



NORTH CAROLINA  
Environmental Quality

ROY COOPER  
Governor

MICHAEL S. REGAN  
Secretary

BRAXTON C. DAVIS  
Director

CRC-20-30

November 2, 2020

## **MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Ken Richardson

**SUBJECT:** Consideration of the Fiscal Analysis 07J .1300 and 07H .0306

### **Background Review:**

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 Development Line (DL) different from the Static Vegetation Line Exception (SVLE) are the procedures and process of defining the oceanward limits of new development, including how to consider decks and other accessory structures outlined in 15A NCAC 07H .0309(a) - such as dune crossovers, gazebos, and parking areas that are exceptions to the oceanfront setback requirements. Although it is not clearly stated in these rules, the Coastal Resources Commission (CRC) expressed their intent to discourage the use of decks and accessory structures (i.e., pools) from being used to delineate DLs. However, due to the ambiguity in the rule (15A NCAC 07J .1300), DLs have been delineated differently from one community to the next, and these structures listed under 15A NCAC 07H .0309(a) may or may not be seaward of the DL at 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 15A NCAC 07H .0309(a) oceanfront setback exceptions are being proposed seaward of a DL.

Both the Development Line and Static Vegetation Line Exception rules are intended to provide regulatory relief from a Static Vegetation Line defined in 15A NCAC 07H.0305(a)(6). Development Line rules require a community to establish an oceanward limit for new development and does not require a community to demonstrate a long-term commitment to managing oceanfront erosion. The Static Line Exception rules limit new development to its landward-most adjacent neighbor, requires a community to demonstrate a commitment to managing oceanfront erosion, and requires reauthorization from the CRC once every five years. Although each management alternative allows oceanfront development setbacks to be measured from the actual vegetation line,



rather than the SVL, there are significant differences between these two rules. Because of the differences, it was not the intent of the CRC for communities to have both an approved DL and SVLE. However, this intent is not clear in current rule language; thus, requiring the proposed amendments for clarification purposes.

At the September 2020 Coastal Resources Commission (CRC) meeting, the Commission approved rule amendments to Development Line Procedures (15A NCAC 07J .1300) and General Use Standards for Ocean Hazard Areas (15A NCAC 07H .0306) rules, in order to resolve two specific rule implementation issues:

- 1) Require communities with a Static Line Exception approved in accordance with 15A NCAC 07J. 1200 and a Development Line approved in accordance with 15A NCAC 07J. 1300, to notify the Division of Coastal Management which one of the two approaches will be used for managing oceanfront development.
- 2) To allow the following types of development (*except for driveways/parking areas, elevated decks, and swimming pools*) to be placed oceanward of the Development Line. All are currently listed as exceptions under 15A NCAC 07H .0309(a), and allowed oceanward of the setback line when conditions in the rule are met. However, they are currently not allowed seaward of the Development Line (15A NCAC 07H. 0306(a)(2)).
  - campsites
  - *driveways and parking areas*
  - *elevated decks*
  - beach accessways
  - unenclosed & uninhabitable gazebos
  - uninhabitable single-story storage sheds
  - temporary amusement stands
  - sand fences
  - *swimming pools*

### **Fiscal Analysis:**

The Division of Coastal Management does not anticipate any increase in expenditures to the regulated public because of this action. The proposed amendments to 15A NCAC 07H .0306 and 07J .1301 are necessary for rule clarification and serve to resolve rule implementation issues – specifically when a community has both a CRC approved SVLE and DL. These rule amendments are consistent with 15A NCAC 07H .0309(a) in that the types of development currently allowed seaward of the setback line (except for driveways, elevated decks and swimming pools) would be allowed in communities with a DL. Since most of the DLs authorized to date have been drawn to encompass decks and pools, it is anticipated that very few properties will be impacted by these amendments. Because these rule amendments clarify the types of development that are allowed oceanward of the setback line, but not allowed under implementation of current rules, a property owner may choose to construct the type of development listed under amended rule 15A NCAC

07J .1301(d) if it is needed, in a manner consistent with other Commission rules related to the siting of development along oceanfront shorelines.

**Staff Recommendation:**

Although the fiscal analysis has been submitted to the Office of State Budget and Management (OSBM), it has not yet been approved. DCM staff are recommending that the Commission consider approval of the fiscal analysis conditioned on no substantial changes being requested by OSBM.

**Attachment A:** Fiscal Analysis

**ATTACHMENT A: FISCAL ANALYSIS**

**GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS & DEVELOPMENT LINE  
PROCEDURES**

15A NCAC 07H .0306 & 15A NCAC 07J .1300

Prepared by

Ken Richardson  
Shoreline Management Specialist  
NC Division of Coastal Management  
(252) 808-2808 Ext. 225

November 9, 2020

## Basic Information

---

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission (CRC).
Title	General Use Standards for Ocean Hazard Areas and Development Line Procedures rule amendments
Citation	15A NCAC 07H .0306 and 15A NCAC 07J .1300
Description of the Proposed Rule	7H .0306 defines use standards within Ocean Hazard Areas of Environmental Concern; and 7J .1300 defines the procedures for requesting approval of a development line. Clarification of existing rules is the primary purpose of these amendments
Agency Contact	Ken Richardson Shoreline Management Specialist Ken.Richardson@ncdenr.gov (252) 808-2808 ext. 225
Authority	113A-107(a) & (b); 113A-118.1
Necessity	Currently, there are specific types of development allowed oceanward of the setback line except only when a community has a CRC approved Development Line. This was not the original intent of the Coastal Resources Commission; therefore, the CRC is amending its rules to allow those exceptions oceanward of the setback line.
Impact Summary	State government: No Local government: No Federal government: No Private property owners: Yes Substantial impact: No

## Summary

---

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 Development Line (DL) different from the Static Vegetation Line Exception (SVLE) are the procedures and process of defining the oceanward limits of new development, including how to consider decks and other accessory structures outlined in 15A NCAC 07H .0309(a) - such as dune crossovers, gazebos, and parking areas that are exceptions to the oceanfront setback requirements. Although it is not clearly stated in these rules, the Coastal Resources Commission (CRC) expressed their intent to discourage the use of decks and accessory structures (i.e., pools) from being used to delineate DLs. However, due to the ambiguity in the rule (15A NCAC 07J .1300), DLs have been delineated differently from one community to the next, and these structures listed under 15A NCAC 07H .0309(a) may or may not be seaward of the DL at 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 15A NCAC 07H .0309(a) oceanfront setback exceptions are being proposed seaward of a DL.

After consideration of the types of development currently allowed within the oceanfront setback area under 15A NCAC 07H. 0309(a), the CRC approved proposed rule language that would exclude swimming pools, elevated decks, and driveways, while the remaining types of development listed as exceptions in 15A NCAC 07H .0309(a) would be allowed oceanward of the DL if other CRC rules and state and local regulations are met.

Both the Development Line and Static Vegetation Line Exception rules are intended to provide regulatory relief from a Static Vegetation Line (SVL) defined in 15A NCAC 07H.0305(a)(6). Development Line rules require a community to establish an oceanward limit for new development and does not require a community to demonstrate a long-term commitment to managing oceanfront erosion. The Static Line Exception rules limit new development to its landward-most adjacent neighbor, requires a community to demonstrate a commitment to managing oceanfront erosion, and requires reauthorization from the CRC once every five years. Although each management alternative allows oceanfront development setbacks to be measured from the actual vegetation line, rather than the SVL, there are significant differences between these two rules. Because of the differences, it was not the intent of the CRC for communities to have both an approved DL and SVLE. However, this intent is not clear in current rule language; thus, requiring the proposed amendments for clarification purposes

## Description of Rule Amendment

---

The two specific things these amendments would do is: 1) require communities with both a CRC approved Development Line and Static Line Exception to decide which oceanfront management rule would be applied (not both), and to also inform the Division of Coastal Management of their choice, and; 2) with the exception of swimming pools, elevated decks and driveway/parking areas, to allow the following types of development that are currently allowed under 15A NCAC 07H .0309(a) to be oceanward of the setback line, but not the DL. A strict interpretation of current rules does not allow any to be placed seaward of the Development Line (15A NCAC 07H. 0306(a)(2)):

- campsites
- *driveways and parking areas*
- *elevated decks*
- beach accessways
- unenclosed & uninhabitable gazebos
- uninhabitable single-story storage sheds
- temporary amusement stands
- sand fences
- *swimming pools*

15A NCAC 07H .0306 defines general use standards inside the Ocean Hazard Area. Currently, 15A NCAC 07H .0306(2) requires all new development to be sited landward of the CRC approved Development Line. This includes specific types of development currently listed under 15A NCAC 07H .0309(a) (listed above) that are allowed oceanward of the setback line as long as it is landward of the vegetation 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 alter the dune vegetation; has accessways to protect any existing dunes; 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; and meets all other non-setback requirements of this rule. When DL rules were initially drafted by the CRC, it was not their intent to exclude all; therefore, the CRC is amending their rules for clarification purposes.

In addition, amendments to 15A NCAC 07H .0306 will also require communities with a CRC approved Development Line (15A NCAC 07J .1300) and Static Line Exception (15A NCAC 07J .1200) to notify the Division of Coastal Management which of the two rules would be applied to their oceanfront jurisdiction. Although both the DL and SVLE allow construction setback to be measured from the actual vegetation line, the two rules are different in terms how much oceanward encroachment of new development can occur in areas with proven erosion problems, and the types of regulatory relief offered under both sets of rules. The CRC is amending this rule to clarify their intent when the DL rules were initially drafted.

## **Affected Parties**

---

### Private Property Owners:

There are several scenarios to consider when applying current rules and proposed amendments to existing and future development. Before reviewing those scenarios, it is important to emphasize that a community is not required seek a CRC approved DL or SVLE – it is their choice. In addition, DLs are mapped by the Town, and can only be remapped or amended by actions initiated by the Town – and not the CRC or DCM. When a community installs a large-scale beach nourishment project, a static vegetation line (pre-project vegetation line) is established for the purpose of

identifying where the erosion hazard was prior to the installation of the beach nourishment project, and to require that all construction setbacks are to be measured from the static line (pre-project vegetation line), or vegetation line; whichever is in a more landward position. The intent being that without regular erosion mitigation (beach nourishment), the initial project will eventually erode back to pre-project conditions. For communities with a static vegetation line, and also conduct regular maintenance of their initial beach nourishment project – effectively mitigating or slowing beach erosion - the CRC created two separate rules (DL and SVLE), that could be utilized by communities to get regulatory relief from the static vegetation line. Specifically, these rules both allow local areas to regain the ability to measure setbacks from the actual vegetation line rather than the static vegetation line. Those rules are the DL rules (15A NCAC 07J .1300) and Static Line Exception Rules (15A NCAC 07J .1200). However, there are different conditions and regulatory relief that apply depending on which of the two rules are utilized. Most notably are that while DL rules establish a limit on seaward encroachment of new development, there is greater potential for new structures to be built closer to the ocean (hazard), and those communities are not required to maintain their initial beach nourishment project. Under SVLE rules, new development is limited to its landward-most adjacent neighbor, and those communities are also required to demonstrate a 30-year commitment to maintaining their initial beach nourishment project. Again, the overall benefit from both sets of rules is the ability to get regulatory relief from the static vegetation line, and measure setback from the actual vegetation line.

Currently, there are four Towns (Oak Island, Kure Beach, Carolina Beach and Figure Eight Island) with CRC approved DL, and one Town (Carolina Beach) with both a CRC approved DL and SVLE. Theoretically, the reason a community would want to have a DL and SVLE approved by the CRC is to get maximum benefit of combining regulatory relief offered by each set of rules. In terms of rule implementation, this scenario was never the intent of the CRC, but current rule language is not specific enough to interpret this intent. This creates the question, “which rule has precedence?” The answer is neither since the rules are not implicit, and so from the Town’s perspective, it becomes a matter of which rule best fits the needs of the proposed development – which was never the intent of the CRC. In addition, the SVLE rules allow large structure (>10,000 sqft.) setback relief where the setback is 120 feet or 60 times the erosion rate setback factor (15A NCAC 07H .0306(a)(5)(K)), and under DL rules the setback is determined by setback requirements defined in 15A NCAC 07H .0306(a).

Based on current estimations, there are 18 pools, 67 decks, and 53 residential structures seaward of current DLs. However, it is important to emphasize that while existing DLs have been approved by the CRC, DLs are mapped, managed, and can only be amended by actions initiated by the Town - and not the CRC or DCM. Therefore, property owners of existing structures oceanward of existing DLs, must first have to petition the Town to make an amendment to its DL. If a Town makes any amendments, they would then seek CRC’s final approval of their amended DL.

The following describes impacts on existing and new development:

**New Structures:**

1. For communities that have both a CRC approved DL and SVLE:
  - a. **If there are no amendments**, rule implementation will continue to be very challenging. Even though DL rules allow a new primary structure (house, condo, etc.) to be built oceanward up to the DL if it can also meet setback, that same



proposed development would still be limited to its landward-most adjacent neighbor under SVLE rules, regardless of how much oceanward the DL is located in relation to neighboring structures. Secondly, SVLE rules provide regulatory relief for large structures (>10,000 sqft), requiring a minimum setback of 120 feet, or 60 times the erosion rate setback factor; while DL rules require setbacks to adhere to current graduated setbacks defined in 15A NCAC 07.0306(a)(5). So, if the size of the proposed development is greater than 10,000 square feet, and the erosion rate is greater than two, setback requirements under DL rules is greater and more restrictive. Lastly, for those types of development under 07H .0309(a), that may be allowed oceanward of the setback line under SVLE rules, they still cannot be oceanward of the DL. So, depending on the proposed development's needs, one set of rules is less restrictive, while the other set of rules is more restrictive, but having both the DL and SVLE restricts the property owner's ability from utilizing the benefits of either rule. With no rule amendments, development is not prohibited, but the DCM would default to the most restrictive rule, and in doing that, because current rules do not implicitly state which rule shall take precedence, permit decisions could face legal challenges. Aside from measuring setbacks from the actual vegetation line, and not the more restrictive static vegetation line, each set of rules prevent the benefits of having a DL or SVLE from being utilized, but do not prohibit development. Since the DL is mapped by the Town, and not the DCM, without rule amendments, property owners could petition the Town to re-map their DL in the event that the proposed development cannot comply with current rules – and then submit the amended DL to the CRC for their approval. Any information that could be used to estimate a cost to property owners or local governments would be speculative and unquantifiable at this time; however, it is anticipated that if faced with this scenario, that rule implementation challenges would significantly slow or pause the permitting process until the property owner(s) can petition the Town(s) to request an amendment to its DL.

- b. **The effect of the rule amendments** will be to primarily eliminate the rule implementation issues as previously described. First, these amendments will require a community to decide which rule will be applied to oceanfront development. This will then allow property owners to take advantage of the regulatory relief offered by either the DL or SVLE, since having both under current rules essentially negates the ability to utilize any benefit at all, other than measuring setback from being able to measure setback from the actual vegetation line, and not the SVL. As for the types of development listed under 07H .0309(a) that may be allowed inside the setback, these amendments would allow all except swimming pools, elevated decks, driveways and parking lots; which are currently not allowed oceanward of the setback. In summary, for new development, these amendments will clarify the CRC's intent, and allow the setback regulatory relief offered by either the DL rules or SVLE rules (not both) to be applied, and allow development exceptions to be applied where a DL exists. Any information that could be used to estimate a cost to property owners or local governments would be speculative and unquantifiable at this time, but it is anticipated that property owners ability will benefit from a clear regulatory pathway.

2. For communities that currently only have a CRC approved Development Line:

- a. **If there are no amendments**, those types of development under 07H .0309(a), that currently may be allowed oceanward of the setback, will continue to be restricted and required to be built landward of the DL. For a property owner to build any type of development oceanward of the DL, they would first have to petition the Town and request an amendment to its DL. If the Town agrees to amend any portion of its DL, the Town will then request an approval from the CRC. Any information that could be used to estimate a cost to property owners or local governments would be speculative and unquantifiable at this time.
- b. **The effect of the rule amendments** will be to allow development of the structures listed below, which are already allowed under current rules where a community does not have a CRC approved DL. It can be assumed that this would result in a cost benefit by allowing these accessory structures within the setback when conditions are met.
  - Campsites
  - Beach accessways
  - Gazebos
  - Sheds
  - Amusement stands
  - Sand fences

### **Existing Structures**

1. For property owners wanting to replace or repair structures built before DL rules went into effect:
  - a. **If there are no amendments**, the rules would only apply if repairs exceeded 50% or more of the structure's appraised value, thus then requiring a CAMA permit to repair/rebuild. If any of the structures listed above (*campsites, beach accessways, gazebos, etc.*) were damaged beyond 50% of its appraised value, or if the property owner simply wanted to replace the structure, it would be restricted to the landward side of the DL. Again, the property owner could petition the Town to amend its DL, and then have it approved by the CRC, if current rules would not allow an existing structure to be replaced. An estimated cost cannot be quantified because this scenario has not become an issue at this time. However, it can be assumed that with no rule amendments, there is potential that this scenario would result in property owners not being able to replace the existing accessory structure in its current location if it were oceanward of the DL, and the Town(s) was also unwilling to amend its DL. Any information that could be used to estimate a cost to property owners or local governments would be speculative and unquantifiable at this time because it is unknown if "development" would qualify as a repair, versus replacement, and if a Town would be willing to amend its DL and be approved by the CRC.
  - b. **The effect of the rule amendments** would allow campsites, beach accessways, gazebos, sheds, amusement stands, and sand fences to be repaired if damaged beyond its 50% appraisal value or replaced if needed. However, driveways, parking areas, decks, and pools would not be allowed oceanward of the DL. In most cases,

these excluded structures were already considered when the Towns mapped its development line. DLs are mapped by a Town, and not the CRC, so if a Town mapped its DL in a landward position relative to an existing structure (i.e. pool or deck), the property owner can petition the Town to amend its DL, and then have it approved by the CRC. For this reason, a cost can is not quantified, and would be based on a speculative scenario, and not the effect of these rule amendments.

In summary, these rule amendments do not result in an added cost to property owners as they are consistent with the types of development allowed inside the setback - except for driveways, elevated decks and swimming pools. However, since most of the DLs authorized to date have been drawn to encompass decks and pools, it is anticipated that very few properties will be impacted by these amendments. Where one of these types of develop is seaward of the DL, the property owner can petition the local government (Town) to relocate the line. In communities that currently have a CRC approved Development Line in accordance with 15A NCAC 07J .1300, there is benefit resulting from rule amendments by allowing those types of development listed under the amended 15A NCAC 07J .1301(d) to be sited oceanward of the setback line and DL. It is not possible to quantify the benefit because this rule only applies when a permit is needed, and it would not be possible to estimate or forecast if property owner needs to build this type of development. To quantify a cost, the CRC would also have to know if a Town is unwilling to amend its DL, and because DL rules are relatively new, this is scenario has been an issue. However, it can be assumed that if needed and constructed, these accessory structures could result in a cost benefit captured in the overall property value.

#### NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, the agency declares that the proposed amendments to 15A NCAC 7H .0306 and 15A NCAC 07J .1300 will not affect environmental permitting for the NC Department of Transportation since NC DOT does not typically engage in projects of this nature.

#### Local Government:

These rule amendments do not result in an added cost to local government as they are consistent with the types of development allowed seaward of the SVLE except for driveways, elevated decks and swimming pools. In communities that currently have a CRC approved Development Line in accordance with 15A NCAC 07J .1300, there is property value benefit resulting from rule amendments by allowing those types of development (particularly beach accessways) listed under the amended 15A NCAC 07J .1301(d) to be sited oceanward of the setback line and DL through a clear regulatory pathway..

#### Division of Coastal Management:

The Division does not foresee any change in permit requests and does anticipate any change in permit receipts because of these rule amendments. However, the Division will benefit from the clarity added to both rules in terms of their overall implementation.

## **Cost/Benefits Summary**

---

The Division of Coastal Management does not anticipate any increase in expenditures to the regulated public because of this action. The proposed amendments to 15A NCAC 07H .0306 and 07J .1301 are necessary for rule clarification and serve to resolve rule implementation issues – specifically when a community has both a CRC approved SVLE and DL. These rule amendments are consistent with 15A NCAC 07H .0309(a) in that the types of development currently allowed seaward of the setback line (except for driveways, elevated decks and swimming pools) would be allowed in communities with a DL. Since most of the DLs authorized to date have been drawn to encompass decks and pools, it is anticipated that very few properties will be impacted by these amendments. Because these rule amendments clarify the types of development that are allowed oceanward of the setback line, but not allowed under implementation of current rules, a property owner may choose to construct the type of development listed under amended rule 15A NCAC 07J .1301(d) if it is needed, in a manner consistent with other Commission rules related to the siting of development along oceanfront shorelines.

# ATTACHMENT A: PROPOSED RULE AMENDMENTS TO 15A NCAC 07H .0306 & 15A NCAC 07J. 1300

## 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 07J .1301(d), in no case shall new development be sited seaward of the development line. In areas with a Static Line Exception approved in accordance with 15A NCAC 07J. 1200 and a Development Line approved in accordance with 15A NCAC 07J. 1300, the petitioner shall notify the Division of Coastal Management which one of the two approaches will be utilized and applied to the entire large-scale project area as defined in 15A NCAC 07H .0305(a)(7).**
- (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 acknowledgment 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.*



## 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; is not essential to the continued existence or use of an associated principal development; and is not required to satisfy minimum requirements of local zoning, subdivision and health regulations.

(c)(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.

(f)(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)(e) 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)(4) 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.*

*; April 1, 2004; August 1, 1998.*