

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0306

DEADLINE FOR RECEIPT: Tuesday, August 8, 2017

PLEASE NOTE: This request 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 7 – replace “is” with “shall be”

Line 9 – delete “line” and “at a distance”

Line 13 – delete the comma after “lands”

Line 15 – replace “setback distance” with “ocean hazard setback”

Line 28 – delete “distance”

Line 30 – replace “is” with “shall be”

Page 2, line 18 – add a comma after “nature”

Page 3, line 6 – add a comma after “proposed”

Page 3, line 13 – replace “which” with “that”

Page 3, line 15 – delete “(s)” twice

Page 3, line 31 through page 4, line 1 – delete all text through “from ocean hazards”

Page 4, line 1 – replace “Therefore, development” with “Development”

Page 4, line 9 – add “as” before “defined”

Page 4, line 10 – delete the comma after “association”

Page 4, line 12 – replace “applies” with “shall apply”

Jason Thomas
Commission Counsel
Date submitted to agency: Tuesday, July 25, 2017

Page 4, line 16 – replace “petitioner as well as” with “petitioner, and”

Page 4, lines 17-18 – delete “The procedures for a static line exception request are defined in 15A NCAC 07J .1200.”

Page 5, line 1 – delete “In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes,”

Page 5, line 1 – capitalize “No”

Page 5, line 6 – what does “irreversible damage” mean – is it defined or a term of art?

Page 5, lines 24-25 – why is this legal conclusion in the Rule? If it is necessary, replace “By granting permits,” with “The acknowledgment shall state that”

Page 5, line 26 – replace “requires” with “shall require”

Page 5, line 27 – replace “as well as” with “and”

Page 5, line 27 – add a comma after “Structures”

Page 5, line 28 – add a comma after “accessories”

Page 5, line 29 – replace “may” with “shall” if that is what is meant

Page 5, line 37 – replace “under” with “pursuant to”

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

Jason Thomas
Commission Counsel
Date submitted to agency: Tuesday, July 25, 2017

1 **15A NCAC 07H .0306 IS AMENDED AS PUBLISHED IN 31:18 NCR 1818-1822 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.~~ on
13 state owned lands, or oceanward of the mean high water line or perpetual property easement line,
14 whichever is more restrictive.

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

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

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

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

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

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

31 (A) A building or other structure less than 5,000 square feet requires a minimum setback of
32 60 feet or 30 times the shoreline erosion rate, whichever is greater;

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

- 1 (C) A building or other structure greater than or equal to 10,000 square feet but less than
2 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion
3 rate, whichever is greater;
- 4 (D) A building or other structure greater than or equal to 20,000 square feet but less than
5 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion
6 rate, whichever is greater;
- 7 (E) A building or other structure greater than or equal to 40,000 square feet but less than
8 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion
9 rate, whichever is greater;
- 10 (F) A building or other structure greater than or equal to 60,000 square feet but less than
11 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion
12 rate, whichever is greater;
- 13 (G) A building or other structure greater than or equal to 80,000 square feet but less than
14 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline
15 erosion rate, whichever is greater;
- 16 (H) A building or other structure greater than or equal to 100,000 square feet requires a
17 minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- 18 (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as
19 boardwalks and sidewalks, and utilities providing for the transmission of electricity, water,
20 telephone, cable television, data, storm water, and sewer requires a minimum setback of
21 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- 22 (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet
23 or 60 times the shoreline erosion rate, whichever is greater;
- 24 (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other
25 structure greater than or equal to 5,000 square feet in a community with a static line
26 exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120
27 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever
28 is greater. The setback shall be measured landward from either the static vegetation line,
29 the vegetation line, or measurement line, whichever is farthest landward; and
- 30 (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of
31 single-family or duplex residential structures with a total floor area greater than 5,000
32 square feet, and commercial and multi-family residential structures with a total floor
33 area no greater than 10,000 square feet, shall be allowed provided that the structure meets
34 the following criteria:
 - 35 (i) the structure was originally constructed prior to August 11, 2009;
 - 36 (ii) the structure as replaced does not exceed the original footprint or square footage;

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

1 less protection from ocean hazards. Therefore, development setbacks in areas that have received
2 large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the
3 static vegetation line as defined in this Section, unless a development line has been approved by the
4 Coastal Resources Commission in accordance with 15A NCAC 07J .1300.

5 (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the
6 setback requirements from the static vegetation line, but can or has the potential to meet the setback
7 requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a
8 local government, group of local governments involved in a regional beach fill project, or qualified
9 “owners’ association” defined in G.S. 47F-1-103(3) that has the authority to approve the locations
10 of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at
11 least one mile of ocean shoreline, may petition the Coastal Resources Commission for a “static line
12 exception” in accordance with 15A NCAC 07J .1200. The static line exception applies to
13 development of property that lies both within the jurisdictional boundary of the petitioner and the
14 boundaries of the large-scale beach fill project. This static line exception shall also allow
15 development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K)
16 of this Rule in areas that lie within the jurisdictional boundary of the petitioner, as well as the
17 boundaries of the large-scale beach fill project. The procedures for a static line exception request
18 are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission
19 shall allow development setbacks to be measured from a vegetation line that is oceanward of the
20 static vegetation line under the following conditions:

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

- 1 (b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development
2 shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that
3 would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed
4 unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be
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 local historic commission, the North Carolina Department of Natural and Cultural Resources, or
8 the National Historical Registry.
- 9 (d) Development shall comply with minimum lot size and set back requirements established by local regulations.
- 10 (e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks
11 existing as of June 1, 1979.
- 12 (f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC
13 07H .0303.
- 14 (g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development
15 increase the risk of damage to public trust areas.
- 16 (h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These
17 measures shall be implemented at the applicant's expense and may include actions that:
- 18 (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
 - 19 (2) restore the affected environment; or
 - 20 (3) compensate for the adverse impacts by replacing or providing substitute resources.
- 21 (i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written
22 acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks
23 associated with development in this hazardous area and the limited suitability of this area for permanent structures.
24 By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes
25 no liability for future damage to the development.
- 26 (j) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the
27 applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential
28 accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the
29 present location. Septic tanks may not be located oceanward of the primary structure. All relocation of structures shall
30 meet all other applicable local and state rules.
- 31 (k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently
32 threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure
33 shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case
34 upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of
35 the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then
36 it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to
37 seek authorization of temporary protective measures allowed under 15A NCAC 07H .0308(a)(2).

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History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;
RRC Objection due to ambiguity Eff. January 24, 1992;
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. September 1, 2017; February 1, 2017; April 1, 2016; September 1, 2013.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1301

DEADLINE FOR RECEIPT: Tuesday, August 8, 2017

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

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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 6 – delete the comma and replace “purposes” with “purpose”

Line 8 – replace “association defined” with “association, as defined”

Line 8 – add a comma after “47F-1-103(3)”

Line 10 – replace “applies” with “shall apply”

Line 10 – delete the comma

Line 11 – place commas around the phrase “at the petitioner’s request”

Line 11 – do you mean “may” or “shall”? If “may,” what standards, factors, or circumstances will guide whether to allow the extension?

Line 13 – replace “The” with “In determining where to position a requested development line, the”

Line 13 – replace “utilize” with “use”

Line 19 – delete the comma

Line 24 – delete the comma

Lines 30-31 – what sorts of information might the CRC “deem necessary” – can you at least give examples?

Lines 24-34 – consider revising something like this, if your meaning is preserved:

Jason Thomas
Commission Counsel
Date submitted to agency: Tuesday, July 25, 2017

- (1) A detailed survey of the development line using on-ground observation and survey or aerial imagery along the oceanfront jurisdiction or legal boundary, including;
 - (A) The development line, static vegetation line, mean high water line, and any other information the Coastal Resources Commission deems necessary for a review of the petitioner's proposed development line; and
 - (3) Surveyed development line spatial data in a geographic information systems (GIS) format referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include Federal Geographic Data Committee (FGDC) compliant metadata;
- (2) All local regulations associated with the development line;
- (3) A record of local adoption of the development line by the petitioner; and
- (4) Documentation of incorporation of development line into local ordinances or rules and regulations of an owner's association.

Page 2, line 6 – replace “except where” with “unless”

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

Jason Thomas
Commission Counsel
Date submitted to agency: Tuesday, July 25, 2017

1 **15A NCAC 07J .1301 IS AMENDED AS PUBLISHED IN 31:18 NCR 1822-1823 AS FOLLOWS:**

2
3 **15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE**

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

10 (b) A development line request applies to the entire large-scale project area as defined in 15A NCAC 07H .0305(a)(7),
11 and at the petitioner’s request may be extended to include the entire oceanfront jurisdiction or legal boundary of the
12 petitioner.

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

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

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

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

35 (f) Once a development line is approved by the Coastal Resources Commission, only the petitioner may request a
36 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.

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

10 *Eff. April 1, 2016;*

11 *Amended Eff. September 1, 2017.*