - (B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;
 - (C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or

footings, extends oceanward of the landward-most adjacent habitable building or structure. The alignment shall be measured from the most oceanward point of the adjacent building or structure's roof line, including roofed decks, if applicable. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent buildings or structures exist, or the configuration of a lot, street, or shoreline precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of

construction shall be determined by the Director of the Division of Coastal Management based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline, extending 500 feet in either direction. If no structures exist within this distance, the proposed structure must meet the applicable setback from the Vegetation Line and will not be held to the landward-most adjacent structure or an average line of structures.

(D) With the exception of swimming pools, the exceptions defined in Rule .0309(a) of this Section shall be allowed oceanward of the pre-project vegetation line.

(b) Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or the National Historical Registry.

(c) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(d) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(e) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. The acknowledgement shall state that the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(f) The relocation or elevation of structures shall require permit approval. Notwithstanding 15A NCAC 7J .0210, for the purposes of this Section, the replacement of any septic tank, pump tank, or component of a ground absorption system, as defined in G.S. 130A-334, located seaward of the Vegetation Line or Measurement line, whichever is applicable, requires a CAMA permit.

- 1) Structures relocated landward with public funds shall comply with the applicable ocean hazard setbacks and other applicable AEC rules.
- 2) Structures relocated ~~landward~~ entirely with non-public funds and that do not meet current applicable ocean hazard setbacks ~~may~~ shall be relocated the maximum feasible distance landward of its present location. Septic tanks, pump tanks, or components of a ground absorption system, as defined in G.S. 130A-334, shall not be relocated or replaced within public trust areas of ocean beaches as defined in G.S. 77-20, oceanward of the primary structure.
- 3) Existing structures shall not be elevated if any portion of the structure is located seaward of the vegetation line.
- 4) When structures are relocated within the Ocean Hazard Area of Environmental Concern, all remaining debris, ancillary structures, or infrastructure shall be removed from the original location.

(g) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within eight years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within eight years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H .0308(a)(2).

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124; Eff. September 9, 1977;
Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;
RRC Objection due to ambiguity Eff. January 24, 1992;
Amended Eff. March 1, 1992;
RRC Objection due to ambiguity Eff. May 21, 1992;
Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;
RRC Objection due to ambiguity Eff. May 18, 1995;*

Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;
Temporary Amendment Eff. January 3, 2013;
Amended Eff. September 1, 2017; February 1, 2017; April 1, 2016; September 1, 2013;
Readopted Eff. December 1, 2020;
Amended Eff. August 1, 2022; December 1, 2021.

