

ANNOTATION EXPLANATION

BLACK TEXT

Current rule language

RED UNDERLINED TEXT

Proposed additions to current rule language (approved in July 2007 for November 2007 public hearing)

~~RED STRIKEOUT TEXT~~

Proposed deletions to current rule language (approved in July 2007 for November 2007 public hearing)

~~BLACK TEXT WITH STRIKEOUT AND YELLOW HIGHLIGHTING~~

Recommended deletions to current rule language (deletions recommended by DCM that were not included in rule language approved for public comment period spanning Nov 1 to Dec 31, 2007)

BOLD RED UNDERLINED TEXT WITH GREEN HIGHLIGHTING

Recommended additions to current rule language (additions recommended by DCM that were not included in rule language approved for public comment period spanning Nov 1 to Dec 31, 2007)

~~**BOLD RED UNDERLINED TEXT WITH STRIKEOUT AND YELLOW HIGHLIGHTING**~~

Recommended deletions to proposed additions to current rule language (original additions were approved in July 2007 for November 2007 public hearing, and subsequent deletions are DCM recommendations following public comment period that ended on December 31, 2007)

15A21 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 these Rules shall be located according to whichever of the following rules is applicable.

~~(1) — If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable. In areas where the rate is less than two feet per year, the setback line shall be 60 feet from the vegetation line or measurement line, where 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. The setback distance shall be determined by both the size of development and the shoreline erosion rate as defined in **15A NCAC 07H.0304 Rule .0304** of this Section. Development size shall be defined by total floor area for buildings or total area of footprint for structures other than buildings. Total floor area is the total square footage

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~~of heated or air-conditioned living space plus all roof-covered porches, walkways and structurally attached parking.~~ With the exception of roof-covered porches and walkways, non-heated or non-air-conditioned areas that are elevated above ground level and either structurally attached or included within the footprint of a building shall be included in the calculation of total floor area. No portion of a building's total floor area may extend oceanward of the ocean hazard setback distance including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established using the following conditions:

- (A) A building or other structure less than 5,000 square feet shall require a minimum setback factor 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 shall require a minimum setback factor 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 shall require a minimum setback factor 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 shall require a minimum setback factor 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 shall require a minimum setback factor 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 shall require a minimum setback factor 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 shall require a minimum setback factor 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 shall require a minimum setback factor of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- (I) Infrastructure including roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities ~~Utility lines~~ providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer and septic shall require a setback factor of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (J) ~~Transportation structures such as roads, surface parking~~ ~~Parking~~ lots and ~~parking structures greater than or equal to 5,000 square feet~~ ~~bridges less than 5,000 square feet~~ shall require a setback factor of 120 feet or 30 times the shoreline erosion rate and 60 times the shoreline erosion rate, whichever is greater, for areas greater than or equal to 5,000 square feet.

- (2) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the ~~long term erosion setback line~~ ocean hazard setback, whichever is farthest from the ~~first line of stable natural~~ vegetation line, static vegetation line or measurement line, ~~where 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 ~~seaward~~ oceanward of the primary dune. In such cases, the development ~~may~~ shall be located landward of the ~~long term erosion ocean hazard setback line~~ and ~~but~~ shall not be located on or ~~oceanward~~ in front of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by

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combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

- (3) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the ~~long term erosion ocean hazard~~ setback ~~line~~, whichever is farthest from the ~~first line of stable natural~~ vegetation line, static vegetation line or measurement line, ~~where whichever~~ is applicable.
- ~~(4) — Because large structures located immediately along the Atlantic Ocean present increased risk of loss of life and property, increased potential for eventual loss or damage to the public beach area and other important natural features along the oceanfront, increased potential for higher public costs for federal flood insurance, erosion control, storm protection, disaster relief and provision of public services such as water and sewer, and increased difficulty and expense of relocation in the event of future shoreline loss, a greater oceanfront setback is required for these structures than is the case with smaller structures. Therefore, in addition to meeting the criteria in this Rule for setback landward of the primary or frontal dune or both the primary and frontal dunes, for all multi-family residential structures (including motels, hotels, condominiums and moteliminiums) of more than 5,000 square feet total floor area, and for any non-residential structure with a total area of more than 5,000 square feet, the erosion setback line shall be twice the erosion setback as established in Subparagraph (a)(1) of this Rule, provided that in no case shall this distance be less than 120 feet. In areas where the rate is more than 3.5 feet per year, this setback line shall be set at a distance of 30 times the long term annual erosion rate plus 105 feet.~~
- ~~(4)~~ If neither a primary nor frontal dune exist in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.
- (5) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the principal structure and both shall meet the setback requirements established in Paragraph (a) of this Rule and ~~15A NCAC 07H.0309(a) Rule .0309(a) of this Section~~. The enclosure of existing roof covered porches shall be exempt from this requirement if the footprint is not expanded, modifications to existing foundations are not required and the existing porch is located landward of the vegetation line, static vegetation line or measurement line, whichever is applicable. 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.
- (6) 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.
- ~~(7)(b)~~ Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H.0312 Rule .0312 of this Section can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. Therefore, development setbacks measured from an established vegetation line in areas that have received beach fill may, over time, be located so as to be closer to the shoreline and more vulnerable to natural hazards along the oceanfront. Therefore, development setbacks in areas that have received large-scale beach fill shall be measured landward from the static vegetation line as defined in this Section. If development landward of the large-scale beach fill project does not 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 Part (1) of this Rule, a local government or community may petition the Coastal Resources Commission for a “static line exception” to allow development of oceanfront property

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that lies both within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. If the request is approved, the Coastal Resources Commission may allow development under the following conditions:

- (A) The local government or community provides evidence of a long-term commitment to beach fill including:
 - (i) plans for design, construction and maintenance of a beach fill project prepared by a licensed professional designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work and designed for a period of at least 30 years; and
 - (ii) documentation by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work a licensed professional of the location, volume and availability of compatible sand necessary to construct and maintain the beach fill project over its design life; and
 - (iii) identification of the financial resources or funding bases necessary to fully fund the beach fill project over its design life; and
- (B) A minimum of five (5) years has passed since the onset of the initial large-scale beach fill construction associated with the static vegetation line as defined in 15A NCAC 07H.0305 Section .0305 of this Rule; and
- (C) Development shall meet all setback requirements from the vegetation line or measurement line defined in this Rule, whichever is applicable; and
- (D) Total floor area of a building shall be no greater than 2,000 square feet; and
- (E) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance; and
- (F) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent structure building. When the geometry or orientation of a lot precludes the placement of a building in line with the landward most adjacent structure of similar use, 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 or measurement line, whichever is applicable, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater; and
- (G) With the exception of swimming pools, the development outlined in 15A NCAC 07H.0309(a) Rule .0309(a) may be allowed oceanward of the static vegetation line; and
- (H) Development shall not be eligible for the single-family exception defined in 15A NCAC 07H.0309(b) Rule .0309(b) outlined in this Section; and
- (I) The Coastal Resources Commission reserves the right to revoke the "static line exception" and require ocean hazard setbacks to be measured landward from the static vegetation line at any time there is evidence that a local government's or community's long-term commitments to beach fill as defined in this Rule are not being upheld. Revocation and expiration of the static line exception shall occur under the conditions defined in 15A NCAC 07J.1200.

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon which 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, and any disturbance of any other dunes shall be allowed only to the extent allowed by Rule .0308(b) of this Section.

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(c) In order to avoid public expenditures for maintaining public safety, construction or placement of growth-inducing public facilities to be supported by public funds shall be permitted in the ocean hazard area only when such facilities:

- (1) are of public benefit,
- (2) shall not increase existing hazards or damage natural buffers,
- (3) shall be safe from flood and erosion-related damage,
- (4) shall not promote growth and development in ocean hazard areas.

Such growth inducing facilities include sewers, waterlines, roads, and bridges.

(d) Development shall not cause irreversible damage to documented historic architectural or archaeological resources documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources.

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

(f) 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.

(g) Development shall comply with general management objective for ocean hazard areas set forth in Rule .0303 of this Section.

(h) 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.

(i) 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.

(j) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant 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. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(k) All relocation of structures shall require permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as 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 may not be located **seaward oceanward** of the primary structure. In these cases, all other applicable local and state rules shall be met.

(l) 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) Rule .0308(2)(B) of this Section**. The structure(s) 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 renourishment 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 condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under **15A NCAC 07H.0308(a)(2) Rule .0308(a)(2)** of this Section.

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;
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RRC Objection due to ambiguity Eff. May 18, 1995;
Amended Eff. November 1, 2004; June 27, 1995.