



NORTH CAROLINA
Environmental Quality

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MEMORANDUM

TO: Coastal Resources Commission
FROM: Cameron Luck
SUBJECT: Rule Amendments to NCAC 07H .0306; General Use Standards for Ocean Hazard Areas

The Ocean Hazard Area consists of several AECs that encompass natural hazard areas along the Atlantic Ocean shoreline vulnerable to erosion and other adverse effects. These AECs include the Ocean Erodible Area, Inlet Hazard Area, Unvegetated Beach Area, and the State Ports Inlet Management Area. Given the dynamic and relatively exposed nature of the shorelines encompassed within these AECs, the Commission determined that uncontrolled or incompatible development could pose risks to life or property. To address these concerns, the Commission established specific rules to regulate development within these AECs, ensuring that any activity or development being proposed aligns with safety and environmental preservation standards of the Coastal Area Management Act (CAMA).

In general, Ocean Hazard Area (OHA) rules within NCAC 07H .0306 encompass building standards, oceanfront setbacks and dune alterations and were designed to minimize, but not eliminate, property loss from hazards. NCAC 07H .0306(e) requires applicants to provide a written acknowledgment to the Division of Coastal Management indicating the applicant is aware of the risks associated with development in the hazardous area and its limited suitability. This acknowledgement has historically been facilitated through the *Ocean Hazard AEC Notice* form and is reviewed, signed, and provided as part of an application package. Though the current form fulfills the requirements as codified in NCAC 07H .0306(e), much of the additional information contained within the form is outdated due to recent rule changes. The Ocean Hazard AEC Notice form provides an educational opportunity so applicants can consider the potential risks they face when building within the OHA. It also provides the Division with signed documentation showing the property owner acknowledges the risks in the event a structure becomes imminently threatened. Based on this opinion, staff recommend that the rule be maintained as it is currently written. However, Staff would like to significantly overhaul and update the form for accuracy.

CAMA permit authorizations in the Ocean Hazard Area also typically require that structures shall be relocated or dismantled if shoreline changes make them imminently threatened. This requirement originates from NCAC 07H .0306(g), which mandates a permit condition requiring the removal or relocation of structures within eight (8) years of structures becoming imminently threatened. Property owners with assets that have become imminently threatened are able to apply for and secure authorizations under NCAC 07H .0308(b)(2) to utilize temporary erosion control



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structures, such as sandbags. According to rule, imminently threatened structures may be protected only once, regardless of ownership, unless the property is part of a community with an active beach nourishment permit. In doing so, structures are no longer considered imminently threatened, pausing the requirement to remove per the permit condition. It is important to note though that temporary erosion control structures are authorized to remain in place for up to eight years, with the possibility of an additional eight-year extension should the property still be considered imminently threatened. Once the total time period for the temporary erosion control structure is up, the property owner is required to remove any structure above grade within 30-days of that time period. DCM can report several instances of property owners complying with NCAC 07H .0306(g) and relocating their structures away from an imminent threat. In other cases property owners utilize sandbag protection, or benefit from beach nourishment or other avenues. For these reasons we believe that the rule remains relevant and necessary. As shoreline erosion continues to be an issue for property owners along the coast, this rule continues to provide DCM with an enforcement mechanism for an imminently threatened structure's relocation or removal.

As requested by the Commission at the November 2024 meeting, staff have reviewed 7H .0306 to identify potential amendments. Given the public education and transparency provided by 7H .0306(e) to property owners within the OHA, staff are not recommending removing this section from the rule. Similarly, 7H .0306(g) contains an important safeguard for public trust and safety, and is a mechanism to ensure that property owners take action to balance their private property rights with those public trust rights through removal, relocation, or protection. Staff, therefore, are not recommending the removal of 7H .0306(g). As part of staff's review of 7H .0306, two technical changes have also been included to clean up administrative typographical errors found in 7H .0306(a)(3)(L)(iii) and (iv) where incorrect subsections are currently being referenced. As a result, staff recommend the Commission proceed with rulemaking for the technical changes presented below.

DCM staff look forward to further discussion at your February meeting.



15A NCAC 07H .0306 is proposed for amendment pursuant to G.S. 150B-21.5(a)(5) as follows:

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, 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)(3), ~~(a)(5)~~ of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(3)(A) ~~(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.

- (A) 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.
- (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 that do not meet current applicable ocean hazard setbacks may be relocated the maximum feasible distance landward of its present location. Septic tanks shall not be relocated 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.
- (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.*



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