

1 15A NCAC 07H .0306 IS AMENDED **WITH CHANGES** AS PUBLISHED IN 31:04 NCR 290-294 AS
2 FOLLOWS:

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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 shall be located according to whichever of the following is
7 applicable:

8 (1) The ocean hazard setback for development is measured in a landward direction from the vegetation
9 line, the static vegetation line, or the measurement line, whichever is applicable.

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

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

14 (4) The setback distance shall be determined by both the size of development and the shoreline long
15 term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total
16 floor area for structures and buildings or total area of footprint for development other than structures
17 and buildings. Total floor area includes the following:

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

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

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

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

25 (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no
26 development, including any portion of a building or structure, shall extend oceanward of the ocean
27 hazard setback distance. This includes roof overhangs and elevated structural components that are
28 cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The
29 ocean hazard setback is established based on the following criteria:

30 (A) A building or other structure less than 5,000 square feet requires a minimum setback of
31 60 feet or 30 times the shoreline erosion rate, whichever is greater;

32 (B) A building or other structure greater than or equal to 5,000 square feet but less than
33 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion
34 rate, whichever is greater;

35 (C) A building or other structure greater than or equal to 10,000 square feet but less than
36 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion
37 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~~ 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~~ may 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~~ "owners' 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~~ shall be calculated from the shoreline erosion rate in place at the time of permit issuance;
- (C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent 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~~ shall be allowed oceanward of the static vegetation line; and
- (E) Development ~~is not~~ shall not be 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

1 unless the development of the property is otherwise impracticable. Any disturbance of these other dunes ~~is~~ shall be
2 allowed only to the extent permitted by 15A NCAC 07H .0308(b).

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

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

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

9 (f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC
10 07H .0303.

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

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

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

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

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

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

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

1 *Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;*
2 *RRC Objection due to ambiguity Eff. January 24, 1992;*
3 *Amended Eff. March 1, 1992;*
4 *RRC Objection due to ambiguity Eff. May 21, 1992;*
5 *Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;*
6 *RRC Objection due to ambiguity Eff. May 18, 1995;*
7 *Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;*
8 *Temporary Amendment Eff. January 3, 2013;*
9 *Amended Eff. February 1, 2017; April 1, 2016; September 1, 2013.*