



NORTH CAROLINA  
Environmental Quality

ROY COOPER  
Governor

MICHAEL S. REGAN  
Secretary

BRAXTON C. DAVIS  
Director

November 6, 2019

**MEMORANDUM**

**CRC-19-37**

**TO:** Coastal Resources Commission  
**FROM:** Ken Richardson, *Shoreline Management Specialist*  
**SUBJECT:** Amendments to 15A NCAC 07H. 0306 and 07J. 1301 – Development Line Setback Exceptions.

At the September 2019 CRC meeting in Wilmington, Commissioners and DCM Staff discussed some notable differences between the Static Vegetation Line (SVL) Exception and Development Line (DVL) that make implementation of these rules complex and present some management challenges, specifically, when it comes to what structures, or parts of the primary structure, can or cannot be located seaward of one or more of the management lines (vegetation line, static line, or development line).

As you may recall, Development Line Rules (15A NCAC 07J .1300) and Static Vegetation Line Exception Rules (15A NCAC 07H .0306(a)(K)) allow construction setbacks to be measured from the existing first line of stable and natural vegetation (FLSNV). What makes the DVL different from the SVL Exception are the procedures within the rules, and the process of defining the limits of development, including how to consider decks and other accessory structures outlined in 07H.0309 - such as dune crossovers, gazebos, and parking areas. Although it is not clearly stated in the rule, the Commission expressed its intent was to discourage the use of decks and accessory structures (i.e., pools) from being used to delineate DVLs. However, due to the ambiguity in the rule DVLs have been delineated differently from one community to the next, and these structures may or may not be seaward of the DVL in some locations. Because the current Rule (15A NCAC 07H .0306(a)(2)) states that “in no case shall new development be sited seaward of the development line,” difficulties have been encountered during permit reviews when decks and other structures listed under 7H .0309 oceanfront setback exceptions are being proposed seaward of a DVL.

After consideration and discussion of the types of development currently allowed within the oceanfront setback area under 07H. 0309, the CRC agreed at that excluding pools, elevated decks, and driveways, the remaining types of development listed as exceptions in 07H .0309 should be allowed oceanward of the DVL if other CRC rules and state and local regulations are met.



At the recommendation of the CRC, Staff is providing draft amendments to 15A NCAC 07H .0306 and 07J .1301 for the Commission to consider for approval at the upcoming meeting.

It should be noted that where local governments have mapped their DVLs to intersect or be located landward of pools, elevated decks, or driveways, there is the ability for communities to make changes to their DVL and ask for the CRC's approval. Based on an initial evaluation using county tax office structure footprints and 2016 imagery, it is estimated that the following are seaward of, or intersected by existing DVLs:

- 67 decks
- 53 single-family residential structures
- 1 multi-family structure
- 6 commercial structures
- 18 pools
- 2 boardwalks (not beach accessways)

If there are no further amendments required, the CRC can approve these draft amendments.

**ATTACHMENT A:** List of Communities with Static Vegetation Lines (SVL), SVL Exceptions, Development Lines (DVL), and Measurement Lines.

**Attachment B:** Proposed Amendments to 07H.0306 General Use Standards for Ocean Hazard Areas

**Attachment C:** Appendix B: Proposed Amendments to 07J.1300 Development Line Procedures

**ATTACHMENT A: List of Communities with Static Vegetation Lines (SVL), SVL Exceptions, Development Lines (DVL), and Measurement Lines.**

<b>Community</b>	<b>SVL</b>	<b>SVL Exception</b>	<b>DVL</b>	<b>Measurement Line</b>
<b>Ocean Isle</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>
<b>Oak Island</b>	<b>Yes</b>	<i>No</i>	<b>Yes</b>	<i>No</i>
<b>Caswell Beach</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>
<b>Bald Head Island</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>
<b>Kure Beach</b>	<b>Yes</b>	<i>No</i>	<b>Yes</b>	<i>No</i>
<b>Carolina Beach</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>
<b>Wrightsville Beach</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>
<b>Figure Eight Island</b>	<i>No</i>	<i>No</i>	<b>Yes</b>	<i>No</i>
<b>Topsail Beach</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>
<b>Surf City</b>	<i>No</i>	<i>No</i>	<i>No</i>	<b>Yes</b>
<b>North Topsail Beach</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<b>Yes</b>
<b>Emerald Isle</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>
<b>Indian Beach</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>
<b>Salter Path</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>
<b>Pine Knoll Shores</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>
<b>Atlantic Beach</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>
<b>Buxton</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>
<b>Rodanthe</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>
<b>Nags Head</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>
<b>Kill Devil Hills</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>
<b>Kitty Hawk</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>
<b>Southern Shores</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>

## ATTACHMENT B: Proposed Amendments to 07H.0306 General Use Standards for Ocean Hazard Areas

### 15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

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

- (1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.
- (2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. **With the exception of those types of development defined in 15A NCAC 07 .1301, in no case shall new development be sited seaward of the development line.**
- (3) In no case shall a development line be created or established on state owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.
- (4) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
  - (A) The total square footage of heated or air-conditioned living space;
  - (B) The total square footage of parking elevated above ground level; and
  - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.
- (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:
  - (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
  - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
  - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
  - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
  - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
  - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
  - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
  - (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
  - (I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water,

- telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
  - (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and
  - (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi-family residential structures with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:
    - (i) the structure was originally constructed prior to August 11, 2009;
    - (ii) the structure as replaced does not exceed the original footprint or square footage;
    - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;
    - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; and
    - (v) the structure is rebuilt as far landward on the lot as feasible.
- (6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed, the development shall be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.
  - (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.
  - (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.
  - (9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
  - (10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
  - (11) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section, unless a development line has been approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.
  - (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at

least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception shall apply to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, and the boundaries of the large-scale beach fill project. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

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

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

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

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

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

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

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

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

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

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

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

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case

upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H .0308(a)(2).

*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.*

# ATTACHMENT C: Proposed Amendments to 07J.1300 Development Line Procedures

## SECTION .1300 – DEVELOPMENT LINE PROCEDURES

### 15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE

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

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

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

(d) The following types of development shall be permitted seaward of the development line if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) beach accessways consistent with Rule 15A NCAC 07H .0308(c);
- (3) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (4) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (5) temporary amusement stands; and
- (6) sand fences consistent with Rule 15A NCAC 07H .0311.

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

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

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

- (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 necessary for a review of the petitioner's proposed development line, such as a pre-nourishment project mean high water line, local ordinances, or easements; and
  - (B) 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 a development line into local ordinances or rules and regulations of an owner's association.

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

(h)(g) A development line request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed development



line request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

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

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