

1 15A NCAC 07H .0309 is proposed for amendment as follows:

2 *Text in italics was previously published in 34:01 NCR 11-13 and is pending CRC final approval and RRC review.*

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4 **15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS**

5 (a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule  
6 .0306(a) of ~~the Subchapter~~ this Section if all other provisions of this Subchapter and other state and local regulations  
7 are met:

- 8 (1) campsites;
- 9 (2) driveways and parking areas with clay, packed sand or gravel;
- 10 (3) elevated decks not exceeding a footprint of 500 square feet;
- 11 (4) beach accessways consistent with Rule .0308(c) of this ~~Subchapter~~ Section;
- 12 (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- 13 (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed  
14 sand or gravel, and a footprint of 200 square feet or less;
- 15 (7) temporary amusement stands;
- 16 (8) sand fences; and
- 17 (9) swimming pools.

18 In all cases, this development shall be permitted only if it is landward of the vegetation line or static vegetation line,  
19 whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the  
20 integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is  
21 not essential to the continued existence or use of an associated principal development; is not required to satisfy  
22 minimum requirements of local zoning, subdivision or health regulations; and meets all other non-setback  
23 requirements of this Subchapter.

24 (b) Where application of the oceanfront setback requirements of Rule .0306(a) of this ~~Subchapter~~ Section would  
25 preclude placement of permanent substantial structures on lots existing as of June 1, 1979, buildings shall be permitted  
26 seaward of the applicable setback line in ocean erodible ~~areas~~, areas and State Ports Inlet Management Areas, but  
27 not inlet hazard areas or unvegetated beach areas, if each of the following conditions are met:

- 28 (1) The development is set back from the ocean the maximum feasible distance possible on the existing  
29 lot and the development is designed to minimize encroachment into the setback area;
- 30 (2) The development is at least 60 feet landward of the vegetation line or static vegetation line,  
31 whichever is applicable;
- 32 (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward  
33 toe of the frontal dune;
- 34 (4) The development incorporates each of the following design standards, which are in addition to those  
35 required by Rule .0308(d) of this ~~Subchapter~~ Section.
  - 36 (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea  
37 level;

1 (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor  
2 area of the structure shall be no more than 2,000 square feet. For the purpose of this  
3 Section, roof-covered decks and porches that are structurally attached shall be included in  
4 the calculation of footprint;

5 (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in  
6 those cases where the development does not abut the ocean and is located landward of a  
7 paved public street or highway currently in use. In those cases concrete, asphalt or  
8 turfstone may also be used;

9 (D) No portion of a building's total floor area, including elevated portions that are cantilevered,  
10 knee braced or otherwise extended beyond the support of pilings or footings, may extend  
11 oceanward of the total floor area of the landward-most adjacent building. When the  
12 geometry or orientation of a lot precludes the placement of a building in line with the  
13 landward most adjacent structure of similar use, an average line of construction shall be  
14 determined by the Division of Coastal Management on a case-by-case basis in order to  
15 determine an ocean hazard setback that is landward of the vegetation line, static vegetation  
16 line or measurement line, whichever is applicable, a distance no less than 60 feet.

17 (5) All other provisions of this Subchapter and other state and local regulations are met. If the  
18 development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such  
19 a system shall be submitted as part of the CAMA permit application.

20 ~~(e) Reconfiguration and development of lots and projects that have a grandfather status under Paragraph (b) of this~~  
21 ~~Rule shall be allowed provided that the following conditions are met:~~

22 ~~(1) Development is setback from the first line of stable natural vegetation a distance no less than that~~  
23 ~~required by the applicable exception;~~

24 ~~(2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean~~  
25 ~~Hazard AEC or have other adverse environmental consequences.~~

26 ~~For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described~~  
27 ~~in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s)~~  
28 ~~of land under the same ownership. The footprint is defined as the greatest exterior dimensions of the structure,~~  
29 ~~including covered decks, porches, and stairways, when extended to ground level.~~

30 ~~(d)(c)~~ The following types of water dependent development shall be permitted seaward of the oceanfront setback  
31 requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local  
32 regulations are met:

33 (1) piers providing public access; and

34 (2) maintenance and replacement of existing state-owned bridges and causeways and accessways to  
35 such bridges.

36 ~~(e)(d)~~ Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the  
37 following conditions is met:

- 1 (1) The ocean pier provides public access for fishing and other recreational purposes whether on a  
2 commercial, public, or nonprofit basis;
- 3 (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited  
4 to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
- 5 (3) The pier house shall be limited to a maximum of two stories;
- 6 (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of  
7 mean high water;
- 8 (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of  
9 5,000 square feet, whichever is larger;
- 10 (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
- 11 (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier  
12 house shall be permitted only if the pier is being replaced and returned to its original function.

13 ~~(e)~~ In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential  
14 development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family  
15 piers and small scale erosion control measures that do not interfere with natural oceanfront processes, shall be  
16 permitted on those non-oceanfront portions of shoreline that exhibit features characteristic of an Estuarine Shoreline.  
17 Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the  
18 adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of  
19 this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for  
20 authorization under 15A NCAC 07H .1100, .1200 and 15A NCAC 07K .0203.

21 ~~(f)~~ Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted  
22 provided that each of the following conditions is met:

- 23 (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal  
24 dunes, all as defined in Rule ~~07H .0305~~, .0305 of this Section, in such a manner so as to ensure that  
25 the placement of the transmission lines involves no alteration or removal of the primary or frontal  
26 dunes; and
- 27 (2) The design and placement of the transmission lines shall be performed in a manner so as not to  
28 endanger the public or the public's use of the beach.

29 (g) Existing stormwater outfalls within the Ocean Hazard AEC that are owned or maintained by a State agency or  
30 local government, may be extended oceanward subject to the provisions contained within 15A NCAC 07J .0200.  
31 Outfalls may be extended below mean low water and may be maintained in accordance with 15A NCAC 07K .0103.  
32 Shortening or lengthening of outfall structures within the authorized dimensions, in response to changes in beach  
33 width, is considered maintenance under 15A NCAC 07K .0103. Outfall extensions may be marked with signage and  
34 shall not prevent pedestrian or vehicular access along the beach. This Paragraph does not apply to existing  
35 stormwater outfalls that are not allowed or maintained by a State agency or local government.

1 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d;*  
2 *113A-124;*  
3 *Eff. February 2, 1981;*  
4 *Amended Eff. April 1, 2010; June 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L.*  
5 *2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January*  
6 *1, 1991; April 1, 1987.*