

1 15A NCAC 07H .0306 IS AMENDED **WITH CHANGES** AS PUBLISHED IN 31:18 NCR 1818-1822 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 shall be located according to whichever of the following is
7 applicable:

8 (1) The ocean hazard setback for development ~~is~~ **shall be** measured in a landward direction from the
9 vegetation 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. on~~
14 ~~state owned [lands,] lands~~ or oceanward of the mean high water line or perpetual property easement
15 ~~line, whichever is more restrictive.~~

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

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

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

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

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

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

32 (A) A building or other structure less than 5,000 square feet requires a minimum setback of
33 60 feet or 30 times the shoreline erosion rate, whichever is greater;

34 (B) A building or other structure greater than or equal to 5,000 square feet but less than
35 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion
36 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 nature**, such as roads, bridges, pedestrian access such
19 as 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 **proposed**, the development shall be landward of the crest of the primary dune, the ocean hazard
8 setback, or development line, whichever is farthest from vegetation line, static vegetation line, or
9 measurement line, whichever is applicable. For existing lots, however, where setting the
10 development landward of the crest of the primary dune would preclude any practical use of the lot,
11 development may be located oceanward of the primary dune. In such cases, the development may
12 be located landward of the ocean hazard setback, but shall not be located on or oceanward of a
13 frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract
14 of land **which, that**, as of June 1, 1979, is specifically described in a recorded plat and cannot be
15 enlarged by combining the lot or tract of land with a contiguous **lot(s) lot** or **tract(s) tract** of land
16 under the same ownership.
- 17 (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where
18 the development is proposed, the development shall be set landward of the frontal dune, ocean
19 hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation
20 line, or measurement line, whichever is applicable.
- 21 (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development
22 is proposed, the structure shall be landward of the ocean hazard setback or development line,
23 whichever is more restrictive.
- 24 (9) Structural additions or increases in the footprint or total floor area of a building or structure represent
25 expansions to the total floor area and shall meet the setback requirements established in this Rule
26 and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be
27 cosmetically, but shall not be structurally, attached to an existing structure that does not conform
28 with current setback requirements.
- 29 (10) Established common law and statutory public rights of access to and use of public trust lands and
30 waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach
31 upon public accessways, nor shall it limit the intended use of the accessways.
- 32 (11) ~~Beach fill as defined in Rule .0305(a)(7) of this Section, represents a temporary response to coastal~~
33 ~~erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 may be expected to erode at~~
34 ~~least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future~~
35 ~~funding or beach compatible sediment for continued beach fill projects and project maintenance. A~~
36 ~~vegetation line that becomes established oceanward of the pre-project vegetation line in an area that~~
37 ~~has received beach fill may be more vulnerable to natural hazards along the oceanfront if the beach~~

1 ~~fill project is not maintained. A development setback measured from the vegetation line may provide~~
2 ~~less protection from ocean hazards. Therefore, development~~ **Development** setbacks in areas that
3 have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward
4 from the static vegetation line as defined in this Section, unless a development line has been
5 approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.

- 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 (a)(1) and (a)(5) of this Rule, a
9 local government, group of local governments involved in a regional beach fill project, or qualified
10 “owners’ association” **as** defined in G.S. 47F-1-103(3) that has the authority to approve the locations
11 of structures on lots within the territorial jurisdiction of the **association,** **association** and has
12 jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources
13 Commission for a “static line exception” in accordance with 15A NCAC 07J .1200. The static line
14 exception **applies shall apply** to development of property that lies both within the jurisdictional
15 boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line
16 exception shall also allow development greater than 5,000 square feet to use the setback provisions
17 defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the
18 **petitioner, as well as petitioner, and** the boundaries of the large-scale beach fill project. **The**
19 **procedures for a static line exception request are defined in 15A NCAC 07J .1200.** If the request is
20 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 shall be calculated from the shoreline erosion rate in place at the
25 time of permit issuance;
 - 26 (C) No portion of a building or structure, including roof overhangs and elevated portions that
27 are cantilevered, knee braced, or otherwise extended beyond the support of pilings or
28 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 .0309(a) of this
35 Section shall be allowed oceanward of the static vegetation line; and
 - 36 (E) Development shall not be eligible for the exception defined in Rule .0309(b) of this
37 Section.

1 (b) ~~In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no~~ No
2 development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation
3 thereon 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
5 shall be 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 acknowledgement shall state that~~ the Coastal Resources Commission does not guarantee the
25 safety of the development and assumes no liability for future damage to the development.

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

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

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4 **15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE**

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

12 (b) A development line request ~~applies~~ shall apply to the entire large-scale project area as defined in ~~15A NCAC 07H~~
13 ~~.0305(a)(7), and~~ 15A NCAC 07H .0305(a)(7) and, at the petitioner's ~~request~~ request, may be extended to include the
14 entire oceanfront jurisdiction or legal boundary of the petitioner.

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

20 (d) An existing structure that is oceanward of an approved development line may remain in place until damaged
21 greater than 50 percent in accordance with Rule .0210 of this Subchapter. At that time it may only be replaced landward
22 of the development ~~line,~~ line and shall meet the applicable ocean hazard setback requirements as defined in 15A
23 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,~~ survey or aerial
28 imagery along the oceanfront jurisdiction or legal ~~boundary;~~ boundary; ~~any local regulations associated with~~
29 ~~the 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;~~ boundary, including;

- 32 (A) The development line, static vegetation line, mean high water line, and any other
33 information [the Coastal Resources Commission deems] necessary for a review of the
34 petitioner's proposed development line, such as a pre-nourishment project mean high water
35 line, local ordinances, or easements; and

1 (B) Surveyed development line spatial data in a geographic information systems (GIS) format
2 referencing North Carolina State Plane North American Datum 83 US Survey Foot, to
3 include Federal Geographic Data Committee (FGDC) compliant metadata;

4 ~~(2) The survey shall include the development line and static vegetation line. [line, static vegetation line,
5 mean high water line, and any other information the Coastal Resources Commission deems
6 necessary for a review of the petitioner's proposed development line.]~~

7 ~~(3) Surveyed development line spatial data in a geographic information systems (GIS) format
8 referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include
9 Federal Geographic Data Committee (FGDC) compliant metadata.~~

10 (2) All local regulations associated with the development line;

11 (3) A record of local adoption of the development line by the petitioner; and

12 (4) Documentation of incorporation of a development line into local ordinances or rules and regulations
13 of an owner's association.

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

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

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

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24 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
25 *Eff. April 1, 2016;*
26 *Amended Eff. September 1, 2017.*