

1 15A NCAC 07H .0306 is proposed for amendment 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~~ Ocean Hazard Area setback for development shall be measured in a landward
8 direction from the vegetation line, the ~~static~~ pre-project vegetation line, or the measurement line,
9 whichever is applicable.

10 ~~(2) In areas with a development line, the ocean hazard setback shall be set in accordance with~~
11 ~~Subparagraphs (a)(3) through (9) of this Rule. With the exception of those types of development~~
12 ~~defined in 15A NCAC 07J .1301(d), in no case shall new development be sited seaward of the~~
13 ~~development line. In areas with a Static Line Exception approved in accordance with 15A NCAC~~
14 ~~07J .1200 and a Development Line approved in accordance with 15A NCAC 07J .1300, the~~
15 ~~petitioner shall notify the Division of Coastal Management which one of the two approaches will~~
16 ~~be utilized and applied to the entire large-scale project area as defined in 15A NCAC 07H~~
17 ~~.0305(a)(7).~~

18 ~~(3) In no case shall a development line be created or established on State-owned lands or oceanward of~~
19 ~~the mean high water line or perpetual property easement line, whichever is more restrictive.~~

20 (4)(2) The ocean hazard setback shall be determined by both the size of development and the shoreline
21 long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by
22 total floor area for structures and buildings or total area of footprint for development other than
23 structures and buildings. Total floor area includes the following:

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

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

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

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

31 ~~(5)(3)~~ (3) With the exception of those types of development defined in ~~15A NCAC 07H .0309~~, 15A NCAC
32 07H .0309(a), no development, including any portion of a building or structure, shall extend
33 oceanward of the ~~ocean hazard~~ Ocean Hazard Area setback. This includes roof overhangs and
34 elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the
35 support of pilings or footings. The ocean hazard setback shall be established based on the following
36 criteria:

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

1 square feet, and commercial and multi-family residential structures a structure with a total
2 floor area no greater than 10,000 square feet, feet shall be allowed provided that the
3 structure meets the following criteria:

- 4 (i) the structure is in a community with an unexpired static line exception, Beach
5 Management Plan approved by the Commission, or was originally constructed
6 prior to August 11, 2009;
- 7 (ii) the structure as replaced does not exceed the original footprint or square footage;
- 8 (iii) it is not possible for the structure to be rebuilt in a location that meets the ~~ocean~~
9 hazard Ocean Hazard Area setback criteria required under Subparagraph (a)(5) of
10 this Rule;
- 11 (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A)
12 of this Rule; a minimum setback of 60 feet or 30 times the shoreline erosion rate,
13 whichever is greater; and
- 14 (v) the structure is rebuilt as far landward on the lot as feasible.

15 ~~(6)(4)~~ If a primary dune exists in the AEC AEC, on or landward of the lot where the development is
16 proposed, the development shall be landward of the applicable ocean hazard setback and the crest
17 of the primary dune, the ocean hazard setback, or development line, whichever is farthest from
18 vegetation line, static vegetation line, or measurement line, whichever is applicable. Dune. For
19 existing lots, ~~however,~~ lots where setting the development landward of the crest of the primary dune
20 would preclude any practical use of the lot, development may be located oceanward of the primary
21 dune. In such cases, the development may be located landward of the ocean hazard setback, ~~but~~ and
22 shall not be located on or oceanward of a frontal ~~dune or the development line. The words dune.~~
23 For the purposes of this Rule, "existing lots" in this Rule shall mean a lot or tract of land that, as of
24 June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the
25 lot or tract of land with a contiguous lot or tract of land under the same ownership.

26 ~~(7)(5)~~ If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where
27 the development is proposed, the development shall be set landward of the frontal ~~dune, ocean~~
28 hazard dune or Ocean Hazard Area setback, ~~or development line,~~ whichever is farthest from the
29 vegetation line, ~~static~~ pre-project vegetation line, or measurement line, whichever is applicable.

30 ~~(8)~~ If ~~neither a primary nor frontal dune exists in the AEC on or landward of the lot where development~~
31 ~~is proposed, the structure shall be landward of the Ocean Hazard Area setback or development line,~~
32 ~~whichever is more restrictive.~~

33 ~~(9)(6)~~ Structural additions or increases in the footprint or total floor area of a building or structure represent
34 expansions to the total floor area and shall meet the setback requirements established in this Rule
35 and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be
36 ~~cosmetically, but shall not be structurally,~~ cosmetically but not be structurally attached to an
37 existing structure that does not conform with current setback requirements.

1 ~~(10)~~(7) Established common law and statutory public rights of access to and use of public trust lands and
2 waters in ~~ocean hazard areas~~ Ocean Hazard Area shall not be eliminated or ~~restricted~~. restricted, nor
3 shall such development increase the risk of damage to public trust areas. Development shall not
4 encroach upon public accessways, nor shall it limit the intended use of the accessways.

5 ~~(11)~~(8) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC
6 07H .0305 shall be measured landward from the ~~static~~ pre-project vegetation line as defined in this
7 Section, unless ~~a development line~~ an unexpired static line exception or Beach Management Plan
8 approved by the Commission has been approved for the local jurisdiction by the Coastal Resources
9 Commission in accordance with ~~15A NCAC 07J .1300.~~ 15A NCAC 07J .1200.

10 ~~(12)~~(9) In order to allow for development landward of the large-scale beach fill project that cannot meet the
11 setback requirements from the static vegetation line, but can or has the potential to meet the setback
12 requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, ~~a~~ A
13 local government, group of local governments involved in a regional beach fill project, or qualified
14 "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations
15 of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at
16 least one mile of ocean shoreline, may petition the Coastal Resources Commission for a ~~"static line~~
17 ~~exception"~~ in accordance with 15A NCAC 07J .1200. ~~The static line exception shall apply to~~
18 ~~development of property that lies both within the jurisdictional boundary of the petitioner and the~~
19 ~~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)(5)(K)~~
21 ~~of this Rule in areas that lie within the jurisdictional boundary of the petitioner, and the boundaries~~
22 ~~of the large-scale beach fill project.~~ approval of a Beach Management Plan in accordance with 15A
23 NCAC 07J .1200. If the request for a Beach Management Plan is approved, the Coastal Resources
24 Commission shall allow development setbacks to be measured from a vegetation line that is
25 oceanward of the ~~static~~ pre-project 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)(5)~~ (a)(3) of this Rule;
- 28 (B) Development setbacks shall be calculated from the shoreline erosion rate in place at the
29 time of permit issuance;
- 30 (C) No portion of a building or structure, including roof overhangs and elevated portions that
31 are cantilevered, knee braced, or otherwise extended beyond the support of pilings or
32 footings, extends oceanward of the landward-most adjacent habitable building or structure.
33 The alignment shall be measured from the most oceanward point of the adjacent building
34 or structure's roof line, including roofed decks, if applicable. An "adjacent" property is one
35 that shares a boundary line with the site of the proposed development. When no adjacent
36 buildings or structures exist, or the configuration of a lot lot, street, or precludes the
37 placement of a building or structure in line with the landward-most adjacent building or

1 structure, an average line of construction shall be determined by the Division of Coastal
2 Management on a case-by-case basis in order to determine an ocean hazard setback that is
3 landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate
4 or 60 feet, whichever is greater; Director of the Division of Coastal Management based on
5 an approximation of the average seaward-most positions of the rooflines of adjacent
6 structures along the same shoreline extending 500 feet in either direction. If no structures
7 exist within this distance, the proposed structure must meet the applicable setback from the
8 Vegetation Line but will not be held to the landward-most adjacent structure or an average
9 line of structures.

10 (D) With the exception of swimming pools, the development exceptions defined in Rule
11 .0309(a) of this Section shall be allowed oceanward ~~of the static vegetation line; and of the~~
12 pre-project vegetation line.

13 (E) ~~Development shall not be eligible for the exception defined in Rule .0309(b) of this~~
14 ~~Section.~~

15 ~~(b) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or~~
16 ~~vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area~~
17 ~~shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these~~
18 ~~other dunes shall be allowed only to the extent permitted by 15A NCAC 07H .0308(b).~~

19 ~~(e)(b)~~ Development shall not cause irreversible damage to historic architectural or archaeological resources as
20 documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or
21 the National Historical Registry.

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

23 ~~(e)(c)~~ Mobile homes shall not be placed within the high hazard flood area Ocean Hazard Area unless they are within
24 mobile home parks existing as of June 1, 1979.

25 ~~(f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC~~
26 ~~07H .0303.~~

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

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

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

34 ~~(i)(e)~~ Prior to the issuance of any permit for development in the ~~ocean hazard AECs,~~ Ocean Hazard Area, there shall
35 be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of
36 the risks associated with development in this hazardous area and the limited suitability of this area for permanent

1 structures. The acknowledgement shall state that the Coastal Resources Commission does not guarantee the safety of
2 the development and assumes no liability for future damage to the development.

3 ~~(j)(f) All The relocation or elevation of structures shall require permit approval. Structures relocated with public funds~~
4 ~~shall comply with the applicable setback line and other applicable AEC rules. Structures, including septic tanks and~~
5 ~~other essential accessories, relocated entirely with non-public funds shall be relocated the maximum feasible distance~~
6 ~~landward of the present location. Septic tanks shall not be located oceanward of the primary structure. All relocation~~
7 ~~of structures shall meet all other applicable local and state rules.~~

8 (1) Structures relocated landward with public funds shall comply with the applicable ocean hazard
9 setbacks and other applicable AEC rules.

10 (2) Structures relocated landward entirely with non-public funds that do not meet current applicable
11 ocean hazard setbacks may be relocated the maximum feasible distance landward of its present
12 location. Septic tanks shall not be relocated oceanward of the primary structure.

13 (3) Existing structures shall not be elevated if any portion of the structure is located seaward of the
14 vegetation line.

15 ~~(k)(g)~~ Permits shall include the condition that any structure shall be relocated or dismantled when it becomes
16 imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such
17 structure shall be relocated or dismantled within ~~two~~ eight years of the time when it becomes imminently threatened,
18 and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within
19 ~~two~~ eight years of the time the structure becomes imminently threatened, so that the structure is no longer imminently
20 threatened, then it need not be relocated or ~~dismantled at that time.~~ dismantled. This permit condition shall not affect
21 the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H
22 .0308(a)(2).

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24 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
25 *Eff. September 9, 1977;*
26 *Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;*
27 *RRC Objection due to ambiguity Eff. January 24, 1992;*
28 *Amended Eff. March 1, 1992;*
29 *RRC Objection due to ambiguity Eff. May 21, 1992;*
30 *Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;*
31 *RRC Objection due to ambiguity Eff. May 18, 1995;*
32 *Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;*
33 *Temporary Amendment Eff. January 3, 2013;*
34 *Amended Eff. September 1, 2017; February 1, 2017; April 1, 2016; September 1, 2013;*
35 *Readopted Eff. December 1, 2020;*
36 *Amended Eff. August 1, 2022; December 1, 2021.*