



NORTH CAROLINA
Environmental Quality

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

BRAXTON DAVIS

Director

CRC-23-18

May 26, 2023

MEMORANDUM

TO: Coastal Resources Commission
FROM: Ken Richardson
SUBJECT: Fiscal Analysis: Exception for Lots Platted Post-1979 15A NCAC 07H .0309

15A NCAC 07H .0309(b) defines exceptions within the Ocean Hazard AEC (OHA) when proposed development cannot meet the required erosion rate-based construction setback defined in 15A NCAC 07H .0306(a). Currently, 07H .0309(b) limits the exception to lots created before June 1, 1979, a total floor area no greater than 2,000 square feet and footprint to a maximum of 1,000 square feet, requires the structure to be set back the maximum feasible distance on the lot (a minimum of 60 feet) and no more oceanward than the landward-most adjacent structure.

At your April meeting, the Commission approved amendments to 07H .0309(b) to remove the 1,000 square foot footprint requirement and the June 1, 1979 provision, while retaining the other existing requirements under .0309(b). Except for Unvegetated Beach Areas, these amendments will make the 07H .0309(b) exception applicable to all oceanfront and inlet areas, and not just lots platted before June 1, 1979. Proposed development that cannot meet the minimum setback for a larger structure could potentially utilize this exception for a structure up to 2,000 square feet if the other conditions outlined above are met. This amendment addresses the primary concern related to the earlier repeal of 07H .0104, while removing the complexity of tracking past erosion rates and recognizing the dates that lots were platted during Minor Permit reviews.

There are 74 vacant lots where proposed development would likely not meet the current setback requirement but could potentially meet the minimum setback (60-ft.). Although property owner intentions cannot be predicted or quantified, it can be anticipated that regardless of when a lot was created, there would be a net benefit associated with the ability to construct a smaller home ($\leq 2,000$ sqft) when the setback for a larger structure cannot be met. Although not substantive, the longer-term benefit to local governments may be evaluated in terms of property tax increases, while property owners may benefit from selling and/or vacation rental fees associated with the construction of a house on a vacant lot.

DCM Staff are asking the Commission to consider approval of the fiscal analysis for amendments to 15A NCAC 07H .0309 to move forward with rulemaking on the condition that it is approved by the Office of State Budget and Management (OSBM) without any substantial changes.

Attachment A: Fiscal Analysis

Attachment B: CRC Approved Rule Amendments (15A NCAC 07H .0309)



North Carolina Department of Environmental Quality | Division of Coastal Management
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ATTACHMENT A: FISCAL ANALYSIS

Fiscal Analysis

Rule Amendments: USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

15A NCAC 07H .0309

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May 26, 2023

Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission (CRC)
Title	Proposed Amendments to Use Standards for Ocean Hazard Area Exceptions.
Citation	15A NCAC 07H .0309
Description of Rule Amendments	In the event that proposed development cannot meet the required oceanfront setback defined in 15A NCAC 07H .0306(a), current Rule 15A NCAC 07H .0309(b) serves as an exception that can allow a structure no greater than 2,000 square feet to be constructed when it can meet a 60-foot setback and be sited no further oceanward than its landward-most adjacent neighbor. In addition, the proposed amendments remove a reference to when a lot was platted, making this development option available to all oceanfront property owners regardless of when their lot was platted.
Agency Contact	Ken Richardson Shoreline Management Specialist Ken.Richardson@ncdenr.gov (252) 515-5433
Authority	G.S. 113A-107; 113A-113; 113A-124
Necessity	The Coastal Resources Commission proposes these amendments to current rules to allow an Ocean Hazard Area Exception to apply to all property owners, and not just property platted prior to June 1, 1979.
Impact Summary	State government: No Local government: No Private Property Owners: Yes Substantial impact: No Federal government: No

Summary

Informally known as the "small structure exception rule," 15A NCAC 07H .0309(b) is an existing rule that outlines specific conditions where exceptions can be made to the Ocean Hazard AEC (OHA) setback requirements defined in 15A NCAC 07H .0306. Where proposed development cannot meet the required erosion rate-based construction setback, 07H .0309(b) serves as an alternative that can allow new construction if a minimum setback distance of 60 feet can be met, the total floor area does not exceed 2,000 square feet, with a maximum footprint of 1,000 square feet, the structure be positioned as far back as practically possible on the lot, and no closer to the ocean than the landward-most adjacent structure. In addition, the lot must have been platted before June 1, 1979 (before oceanfront setback rules went into effect).

The NC Coastal Resources Commission (CRC) is amending this rule to address concerns expressed over the inability to apply this exception within the oceanfront setback to lots created after June 1, 1979. This issue was raised following the repeal of 15A NCAC 07H .0104, which contained similar provisions for lots created after June 1, 1979, that could not meet the required setback. Aside from the date stipulations, the primary differences between the two rules were that 07H .0104 allowed the option to measure setbacks using the erosion setback factor in place at the time the lot was platted, while 07H .0309(b) requires a setback of at least 60 feet regardless of the erosion rate setback factor. Both rules limited new construction to no greater than 2,000 square feet, but 07H .0309 limits a structure's footprint to 1,000 square feet. Although separate rules, they had been commonly referred to as the "small structure exceptions."

Amendments to 07H .0309(b) remove the 1,000 square foot footprint condition, retain the total floor area of 2,000 square feet, and remove the prior to June 1, 1979 stipulation. This would make the .0309 exception applicable to all oceanfront and inlet areas, except for Unvegetated Beach Areas. For property owners that cannot meet the minimum setback for a larger structure, they could potentially utilize this exception for a structure up to 2,000 square feet if the other conditions outlined above are met. This amendment addresses the primary concern related to the repeal of 07H .0104, while removing the complexity of tracking past erosion rates and recognizing the dates that lots were platted during Minor Permit reviews.

Currently, there are 74 vacant lots¹ where proposed development would likely not meet the current setback requirement but could potentially meet the minimum setback (60-ft.). This rule will continue to limit new development to its landward-most adjacent neighbor, and total floor area no greater than 2,000 square feet. Although property owner intentions cannot be predicted or quantified, it can be anticipated that there would be a cost-benefit associated with the ability to construct a smaller home ($\leq 2,000$ sqft). As stated, this exception is currently available to property owners whose lots were platted prior to June 1, 1979.

¹ An estimate of the current 60-ft setback was determined by using GIS to measure landward setbacks from a 2021-2022 vegetation line, and then identifying vacant lots where the required setback would likely preclude the placement of a new structure, but could potentially accommodate a small structure ($\leq 2,000$ sqft) while adhering to a 60-ft setback.

Introduction and Purpose

The NC Coastal Resources Commission (CRC) is revising this rule in response to concerns raised about the inability to apply the exception within the oceanfront setback to lots created after June 1, 1979. These concerns emerged after the repeal of 15A NCAC 07H .0104, which had similar provisions for lots created after June 1, 1979, that couldn't meet the required setback. While both rules limited new construction to a maximum of 2,000 square feet, there were differences between them. Rule 15A NCAC 07H .0104 (*repealed 8/1/2022*) allowed setbacks to be measured based on the erosion setback factor at the time the lot was platted, whereas 07H .0309(b) requires a minimum setback of 60 feet regardless of the erosion rate setback factor. Additionally, 07H .0309(b) limits the structure's footprint to 1,000 square feet. Although these were separate rules, they were commonly referred to as the "small structure exceptions." This amendment addresses the main concern regarding the repeal of 15A NCAC 07H .0104, while removing the complexity of tracking past erosion rates and recognizing the dates that lots were platted during Minor Permit reviews.

Description of Proposed Actions

Before 07H .0104 was repealed (08/01/2022), all oceanfront property owners who could not meet the current setback requirement defined in 15A NCAC 07H .0306 had an option that could potentially permit a new structure no greater than 2,000 sqft to be constructed. These amendments effectively serve to merge two rules (07H .0104 and 07H .0309(b)) while eliminating any confusion associated with interpretation of rules and how they are applied.

1. Proposed Amendments to 15A NCAC 07H .0309(b):
 - a. "Ocean Hazard Area" is the formal name of the Area of Environmental Concern (AEC) where these rules apply, but replaces the word "oceanfront" for clarification purposes only.
 - b. Amendment removes the "*June 1, 1979*" date condition. As the rule is currently written, only lots created before June 1, 1979 can utilize this exception if needed. Before the repeal of 07H .0104 lots created after June 1, 1979 were addressed. By removing the date condition, any property owner could utilize this exception regardless of when their lot was platted.
 - c. 07H .0309 defines exceptions to use standards within the Ocean Hazard Area. These amendments include the phrase "*the structure shall be permitted seaward of the applicable setback line*" for clarity purposes.
2. Proposed Amendments to 15A NCAC 07H .0309(b)(4)(B):
 - a. Amendments remove the 1,000 square feet footprint condition. The CRC determined it is not needed since they are retaining the overall structure size limit to no greater than 2,000 square feet.
3. Proposed Amendments to 15A NCAC 07H .0309(e):
 - a. Changes "small scale" to "small-scale" for rule grammatical consistency. Change does not affect its meaning or application.

Anticipated Impacts

Given that there are 74 vacant lots where proposed development would likely not meet the current setback requirement but could potentially meet the minimum setback (60-ft.), it is anticipated that

these amendments could potentially result in a net positive opportunity cost associated with property owner’s ability to build, and property tax revenues generated by the addition of structures built on vacant lots.

Local Governments:

Of the 74 vacant lots, none appear to be owned by local governments. However, if there are any, these amendments do not include any new restrictions that would influence public projects such as public beach access, roads, parking, or other infrastructure.

With regards to additional revenue generated from property taxes associated with construction of new homes on these vacant lots, the Division cannot speculate how many lots would be developed, if any, or what types of materials would be used for construction, or specific amenities – which makes it impossible to accurately calculate a total net gain. However, it is possible to estimate a gain based on a scenario that considers current property tax rates (2022) and a market example (5/16/2023)² that showed average oceanfront homes for sell in NC that have square footage equal to or less than 2,000 square feet, while also considering asking prices for oceanfront vacant lots for the same time.

Based on the location of the 74 vacant lots, the average property tax rate is 0.6024, or 60.24 cents per \$100 of property value (see Table 1). Based on this example, the average cost of an oceanfront home that is 2,000 square feet or less was \$1,148,244; while the range varied significantly (\$620K to \$2M). The average cost of a vacant oceanfront lot on that same single-day search was \$577,067; while the range varied greatly too (\$30K to \$1.9M).

Table 1. 2022 Property Tax Rates per \$100 property value

Location	per \$100
Ocean Isle	0.1639
Holden Beach	0.2
Bald Head Island	0.81
North Topsail	0.43
Hatteras Village	0.6335
Buxton	0.7899
Nags Head	0.831
Kitty Hawk	0.8005
Currituck County	0.763
AVERAGE:	0.6024

Based purely on this scenario, a structure ≤ 2,000 square feet adds approximately \$570 to \$580K to the value of the property. It can then be estimated that using the average property tax rate (0.6024) that the addition of a structure on all 74 lots would result in an estimated total of \$422K to \$429K additional tax revenues annually. This scenario does not consider differences in property appraisal value versus owner asking price but should reflect higher estimates. For the array of reasons that can and do influence property value, this estimate will vary. However, although this estimated cost

² Based on review of market listings on May 16, 2023, Zillow.com

benefit is worth noting, it is not considered substantial, especially considering that not all lots would be developed, nor would they be in the same year.

Private Property Owners:

It can be assumed that if property owners of the 74 vacant lots have had intentions of building a structure, but cannot due to the setback requirements defined in 15A NCAC 07H .0306, then they may potentially build if proposed development adheres to the conditions in Rule 15A NCAC 07H .0309 and its amendments. These amendments alone would not initiate an immediate cost or benefit to the property owner, however, with continued beach nourishment, reduced storm intensity and frequency, it can be anticipated that property owners might experience longer-term opportunity net gains associated with building a house – whether from selling or vacation rentals. Quantifying this value with a high degree of accuracy would be very challenging if not impossible due to the many factors influencing the selling price of oceanfront property, or fees collected from rentals.

The Division acknowledges that private property owners are likely to experience net gains in the longer-term (5 or more years) but cannot accurately quantify gains in terms that meet the definition of substantial impact (\$1M or more in one year).

NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, no impacts to NCDOT permitting are anticipated from the proposed amendments to 15A NCAC 07H .0309. The Division does not anticipate an increase or decrease in the number of permits issued to NCDOT. 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.

Division of Coastal Management:

The Division does not anticipate an increase or decrease in the number of permits issued. 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.

Cost/Benefit Summary

It can be assumed that if property owners of the 74 vacant lots have had intentions of building a structure, but cannot due to the setback requirements defined in 15A NCAC 07H .0306, then they could potentially build if proposed development adheres to the conditions in Rule 15A NCAC 07H .0309 and its amendments. These amendments alone would not initiate an immediate cost or benefit to the property owner, however, with continued beach nourishment, reduced storm intensity and frequency, it can be anticipated that property owners might experience longer-term opportunity net gains associated with building a house – whether from selling or vacation rentals.

With regards to additional revenue generated from property taxes associated with construction of new homes on these vacant lots, the Division cannot speculate how many lots would be developed, if any, or what types of materials would be used for construction, or specific amenities – which makes it impossible to accurately calculate a total net gain.

References:

Brunswick County Tax Office, 2022 Tax Rates: <https://www.brunswickcountync.gov/tax-office/rates/>

Onslow County Tax Office, 2022 Tax Rates: <https://www.onslowcountync.gov/DocumentCenter/View/6905/2018-TAX-RATES>

Dare County Tax Office, 2022 Tax Rates: <https://www.darenc.gov/departments/tax-department/tax-rates>

Currituck County Tax Office, 2022 Evaluation: <https://currituckcountync.gov/tax/tax-matters/>

ATTACHMENT B: CRC APPROVED RULE AMENDMENTS (04/26/2023)

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) driveways and parking areas with clay, packed sand, or gravel;
- (3) elevated decks not exceeding a footprint of 500 square feet. Existing decks exceeding a footprint of 500 square feet may be replaced with no enlargement beyond their original dimensions;
- (4) beach accessways consistent with Rule .0308(c) of this Section;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands consistent with Section .1900 of this Subchapter;
- (8) sand fences;
- (9) swimming pools; and
- (10) fill not associated with dune creation that is obtained from an upland source and is of the same general characteristics as the sand in the area in which it is to be placed.

In all cases, this development shall be permitted only if it is landward of the vegetation line or pre-project vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; is not essential to the continued existence or use of an associated principal development; and meets all other non-setback requirements of this Subchapter.

(b) Where application of the ~~oceanfront~~ **Ocean Hazard Area** setback requirements of Rule .0306(a) of this Section would preclude placement of a structure **on a lot existing as of June 1, 1979, the structure shall be permitted seaward of the applicable setback line** in Ocean Erodible Areas, State Ports Inlet Management Areas, and Inlet Hazard Areas, but not Unvegetated Beach ~~Areas~~ **Areas, the structure shall be permitted seaward of the applicable setback line** if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance ~~possible~~ on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation line, measurement line, or pre-project vegetation line, whichever is applicable;
- (3) The development is not located on or oceanward of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Section:
 - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
 - (B) ~~The footprint of the structure shall be no more than 1,000 square feet, and the~~ total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;

- (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases, other material may be used; and
- (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most 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. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent building or structure exists, or the geometry or orientation of a lot or shoreline precludes the placement of a building in line with the landward most adjacent structure of similar use, 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 shall meet the applicable setback from the Vegetation Line but shall not be held to the landward-most adjacent structure or an average line of structures. The ocean hazard setback shall extend landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.

(c) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) piers providing public access; and
- (2) maintenance and replacement of existing state-owned bridges, and causeways and accessways to such bridges.

(d) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:

- (1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;
- (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
- (3) The pier house shall be limited to a maximum of two stories;
- (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
- (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
- (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and

- (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.
- (e) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and **small seale small-scale** erosion control measures that do not interfere with natural oceanfront processes, shall be permitted in the Ocean Hazard Area along those portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, **small seale small-scale** is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200, and 15A NCAC 07K .0203.
- (f) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:
- (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule .0305 of this Section, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
 - (2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.
- (g) Existing stormwater outfalls as of the last amended date of this rule within the Ocean Hazard AEC that are owned or maintained by a State agency or local government, may be extended oceanward subject to the provisions contained within 15A NCAC 07J .0200. Outfalls may be extended below mean low water and may be maintained in accordance with 15A NCAC 07K .0103. Shortening or lengthening of outfall structures within the authorized dimensions, in response to changes in beach width, is considered maintenance under 15A NCAC 07K .0103. Outfall extensions may be marked with signage and shall not prevent pedestrian or vehicular access along the beach. This Paragraph does not apply to existing stormwater outfalls that are not owned or maintained by a State agency or local government.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124;
Eff. February 2, 1981;
Amended Eff. April 1, 2020; June 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987;
Readopted Eff. December 1, 2020;
Amended Eff. December 1, 2022; August 1, 2022.