

Fiscal Analysis

Amendments to 15A NCAC 7H .0306 General Use Standards for Ocean Hazard Areas

Replacement of Commercial and Multi-Family Residential Structures
on the Oceanfront

Prepared by

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Basic Information

Agency DEQ, Division of Coastal Management (DCM)
Coastal Resources Commission (CRC)

TITLE GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

Citation 15A NCAC 7H .0306

Description of the Proposed Rule 7H.0306 defines specific development requirements in Ocean Hazard Areas. The proposed rule change amends language in section 7H.0306(a)(2)(L) pertaining to setbacks for oceanfront development, creating an exemption for the replacement of commercial and multi-family residential structures between 5,000 and 10,000 sq. ft. that cannot meet the setback criteria contained within 15A NCAC 7H .0306(a)(2)(A)-(K).

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Authority G.S. 113A-107; 113A-113(b)(6); 113A-124

Necessity Passage of House Bill 819 and subsequent law (SL2012-202), required the CRC to adopt permanent rules allowing for the replacement of single-family or duplex residential structures that cannot meet the setback criteria of 15A NCAC 7H .0306(a)(2)(A)-(L). The CRC is seeking to expand the allowed structures covered by this rule to include commercial and multi-family residential structures.

Impact Summary	State government:	Potential, but indirect
	Local government:	Potential, but indirect
	Federal government:	Potential, but indirect
	Private property owners:	Potential, but indirect
	Substantial impact:	Potential, but indirect

Summary

The N.C. Coastal Resources Commission (CRC) is proposing to amend 15A NCAC 07H .0306 to “grandfather” certain oceanfront structures that are currently nonconforming with the CRC’s development setback rule. This action will allow the Division of Coastal Management (DCM) to issue permits, subject to a few specific criteria, to replace those structures if they are destroyed or incur damages exceeding 50 percent of their value. Session Law 2012-202 directed the CRC to grandfather single-family and duplex residential structures over 5,000 square feet, and the CRC amended its rules accordingly in 2013. This action will expand grandfathering to all oceanfront structures between 5,000-10,000 square feet, regardless of use, subject to the same conditions that currently apply to single-family and duplex structures.

Anecdotal evidence suggests that nonconforming status can make federally-backed mortgages more difficult to obtain, due to federal reluctance to underwrite properties that are difficult or impossible to replace if destroyed. If federally-backed mortgages are unavailable for nonconforming properties, this can make those properties more difficult to sell, and in turn lower their market value. If these assumptions are correct, grandfathering can be expected to facilitate more real estate sales.

DCM has performed a detailed analysis of existing oceanfront structures to determine how many qualify for grandfathering; however, calculating the economic value of grandfather status has proven to be difficult and speculative. Real estate values are sensitive to location, square footage, age, amenities, economic climate, and many other factors. Values are also sensitive to conforming or nonconforming status because this affects the ability to obtain mortgage financing and insurance. Grandfathering nonconforming status presumably makes nonconforming properties easier to finance and insure, potentially reducing their time on the market and increasing their market value, but estimating the value of these benefits is elusive.

By DCM’s analysis, there are 157 multi-family residential properties with an average assessed value of approximately \$989,000, and 33 commercial properties with an average assessed value of approximately \$1,885,000 that fit the criteria for grandfathering under this proposed amendment. 74 of these 190 structures (50 residential and 24 commercial) currently meet the minimum setback under the proposed rule amendment and could be rebuilt if they are destroyed. The remaining 116 properties could benefit from grandfathering in the future if they become nonconforming. The combined value of all potentially affected properties is well over \$200 million. DCM does not assume that average value can be used to project annual potential fiscal impact, since the average value for multi-family residential structures represents the combined value of multiple (three or more) residential units within a single structure, and because the value of individual oceanfront units varies widely.

Assuming that grandfather status increases a nonconforming structure’s market value and reduces time on the market, it is conceivable that more of these structures would be bought and sold each year. In addition to capital gains on sales, transaction costs and benefits are generated on each sale. When considering the number of potential transactions and rebuilt structures along the valuable oceanfront, it is possible that the economic impact of this rule amendment can be significant if a large number of affected parties choose to take advantage of the grandfather status to sell or rebuild their properties.

Since this rule amendment merely allows a new activity but does not require affected parties to take any new action, the actual fiscal impact will depend on the effect of conforming or nonconforming status on market values, how many affected structures will be destroyed or substantially damaged in the future, and how many parties take voluntary action under the new allowance. DCM has no reasonable basis for making assumptions about how many more real estate transactions will occur as a result of this amendment, what the difference in market value will be, or how many structures will be destroyed and rebuilt. For these reasons, DCM finds that this rule action has an incalculable, but potentially significant, economic impact.

The proposed effective date for this amendment is February 1, 2017.

Introduction and Purpose

In 2009, the CRC amended their oceanfront setback rule 15A NCAC 07H .0306 so that increasingly larger structures are subject to progressively larger setbacks from the oceanfront. Prior to 2009 all commercial and multi-family residential structures of four or more units or over 5,000 square feet were subject to larger setbacks of 60 times the erosion rate. Residential structures with less than four units required only a setback of 30 times the erosion rate, regardless of size. The 2009 rule amendment rendered many commercial and residential oceanfront structures “legal nonconforming,” meaning that they were built in compliance with the rules in effect at the time of initial construction, but were rendered nonconforming due to a change in the applicable rules.

Session law 2012-202 (House Bill 819), directed the Coastal Resources Commission (CRC) to amend its setback rule; to not deny a development permit for the replacement of a single-family or duplex residential dwelling with a total floor area greater than 5,000 square feet based on failure to meet the ocean hazard setback required under 15A NCAC 07H .0306(a)(2), if the structure meets five specific criteria:

1. the structure was originally constructed prior to August 11, 2009;
2. the structure as replaced does not exceed the original footprint or square footage;
3. the structure as replaced meets the minimum setback required under 15A NCAC 07H .0306(a)(2)(A);
4. it is impossible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under 15A NCAC 07H .0306(a)(2); and
5. the structure is rebuilt as far landward on the lot as feasible.

The CRC amended 7H .0306 to be substantively identical to the provisions of the legislation.

In October 2014, a representative of the Wilmington Regional Association of Realtors (WRAR) approached the CRC to raise the concern that when the CRC introduced graduated setbacks in 2009, that action made many single-family, duplex, and multi-family residential structures “legal nonconforming.” Session law 2012-202 provided relief to single-family and duplex residential structures through grandfathering, but did not grandfather multi-family residential structures such as condominiums. The WRAR stated that if one building within a multi-structure condominium complex is nonconforming with the applicable setback, all of the structures are considered nonconforming by the financial services industry—including non-oceanfront structures within the complex that individually meet the Coastal Area Management Act (CAMA) setback or are outside of CAMA’s permitting jurisdiction. While the treatment of all structures as a single unit by the financial sector might in fact hinder sales of all units within the condominium complex, the CRC does not have any direct role or influence over that policy.

The WRAR sought relief from the CRC through a rule amendment to grandfather multi-family residential structures, with a maximum size of 10,000 square feet, making them eligible for replacement under the same conditions as single-family and duplex structures. In making this request, the WRAR contended that if the CRC failed to amend the rule, it could result in a significant drop in oceanfront property values. After extended discussions, including consideration of a revised request from the WRAR, and alternatives offered by DCM staff, the CRC voted in February 2016 to move forward with a proposed rule amendment that would grandfather commercial and multi-family residential structures up to 10,000 square feet, under the same conditions as those specified in HB 819. This rule amendment will not require anyone to take any specific action, but by virtue of the “grandfathered” status that will be extended to commercial and multi-family residential structures, it is expected to have an indirect economic impact.

Description of Rule Amendment

15A NCAC 7H .0306 includes the General Use Standards for Ocean Hazard Areas. The proposed rule amendment to 15A NCAC 7H .0306(a)(2) will set up grandfather protection for the replacement of commercial and multi-family residential structures between 5,000-10,000 square feet, subject to the following criteria:

- The structure was originally constructed prior to August 11, 2009;
- The structure as replaced does not exceed the original footprint or square footage;
- The structure as replaced meets the minimum setback required under 15A NCAC 07H .0306(a)(2)(A);
- It is impossible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under 15A NCAC 07H .0306(a)(2) and;
- The structure is rebuilt as far landward on the lot as feasible.

Not all nonconforming structures will be granted a rebuilding permit if they are destroyed; only those that could meet the minimum CAMA setback of 30 times the erosion rate could be rebuilt.

Current CRC rules for siting development along oceanfront shorelines utilize graduated setback factors to calculate the required distance between structures and the shoreline. For all structures less than 5,000 square feet, the minimum setback is 30 times the erosion rate or 60 feet, whichever is greater. Above 5,000 square feet, and every 5,000 square feet thereafter, the setback factor increases from 60 to 90 in increments of five. The minimum setback for structures greater than or equal to 100,000 square feet is 180 feet (a setback factor of 90 multiplied by an erosion rate of 2ft/year) (see Table 1).

Table 1. Minimum construction setbacks based on structure size and minimum erosion rate of 2 ft/yr.

Structure Size (square feet)	Construction Setback Equation (setback factor x erosion rate)	Minimum Setback (calculated using erosion rate = 2 ft/yr)
Less than 5,000	30 x erosion rate	60
=>5,000 and < 10,000	60 x erosion rate	120
=>10,000 and < 20,000	65 x erosion rate	130
=>20,000 and < 40,000	70 x erosion rate	140
=>40,000 and < 60,000	75 x erosion rate	150
=>60,000 and < 80,000	80 x erosion rate	160
=>80,000 and < 100,000	85 x erosion rate	170
Greater than 100,000	90 x erosion rate	180

With regard to re-building or replacement of structures, 15A NCAC 7J .0210 (Replacement of Existing Structures) distinguishes between repair and replacement. Repair of structures damaged by natural elements, fire or normal deterioration is not considered development and does not require a CAMA permit. Replacement of structures is allowed if the development complies with current CRC rules, and requires a CAMA permit. Proposed work is considered replacement if the cost to do the work exceeds 50 percent of the market value of the structure, excluding the value of the land, value resulting from the location of the property, value of accessory structures, or value of other improvements located on the property.

Nonconforming status can result in negative economic impacts, since lenders and insurers may be less inclined to finance and underwrite nonconforming properties that might be difficult or impossible to replace if destroyed. Difficulty in securing financing and insurance can make nonconforming properties more difficult to sell, and as a result can lower their market value. Grandfathering can be at least a partial remedy by offering some assurance that a structure can be replaced if destroyed by the elements.

DCM expects several types of parties to be affected by this action:

- Property owners could see potential increases in the market value of their properties, reflected in higher prices and shorter time on the market when listed for sale. Property owners will also have greater assurance that they could replace their structure if it is destroyed, and continue the pre-existing residential or commercial use.
- Local governments could be affected through real estate transfer taxes, property taxes, and permit fees.
- Over the longer term, local, state and federal governments could see increased costs for erosion response projects such as beach nourishment and inlet stabilization. Conversely, local, state and federal governments could also see increased costs for emergency and disaster response if the risk to grandfathered structures increases. With newer, higher-value oceanfront development, post-disaster insurance and recovery costs could be higher.
- Real estate industry participants could see increased income if the volume of sales increases.

Conversely, DCM expects that other parties will not be affected by these amendments:

- DCM is not aware of any commercial or multi-family residential structures owned by the Department of Transportation.
- DCM does not anticipate any significant increase in permit receipts or staff time devoted to processing permit applications, since most permit applications are processed by local government staff, and the number of property replacements permitted each year is expected to be small.

A DCM inventory of oceanfront properties found 39 commercial structures, and 157 multi-family residential structures that could potentially be affected by this rule change if they were destroyed by the elements, or offered for sale. Any DCM estimate of how many structures would be sold or re-built under the new grandfather provision would be highly speculative as it would depend upon how frequently nonconforming oceanfront structures are destroyed, as well as upon the willingness of individual property owners to rebuild in locations where their prior structure had been destroyed.

The proposed amendment will immediately benefit those properties that are currently nonconforming with the setback, as well as those that might become nonconforming in the future due to erosion or shoreline recession.

Description of Economic Benefits Analysis

The analysis of the potential fiscal impact of this rule amendment began with a deceptively simple premise: if the number of affected structures is known, and an appreciation factor could be applied to structures that are grandfathered, the cumulative impact of the rule change could be calculated.

Determining the Number of Affected Structures

Staff looked to the criteria in the proposed rule to determine the types of structures that would be affected by this rule change. Specifically, they would be buildings that are:

1. Directly on the oceanfront
2. Either commercial or multi-family (3 or more units) use
3. Between 5,000 and 10,000 square feet of total floor area
4. Originally constructed prior to August 11, 2009
5. Currently nonconforming with the applicable CAMA setback
6. Able to meet the minimum CAMA setback

All of the CAMA counties along the oceanfront maintain databases of properties within their jurisdiction, including maps and tax values. DCM was able to get digital copies of all of the county data needed for the analysis, either directly from the counties, or through the state's NC OneMap data portal (<http://www.nconemap.com/>). The county data is not sortable along the parameters of interest to this analysis; for example, there was no way to distinguish from the county data whether a data file for a particular parcel was for an oceanfront or inland parcel. Also, in most cases, each individual residential unit within the same condominium structure had its own data file, with no way to sort the county data to aggregate all condo units in a single building into a single data file. Staff was required to visually inspect GIS maps for the entire oceanfront, and manually link oceanfront parcels to their corresponding data files.

Once oceanfront parcels were linked with the county data files, staff then had to sort through the data attribute tables to extract the necessary information such as date of construction, structure size, tax value, and structure use. A further complication was determining that the multi-family residential structures selected each contained at least three individual housing units. Tax values were captured and used as a proxy for market values, since market values are not available.

After developing a database of all oceanfront structures that included the size, use, and date of construction criteria, staff conducted a GIS analysis to determine which commercial and multi-family oceanfront structures, between 5,000 and 10,000 square feet, constructed prior to August 11, 2009, are currently nonconforming with the current applicable setback of 60 times the long-term annual erosion rate. Further, staff looked to see whether the currently nonconforming structures could meet the minimum setback of 30 times the erosion rate.

In all, staff combed through hundreds of thousands of data points to determine which properties would be affected by this rule amendment. The table below summarizes the structure counts by county, along with the combined tax values of the relevant structures.

Table 2. Oceanfront structure counts and tax values

Residential	Currituck	Dare	Carteret	Onslow	Pender	New Hanover	Brunswick	TOTAL
Number of multi-family residential structures	0	unavailable	174	48	19	106	42	389
Number under 5,000	0	unavailable	15	13	5	11	22	66
Number 5,000-10,000	0	33	37	17	6	59	5	157
Number over 10,000	0	unavailable	122	18	8	36	15	199
Number 5,000 - 10,000 built prior to August 11, 2009	0	33	37	17	6	59	5	157
Number 5,000 - 10,000 built after August 11, 2009	0	0	0	0	0	0	1	1
Number currently non-conforming with 60x setback	0	21	6	9	6	28	2	72
Number currently conforming with 30x setback	0	20	5	13	0	7	5	50
Tax value of 5,000-10,000 sf structures built prior to August 11, 2009	0	58,986,700	10,837,880	19,528,630	14,442,928	45,687,600	5,820,190	155,303,928
Commercial								
Total number of commercial structures	2	65	12	2	11	40	27	159
Number under 5,000	1	22	8	1	8	16	15	71
Number 5,000-10,000	0	12	1	1	3	11	7	35
Number over 10,000	1	27	3	0	0	13	5	49
Number 5,000 - 10,000 built prior to August 11, 2009	0	12	1	1	3	11	5	33
Number 5,000 - 10,000 built after August 11, 2009	0	0	0	0	0	0	0	0
Number currently non-conforming with 60x setback	na	4	1	1	3	7	7	23
Number currently conforming with 30x setback	na	10	1	1	3	6	3	24
Tax value of 5,000-10,000 sf structures built prior to August 11, 2009	na	31,827,600	1,777,340	1963400	3,833,874	11,884,100	10,924,470	62,210,784

Value of Grandfathering

In addition to the determining the number of affected structures, staff needed a methodology to quantify the fiscal impact of the rule amendment. Staff began with an online literature search for any peer-reviewed studies or “grey literature” that have previously addressed the value of grandfather protection for nonconforming structures. No published studies or uniformly applicable methodology were found.

After the literature search, DCM called county tax departments and interviewed county staff about their treatment of nonconforming structures. Most coastal counties do not factor in nonconforming status into their property tax valuations. A few counties may discount the value of the lot, but not the structure, on a case-by-case basis if asked by the property owner. Discount rates are not standard, nor universally applied across the counties. The counties universally reported that they would not adjust their tax valuations based solely on grandfathering under CAMA rules.

DCM then interviewed professional real estate appraisers, one commercial and one residential. Both professionals reported that they do not factor nonconforming status into property valuations, but would include that information in their appraisal reports. Both professionals also stated that they are unaware, in their combined several decades of experience, of any industry standard or requirement for discounting nonconforming structures. Comparable sales analysis might reflect a lower price for similar properties where one is nonconforming and the other is not,

but these differences can only be detected on a case-by-case basis, and a general discount factor is not considered to be appropriate.

The fourth method that was considered was researching actual market values from sales data. This method was quickly determined to be infeasible, due to the complex logistics of performing valid comparative sales analyses at the volume needed to draw any meaningful inferences about the effect of nonconforming status. Comparable sales are highly sensitive to a large number of factors, including among other things location, time, and the property itself; for example, different units within the same condominium tower can vary widely in market price over time, and depending on where they are within the structure (i.e., middle vs. corner unit, ground floor vs. top floor, etc.) Comparable sales; therefore, cannot be generalized.

Having exhausted four different avenues concerning the valuation question, DCM has concluded that no standard methodology exists for discounting nonconforming structures, that can be applied to the entire range of oceanfront development in in North Carolina. DCM finds the projected economic impact to be incalculable, because the number and nature of the assumptions that would have to be made introduce an unacceptable amount of error, and because there is a large number of unknowable factors. DCM has also been unable to devise defensible method for the sole purpose of testing whether this rule amendment might have a “substantial economic impact” as defined in G.S 150B-21.4.

DCM believes that the following assumptions would need to be made in order to attempt to calculate the economic benefits of this rule amendment; however, the bases for these assumptions are not strong, and would make the result highly speculative and unreliable. All other things being equal, we would have to assume:

1. That there is a difference in market value between a conforming and a nonconforming structure.
2. That the market value of a nonconforming structure is lower than the market value of a conforming structure.
3. That a simple average value of an oceanfront building, calculated as the total value of all structures divided by the number of structures, is a reasonable basis for further calculations.
4. That on average, more nonconforming properties will be sold once they are grandfathered. We would have to select a number or range for the calculations.
5. That sellers would obtain higher prices for their newly grandfathered nonconforming properties, than they would have if they were not grandfathered. We would have to select a number or range for the calculations.
6. Transaction costs are generated on each sale, such as real estate commissions, appraisal fee, attorney fees, transfer taxes, mortgage origination costs, surveys, and home inspection fees. We would have to select a number or range for the calculations.
7. That average property value is an acceptable proxy selling price in a sales transaction.
8. That property tax value can be used as an acceptable proxy for market price.
9. That the value of a property after it is rebuilt is the same as before it was destroyed.
10. That if a property destroyed by the elements, it will be rebuilt. We would have to select a number or range for the calculations.
11. Rebuilding generates an economic impact within the construction industry. We would need to make an assumption about the magnitude of that impact.

In addition to the self-evident difficulties in making some of the assumptions above, DCM believes that there are a number of unknowable factors that underscore how speculative a calculated potential economic impact would be:

1. Does grandfathering of nonconforming structures, in fact, affect market price? If so, how much?
2. The actual market value, versus tax value, for all affected properties.
3. How long grandfathered structures take to sell versus non-grandfathered structures.
4. The economic costs and benefits, and opportunity cost of the length of time it takes to sell.
5. The average number of nonconforming structures that are being offered for sale and sold each year.
6. The number of nonconforming, grandfathered structures that will be offered for sale and sold each year after this rule amendment becomes effective.
7. The number of structures that will be destroyed and rebuilt each year, and the economic impact of rebuilding structures that have been destroyed.

8. The cumulative economic costs and benefits generated by real estate transactions, that accrue to lenders, appraisers, REALTORS®, etc.
9. The long-term impact of grandfathering on property tax values and local government revenue.

Cost or Neutral Impacts

Local, State, and Federal Governments

DCM does not anticipate any direct cost impacts to local, state, or federal governments as a result of this rule change. The indirect costs of the proposed rule change cannot be quantified due to data limitations and uncertainty.

Over the longer term, local, state and federal governments could see increased costs for erosion response projects such as beach nourishment and inlet stabilization. These entities already share costs to mitigate coastal hazards for oceanfront development, especially for funding beach nourishment projects. The average annual cost of beach nourishment projects in North Carolina (including sand dredging) was approximately \$42 million (2011 estimate).¹ The CRC's 2010 Terminal Groin Study Final Report analyzed the potential costs of building a terminal groin at five possible locations and found a range of between \$1 million and \$24 million.² These types of costs could potentially increase in the future if the frequency or cost of engineering projects increase, but there is no way to determine what percentage of future cost increases should be attributed to property sales or structure replacements that might occur because of this rule amendment.

Local, state, and federal governments may incur increased costs for emergency or disaster response and coastal property insurance claims for grandfathered structures.³ Over the past 10 years, the state spent an average of \$4 million per year on disaster and emergency events affecting coastal counties that were caused by hurricanes, floods, and severe storms.⁴ It is not possible to determine what portion of those funds were devoted to oceanfront properties. Furthermore, it is not possible to quantify the change in risk to life and property that might occur because of this rule amendment as the probability of damage (and government expenditure) is a function of variable and locally specific factors, including:

- Coastal erosion or shoreline recession rates
- Beach width and profile, plus the presence or absence of protective dunes
- Storm frequency and severity
- Structure setbacks, elevation and storm resistance
- Erosion management measures such as groins and beach nourishment
- Structure values
- Voluntary decisions to rebuild

With newer, higher-value oceanfront development, federal and state post-disaster insurance and recovery costs could be higher. There is no way to determine what percentage of future cost increases should be attributed to property sales or structure replacements that might occur because of this rule amendment.

¹ North Carolina Department of Environment and Natural Resources. (2011). *North Carolina Beach & Inlet Management Plan*. Retrieved from: <https://deq.nc.gov/about/divisions/coastal-management/coastal-management-oceanfront-shorelines/beach-inlet-management-plan/bimp-final-report>

² North Carolina Department of Environment and Natural Resources, Coastal Resources Commission. (2010). *Terminal Groin Study Final Report*. <http://deq.nc.gov/about/divisions/coastal-management/coastal-resources-commission/2010-crc-terminal-groin-study/terminal-groin-study-final-report>

³ For certain types of disasters, response and recovery costs are shared between federal, state, and local governments.

⁴ Data do not allow state spending to be disaggregated by county. Instead, data are reported by event. The average annual cost estimate includes the total cost of hurricane, flood, and severe storm events that caused damage along the coast. For example, if a hurricane affected both coastal and eastern counties, the full cost of that event is included in the annual cost estimate.

Source: OSBM calculation using data from the North Carolina Accounting System (NCAS) and the Integrated Budget Information System (IBIS), FY 2006-2015.

Permits for oceanfront development are issued by local governments through a cooperative minor permitting program with the CRC. DCM does not anticipate any significant increase in local government permit revenue or staff time costs for processing permit applications due to the small number of eligible properties.

Division of Coastal Management

DCM does not expect to incur any cost increases or increased revenue as a result of this action. Most, if not all of the development that would be permitted as a result of this action would go through the local government's minor permitting office, and not through DCM.

Property Owners

Absolute safety from the destructive forces of the Atlantic Ocean is an impossibility for development located along to the coast, and especially for the first row of oceanfront development. The CRC mitigates the risk to life and property from these forces through their rules governing development setbacks and structure design. A potential cost to property owners is a greater chance for repetitive structural damage if a nonconforming property that is destroyed by the elements is rebuilt in the same location. The nonconforming structure will again be subjected to the same erosional or storm-related damage as a result of not being set back to the full extent required under the CRC's existing rule. In addition to the setback distance and building elevation above the base flood elevation, the probability of repetitive loss to an individual structure is influenced by the local erosion rate, the frequency and severity of storms, beach topography, shoreface orientation, and other factors. Due to the number of natural conditions and events that are involved, DCM cannot calculate with any acceptable degree of certainty what this cost may be; however, the costs would not result directly from this rule amendment.

NC Department of Transportation (DOT)

Pursuant to G.S. 150B-21.4, DCM does not believe that the proposed rule amendment will affect environmental permitting for the NC Department of Transportation. Development such as roads, parking lots, and other public infrastructure such as utilities are already subject to a minimum setback factor of sixty feet (60) or thirty (30) times the erosion rate (whichever is greater). This setback is identical to the minimum setback that will be applied to grandfathered structures. In the event that NC DOT needs 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.

Benefits

In DCM's research, the primary benefit of CAMA grandfathering is to give assurance to mortgage companies and insurers that collateral for their investments can be restored, giving them the confidence to enable property transactions and generating economic activity. Grandfathering also, by definition, grants property owners the ability to replace a nonconforming structure if it is destroyed, so that its use and economic benefits can continue.

Division of Coastal Management

DCM does not anticipate significant changes in permitting activity or application fee receipts due to this proposed action. A maximum of 50 multi-family structures and 24 commercial structures stand to be immediately affected by this amendment, meaning that they are currently nonconforming at 60 times the erosion rate, but could meet the 30 times erosion rate setback. Additional structures may benefit in the future if they become nonconforming at 60 times the erosion rate, but remain conforming at at least 30 times the erosion rate. DCM does not have records of how many structures meeting these criteria are destroyed in an average year and how many have been prevented from being replaced because they are not grandfathered. In the absence of data, anecdotal evidence leads DCM to conclude that there will not be a significant number of permit applications submitted to replace nonconforming structures after they are destroyed.

Local Government

Local governments could potentially benefit by property owners having the ability to replace properties that generate tax income. The benefit would be realized not as new income, but as a continuation of pre-existing income. Any attempt to estimate of how many structures would be re-built if destroyed would be highly speculative, as it would depend upon the frequency at which structures are destroyed by the elements, as well as upon the willingness of individual property owners to rebuild in locations where their prior property had been destroyed.

Property Owners

The amended setback rule would apply when oceanfront property owners are seeking a CAMA permit for the replacement of nonconforming structure that has been destroyed. Based on a DCM inventory of oceanfront development, there are currently 95 structures (23 commercial and 72 multi-family) that are currently nonconforming with applicable CAMA setback of 60 times the erosion rate. 74 of these 95 structures (50 multi-family and 24 commercial) meet the minimum setback and could be replaced immediately if destroyed. These numbers represent significant fractions of the total 159 commercial structures and 389 multi-family residential structures on the oceanfront.

The possible economic benefits to property owners are the potential increased ease of selling their properties, and the potential to rebuild their structure if it is severely damaged or destroyed. The sales benefits could include windfall capital gains, and the rebuilding benefits could include restoration of use or income.

Alternatives Considered

Before selecting the proposed rule amendment described above, the CRC considered three other alternatives and selected their preferred alternative during open discussion at their February 2016 meeting. Structure counts and assessed values were not available for consideration at that meeting.

Alternative 1

The WRAR initially asked the CRC to grandfather all residential condominiums over 5,000 square feet, but less than 10,000 square feet (Oct. 23, 2014 letter). The request did not address grandfathering for commercial structures. This alternative was not selected because it created an inequity with commercial structures of similar size that would not be grandfathered.

Alternative 2

The WRAR later asked the CRC to grandfather all residential structures over 5,000 square feet, with no maximum size limit (Sept. 4, 2015 letter). DCM staff used this request as the basis for Alternative 2, but added commercial structures in order to be equitable. This alternative would therefore have amended the rule to extend grandfathering to all residential and commercial structures over 5,000 square feet, with no maximum size limit. This alternative was not selected because the CRC wanted to limit the maximum size of buildings that would be grandfathered.

Alternative 3

This alternative would have created a targeted regulatory framework that incentivized communities to prepare comprehensive beach management plans by offering a suite of more flexible development standards and more streamlined permitting to communities with approved plans. This alternative was not selected because it would take longer to accomplish and the CRC wanted to provide faster relief for the concerns raised by the WRAR.

Cost/Benefit Summary

This rule amendment does not create a new regulatory prohibition or development standard. It does not require an action by any regulated party. In that sense, the amendment does not directly create any new cost to any affected party. Instead, the rule amendment allows a new activity to occur that is currently prohibited. The actual fiscal and economic impact of this rule amendment will depend on the effect of conforming or nonconforming status on market values, how many affected structures will be destroyed or substantially damaged in the future, and how many parties take voluntary action under the new allowance. DCM has no basis for making assumptions about how many more real estate transactions will occur as a result of this amendment, whether there will be a difference in market value, or how many structures will be destroyed and rebuilt under the new grandfathering provision. For these reasons, DCM finds that this rule action does not have any direct economic impact, but will likely have an indirect impact. The potential indirect economic impacts are offsetting but incalculable, and the net impact is unclear.

SUBCHAPTER 7H – STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

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 is measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.
- (2) In areas with a development line, the ocean hazard setback line shall be set at a distance in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.
- (3) In no case shall a development line be created or established below the mean high water line.
- (4) The setback distance 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 are not 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.
- (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. 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 is 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, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception 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 static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and
- (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square ~~feet-feet~~; and commercial and multi-family residential structures 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 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; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (6) 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 crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, 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 but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land which, 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(s) or tract(s) of land under the same ownership.
- (7) 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, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.
- (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.
- (9) 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 shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (10) 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. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (11) Beach fill as defined in Rule .0305(a)(7) of this Section, represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation

line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront if the beach fill project is not maintained. A development setback measured from the vegetation line may provide less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section, unless a development line has been approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.

- (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified owner's association 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 a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;
- (B) Development setbacks are 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 building or structure. When the configuration of a lot 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 Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
- (D) With the exception of swimming pools, the development defined in Rule .0309(a) of this Section is allowed oceanward of the static vegetation line; and
- (E) Development is not eligible for the exception defined in Rule .0309(b) of this Section.

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes is allowed only to the extent permitted by 15A NCAC 07H .0308(b).

(c) 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.

(d) Development shall comply with minimum lot size and set back requirements established by local regulations.

(e) 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.

(f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.

(g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development increase the risk of damage to public trust areas.

(h) 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.

(i) 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. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location. Septic tanks may not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

(k) 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 two 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 two 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 at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under 15A NCAC 07H .0308(a)(2).

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. September 9, 1977;
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