

1 15A NCAC 07H .0305 is amended **with changes** as published in 30:09 NCR 983-984 as follows:

2
3 **15A NCAC 07H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS**

4 (a) This **section Paragraph** describes natural and man-made features that are found within the ocean hazard area of
5 environmental concern.

6 (1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend
7 from the mean low water line landward to a point where either:

8 (A) the growth of vegetation ~~occurs~~, **occurs**; or

9 (B) a distinct change in slope or elevation alters the configuration of the landform, whichever
10 is farther landward.

11 (2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is
12 characterized by dynamic changes both in space and time as a result of storms.

13 (3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches
14 having an elevation equal to the mean flood level (in a storm having a one percent chance of being
15 equaled or exceeded in any given year) for the area plus six feet. ~~The primary dune extends~~ **Primary**
16 **dunes extend** landward to the lowest elevation in the depression behind that same mound of sand
17 (commonly referred to as the ~~dune trough~~). **“dune trough.”**)

18 (4) Frontal Dunes. The frontal dune is ~~deemed to be~~ the first mound of sand located landward of the
19 ocean ~~beach having sufficient vegetation, height, continuity and configuration to offer protective~~
20 **value. beach that has stable and natural vegetation present.**

21 (5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which
22 shall be used as the reference point for measuring oceanfront setbacks. This line represents the
23 boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides,
24 storms and wind, and the more stable upland areas. The vegetation line is generally located at or
25 immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division
26 of Coastal Management or Local Permit Officer shall determine the location of the stable and natural
27 vegetation line based on visual observations of plant composition and density. If the vegetation has
28 been planted, it may be considered stable when the majority of the plant stems are from continuous
29 rhizomes rather than planted individual rooted sets. ~~The Planted~~ **Planted** vegetation may be considered
30 natural when the majority of the plants are mature and additional species native to the region have
31 been recruited, providing stem and rhizome densities that are similar to adjacent areas that are
32 naturally occurring. In areas where there is no stable ~~and~~ **and** natural vegetation present, this line may
33 be established by interpolation between the nearest adjacent stable natural vegetation by ~~on-ground~~
34 **on-ground** observations or by aerial photographic interpretation.

35 (6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the
36 vegetation line that existed within one year prior to the onset of ~~initial~~ **initial** project construction shall be
37 defined as the ~~static vegetation line~~. **“static vegetation line.”** ~~The “onset of project construction”~~

1 shall be defined as the date sediment placement begins, with the exception of projects completed
2 prior to the effective date of this Rule, in which case the award of the contract date will be considered
3 the onset of construction. A static vegetation line shall be established in coordination with the
4 Division of Coastal Management using on-ground observation and survey or aerial imagery for all
5 areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is
6 established, and after the onset of project construction, this line shall be used as the reference point
7 for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all
8 locations where the vegetation line as defined in this Rule is landward of the static vegetation line,
9 the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static
10 vegetation line shall not be established where a static vegetation line is already in place, including
11 those established by the Division of Coastal Management prior to the effective date of this Rule. A
12 record of all static vegetation lines, including those established by the Division of Coastal
13 Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal
14 Management for determining development standards as set forth in Rule .0306 of this Section.
15 Because the impact of Hurricane Floyd (September 1999) caused significant portions of the
16 vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated
17 landward of its pre-storm position, the static line for areas landward of the beach fill construction in
18 the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000,
19 shall be defined by the general trend of the vegetation line established by the Division of Coastal
20 Management from June 1998 aerial orthophotography.

- 21 (7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment
22 used solely to establish or strengthen dunes shall not be considered a beach fill project under this
23 Rule. A ~~large-scale beach fill project~~ "large-scale beach fill project" shall be defined as any volume
24 of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S.
25 Army Corps of Engineers. ~~The onset of construction shall be defined as the date sediment placement~~
26 ~~begins with the exception of projects completed prior to the effective date of this Rule, in which~~
27 ~~case the award of contract date will be considered the onset of construction.~~
- 28 (8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm
29 tide erosion.
- 30 (9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of
31 this Section is measured in the unvegetated beach area of environmental concern as described in
32 Rule ~~.0304(4)~~ .0304(3) of this Section. Procedures for determining the measurement line in areas
33 designated pursuant to Rule ~~.0304(4)(a)~~ .0304(3) of this Section shall be adopted by the Commission
34 for each area where such a line is designated pursuant to the provisions of G.S. 150B. These
35 procedures shall be available from any local permit officer or the Division of Coastal Management.
36 In areas designated pursuant to Rule ~~.0304(4)(b)~~ .0304(3)(b) of this Section, the Division of Coastal

1 Management shall establish a measurement line that approximates the location at which the
2 vegetation line is expected to reestablish by:

- 3 (A) determining the distance the vegetation line receded at the closest vegetated site to the
4 proposed development site; and
5 (B) locating the line of stable **and** natural vegetation on the most current pre-storm aerial
6 photography of the proposed development site and moving this line landward the distance
7 determined in Subparagraph ~~(g)(1)~~ **(a)(1)** of this Rule.

8 The measurement line established pursuant to this process shall in every case be located landward
9 of the average width of the beach as determined from the most current pre-storm aerial photography.

10 (10) Development Line. The line established in accordance with 15A NCAC 07J .1300 by local
11 governments representing the seaward-most allowable location of oceanfront development. In areas
12 that have [approved] development [lines], lines approved by the CRC, the vegetation line or
13 measurement line shall be used as the reference point for measuring oceanfront setbacks instead of
14 the static vegetation line, subject to the provisions of [Rule .0306(a)(2) of this Section.] 15A NCAC
15 07H .0306(a)(2).

16 (b) For the purpose of public and administrative notice and convenience, each designated minor development permit-
17 letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local
18 implementation and enforcement plan as defined **in** 15A NCAC 07I .0500, **a readily an** identifiable land area within
19 which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule
20 .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

21
22 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
23 *Eff. September 9, 1977;*
24 *Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;*
25 *Temporary Amendment Eff. October 10, 1996;*
26 *Amended Eff. January 1, 1997;*
27 *Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*
28 *Temporary Amendment Eff. October 22, 1997;*
29 *Amended Eff. April 1, 2016; April 1, 2008; August 1, 2002; August 1, 1998.*

1 15A NCAC 07H .0306 IS AMENDED **WITH CHANGES** AS PUBLISHED IN 30:09 NCR 984-988 AS
2 FOLLOWS:

3
4 15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

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

8 (1) The ocean hazard setback for development is measured in a landward direction from the vegetation
9 line, the static vegetation **line line**, or the measurement line, whichever is applicable. ~~The setback~~
10 ~~distance is determined by both the size of development and the shoreline erosion rate as defined in~~
11 ~~15A NCAC 07H .0304. Development size is defined by total floor area for structures and buildings~~
12 ~~or total area of footprint for development other than structures and buildings. Total floor area~~
13 ~~includes the following:~~

14 ~~(A) The total square footage of heated or air conditioned living space;~~

15 ~~(B) The total square footage of parking elevated above ground level; and~~

16 ~~(C) The total square footage of non-heated or non-air conditioned areas elevated above~~
17 ~~ground level, excluding attic space that is not designed to be load bearing.~~

18 ~~Decks, roof covered porches and walkways are not included in the total floor area unless they are~~
19 ~~enclosed with material other than screen mesh or are being converted into an enclosed space with~~
20 ~~material other than screen mesh.~~

21 (2) In areas with a development line, the ocean hazard setback line shall be set at a distance in
22 accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development
23 be sited seaward of the development line.

24 (3) In no case shall a development line be created or established below the mean high water line.

25 (4) The setback distance **is** shall be determined by both the size of development and the shoreline
26 **long-term** erosion rate as defined in Rule .0304 of this Section. ~~Development size~~ **“Development**
27 **size”** is defined by total floor area for structures and buildings or total area of footprint for
28 development other than structures and buildings. Total floor area includes the following:

29 (A) The total square footage of heated or air-conditioned living space;

30 (B) The total square footage of parking elevated above ground level; and

31 (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground
32 level, excluding attic space that is not designed to be load-bearing.

33 Decks, roof-covered ~~porches~~ **porches**, and walkways are not included in the total floor area unless
34 they are enclosed with material other than screen mesh or are being converted into an enclosed space
35 with material other than screen mesh.

36 ~~(2)~~(5) With the exception of those types of development defined in 15A NCAC 07H .0309, no
37 development, including any portion of a building or structure, shall extend oceanward of the ocean

1 hazard setback distance. This includes roof overhangs and elevated structural components that are
2 cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The
3 ocean hazard setback is established based on the following criteria:

- 4 (A) A building or other structure less than 5,000 square feet requires a minimum setback of
5 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- 6 (B) A building or other structure greater than or equal to 5,000 square feet but less than
7 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion
8 rate, whichever is greater;
- 9 (C) A building or other structure greater than or equal to 10,000 square feet but less than
10 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion
11 rate, whichever is greater;
- 12 (D) A building or other structure greater than or equal to 20,000 square feet but less than
13 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion
14 rate, whichever is greater;
- 15 (E) A building or other structure greater than or equal to 40,000 square feet but less than
16 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion
17 rate, whichever is greater;
- 18 (F) A building or other structure greater than or equal to 60,000 square feet but less than
19 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion
20 rate, whichever is greater;
- 21 (G) A building or other structure greater than or equal to 80,000 square feet but less than
22 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline
23 erosion rate, whichever is greater;
- 24 (H) A building or other structure greater than or equal to 100,000 square feet requires a
25 minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- 26 (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as
27 boardwalks and sidewalks, and utilities providing for the transmission of electricity, water,
28 telephone, cable television, data, ~~storm water~~ storm water, and sewer requires a minimum
29 setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- 30 (J) Parking lots greater than or equal to 5,000 square feet ~~requires~~ require a setback of 120 feet
31 or 60 times the shoreline erosion rate, whichever is greater;
- 32 (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other
33 structure greater than or equal to 5,000 square feet in a community with a static line
34 exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120
35 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever
36 is greater. The setback shall be measured landward from either the static vegetation line,
37 the ~~vegetation~~ line ~~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 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)(2)~~ (a)(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part ~~(a)(2)(A)~~ (a)(5)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.

~~(3)~~(6) If a primary dune exists in the AEC on or landward of the lot ~~on which~~ where the development is proposed, the development shall be landward of the crest of the primary ~~dune or dune~~, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation ~~line 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~~ 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 which 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.

~~(4)~~(7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot ~~on~~ which where the development is proposed, the development shall be set landward of the frontal ~~dune~~ or landward of the dune, ocean hazard ~~setback~~ setback, or development line, whichever is farthest from the vegetation line, static vegetation ~~line line~~, or measurement line, whichever is applicable.

~~(5)~~(8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot ~~on which~~ where development is proposed, the structure shall be landward of the ocean hazard ~~setback~~ setback or development line, whichever is more restrictive.

~~(6)~~(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.

~~(7)~~(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.

1 (8)(11) Beach fill as defined in .0305(a)(7) of this Section Section represents a temporary response to
2 coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to
3 erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance
4 of future funding or beach-compatible sediment for continued beach fill projects and project
5 maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation
6 line in an area that has received beach fill may be more vulnerable to natural hazards along the
7 ~~oceanfront.~~ oceanfront if the beach fill project is not maintained. A development setback measured
8 from the vegetation line ~~provides~~ may provide less protection from ocean hazards. Therefore,
9 development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC
10 07H .0305 shall be measured landward from the static vegetation line as defined in this ~~Section.~~
11 ~~Section~~ Section, unless a development line has been approved by the Coastal Resources
12 ~~Commission.~~ Commission in accordance with 15A NCAC 07J .1300. However, in order to allow
13 for development landward of the large scale beach fill project that is less than 2,500 square feet and
14 cannot meet the setback requirements from the static vegetation line, but can or has the potential to
15 meet the setback requirements from the vegetation line set forth in Subparagraphs (1) and (2)(A) of
16 this Paragraph, a local government or community may petition the Coastal Resources Commission
17 for a “static line exception” in accordance with 15A NCAC 07J .1200. The static line exception
18 applies to development of property that lies both within the jurisdictional boundary of the petitioner
19 and the boundaries of the large scale beach fill project. This static line exception shall also allow
20 development greater than 5,000 square feet to use the setback provisions defined in Part (a)(2)(K)
21 of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the
22 boundaries of the large scale beach fill project. The procedures for a static line exception request
23 are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission
24 shall allow development setbacks to be measured from a vegetation line that is oceanward of the
25 static vegetation line under the following conditions:

26 (A) — Development meets all setback requirements from the vegetation line defined in
27 Subparagraphs (a)(1) and (a)(2)(A) of this Rule;

28 (B) — Total floor area of a building is no greater than 2,500 square feet;

29 (C) — Development setbacks are calculated from the shoreline erosion rate in place at the time
30 of permit issuance;

31 (D) — No portion of a building or structure, including roof overhangs and elevated portions that
32 are cantilevered, knee braced or otherwise extended beyond the support of pilings or
33 footings, extends oceanward of the landward most adjacent building or structure. When
34 the configuration of a lot precludes the placement of a building or structure in line with the
35 landward most adjacent building or structure, an average line of construction shall be
36 determined by the Division of Coastal Management on a case by case basis in order to

1 determine an ocean hazard setback that is landward of the vegetation line, a distance no
2 less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;

3 (E) — With the exception of swimming pools, the development defined in 15A NCAC 07H
4 .0309(a) is allowed oceanward of the static vegetation line; and

5 (F) — Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

6 (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the

7 setback requirements from the static vegetation line, but can or has the potential to meet the setback
8 requirements from the vegetation line set forth in Subparagraphs ~~[(4) and (5) of this Paragraph]~~

9 (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional
10 beach fill project, or qualified owner’s association defined in G.S. ~~[47F-1-103 (3)]~~ 47F-1-103(3)

11 that has the authority to approve the locations of structures on lots within the territorial jurisdiction
12 of the association, and has jurisdiction over at least one mile of ocean shoreline, may petition the

13 Coastal Resources Commission for a “static line exception” in accordance with 15A NCAC 07J
14 .1200. The static line exception applies to development of property that lies both within the

15 jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This
16 static line exception shall also allow development greater than 5,000 square feet to use the setback

17 provisions defined in Part ~~[(a)(2)(K)]~~ (a)(5)(K) of this Rule in areas that lie within the jurisdictional
18 boundary of the ~~[petitioner]~~ petitioner, as well as the boundaries of the large-scale beach fill project.

19 The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request
20 is approved, the Coastal Resources Commission shall allow development setbacks to be measured

21 from a vegetation line that is oceanward of the static vegetation line under the following conditions:

22 (A) Development meets all setback requirements from the vegetation line defined in
23 Subparagraphs (a)(1) and (a)(5) of this Rule;

24 (B) Development setbacks are calculated from the shoreline erosion rate in place at the time
25 of permit issuance;

26 (C) No portion of a building or structure, including roof overhangs and elevated portions that
27 are cantilevered, knee ~~[braced]~~ braced, or otherwise extended beyond the support of pilings

28 or footings, extends oceanward of the landward-most adjacent building or structure. When
29 the configuration of a lot precludes the placement of a building or structure in line with the

30 landward-most adjacent building or structure, an average line of construction shall be
31 determined by the Division of Coastal Management on a case-by-case basis in order to

32 determine an ocean hazard setback that is landward of the vegetation line, a distance no
33 less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;

34 (D) With the exception of swimming pools, the development defined in Rule
35 .0309(a) of this Section is allowed oceanward of the static vegetation line; and

36 (E) Development is not eligible for the exception defined in Rule .0309(b) of this Section.

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

6 (c) Development shall not cause irreversible damage to historic architectural or archaeological resources ~~as~~
7 documented by the ~~Division of Archives and History, the National Historical Registry, the local land use plan, or other~~
8 ~~sources with knowledge of the property.~~ local historic commission, the North Carolina Department of Natural and
9 Cultural Resources, or the National Historical Registry.

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

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

13 (f) Development shall comply with ~~the~~ general management objective for ocean hazard areas set forth in 15A NCAC
14 07H .0303.

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

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

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

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

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

32 (k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently
33 threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure
34 shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case
35 upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of
36 the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then

1 it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to
2 seek authorization of temporary protective measures allowed under 15A NCAC 07H .0308(a)(2).

3
4 *History Note:* Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
5 Eff. September 9, 1977;
6 Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;
7 RRC Objection due to ambiguity Eff. January 24, 1992;
8 Amended Eff. March 1, 1992;
9 RRC Objection due to ambiguity Eff. May 21, 1992;
10 Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;
11 RRC Objection due to ambiguity Eff. May 18, 1995;
12 Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;
13 Temporary Amendment Eff. January 3, 2013;
14 Amended Eff. April 1, 2016; September 1, 2013.

1 15A NCAC 07J .1201 is amended **with changes** as published in 30:09 NCR 988-989 as follows:

2
3 **15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION**

4 ~~(a) Any local government [government, group of local governments involved in a regional beach fill project, qualified~~
5 ~~owner's association defined in G.S. 47F-1-103 (3) that has the authority to approve the locations of structures on lots~~
6 ~~within the territorial jurisdiction of the association, and has jurisdiction over at least one mile of ocean shoreline;] or~~
7 ~~permit holder of a large scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation~~
8 ~~line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static~~
9 ~~line in accordance with the provisions of this Section.~~

10 (a) A petitioner subject to a static vegetation line pursuant to 15A NCAC 07H .0305 may petition the Coastal
11 Resources Commission for an exception to the static vegetation line in accordance with the provisions of this Section.

12 A "petitioner" shall be defined as:

13 (1) Any local government;

14 (2) Any group of local governments involved in a regional beach fill project;

15 (3) Any qualified homeowner's association defined in G.S. 47F-1-103(3) that has the authority to
16 approve the locations of structures on lots within the territorial jurisdiction of the association, and
17 has jurisdiction over at least one mile of ocean shoreline; or

18 (4) A permit holder of a large-scale beach fill project.

19 (b) A petitioner ~~is~~ shall be eligible to submit a request for a static vegetation line exception after ~~five years have passed~~
20 ~~since~~ the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305
21 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective
22 date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial
23 photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in
24 lieu of the completion of construction date.

25 (c) A static **vegetation** line exception request applies to the entire static vegetation line within the jurisdiction of the
26 ~~petitioner~~ petitioner, including segments of a static vegetation line that are associated with the same large-scale beach
27 fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different
28 large-scale beach fill projects, then the static **vegetation** line exception in accordance with 15A NCAC 07H .0306 and
29 the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

30 (d) A static **vegetation** line exception request shall be made in writing by the petitioner. A complete static **vegetation**
31 line exception request shall include the following:

32 (1) A summary of all beach fill projects in the area for which the exception is being requested including
33 the initial large-scale beach fill project associated with the static vegetation line, subsequent
34 maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial
35 large-scale projects(s). To the extent historical data allows, the summary shall include construction
36 dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding
37 sources, maps, design schematics, pre-and post-project surveys and a project footprint;

- 1 (2) Plans and related materials including reports, maps, tables and diagrams for the design and
2 construction of the initial large-scale beach fill project that required the static vegetation line,
3 subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life
4 providing no less than ~~25~~ 30 years of shore protection from the date of the static line exception
5 request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of
6 Engineers or persons meeting applicable State occupational licensing requirements for said work;
- 7 (3) Documentation, including maps, geophysical, and geological data, to delineate the planned location
8 and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and
9 maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design
10 life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or
11 persons meeting applicable State occupational licensing requirements for said work; and
- 12 (4) Identification of the financial resources or funding sources necessary to fund the large-scale beach
13 fill project over its design life.

14 (e) A static **vegetation** line exception request shall be submitted to the Director of the Division of Coastal Management,
15 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed static
16 **vegetation** line exception request, including notification of the date of the meeting at which the request will be
17 considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal
18 Management.

19 (f) The Coastal Resources Commission shall consider a static **vegetation** line exception request no later than the
20 second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management,
21 except when the petitioner and the Division of Coastal Management agree upon a later date.

22
23 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
24 *Eff. March 23, 2009;*
25 *Amended Eff. April 1, 2016.*

1 15A NCAC 07J .1301 is adopted with changes as published in 30:09 NCR 989 as follows:

2
3 **SECTION .1300 – DEVELOPMENT LINE PROCEDURES**
4

5 **15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE**

6 (a) Any local government, group of local governments involved in a regional beach fill ~~project~~ project, or qualified
7 owner’s association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to
8 15A NCAC 07H .0305, may petition the Coastal Resources Commission for a development line for the purposes of
9 siting oceanfront development in accordance with the provisions of this Section. A ~~qualified owner’s association~~
10 “qualified owner’s association” is an owner’s association defined in G.S. ~~47F-1-103 (3)~~ 47F-1-103(3) that has
11 authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has
12 jurisdiction over at least one mile of ocean shoreline.

13 (b) A development line request applies to the entire ~~large-scale~~ large-scale project area as defined in 15A NCAC_07H
14 .0305(a)(7), and at the petitioner’s request may be extended to include the entire oceanfront jurisdiction or legal
15 boundary of the petitioner.

16 (c) The petitioner shall utilize an adjacent neighbor sight-line approach, resulting in an average line of structures. In
17 areas where the seaward edge of existing development is not linear, the petitioner may determine an average line of
18 construction on a case-by-case basis. In no case shall a development line be established seaward of the most seaward
19 structure within the petitioner’s oceanfront jurisdiction.

20 (d) An existing structure that is oceanward of an approved development line ~~can~~ may remain in place until damaged
21 greater than 50 percent in accordance with Rule .0210 of this ~~Subchapter; and can~~ Subchapter. At that time it may
22 only be replaced landward of the development line, and ~~must~~ shall meet the applicable ocean hazard setback
23 requirements as defined in 15A NCAC 07H .0306(a).

24 (e) A request for a development line or amendment shall be made in writing by the petitioner and submitted to the
25 CRC by sending the written request to the Director of the Division of Coastal Management. A complete request shall
26 include the following:

- 27 (1) A detailed survey of the development line using on-ground observation and survey, or aerial imagery
28 along the oceanfront jurisdiction or legal boundary; any local regulations associated with the
29 development line; a record of local adoption of the development line by the petitioner; and
30 documentation of incorporation of development line into local ordinances or rules and regulations
31 of an owner’s association.
- 32 (2) The survey shall include the development line and static vegetation line.
- 33 (3) Surveyed development line spatial data in a geographic information systems (GIS) format
34 referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include
35 Federal Geographic Data Committee (FGDC) compliant metadata.

36 (f) Once a development line is approved by the Coastal Resources Commission, only the petitioner may request a
37 change or reestablishment of the position of the development line.

1 (g) A development line request shall be submitted to the Director of the Division of Coastal Management, 400
2 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed development
3 line request, including notification of the date of the meeting at which the request will be considered by the Coastal
4 Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

5 (h) The Coastal Resources Commission shall consider a development line request no later than the second scheduled
6 meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the
7 petitioner and the Division of Coastal Management agree upon a later date.

8

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

10 *Eff. April 1, 2016.*

1 15A NCAC 07J .1302 is adopted with changes as published in 30:09 NCR 989-990 as follows:

2

3 **15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE**

4 (a) At the meeting that the development line request is considered by the Coastal Resources Commission, the
5 following shall occur:

6 (1) A representative for the petitioner shall orally present the request described in Rule .1301 of this
7 Section. The Chairman of the Coastal Resources Commission may limit the time allowed for oral
8 ~~presentations.~~ presentations based upon the number of speakers wishing to present.

9 (2) Additional persons may provide written or oral comments relevant to the development line request.
10 The Chairman of the Coastal Resources Commission may limit the time allowed for oral ~~comments.~~
11 comments based upon the number of speakers wishing to speak.

12 (b) The Coastal Resources Commission shall approve a development line request if the request contains the
13 information required and meets the standards set forth in ~~Rule .1301 of this Section.~~ The final decision of the Coastal
14 Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next
15 scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days
16 following the meeting at which the decision is reached. 15A NCAC 07J .1301.

17 (c) The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard
18 or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by
19 registered mail within 10 business days following the meeting at which the decision is reached.

20 ~~(d)~~ The decision to authorize or deny a development line is a final agency decision and is subject to judicial review
21 in accordance with G.S. 113A-123.

22

23 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-123; 113A-124*
24 *Eff. April 1, 2016.*

1 15A NCAC 07J .1303 is adopted with changes as published in 30:09 NCR 990 as follows:

2

3 **15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT**
4 **LINES**

5 A list of development lines in place for petitioners and any conditions under which the development lines ~~exist~~, exist
6 in accordance with 15A NCAC 07J .1300, including the date(s) the development lines were approved, shall be
7 maintained by the Division of Coastal Management. The list of development lines shall be available for inspection at
8 the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC ~~28557~~, 28557, during business
9 hours or on the Division's website nccoastalmanagement.net.

10

11 *History Note:* Authority G.S. 113A-107; 113A-113(b)(6), 113A-124
12 *Eff. April 1, 2016.*