

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0306

DEADLINE FOR RECEIPT: Thursday, January 12, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 21, replace "are not" with "shall not be"

Page 3, line 7, add a comma after "setback"

Page 3, line 27, replace "can" with "may"

Page 3, line 28, replace "is" with "shall be"

Page 3, line 37, replace "cannot" with "may not"

Page 4, line 1, replace "can" with "may"

Page 4, line 4, replace "owner's" with "owners'" to properly track the statutory term

Page 4, line 4, place the term "owners' association" in quotation marks to clarify the term being defined

Page 4, line 18, replace "are" with "shall be"

Page 4, lines 29 and 34, replace "is" with "shall be"

Page 4, line 30, replace "is not" with "shall not be"

Page 4, line 33, define "adversely" If the term is defined by statute or another rule, please consider adding a cross-reference to the standard of when something may "adversely affect" to clarify

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, December 29, 2016

Page 5, lines 26, 28, and 30, define “imminently” If the term is defined by statute or another rule, please consider adding a cross-reference to the standard of when something may “imminently threatened” to clarify

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, December 29, 2016

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

2
3 **15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS**

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

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

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

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

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

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

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

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

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

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

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

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

34 (C) A building or other structure greater than or equal to 10,000 square feet but less than
35 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion
36 rate, whichever is greater;

37 (D) A building or other structure greater than or equal to 20,000 square feet but less than

- 1 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion
2 rate, whichever is greater;
- 3 (E) A building or other structure greater than or equal to 40,000 square feet but less than
4 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion
5 rate, whichever is greater;
- 6 (F) A building or other structure greater than or equal to 60,000 square feet but less than
7 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion
8 rate, whichever is greater;
- 9 (G) A building or other structure greater than or equal to 80,000 square feet but less than
10 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline
11 erosion rate, whichever is greater;
- 12 (H) A building or other structure greater than or equal to 100,000 square feet requires a
13 minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- 14 (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as
15 boardwalks and sidewalks, and utilities providing for the transmission of electricity, water,
16 telephone, cable television, data, storm water, and sewer requires a minimum setback of
17 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- 18 (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet
19 or 60 times the shoreline erosion rate, whichever is greater;
- 20 (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other
21 structure greater than or equal to 5,000 square feet in a community with a static line
22 exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120
23 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever
24 is greater. The setback shall be measured landward from either the static vegetation line,
25 the vegetation line, or measurement line, whichever is farthest landward; and
- 26 (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of
27 single-family or duplex residential structures with a total floor area greater than 5,000
28 square feet ~~feet, and commercial and multi-family residential structures with a total floor~~
29 area no greater than 10,000 square feet, shall be allowed provided that the structure meets
30 the following criteria:
- 31 (i) the structure was originally constructed prior to August 11, 2009;
- 32 (ii) the structure as replaced does not exceed the original footprint or square footage;
- 33 (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean
34 hazard setback criteria required under Subparagraph (a)(5) of this Rule;
- 35 (iv) the structure as replaced meets the minimum setback required under Part
36 (a)(5)(A) of this Rule; and
- 37 (v) the structure is rebuilt as far landward on the lot as feasible.

- 1 (6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed
2 the development shall be landward of the crest of the primary dune, the ocean hazard setback, or
3 development line, whichever is farthest from vegetation line, static vegetation line, or measurement
4 line, whichever is applicable. For existing lots, however, where setting the development landward
5 of the crest of the primary dune would preclude any practical use of the lot, development may be
6 located oceanward of the primary dune. In such cases, the development may be located landward
7 of the ocean hazard setback but shall not be located on or oceanward of a frontal dune or the
8 development line. The words "existing lots" in this Rule shall mean a lot or tract of land which, as
9 of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining
10 the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- 11 (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where
12 the development is proposed, the development shall be set landward of the frontal dune, ocean
13 hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation
14 line, or measurement line, whichever is applicable.
- 15 (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development
16 is proposed, the structure shall be landward of the ocean hazard setback or development line,
17 whichever is more restrictive.
- 18 (9) Structural additions or increases in the footprint or total floor area of a building or structure represent
19 expansions to the total floor area and shall meet the setback requirements established in this Rule
20 and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be
21 cosmetically, but shall not be structurally, attached to an existing structure that does not conform
22 with current setback requirements.
- 23 (10) Established common law and statutory public rights of access to and use of public trust lands and
24 waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach
25 upon public accessways, nor shall it limit the intended use of the accessways.
- 26 (11) Beach fill as defined in Rule .0305(a)(7) of this Section, represents a temporary response to coastal
27 erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at
28 least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future
29 funding or beach-compatible sediment for continued beach fill projects and project maintenance. A
30 vegetation line that becomes established oceanward of the pre-project vegetation line in an area that
31 has received beach fill may be more vulnerable to natural hazards along the oceanfront if the beach
32 fill project is not maintained. A development setback measured from the vegetation line may provide
33 less protection from ocean hazards. Therefore, development setbacks in areas that have received
34 large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the
35 static vegetation line as defined in this Section, unless a development line has been approved by the
36 Coastal Resources Commission in accordance with 15A NCAC 07J .1300.
- 37 (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the

1 setback requirements from the static vegetation line, but can or has the potential to meet the setback
2 requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a
3 local government, group of local governments involved in a regional beach fill project, or qualified
4 owner's association defined in G.S. 47F-1-103(3) that has the authority to approve the locations of
5 structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at
6 least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line
7 exception" in accordance with 15A NCAC 07J .1200. The static line exception applies to
8 development of property that lies both within the jurisdictional boundary of the petitioner and the
9 boundaries of the large-scale beach fill project. This static line exception shall also allow
10 development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K)
11 of this Rule in areas that lie within the jurisdictional boundary of the petitioner, as well as the
12 boundaries of the large-scale beach fill project. The procedures for a static line exception request
13 are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission
14 shall allow development setbacks to be measured from a vegetation line that is oceanward of the
15 static vegetation line under the following conditions:

- 16 (A) Development meets all setback requirements from the vegetation line defined in
17 Subparagraphs (a)(1) and (a)(5) of this Rule;
- 18 (B) Development setbacks are calculated from the shoreline erosion rate in place at the time
19 of permit issuance;
- 20 (C) No portion of a building or structure, including roof overhangs and elevated portions that
21 are cantilevered, knee braced, or otherwise extended beyond the support of pilings or
22 footings, extends oceanward of the landward-most adjacent building or structure. When
23 the configuration of a lot precludes the placement of a building or structure in line with the
24 landward-most adjacent building or structure, an average line of construction shall be
25 determined by the Division of Coastal Management on a case-by-case basis in order to
26 determine an ocean hazard setback that is landward of the vegetation line, a distance no
27 less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
- 28 (D) With the exception of swimming pools, the development defined in Rule
29 .0309(a) of this Section is allowed oceanward of the static vegetation line; and
- 30 (E) Development is not eligible for the exception defined in Rule .0309(b) of this Section.

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

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

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

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

7 (f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC
8 07H .0303.

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

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

13 (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;

14 (2) restore the affected environment; or

15 (3) compensate for the adverse impacts by replacing or providing substitute resources.

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

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

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

33
34 *History Note:* Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;

35 *Eff. September 9, 1977;*

36 *Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;*

37 *RRC Objection due to ambiguity Eff. January 24, 1992;*

1
2
3
4
5
6
7
8

Amended Eff. March 1, 1992;
RRC Objection due to ambiguity Eff. May 21, 1992;
Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;
RRC Objection due to ambiguity Eff. May 18, 1995;
Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;
Temporary Amendment Eff. January 3, 2013;
Amended Eff. February 1, 2017; April 1, 2016; September 1, 2013.