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**CRC-20-05**

January 31, 2020

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Ken Richardson

**SUBJECT:** Static Line Exception and Development Line - Origins

The first line of stable natural vegetation (FLSNV) has been used as an oceanfront setback delimiter since 1979. The focus was placed on "natural" vegetation due to dunes being artificially pushed seaward of their natural equilibrium and vegetated in an effort to reduce setback restrictions. The first application of the FLSNV on a nourished beach came about in 1981 with the completion of the Wrightsville Beach Hurricane Protection Project.

Over the course of several meetings in the early 1990's, the CRC determined that the post-project vegetation was not "stable and natural" and should not be used for measuring oceanfront setbacks and directed staff to utilize the pre-project vegetation line for siting oceanfront development. This directive was supported by subsequent rule interpretations by the CRC. In connection with a 1995 contested case regarding a minor permit denial, an Administrative Law Judge urged the Commission to codify this method of measuring setbacks on nourished beaches. The CRC then developed rule language that was based on three primary rationales: 1) there is field evidence that nourished beaches have a higher erosion rate than natural ones, 2) there is no assurance that funding for any nourishment project will be available for future maintenance work as the original project erodes away, and 3) structures would be located so as to be more likely damaged by erosion since their siting was tied to an artificially forced system. The intent of the Static Vegetation Line provisions was to recognize that beach nourishment is an erosion response necessary to protect existing development, and should not be a stimulus for new development or the seaward encroachment of development on sites that are not otherwise suitable for building. In 1996, the Commission started using the pre-project vegetation line to determine development setbacks in areas that received a large-scale (200,000 cubic yards with an average distribution under 50 $yds^3/ft.$) beach nourishment project.

In 2006, the Commission began to review the Static Vegetation Line triggers, noting that in order to avoid a Static Vegetation Line, municipalities had the ability to design projects with sediment volumes less than 200,000 $yds^3$ or, more commonly, sediment distributions greater than 200,000

yds$^3$ with an average distribution under 50 yds$^3$/linear ft. The Commission discussed that while high-frequency beach fill projects can be designed to offset smaller volumes, the large-scale beach fill projects lasted longer and would have fewer environmental impacts due to a longer period between nourishment events. There was a concern that these triggers created a disincentive for large-scale projects for municipalities wanting to avoid the restrictions associated with Static Vegetation Lines. In order to address this possibility, the Commission directed staff to research the past history of beach projects in order to re-examine the definition of large-scale projects. As a result of the study, the Commission re-defined large-scale beach fill projects to be greater than 300,000 cubic yards, or a storm protection project constructed by the USACE, with the intent that a typical beach disposal or inlet navigation project would not trigger a Static Vegetation Line.

The CRC also considered several variance requests based, in part, on hardship claims argued by property owners who met the setback from the "existing vegetation line" but not the setback from the Static Vegetation Line. As property values continue to rise and structures age, the number of variance requests for development on nonconforming lots, as well as re-development on those lots, was predicted to rise as well. At that time, of the ~45 miles of oceanfront beaches that had received beach fill, ~35 miles also had a Static Vegetation Line.

The increasing number of beach fill projects also caused the Commission to reconsider how the oceanfront erosion rate is calculated as many shorelines were substantially farther seaward than they would have been without recent beach fill. The net effect of the increasing number and frequency of beach fill projects was a lower erosion rate over time. In recognition of the effect of beach nourishment on erosion rates, the Commission also began discussion of how the location of structures is managed on the oceanfront.

When the original construction setback rules were established in 1979, they were created with a 30-year multiplier. At that time, oceanfront development was less dense and consisted of predominately smaller, single-family structures. Since that time, development had become larger and denser, and beach fill projects were becoming a more frequent response to sudden erosion events as well as long-term erosion problems. The end results of these discussions were: 1) graduated oceanfront setbacks, and 2) abandoning the distinction between residential and commercial structures and focusing instead on structure size – i.e., the larger the structure, the greater the setback. The Commission also recognized the increasing commitment many local governments had to beach nourishment projects that included monitoring and regular maintenance and discussed providing regulatory relief from the Static Vegetation Line provisions in these situations.

The Commission considered several options, including redefining large-scale beach fill projects; establishing expiration dates for Static Vegetation Line based on monitoring; exemptions for “one-time” projects such as dredged material disposal; and allowing restricted development based on existing vegetation (e.g., building no farther seaward than adjacent property owners, re-development within existing footprint, new development with footprint limitations). In 2009, the Commission adopted the Static Vegetation Line Exception rules, which recognized local government efforts and long-term commitments to managing oceanfront erosion, but also retained state oversight of beachfront development by requiring the Commission’s review and approval of local beach plans, with a 5-year renewal process (including reviews of beach

nourishment maintenance activities, funding mechanism and sand resources). Since the effective date of the rule, eight municipalities (Carolina Beach, Wrightsville Beach, Ocean Isle Beach, Atlantic Beach, Emerald Isle, Indian Beach, Salter Path, and Pine Knoll Shores) have been approved and re-approved for the Static Line Exception.

In response to 2012 legislation requiring the Commission to study the feasibility of creating a new AEC for lands adjacent to the mouth of the Cape Fear River, the CRC conducted an Inlet Management Study which included reviews of beach nourishment, Static Vegetation Lines and Static Line Exceptions (CRC 14-02). In May 2014, the Commission Chair proposed changes to replace the existing Static Vegetation Line rules, which were included as one of the short-term priorities of the Inlet Management Study (CRC 14-33).

In 2014 the Commission began discussing the Development Line concept as an alternative to the existing Static Vegetation Line provisions (CRC 14-34), which included repealing the Static Vegetation Line rule (and replacing it with the development line as proposed by the Chair) or amending the Static Vegetation Line rules. The pros and cons of each option were discussed in December 2014, and DCM proposed three amendments focused more narrowly on amending the existing Static Line Exception provisions. These amendments to the Static Line Exception rules included eliminating the 2,500 square foot maximum building size limit; eliminating the five year waiting period after an initial beach project (making areas retroactively eligible to petition for the exception); and increasing the existing 300,000 yds3 trigger for the Static Vegetation Line as the definition of "large-scale beach fill projects" to volume per linear foot measure that would allow even larger projects involving inlet dredging to continue without triggering a Static Vegetation Line (CRC 14-42).

A subcommittee comprised of CRAC members and local government representatives was appointed by the Chair to further develop the option of repealing the Static Vegetation Line and utilizing the development line. The general concept is that no new development or expansion of existing structures would be allowed seaward of the approved development line. In addition, new or
replacement structures, and the allowable expansion of existing structures, would be determined based on the graduated setback from the existing vegetation line, or the development line, whichever is farther landward. The subcommittee drafted a concept document for CRC consideration and DCM Staff noted several implementation issues for the Commission to consider. In February 2015, the subcommittee presented their draft development line rule language to the CRC, with their recommendations as well as DCM's recommended alternative language (CRC 15-05).

The subcommittee's proposal envisioned communities choosing between three alternatives:

(1) **Graduated setbacks associated with the Vegetation Line (existing rules)** - for a community that does not have a Static Vegetation Line, and has/will not receive large-scale beach nourishment, nor wants a Development Line.
(2) **Static Vegetation Line (existing rules)** - for a community that has received large-scale beach nourishment in the past, has a Static Vegetation Line that it wishes to keep, or does not yet have an approved Development Line.

(3) **Development Line (new rule)** - for communities that have a Static Vegetation Line and wish to replace it with a Development Line, or a community that receives initial large-scale beach nourishment that wishes to have a Development Line instead of a Static Vegetation Line.

Draft rule language considered in 2015 incorporated the development line concept as well as DCM's proposed amendments to the Static Vegetation Line and Static Line Exception procedures. The two key differences between the Subcommittee's and DCM staff's proposals were:

1) Under the Staff's proposals, local governments would still be required to demonstrate a commitment to long-term beach maintenance under the Static Line Exception rules through the Commission's review and approval of local beach plans (and 5-year updates).
2) Under the Subcommittee's proposal, structures would be allowed to encroach oceanward up to an approved Development Line, whereas the existing Static Line Exception rule does not allow new or expanded construction oceanward of the landward-most adjacent neighbor.

The CRAC expressed support for maintaining the Static Vegetation Line, but wanted to replace the Static Line Exception with the development line alternative. The CRAC also recommend that the language requiring communities to commit to maintaining beach fill be retained.

In February 2015 (CRC 15-05), the CRC Chair and Division staff made presentations outlining respective concerns with the current Static Vegetation Line, Static Line Exception, and the proposed Development Line alternative. The CRC Chair presented specific concerns with current rules, specifically that communities are discouraged from designing beach fill projects greater than 300,000 cubic yards due to the Static Vegetation Line rules and restrictions, which was resulting in smaller beach fill projects offering less protection from storms and erosion. The Chair expressed additional concerns about a local government's realistic ability to identify dependable funding sources for project maintenance, and local government budgets being unduly burdened by costs associated with consulting and engineering services needed for pre-identifying compatible sand sources (geotechnical data collection), project monitoring, and updating Exception Reauthorization Reports as required under current rules (15A NCAC 07 J .1201).

DCM Staff followed with a brief presentation that expressed concerns that the proposed Development Line rules might allow for seaward encroachment of oceanfront development and eliminate requirements for a local government to demonstrate their commitment to maintain beach fill projects. Staff commented that while beach fill projects mitigate chronic erosion, they do not eliminate the underlying causes. The Static Vegetation Line serves as an indicator of where the hazard was prior to the beach fill project, and allowing structures to potentially be placed seaward of the pre-project vegetation line may put them at greater risk should a beach fill project not be maintained due to funding issues, limited sand supplies, repetitive storms, or other reasons.

Following further refinements to the rule language and public hearing, the Commission adopted rule language that established the Development Line and amended the Static Vegetation Line Exception rules. The rule changes became effective on April 1, 2016.

In May 2016, Staff met with local governments to field questions regarding implementation of the Development Line (CRC 16-26). In September 2016, The Towns of Carolina Beach and Oak Island applied for and obtained CRC approval of their Development Lines. At the November 2016 CRC meeting, Staff provided proposed amendments to address some concerns (CRC 16-42) as the rules did not require the petitioner to submit maps or GIS data that illustrate the existing, or pre-project (before beach nourishment) location of the mean high water line(s), permanent easement lines, or other applicable line(s) that could be used to distinguish the boundary between private and publicly owned or managed lands. Following the conditional approval of the Town of Oak Island's Development Line, DCM staff noted that additional language was needed in order to provide clarity that will help local governments better understand how to delineate a proposed Development Line, while also making the review process for both the CRC and DCM staff more efficient.

In early 2017, Figure Eight Island and Kure Beach submitted their Development Lines for approval and DCM began to relay to the Commission the Staff's experience in implementing the Development Line rule and identified recurring concerns of seaward encroachment of oceanfront structures. While the Development Line rules to do not require DCM's review other than that the necessary documents are contained in the local government proposal, the Commission directed Staff to develop alternatives for increased DCM involvement in Development Line approvals and limiting seaward encroachment. The Development Line directs communities to "utilize 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." Staff relayed to the Commission that of all the requested Development Lines so far, the seaward edge of existing development is not usually linear and may vary by tens of feet between adjacent structures. This variation has resulted in approved Development Lines that can allow large numbers of structures to be moved oceanward, sometimes significantly, following renourishment projects where vegetation is established seaward of the Static Vegetation Line. Staff's understanding is that the Commission did not intend to facilitate large-scale oceanward redevelopment under the Development Line rules, and contrasted this with redevelopment under the Static Line Exception which limits oceanward encroachment to no farther seaward than the landward-most adjacent neighbor.

Beginning in September 2017, Staff involvement in the process been to quantify and present the potential for seaward encroachment of structures under each new Development Line proposal, in order to assist in the Commission's decision making (CRC 17-26).

At the September 2018 meeting, the Commission considered an amendment to a segment (~1,200 feet) of the Town of Oak Island's Development Line. DCM Staff noted that the proposed amendment was, on average, 76 feet oceanward of the Town's current Development Line, and based on observations measured at existing structures, the proposed amendment could potentially allow the seaward movement of structures between 12 and 131 feet. The Commission did not approve the amendment and requested the Town re-draw the line.

There was no further Commission discussion of the Development Line until September 2019, when "lessons learned through implementation" were discussed with the CRC (CRC 19-31). Staff pointed out notable differences between the Static Line Exception and Development Line rules and additional management challenges associated with them. As you will recall these

included defining the limits of development, including how to consider decks and other accessory structures outlined in 07H.0309, such as dune walkovers, gazebos, and parking areas. It was also at this time that Staff advised the Commission of the pending Town of Carolina Beach Static Line Exception re-authorization, and corresponding rules' silence regarding a local government's ability and the Commission's intent for a town to have both a Static Line Exception and a Development Line apply in the same area.

I look forward to discussing these oceanfront management issues with you further at the upcoming meeting in Beaufort.

North Carolina Department of Environment and Natural Resources
Division of Coastal Management

Pat McCrory
Governor

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**MEMORANDUM** **CRC-14-02**

**TO:** Coastal Resources Commission

**FROM:** Matt Slagel, DCM Shoreline Management Specialist

**SUBJECT:** Beach Nourishment, Static Vegetation Lines, and Static Line Exceptions

**DATE:** February 11, 2014

## Static Vegetation Lines

Oceanfront setbacks are measured from the first line of stable natural vegetation except in unvegetated beach areas and areas within the boundaries of a large-scale beach fill project. A large-scale beach fill project is defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers (USACE) (15A NCAC 7H.0305(a)(7)). In areas that have received a large-scale beach fill project, the building setback is measured from the vegetation line in existence within one year prior to the onset of the project. This is the "Static Vegetation Line," and once a static vegetation line is established, it is used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In locations where the vegetation line is landward of the static vegetation line, the vegetation line is used as the reference point for measuring oceanfront setbacks. A static vegetation line is established in coordination with DCM using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project (15A NCAC 7H.0305(a)(6)). A static vegetation line has been established for the following communities (though not necessarily the entire community): Ocean Isle Beach, Oak Island, Caswell Beach, Bald Head Island, Kure Beach, Carolina Beach, Wrightsville Beach, Emerald Isle, Indian Beach, Salter Path, Pine Knoll Shores, Atlantic Beach, and Nags Head.

Codified in 1996, the use of the pre-project vegetation line to determine development setbacks was a procedure used by DCM staff since 1981. The CRC recognized that beach fill can be used as an option to mitigate erosion and protect existing development and infrastructure but should not encourage encroachment farther seaward. The static vegetation line policy was established by the CRC, in part, based on three factors:

1) Engineered beaches erode at least as fast as, if not faster than, the pre-project beach;
2) There is no assurance of future funding (or beach-compatible sand) for project maintenance; and
3) Development tied to a vegetation line in artificially forced systems could be located so as to be more vulnerable (closer to the shoreline) to natural hazards along the oceanfront.

**"Large-Scale Beach Fill Project" Definition**

Prior to 2008, a large-scale beach fill project was defined as one that placed more than a total volume of 200,000 cubic yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot of shoreline, or a Hurricane Protection project constructed by the USACE. In order to avoid a static vegetation line, municipalities had the ability to design projects with a total sediment volume less than 200,000 cubic yards or, more commonly, a total sediment volume greater than 200,000 cubic yards with an average volume distribution under 50 $yds^3$/ft (e.g., 49 $yds^3$/ft). While high-frequency maintenance projects could be designed to avoid triggering a static vegetation line, larger projects last longer and less frequent projects have fewer environmental impacts. The policy at the time created a disincentive for large-scale, low frequency beach fill projects for municipalities that wanted to avoid the restrictions of static vegetation lines.

The definition was changed in 2008 to remove the 50 $yds^3$/ft average volume requirement and increase the total volume threshold to 300,000 cubic yards. The CRC increased the total volume threshold based on the fact that during the 30-year period between 1975 and 2004, 562 out of 608 (91%) of USACE inlet navigation maintenance dredging projects disposed of less than 300,000 cubic yards of sediment. All but one of the larger projects was associated with dredging Oregon Inlet and placing sand on Pea Island. Therefore, beach disposal of typical inlet navigation projects in NC does not trigger a static vegetation line.

**Static Line Exceptions**

In some communities with a demonstrated, long-term commitment to beach fill, proposed development on many lots could meet the required setback from the natural vegetation line, but could not be permitted because it could not meet the setback from the static vegetation line. The CRC created the static line exception (15A NCAC 7H.0306(a)(8)) as a mechanism to allow setbacks for small-scale development to be measured from either the natural vegetation line or the static line, making many more lots developable. Communities wanting a static line exception may petition the CRC for the designation and demonstrate that they meet the criteria to qualify under the rule. Once granted, the static line exception applies to the entire community and must be renewed every five years.

An approved static line exception allows development setbacks to be measured from a natural vegetation line that is oceanward of the static line under the following conditions:

- Development meets the minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater, as measured from the vegetation line;
- Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
- Total floor area of a building is no greater than 2,500 square feet;
- 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; and
- Swimming pools are not allowed oceanward of the static vegetation line.

Another feature of the static line exception is that only two erosion setback factors apply to development within the boundaries of the exception. Development less than 2,500 square feet must meet a minimum setback of 30 times the erosion rate or 60 feet, whichever is greater, and the setback is measured from a natural vegetation line in areas where it is oceanward of the static line. Development between 2,500 and 5,000 square feet also must meet a minimum setback of 30 times the erosion rate or 60 feet, whichever is

greater, but the setback is measured from the static line, natural vegetation line, or other measurement line, whichever is more landward. Development 5,000 square feet or larger must meet a minimum setback of 60 times the erosion rate in place at the time of permit issuance, and also must be measured from the static line, natural vegetation line, or other measurement line, whichever is more landward (15A NCAC 7H.0306(a)(2)(K)).

The municipalities in the table below have approved static line exceptions. The exceptions must be reviewed by the CRC every five years. As shown in the table, the Commission will be reviewing the five-year progress reports for Carolina Beach and Wrightsville Beach in the coming months.

| Municipality | Date Adopted by CRC | 5-Year Progress Reports Due |
|---|---|---|
| Carolina Beach | August 27, 2009 | August 27, 2014 |
| Wrightsville Beach | August 27, 2009 | August 27, 2014 |
| Ocean Isle Beach | January 13, 2010 | January 13, 2015 |
| Atlantic Beach | March 24, 2010 | March 24, 2015 |
| Emerald Isle | March 24, 2010 | March 24, 2015 |
| Indian Beach / Salter Path | March 24, 2010 | March 24, 2015 |
| Pine Knoll Shores | March 24, 2010 | March 24, 2015 |

**Procedures for Establishing a New Static Line Exception**

Any local government or permit holder of a large-scale beach fill project that is subject to a static vegetation line may petition the CRC for an exception to the static line. A petitioner is eligible to submit a request for a static line exception after five years have passed since the completion of the initial large-scale beach fill project that required the establishment of a static line. The Commission's rule 15A NCAC 7J.1203(b) indicates that the Commission "shall authorize a static line exception request following affirmative findings on each of the criteria presented in 15A NCAC 7J.1201(d)(1) through (d)(4)." Specifically, these four criteria require a showing by the petitioner of (1) a summary of all beach fill projects in the area proposed for the exception, (2) plans and related materials showing the design of the initial fill projects, and any past or planned maintenance work needed to achieve a design life providing no less than 25 years of shore protection from the date of the static line exception request, (3) documentation showing the location and volume of compatible sediment necessary to construct and maintain the project over its design life, and (4) identification of the financial resources or funding sources to fund the project over its design life.

Upon receiving a static line exception request which contains the technical information above, DCM prepares a written summary report of the request to be presented to the CRC. The summary report includes a description of the area affected by the static line exception request, a summary of the large-scale beach fill project that required the static vegetation line and completed and planned maintenance, a summary of the evidence required for a static line exception, and a recommendation to grant or deny the static line exception. DCM also provides the petitioner requesting the static line exception an opportunity to review the summary report. At the CRC meeting where the exception is considered, DCM orally presents the summary report, a representative for the petitioner may provide written or oral comments, additional parties may provide written or oral comments relevant to the static line exception request, and the Commission evaluates the four criteria above to either authorize or deny the static line exception request.

**Procedures for Renewing an Existing Static Line Exception**

The petitioner that received the static line exception must provide a progress report to the Commission at intervals no greater than every five years from the date the static line exception was authorized. In addition to the four criteria in the original exception request, the five-year progress report should include (1) design changes to the initial large-scale beach fill project, (2) design changes to the location and volume of compatible sediment necessary to construct and maintain the large-scale beach fill project, and (3) changes in the financial resources or funding sources necessary to fund the large-scale beach fill project.

The process for reviewing the five-year progress report is very similar to the process for reviewing the original static line exception request. Upon receiving a progress report which contains the technical information above, DCM prepares a written summary of the progress report to be presented to the CRC. The summary includes a recommendation from DCM on whether the conditions defined in 15 NCAC 7J.1201(d)(1) through (d)(4) have been met. DCM also provides the petitioner submitting the progress report an opportunity to review the written summary. At the CRC meeting where the progress report is considered, DCM orally presents the written summary of the progress report, a representative for the petitioner may provide written or oral comments, additional parties may provide written or oral comments relevant to the static line exception progress report, and the Commission evaluates the four criteria above to either reauthorize or revoke the static line exception.

If the Commission reauthorizes the static line exception based on the information in the progress report, the exception is valid for another five years. The static line exception is revoked immediately if the Commission determines that any of the four criteria under which the static line exception was authorized are no longer being met. The static line exception expires immediately at the end of the design life of the large-scale beach fill project including subsequent design changes to the project. If a progress report is not received by DCM within five years from either the static line exception or the previous progress report, the static line exception is revoked automatically at the end of the five-year interval for which the progress report was not received.

The rules governing static vegetation lines and static line exceptions are attached. I look forward to further discussing this at your meeting in Nags Head.

**15A NCAC 7H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS**

(a) This section describes natural and man-made features that are found within the ocean hazard area of environmental concern.

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(5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and

rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.

(6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of initial project construction shall be defined as the static vegetation line. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

(7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers. The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.

**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 is measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. 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 are not 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.

(2) 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 distance. 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 is 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 requires 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 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)(2) of this Rule;

(iv) the structure as replaced meets the minimum setback required under Part (a)(2)(A) of this Rule; and

(v) the structure is rebuilt as far landward on the lot as feasible.

(3) 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 ocean hazard setback, 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. 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 combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

(4) 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 ocean hazard setback whichever is farthest from the vegetation line, static vegetation line or measurement line, whichever is applicable.

(5) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.

(6) 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.

(7) 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.

(8) 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 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. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront. A development setback measured from the vegetation line provides less protection from ocean hazards. Therefore, 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. However, in order to allow for development landward of the large-scale beach fill project that is less than 2,500 square feet and 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 (1) and (2)(A) of this Paragraph, a local government or community may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies 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)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. 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)(2)(A) of this Rule;

(B) Total floor area of a building is no greater than 2,500 square feet;

(C) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;

(D) 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;

(E) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and

(F) Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

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## SECTION .1200 – STATIC VEGETATION LINE EXCEPTION PROCEDURES

### 15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) Any local government or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

(b) A petitioner is eligible to submit a request for a static vegetation line exception after five years have passed since the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static line exception request shall be made in writing by the petitioner. A complete static line exception request shall include the following:

(1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;

(2) Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 25 years of shore protection from the date of the static line exception

request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

(3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and

(4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception 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 static line exception 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.

(f) The Coastal Resources Commission shall consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when 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. March 23, 2009.*

**15A NCAC 07J .1202 REVIEW OF THE STATIC LINE EXCEPTION REQUEST**

(a) The Division of Coastal Management shall prepare a written report of the static line exception request to be presented to the Coastal Resources Commission. This report shall include:

(1) A description of the area affected by the static line exception request;

(2) A summary of the large-scale beach fill project that required the static vegetation line as well as the completed and planned maintenance of the project(s);

(3) A summary of the evidence required for a static line exception; and

(4) A recommendation to grant or deny the static line exception.

(b) The Division of Coastal Management shall provide the petitioner requesting the static line exception an opportunity to review the report prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff: March 23, 2009.*

**15A NCAC 07J .1203 PROCEDURES FOR APPROVING THE STATIC LINE EXCEPTION**

(a) At the meeting that the static line exception is considered by the Coastal Resources Commission, the following shall occur:

(1) The Division of Coastal Management shall orally present the report described in 15A NCAC 07J .1202.

(2) A representative for the petitioner may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(3) Additional parties may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings on each of the criteria presented in 15A NCAC 07J .1201(d)(1) through (d)(4). The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.
(c) The decision to authorize or deny a static line exception is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1204 REVIEW OF THE LARGE-SCALE BEACH-FILL PROJECT AND APPROVED STATIC LINE EXCEPTIONS**

(a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five years from date the static line exception is authorized. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission to the petitioner.
(b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J .1203 at intervals no greater than every five years from the initial authorization in order to renew its findings for the conditions defined in 15A NCAC 07J .1201(d)(2) through (d)(4). The Coastal Resources Commission shall also consider the following conditions:

(1) Design changes to the initial large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;
(2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and
(3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.

(c) The Division of Coastal Management shall prepare a written summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. This written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.
(d) The following shall occur at the meeting at which the Coastal Resources Commission reviews the static line exception progress report:

(1) The Division of Coastal Management shall orally present the written summary of the progress report as defined in this Rule.

(2) A representative for the petitioner may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(3) Additional parties may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION**

(a) The static line exception shall be revoked immediately if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the static line exception is authorized, as defined in 15A NCAC 07J .1201(d)(2) through (d)(4) are not being met.

(b) The static line exception shall expire immediately at the end of the design life of the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) including subsequent design changes to the project as defined in 15A NCAC 07J .1204(b).

(c) In the event a progress report is not received by the Division of Coastal Management within five years from either the static line exception or the previous progress report, the static line exception shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.

(d) The revocation or expiration of a static line exception is considered a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH STATIC VEGETATION LINES AND STATIC LINE EXCEPTIONS**

A list of static vegetation lines in place for petitioners and the conditions under which the static vegetation lines exist, including the date(s) the static line was defined, shall be maintained by the Division of Coastal Management. A list of static line exceptions in place for petitioners and the conditions under which the exceptions exist, including the date the exception was granted, the dates the progress reports were received, the design life of the large-scale beach fill project and the potential expiration dates for the static line exception, shall be maintained by the Division of Coastal Management. Both the static vegetation line list and the static line exception list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6), 113A-124*
*Eff. March 23, 2009.*

North Carolina Department of Environment and Natural Resources
Division of Coastal Management

Pat McCrory
Governor

John E. Skvarla, III
Secretary

CRC-14-33

October 7, 2014

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Mike Lopazanski

**SUBJECT:** Inlet Management Study – Draft Final Report

You will recall that in response to the 2012 NC General Assembly directing the Coastal Resources Commission (CRC) to study the feasibility of creating a new Area of Environmental Concern (AEC) for the lands adjacent to the mouth of the Cape Fear River, the Commission elected to undertake a comprehensive review of inlet-related issues and management tools to assist local governments in these dynamic areas.

The attached draft report summarizes the Commission efforts in conducting a comprehensive inlet management study which examined dredging activities, beach fill, beneficial use of dredged material, and the regulatory framework of beach and inlet related projects.

If the Commission approves, this report including the identified priorities and proposed actions will fulfill the CRC's obligations under Session Law 2012-202 and will be forwarded on to the Department, Legislature and the Governor.

I look forward to discussing the draft report at the upcoming meeting in Wilmington.

Division of Coastal Management
400 Commerce Ave., Morehead City, NC 28557
Phone: 252-808-2808 \ FAX: 252-247-3330 Internet: www.nccoastalmanagement.net

# N.C. Coastal Resources Commission
# Inlet Management Study
# Priorities and Recommendations

Introduction

The 2012 N.C. General Assembly directed the Coastal Resources Commission (CRC) to study the feasibility of creating a new Area of Environmental Concern (AEC) for the lands adjacent to the mouth of the Cape Fear River. Session Law 2012-202 required the CRC to consider the unique coastal morphologies and hydrographic conditions of the Cape Fear River region, and to determine if action is necessary to preserve, protect, and balance the economic and natural resources of this region through the elimination of current overlapping AECs by incorporating appropriate development standards into one single AEC unique to this location.

During the course of this study, the CRC found that while the Cape Fear River inlet did present a unique set of challenges, other inlets may have similar issues. The Commission therefore decided to undertake a comprehensive review of inlet-related issues and with the expectation of developing additional management tools that will allow the CRC to more proactively address the issues confronted by local governments in these dynamic areas.

This comprehensive review of inlet management related issues included a number of related initiatives and legislative mandates currently underway such as determining the feasibility of eliminating the Inlet Hazard AEC and incorporating appropriate development standards adjacent to developed inlets (S.L.2012-202); an examination of permit mechanisms to streamline inlet dredging projects (S.L.2013-138); and efforts to promote regional sediment management through implementation of the Beach and Inlet Management Plan.

These efforts have been combined as part of a comprehensive inlet management study in an effort to develop a solutions-oriented approach that provides appropriate remedies with respect to proposed development, dredging activities, beach fill, beneficial use of dredged material, and the use of engineered structures through close collaboration with local governments.

Over the course of the study, the Commission reviewed existing shoreline management strategies, inlet dynamics, erosion rates and setback factors as well as CRC development standards adjacent to inlets. The study also considered how historical and ongoing beach and inlet management techniques, including dredging, beach fill, beneficial use of dredged material and engineered structures such as groins and jetties can be incorporated into a management strategy. Of particular focus was an examination of CAMA permit mechanisms to streamline routine inlet projects and collaboration with local governments and landowners in an effort to ensure a cost-effective and equitable approach to beach and inlet management and restoration.

Stakeholder Input

The Commission sought input on inlet management from a wide array of stakeholders that included sand managers, engineers, dredging industry representatives, the US Army Corps of Engineers and those with an interest in environmental impacts associate with inlet management. Stakeholders provided the Commission with an overview of their concerns and ideas regarding inlet management, including in-water issues (dredging), erosion control alternatives, and development standards on adjacent lands.

In order to build on the Cape Fear River AEC Study and elicit a range of management options and regulatory reforms related to inlet management, a series of community-based discussion forums were held along the coast. These regional meetings were held in Hatteras, Beaufort, Wilmington and Ocean Isle Beach and included discussion of the existing regulatory framework with regard to dredging and beach nourishment as well as specific issues/actions related to the inlets encompassed by the region. Local governments and representatives of other organizations adjacent to inlets in the region were invited to present their specific concerns related to the inlet(s) within their jurisdiction (see Appendix B Summary of regional Inlet Management Meetings and Preliminary Findings). Written comments were also solicited on new tools and management options to address the following areas:

- Beneficial use of dredged materials
- Dredging depths and sediment criteria rules
- Channel realignment projects
- Development standards/erosion setback
- Volumetric triggers for "static lines"
- Emergency permitting: bulldozing & sandbags
- Dredging windows/moratoria
- Terminal groins and sand bypassing
- Erosion rate calculations for Inlet Hazard Areas
- Dune creation in the Inlet Hazard
- Monitoring conditions associated with

Priorities and Recommendations

The Commission utilized the information gathered from the regional meetings, stakeholders and public comments to develop a list of short-term and long-term priorities contained within the NC Coastal Resources Commission, Inlet Management Study, Findings and Policy Options document Appendix A). The Findings document contains a full discussion of specific public comments, implementation actions and relevant laws or rules associate with each inlet management topic.

**Short-Term Priorities**

- Dredging Depths and Sediment Criteria Rules
- Erosion Rate Calculations for Inlet Hazard Areas
- Emergency Permitting

- Static Vegetation Lines
- Stockpiling of Sand
- Extend Permit Expiration Period for Long-Term Beach and Inlet Projects

**Long-Term Priorities**

- Beneficial Use of Dredged Materials
- Inlet Management Plans
- Funding Sources and Partnerships
- Dredging Windows / Moratoria
- Monitoring Conditions

The Commission recommends beginning implementation of the following priorities to address inlet manage related issues. These initial efforts will focus on areas that are within the existing authority of the CRC, build in current initiatives and include a mix of short and long-term actions:

**Complete Science Panel technical study of Inlet Hazard Areas**

The purpose of the Inlet Hazard Areas is to define areas that are subject to coastal processes associated with inlet dynamics (tidal currents, influence of ebb shoals on erosion patterns, etc.). A 1978 report defined the original Inlet Hazard Area boundaries, and minor amendments were made in the early 1980's. Since the boundaries are outdated, there are many cases where the inlet has completely migrated out of the hazard area. Currently, the setbacks for the IHAs are based on the erosion rates calculated for the adjacent Ocean Erodible Areas (OEAs) and not for the actual inlet area itself.

The CRC has tasked its Science Panel with completing its Inlet Hazard Areas study focusing on a developing a methodology for calculating erosion rates adjacent to inlets and responding to the requirements of House Bill 819 (S.L. 2012-202), to include a feasibility analysis of whether the Inlet Hazard Area of Environmental Concern can be eliminated.

**Establish Deep Draft, Port or Navigation Inlet Management Areas**

Since each inlet in the state has unique attributes, individual inlet management plans could be developed to guide future management actions at each inlet. Some aspects of inlet management plans already exist to a certain extent at a few of North Carolina's inlets. The two deep-draft inlets in the state, Beaufort Inlet and Cape Fear River Inlet, have 20-year Dredged Material Management Plans (DMMPs) which guide the frequency and distribution of dredged material disposal. Inlet management plans could also include sediment budgets, relevant research and studies, delineated areas of inlet influence, and appropriate development standards adjacent to inlets.

The Commission will begin development of separate distinct deep-draft Inlet Management AECs that would result in Beaufort Inlet and Cape Fear River Inlet having specific management objectives and associated development standards. The management objects will recognize the priority placed on providing shipping access to the State Ports through channels maintained by the United States Army Corps of Engineers. The use standards for development in these areas will recognize the influence of a federally mandated channel location on adjacent shorelines, additional

considerations to address erosion control, beach management, the beneficial use of dredged material and the protection of coastal resources.

**Expansion of dredging windows related to moratoria due to biological activity**

Dredging projects require coordination with other state and federal agencies, including the US Army Corps of Engineers (USACE), the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) to mitigate impacts to natural resources. DCM relies on federal and state resource agencies during the CAMA Major Permit process to provide guidance on the timing of projects to minimize adverse effects on biological activity.

Representatives from Coastal Planning and Engineering, Moffatt and Nichol, Dial Cordy and Associates, and other consultants in North Carolina are currently undertaking a study to evaluate the feasibility of expanding the current dredging windows. The objective of the study is to develop summer dredging protocols to mitigate possible impacts to biological resources. The study will be circulated to the various resource agencies and the Commission will evaluate the extension of dredging windows.

**Develop alternative approaches to static vegetation line and static line exception rules**

In areas that have received a large-scale beach fill project (greater than 300,000 cubic yards of sediment or any storm protection project constructed by the USACE), the building setback is measured from the Static Vegetation Line which is the vegetation line in existence within one year prior to the onset of the project. In some communities with a long-term commitment to beach fill, proposed development on many lots could meet the required setback from the natural vegetation line, but could not be permitted since they could not meet the setback from the static vegetation line. The CRC created the static line exception (15A NCAC 07H.0306(a)(8)) as a mechanism to allow setbacks for small-scale development in areas with a long-term commitment to beach nourishment to be measured from either the natural vegetation line or the static line, making more lots developable in these areas.

The Commission will consider developing an alternative to the existing static vegetation provisions, replacing it with a "development line' established by local governments and approved by the CRC seaward of which no new development will be allowed. New or replacement structures sited based on the graduated setback from the vegetation line, or the development line, whichever is further landward. The CRC will also consider amending the static line exception rules eliminating 2,500 square foot maximum building size limit and determine structure setbacks based on the graduated setbacks from first line of stable and natural vegetation where local governments have demonstrated a commitment to long-term beach nourishment.

**Coordinate with Us Army Corps of Engineers on beach bulldozing practices**

The DCM General Permit for beach bulldozing (15A NCAC 07H.1800) allows bulldozing landward of the Mean High Water Line (MHWL) in the Ocean Erodible AEC (OEA), but it does not apply to Inlet Hazard AECs (IHA). Bulldozing of material from seaward of the Mean High Water Line (MHWL) is also allowed but requires a CAMA Major Permit and State Dredge and Fill Permit. Bulldozing and new dune buildings are both currently prohibited in IHAs, but the rebuilding of existing dunes is allowed. Bulldozing is allowed to protect vacant lots if the lots are not located in an IHA. The Commission and DCM will begin development of a more comprehensive General Permit for bulldozing below MHWL in consultation with the US Army Corps of Engineers, as well as address dune building and bulldozing practices in IHAs.

**Amend the definition of "imminently threatened" and its application in CRC rules**

Sandbags are allowed as temporary protection for threatened structures such as houses, septic systems, and roads. They currently cannot be used to protect swimming pools, decks, gazebos, vacant lots, or natural features such as dunes. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened a the DCM Director's discretion when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

The Commission will consider amending the definition of "imminently threatened" including the distance at which point sandbags would be allowed. Also to be considered will be natural features such as dunes in addition to structures.

**Beneficial Use of Dredged Materials**

The state currently has an enforceable beneficial use policy that has been approved by the National Oceanic and Atmospheric Administration (NOAA) for the purposes of federal consistency. Under this policy, clean, beach quality material dredged from navigation channels will be disposed of on the ocean beach or shallow active nearshore area where environmentally acceptable and compatible with other uses of the beach unless no practicable alternative exists. The state also adopted legislation (NC Dredge and Fill Act (NCGS §113-229)) that has not been approved by NOAA for purposes of federal consistency since it does not include a "maximum extent practicable" clause.

The Commission will amend or replace the existing policy to ensure that all beach-compatible sand resulting from the dredging of navigation channels within tidal inlets, harbors, and rivers, shall be placed directly on adjacent beaches. To address possible federal objection, the CRC will consider clarifying what "no practicable alternative" or maximum extent practicable means through the specification or definition of financial and logistical constraints.

**Monitoring Conditions**

Monitoring conditions for CAMA Major Permits are coordinated with other state and federal agencies that are responsible for ensuring that impacts to natural resources are minimized. For some types of projects that have been performed frequently over the course of decades, such as inlet dredging with beach disposal of compatible sediment, comprehensive biological monitoring may not be necessary. Additionally, monitoring protocols do not often allow for cross-project comparisons, so the utility of the results are sometimes limited. The Division of Coastal Management will pursue additional resources for a study to review monitoring conditions placed on past permits and monitoring reports to look for ways to make the data received from monitoring more meaningful and applicable to other projects.

## Topic: Static Vegetation Lines

***Summary of Public Comments:***

- The "300,000 cubic yard rule" for establishing a static vegetation line should be reevaluated. **(S)**
- Some communities have intentionally avoided having a static vegetation line established by keeping any nourishment projects under 300,000 cubic yards. In those cases, this results in more frequent dredging projects, which results in greater environmental impacts and greater costs.

***Discussion:***

A large-scale beach fill project is defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the USACE (15A NCAC 07H.0305(a)(7)). In areas that have received a large-scale beach fill project, the building setback is measured from the vegetation line in existence within one year prior to the onset of the project. This is the "Static Vegetation Line," and once a static vegetation line is established, it is used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In some communities with a demonstrated, long-term commitment to beach fill, proposed development on many lots could meet the required setback from the natural vegetation line, but could not be permitted because it could not meet the setback from the static vegetation line. The CRC created the static line exception (15A NCAC 07H.0306(a)(8)) as a mechanism to allow setbacks for small-scale development to be measured from either the natural vegetation line or the static line, making more lots developable. Any local government or permit holder of a large-scale beach fill project that is subject to a static vegetation line may petition the CRC for an exception to the static line.

At its meeting on May 14, 2014 in Atlantic Beach, the CRC Chairman proposed the following changes to replace the existing static vegetation line rules:

- Eliminate static line and 300,000 cy rule.
- No new development allowed seaward of existing development line.
- Local communities determine development line, DCM reviews.
- Use vegetation line for measurement of setbacks in the absence of a development line.
- Use graduated setbacks based on structure size and local erosion rate.
- New or replacement buildings sited based on the graduated setback from the vegetation line, or the development line, whichever is further landward.
- Apply this concept statewide, not just in IHAs

***CRC Policy Options***

The proposed changes above would eliminate the static vegetation line in areas where a static line has been established, and a static line exception would no longer be required to use the vegetation line for measuring setbacks. Setbacks based on square footage would be measured from the first line of stable and natural vegetation, and any new buildings could only be built as far seaward as the existing development line. The Commission could develop rule language to replace 15A NCAC 07H.0305(a)(6) and the references to static lines and static line exceptions in 15A NCAC 07H.0306(a). Since static line exceptions would no longer be needed, the procedures for applying for and renewing the exception would be eliminated (15A NCAC 07J.1200).

Alternatively, the static vegetation line and static line exception rules could be retained, but the 2,500 square foot maximum building size limit could be repealed (15A NCAC 07H .0306(a)(8)(B)). Graduated setbacks would be measured from either the static line or first line of stable and natural vegetation (in areas with a static line exception). For beaches with a static line exception, structures that measure their setback from the first line of stable and natural vegetation are currently limited to a maximum size of 2,500 square feet. If this size restriction were removed, structures that measure their setback from the first line of stable and natural vegetation would need to meet the graduated setback based on structure size and be located no further oceanward than the landward-most adjacent structure, but they could be larger than 2,500 square feet.

The Commission could also amend the definition of "large-scale beach fill project", increasing it from 300,000 cubic yards to a larger number. If the volume trigger were increased, communities could continue to avoid having a static vegetation line established but build larger and potentially less-frequent beach nourishment projects.

***Relevant Laws or Rules:***
15A NCAC 07H.0305(a)(6-7); 15A NCAC 07H.0306(a); 15A NCAC 07J.1200

North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

CRC-14-34

October 2, 2014

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Mike Lopazanski, Ken Richardson

**SUBJECT:** Static Vegetation Line Alternatives

Over the course of the Inlet Management Study, the Commission discussed developing an alternative to the present management strategy for siting oceanfront development adjacent to beach fill projects. The current rule 15A NCAC 07H.0305(a)(7) requires that oceanfront development in areas that have received a large-scale beach fill project (greater than 300,000 cubic yards of sediment or any storm protection project constructed by the US Army Corps of Engineers (USACE), be measured from the Static Vegetation Line, which is the vegetation line in existence within one year prior to the onset of the project. Exceptions to this rule are allowed, provided that the local government has received a Static Line Exception from the Commission.

Background

The first line of stable natural vegetation (FLSNV) has been used as an oceanfront setback delimiter since 1979. The focus was placed on "natural" vegetation due to dunes being artificially pushed seaward of their natural equilibrium and vegetated in an effort to reduce setback restrictions. The first application of the FLSNV on a nourished beach came about in 1981 with the completion of the Wrightsville Beach Hurricane Protection Project.

Over the course of several meetings, the CRC previously determined that the post-project vegetation was not "stable and natural" and should not be used for measuring oceanfront setbacks and directed staff to utilize the pre-project vegetation line for siting oceanfront development. This directive was support by subsequent rule interpretations by the CRC. In connection with a 1995 contested case regarding a minor permit denial, an Administrative Law Judge urged the Commission to codify this method of measuring setbacks on nourished beaches. The CRC then developed rule language that was based on three primary rationale: 1) there is evidence that nourished beaches have a higher erosion rate than natural ones, 2) there is no assurance that funding for any nourishment project will be available for future maintenance work as the original project erodes away, and 3) structures would more likely be damaged by erosion since their siting was tied to an artificially forced system. The intent of the static line provisions were to recognize that beach nourishment is an erosion response necessary to protect

existing development, and should not be a stimulus for new development or the seaward encroachment of development on sites that are not otherwise suitable for building.

The original static line provisions were tied to large-scale beach nourishment projects, defined as one that: 1) places >200,000 $yds^3$ of sediment at an average ratio >50 $yds^3$/linear ft.; or 2) is a hurricane protection project constructed by the USACE. By 2005, the Division and Commission were beginning to notice how the increasing number of beach fill projects was affecting oceanfront erosion rate calculations. The long-term average of shoreline change is analyzed over a period of approximately 50 years in what is commonly referred to as the "end point method". This method measures the distance of an early shoreline (typically 1940s or 1950s) and compares it to the current location of the shoreline. The Division was noting that many of the shorelines were substantially farther seaward than they would have been without recent beach fill and the net effect was a lower erosion rate due to the most recent shoreline being biased by successive beach fill projects.

In 2006 the Commission began to review the static line triggers noting that in order to avoid a static vegetation line, municipalities had the ability to design projects with sediment volumes less than 200,000 $yds^3$ or, more commonly, sediment distributions greater than 200,000 $yds^3$ with an average distribution under 50 $yds^3$/ft. The Commission discussed that while high-frequency beach fill projects can be designed to offset smaller volumes, the large-scale beach fill projects lasted longer and would have fewer environmental impacts. There was a concern that the triggers created a disincentive for large-scale projects for municipalities wanting to avoid the restrictions associated with static vegetation lines. In order to address this possibility, the Commission directed staff to examine the past history of beach projects in order to gauge how large-scale projects should be defined. The analysis showed that between 1975 and 2004, 562 out of 608 (91%) of USACE inlet navigation maintenance projects disposed of less than 300,000 $yds^3$ of sediment. All but one of the larger projects was associated with Oregon Inlet. As a result of the study, the Commission re-defined large-scale beach fill projects to be greater than 300,000 cubic yards or a storm protection project constructed by the USACE with the intent that a beach disposal or typical inlet navigation project would not trigger a static line.

In addition, the Commission found that in some communities with a long-term commitment to beach fill, proposed development on many lots could meet the required setback from the natural vegetation line, but could not be permitted since they did not meet the setback from the static vegetation line. The CRC created the static line exception (15A NCAC 07H.0306(a)(8)) as a mechanism to allow setbacks for small-scale development (up to 2,500 square feet) in areas with a long-term commitment to beach nourishment to be measured from either the natural vegetation line or the static line, making more lots developable in these areas. Today, there are fourteen communities and one state park with Static Vegetation Lines; Ocean Isle, Oak Island, Caswell Beach, Bald Head Island, Kure Beach, Carolina Beach, Wrightsville Beach, Topsail Beach, Emerald Isle, Indian Beach, Salter Path, Pine Knoll Shores, Atlantic Beach, Nags Head, and Fort Macon State Park.

Two alternatives to the present regulatory framework involving the use of static lines in siting oceanfront development have been discussed. The first alternative has been repeal of static lines and utilization of a "development line." The second alternative proposed by DCM staff has been amendment of the existing static line exception provisions. Both alternatives are outlined below. In addition, proposed rule language has been attached showing possible amendments to the current static line exception rules. Staff will discuss both alternatives at the upcoming meeting in Wilmington.

Static Line Alternatives

**Alternative 1 – Repeal Static Line Provisions**
The Commission could replace the existing static line provision with a "development line" established by local governments and approved by the CRC seaward of which no new development will be allowed. New or replacement structures would be sited based on the graduated setback from the existing vegetation line, or the development line, whichever is further landward.

Pros:

- Allows infill development.
- Some non-conforming structures could be replaced.
- Unbuildable lots could potentially become buildable.
- Could be implemented in areas that were developed during the same time period with similarly sized structures.
- Removes administrative requirement for communities to present long-term erosion control strategies to the CRC.

Cons:

- No assurance of beach fill project maintenance
- In some cases, existing development is not only non-conforming but also on the public trust beach.
- Could be difficult to implement in areas with complex lot geometry (flag lots, cul de sacs, etc.), where plat shape dictates structure placement.
- A "development line" can be difficult to determine where a mix of commercial, high-density, and residential development occurs.
- Areas constructed at different times with dissimilar plans, or constructed when the initial setback differed, could make a development line complicated.
- Potential for seaward encroachment of development in areas likely to experience erosion, storm surge, or in close proximity to inlets.

**Alternative 2 – Amend Static Line Exception Provisions**
The CRC could amend the existing static line exception rules and eliminate the 2,500 square foot maximum building size limit, as well as the five year waiting period, making areas retroactively eligible to petition for the exception. In addition, the Commission could increase the 300,000 $yds^3$ trigger for large-scale beach fill projects. Structure setbacks would be based on the graduated setbacks from first line of stable and natural vegetation and be no farther seaward than the landward-most adjacent structure. As is

currently the case, local governments would petition the Commission to be allowed the exception which would be approved based on demonstrating a commitment to long-term beach fill.

Pros:

- Allows infill development.
- Continued assurance that the community is committed to maintaining the beach fill projects subject to periodic Commission review.
- Most local governments with static lines have already been approved for static line exceptions by the Commission.
- Repealing the 2,500 square foot maximum structure size limitation would allow development similar to areas without large-scale beach fill projects.
- Repealing the five year waiting period would allow local governments to be eligible for the exception immediately upon completion of a beach fill project.
- Some unbuildable lots may become buildable.
- Some non-conforming structures could be replaced.
- By increasing the sediment volume trigger, communities without a Static Vegetation Line may pursue larger projects in hopes of added protection.

Cons

- Local governments that are not currently approved for a static line exception will need to petition the CRC for the exception.
- There will be a continued responsibility on the part of the Commission and local government to periodically review the status of erosion control / beach fill projects.
- Allowance for larger-scale development in areas likely to experience erosion, storm surge, or in close proximity to inlets.

**15A NCAC 7H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS**

(a) This section describes natural and man-made features that are found within the ocean hazard area of environmental concern.

(1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:

(A) the growth of vegetation occurs, or

(B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.

(3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).

(4) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.

(5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.

(6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of initial project construction shall be defined as the static vegetation line. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

(7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army

Corps of Engineers. The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.

(8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(4) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(4)(a) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(4)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:

(A) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and

(B) locating the line of stable natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.

The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

(b) For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined 15A NCAC 07I .0500, a readily identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
*Eff. September 9, 1977;*
*Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;*
*Temporary Amendment Eff. October 10, 1996;*
*Amended Eff. January 1, 1997;*
*Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*
*Temporary Amendment Eff. October 22, 1997;*
*Amended Eff. April 1, 2008; August 1, 2002; August 1, 1998.*

**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 is measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. 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 are not 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.

(2) 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 distance. 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 is 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 requires 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 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)(2) of this Rule;

(iv) the structure as replaced meets the minimum setback required under Part (a)(2)(A) of this Rule; and

(v) the structure is rebuilt as far landward on the lot as feasible.

(3) 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 ocean hazard setback, 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. 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 combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

(4) 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 ocean hazard setback whichever is farthest from the vegetation line, static vegetation line or measurement line, whichever is applicable.

(5) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.

(6) 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.

(7) 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.

(8) 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 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. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront. A development setback measured from the vegetation line provides less protection from ocean hazards. Therefore, 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. However, in order to allow for development landward of the large-scale beach fill project that ~~is less than 2,500 square feet and~~ 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 (1) and (2)(A) of this Paragraph, a local government or community may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies 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)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. 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)(2)(A) of this Rule;

~~(B) Total floor area of a building is no greater than 2,500 square feet;~~

~~(C)~~(B) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;

~~(D)~~(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;

~~(E)~~(D) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and

~~(F)~~(E) Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development is 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. Any disturbance of these other dunes is 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 documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources with knowledge of the property.

(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 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. 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.

(j) All relocation of structures requires 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 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 under 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, 2013.*

## SECTION .1200 – STATIC VEGETATION LINE EXCEPTION PROCEDURES

### 15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) Any local government or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

(b) A petitioner is eligible to submit a request for a static vegetation line exception after ~~five years have passed since~~ the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static line exception request shall be made in writing by the petitioner. A complete static line exception request shall include the following:

(1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;

(2) Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 25 years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

(3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and

(4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception 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 static line exception 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.

(f) The Coastal Resources Commission shall consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when 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. March 23, 2009.*

### 15A NCAC 07J .1202 REVIEW OF THE STATIC LINE EXCEPTION REQUEST

(a) The Division of Coastal Management shall prepare a written report of the static line exception request to be presented to the Coastal Resources Commission. This report shall include:

(1) A description of the area affected by the static line exception request;
(2) A summary of the large-scale beach fill project that required the static vegetation line as well as the completed and planned maintenance of the project(s);
(3) A summary of the evidence required for a static line exception; and
(4) A recommendation to grant or deny the static line exception.

(b) The Division of Coastal Management shall provide the petitioner requesting the static line exception an opportunity to review the report prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1203 PROCEDURES FOR APPROVING THE STATIC LINE EXCEPTION**

(a) At the meeting that the static line exception is considered by the Coastal Resources Commission, the following shall occur:

(1) The Division of Coastal Management shall orally present the report described in 15A NCAC 07J .1202.
(2) A representative for the petitioner may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.
(3) Additional parties may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings on each of the criteria presented in 15A NCAC 07J .1201(d)(1) through (d)(4). The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to authorize or deny a static line exception is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1204 REVIEW OF THE LARGE-SCALE BEACH-FILL PROJECT AND APPROVED STATIC LINE EXCEPTIONS**

(a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five years from date the static line exception is authorized. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission to the petitioner.

(b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J .1203 at intervals no greater than every five years from the initial authorization in order to renew its findings for the conditions defined in 15A NCAC 07J .1201(d)(2) through (d)(4). The Coastal Resources Commission shall also consider the following conditions:

(1) Design changes to the initial large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;
(2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and

(3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.

(c) The Division of Coastal Management shall prepare a written summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. This written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

(d) The following shall occur at the meeting at which the Coastal Resources Commission reviews the static line exception progress report:

(1) The Division of Coastal Management shall orally present the written summary of the progress report as defined in this Rule.

(2) A representative for the petitioner may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(3) Additional parties may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION**

(a) The static line exception shall be revoked immediately if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the static line exception is authorized, as defined in 15A NCAC 07J .1201(d)(2) through (d)(4) are not being met.

(b) The static line exception shall expire immediately at the end of the design life of the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) including subsequent design changes to the project as defined in 15A NCAC 07J .1204(b).

(c) In the event a progress report is not received by the Division of Coastal Management within five years from either the static line exception or the previous progress report, the static line exception shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.

(d) The revocation or expiration of a static line exception is considered a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH STATIC VEGETATION LINES AND STATIC LINE EXCEPTIONS**

A list of static vegetation lines in place for petitioners and the conditions under which the static vegetation lines exist, including the date(s) the static line was defined, shall be maintained by the Division of Coastal Management. A list of static line exceptions in place for petitioners and the conditions under which the exceptions exist, including the date the exception was granted, the dates the progress reports were received, the design life of the large-scale beach fill project and the potential expiration dates for the static line exception, shall be maintained by the Division of Coastal Management. Both the static vegetation line list and the static line exception list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6), 113A-124*
*Eff. March 23, 2009.*

North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

CRC-14-42

December 2, 2014

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Mike Lopazanski

**SUBJECT:** Static Vegetation Line Alternatives – Subcommittee Proposal

At the previous CRC meeting, the Commission continued its discussion of alternatives to the present strategy for managing oceanfront development which includes utilization of a Static Vegetation Line in determining the siting of oceanfront structures. You will recall that the current rule 15A NCAC 07H.0305(a)(7) requires that oceanfront development in areas that have received a large-scale beach fill project (greater than 300,000 cubic yards of sediment or any storm protection project constructed by the US Army Corps of Engineers (USACE)) be measured from the Static Vegetation Line, which is the vegetation line in existence within one year prior to the onset of the project. Exceptions to this rule are allowed, provided that the local government has received a Static Line Exception from the Commission. The origins and rationale for the Static Line were presented at the previous meeting and the background memo (CRC-14-34) is attached as reference.

Two alternatives to the present regulatory framework have been discussed, with the first being a repeal of static lines and utilization of a "development line" as initially proposed by the CRC Chair. The Commission could replace the existing static line provision with a "development line" to be established by local governments and potentially approved by the CRC. The general concept was that no new development or expansion of existing structures would be allowed seaward of the established development line. In addition, new or replacement structures, and the allowable expansion of existing structures, would be determined based on the graduated setback from the existing vegetation line, or the development line, whichever is farther landward.

A second alternative was proposed by DCM staff (potential rule language attached) and focused more narrowly on three amendments to the existing static line exception provisions. The CRC could 1) eliminate the 2,500 square foot maximum building size limit under the static line exception, 2) eliminate the five year waiting period after an initial beach project (making areas retroactively eligible to petition for the exception), and 3) increase the existing 300,000 $yds^3$ trigger for the static line as the definition of "large-scale beach fill projects." The trigger would change to a volume per linear foot along the beachfront, based on additional analysis and discussion with the Commission. Under the existing Static Line Exception process, structure setbacks would continue to

be based on the graduated setbacks from first line of stable and natural vegetation and be sited no farther seaward than the landward-most adjacent structure. As is currently the case, local governments would petition the Commission to be allowed the exception which would be approved based on demonstrating a commitment to long-term beach fill.

At the last CRC meeting, a subcommittee was appointed by the CRC Chair (Rudy Rudolph – CRAC, Spencer Rogers - CRAC, Steve Foster – Oak Island, Frank Rush – Emerald Isle, David Kellam – Figure Eight Island) to further develop the option of repealing static lines and utilizing a development line. The subcommittee met in Morehead City on October 31st and had subsequent email discussions. A concept document was drafted (attached) for CRC consideration. An excerpt from this subcommittee report follows:

*"The proposal envisions communities choosing between three categories:*

*(1)* ***Graduated setbacks associated with SNV (existing rules)*** *- community that does not have a static line, and has/will not receive nourishment, nor wants a Development Line.*

*(2)* ***Static line (existing rules)*** *– community that has received nourishment in the past, has a static line and either is moving forward with a Development Line, or wishes to keep the static line.*

*(3)* ***Development Line (new rule)*** *– communities that have a static line and wish to remove it with a Development Line, or a community that receives initial nourishment that wishes to have a Development Line."*

As this proposal differs somewhat from the Chair's original proposal, there are several areas that may need to be considered by the Commission for further discussion, for example:

- Will criteria be developed by the CRC for both the content and the approval of the proposed "Shoreline Management Plans"?
- Will the process for establishing a Development Line be locally driven (standards & criteria) or will the Commission develop a process for establishing and approving such lines?
- What would the local "governing documents" encompass and how would development lines be incorporated?
- If Development Lines will be submitted to DCM for review prior to CRC final determination, what standards or criteria should be used by DCM in the review?
- What are the implications of removing the graduated setback for larger structures?
- The proposal states that Development Lines will be reviewed by the CRC in concurrence with future land use plans. There are currently no provisions for Development Lines in the CAMA Land Use Plans and municipal governments are not required to participate in the land use planning program.

- The proposal states that conflicts with the Development Line would not be reviewed by the CRC until and unless a proposed variance is supported by the local government. CAMA currently allows any person to seek a variance from the Commission for activities otherwise prohibited by its rules. This provision may be in conflict with CAMA and may also send the issue immediately to a contested case hearing under the Administrative Procedures Act.
- While the location of residential/commercial development has always been the purview of local government, the state has historically maintained responsibility for siting of development with the intent of minimizing losses of life and property resulting from storms and long-term erosion and preventing encroachment of permanent structures on the public beach. The overriding objective has been to preserve the natural conditions of the barrier dune and beach system and reduce public costs of inappropriately sited development. If local governments are to be given authority to make siting determinations, will there be standards or criteria developed by the Commission that meet similar objectives?

DCM Staff appreciate the work of the Commission and the appointed subcommittee, and recognize that the suggested rule changes are initial draft proposals that are intended for further discussion and exploration at upcoming meetings. Staff's initial questions above are only intended as potential discussion points – at this time, the Division and Department do not have a formal position on any proposals other than the changes proposed by the Division, as described above.

Greg "Rudi" Rudolph will present an overview of the subcommittee's proposal at the upcoming CRC meeting. I look forward to the Commission's discussion of this important issue.

The general consensus of the meeting on Friday, October 31, 2014 of the ad-hoc group appointed by the CRC chairman to consider the prior Option One of removal of the static line is outlined below.

**1. The goal is to provide Towns/Communities the ability to eliminate the "static line" from coastal management processes or consideration where the locally proposed and implemented shoreline management plan meets the purposes of CAMA management and setback rules. The proposed method will replace the present vegetation line referenced development standards with a fixed, community implemented development line.**

**2. Existing Static vegetation lines would remain until such time as they have been replaced (via the process) by a "Development Line".**

**3. Local communities/towns will have the option to establish a detailed, surveyed development line along their beach front. This Development Line (and any other associated regulations) would be incorporated into the governing documents of the town or community. The development line would restrict ALL residential/commercial development from being seaward of this line..**

***Generally speaking it is the expectation the Development Line would follow existing development and allow all homes to be built to this alignment. The Development Line would be established and maintained by the local governing body. Proposed Development Lines would be submitted to DCM for review before a final determination by the CRC. Upon final establishment of a Development Line, the existing static line would automatically be eliminated and replaced by the Development Line.***

**4. In addition to the placement of Development Line. Development would also be required to comply with the 30 times the annual erosion rate standard as it relates to stable natural vegetation (SNV) as currently utilized by DCM.**

**5. Development would be restricted to the more restrictive of the Development Line OR the 30 times the erosion rate as it relates to SNV.**

**6. Beach paths, decks, gazebo's would NOT be regulated by this Development Line but rather by existing DCM rules implemented by the local governing body.**

**7. Development lines will be reviewed by the CRC in concurrence with future land Use Plans.**

**8. Individual proposals for owners to conflict with the CRC approved local development standards would be reviewed by the CRC process if only if the local governing body supports the change and refers it to the CRC for consideration. CRC would not review individual proposals not supported by the local governing body.**

***It is the intent of the Development Line to allow for a more controlled line and not allow for new lot development seaward of existing development. It is also the intent to involve the local government body in the decision and management process.***

**8. Graduated setbacks, size limitations, residential/commercial shall be the determination of the local governing authority.**

**OTHER**

The ad-hoc committee came to consensus and unanimously supported moving forward with formulating rule language similar to the above. It is understood there will be particular issues that will arise in specific

areas. Most of those issues will be resolved by the local governing body prior to submission of a Development Line.

Any community currently under "static line" guidance would remain so until such time as a "Development Line" has been established by local governing body and received concurrence by DCM.

It is envisioned that any given community will fall under the following three rules:

(1) **Graduated setbacks associated with SNV (existing rules)** - community that does not have a static line, and has/will not receive nourishment, nor wants a Development Line.

(2) **Static line (existing rules)** – community that has received nourishment in the past, has a static line and either is moving forward with a Development Line, or wishes to keep the static line.

(3) **Development Line (new rule)** – communities that have a static line and wish to remove it with a Development Line, or a community that receives initial nourishment that wishes to have a Development Line.

It is possible with the scenarios above that only minor changes will need to occur to existing rules governing graduated setbacks and the static line.

There is a desire to get some level of commitments from the local governing body to continue to maintain healthy beaches. That commitment is highly encouraged but should not be a mandate. The threat of non-conforming properties and local governance is considered as an incentive by itself to establish a nourishment/shore protection plan.

Other issues that local development lines may need to consider include: public trust issues on beachfill placed seaward of the mean high water line and beachfill construction easements.

***Attendence:***
Greg "rudi" Rudolph
Frank Rush
Steve Shuttleworth
Spencer Rogers
David Kellam
Ken Richardson
Steve Foster
Steve Edwards

**15A NCAC 7H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS**

(a) This section describes natural and man-made features that are found within the ocean hazard area of environmental concern.

(1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:

(A) the growth of vegetation occurs, or

(B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.

(3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).

(4) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.

(5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.

(6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of initial project construction shall be defined as the static vegetation line. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

(7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army

Corps of Engineers. The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.

(8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(4) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(4)(a) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(4)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:

(A) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and

(B) locating the line of stable natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.

The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

(b) For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined 15A NCAC 07I .0500, a readily identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
*Eff. September 9, 1977;*
*Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;*
*Temporary Amendment Eff. October 10, 1996;*
*Amended Eff. January 1, 1997;*
*Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*
*Temporary Amendment Eff. October 22, 1997;*
*Amended Eff. April 1, 2008; August 1, 2002; August 1, 1998.*

**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 is measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. 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 are not 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.

(2) 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 distance. 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 is 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 requires 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 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)(2) of this Rule;

(iv) the structure as replaced meets the minimum setback required under Part (a)(2)(A) of this Rule; and

(v) the structure is rebuilt as far landward on the lot as feasible.

(3) 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 ocean hazard setback, 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. 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 combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

(4) 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 ocean hazard setback whichever is farthest from the vegetation line, static vegetation line or measurement line, whichever is applicable.

(5) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.

(6) 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.

(7) 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.

(8) 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 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. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront. A development setback measured from the vegetation line provides less protection from ocean hazards. Therefore, 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. However, in order to allow for development landward of the large-scale beach fill project that ~~is less than 2,500 square feet and~~ 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 (1) and (2)(A) of this Paragraph, a local government or community may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies 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)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. 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)(2)(A) of this Rule;

~~(B) Total floor area of a building is no greater than 2,500 square feet;~~

~~(C)~~(B) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;

~~(D)~~(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;

~~(E)~~(D) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and

~~(F)~~(E) Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development is 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. Any disturbance of these other dunes is 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 documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources with knowledge of the property.

(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 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. 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.

(j) All relocation of structures requires 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 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 under 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, 2013.*

## SECTION .1200 – STATIC VEGETATION LINE EXCEPTION PROCEDURES

### 15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) Any local government or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

(b) A petitioner is eligible to submit a request for a static vegetation line exception after ~~five years have passed since~~ the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static line exception request shall be made in writing by the petitioner. A complete static line exception request shall include the following:

(1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;

(2) Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 25 years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

(3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and

(4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception 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 static line exception 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.

(f) The Coastal Resources Commission shall consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when 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. March 23, 2009.*

### 15A NCAC 07J .1202 REVIEW OF THE STATIC LINE EXCEPTION REQUEST

(a) The Division of Coastal Management shall prepare a written report of the static line exception request to be presented to the Coastal Resources Commission. This report shall include:

(1) A description of the area affected by the static line exception request;

(2) A summary of the large-scale beach fill project that required the static vegetation line as well as the completed and planned maintenance of the project(s);

(3) A summary of the evidence required for a static line exception; and

(4) A recommendation to grant or deny the static line exception.

(b) The Division of Coastal Management shall provide the petitioner requesting the static line exception an opportunity to review the report prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1203 PROCEDURES FOR APPROVING THE STATIC LINE EXCEPTION**

(a) At the meeting that the static line exception is considered by the Coastal Resources Commission, the following shall occur:

(1) The Division of Coastal Management shall orally present the report described in 15A NCAC 07J .1202.

(2) A representative for the petitioner may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(3) Additional parties may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings on each of the criteria presented in 15A NCAC 07J .1201(d)(1) through (d)(4). The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to authorize or deny a static line exception is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1204 REVIEW OF THE LARGE-SCALE BEACH-FILL PROJECT AND APPROVED STATIC LINE EXCEPTIONS**

(a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five years from date the static line exception is authorized. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission to the petitioner.

(b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J .1203 at intervals no greater than every five years from the initial authorization in order to renew its findings for the conditions defined in 15A NCAC 07J .1201(d)(2) through (d)(4). The Coastal Resources Commission shall also consider the following conditions:

(1) Design changes to the initial large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;

(2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes

have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and

(3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.

(c) The Division of Coastal Management shall prepare a written summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. This written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

(d) The following shall occur at the meeting at which the Coastal Resources Commission reviews the static line exception progress report:

(1) The Division of Coastal Management shall orally present the written summary of the progress report as defined in this Rule.

(2) A representative for the petitioner may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(3) Additional parties may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION**

(a) The static line exception shall be revoked immediately if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the static line exception is authorized, as defined in 15A NCAC 07J .1201(d)(2) through (d)(4) are not being met.

(b) The static line exception shall expire immediately at the end of the design life of the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) including subsequent design changes to the project as defined in 15A NCAC 07J .1204(b).

(c) In the event a progress report is not received by the Division of Coastal Management within five years from either the static line exception or the previous progress report, the static line exception shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.

(d) The revocation or expiration of a static line exception is considered a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH STATIC VEGETATION LINES AND STATIC LINE EXCEPTIONS**

A list of static vegetation lines in place for petitioners and the conditions under which the static vegetation lines exist, including the date(s) the static line was defined, shall be maintained by the Division of Coastal Management. A list of static line exceptions in place for petitioners and the conditions under which the exceptions exist, including the date the exception was granted, the dates the progress reports were received, the design life of the large-scale beach fill project and the potential expiration dates for the static line exception, shall be maintained by the Division

of Coastal Management. Both the static vegetation line list and the static line exception list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6), 113A-124*
*Eff. March 23, 2009.*

North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

Donald R. van der Vaart
Secretary

CRC-15-01

February 2, 2015

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Mike Lopazanski, Ken Richardson

**SUBJECT:** Draft Development Line Rule

At the December 2014 CRC meeting, the Commission discussed two alternatives for utilization of a Static Vegetation Line for siting oceanfront development in areas following a large scale beach fill project. The first alternative proposed by the Commission Chair involves giving local governments the option to eliminate their static line by replacing it with a "development line" that they establish and the CRC approves. The general concept is that no new development or expansion of existing structures would be allowed seaward of the approved development line. In addition, new or replacement structures, and the allowable expansion of existing structures, would be determined based on the graduated setback from the existing vegetation line, or the development line, whichever is farther landward. This concept was further developed by a subcommittee appointed by the CRC Chair (Rudi Rudolph – CRAC, Spencer Rogers - CRAC, Steve Foster – Oak Island, Frank Rush – Emerald Isle, David Kellam – Figure Eight Island). The proposal envisions communities choosing between three alternatives:

(1) ***Graduated setbacks associated with the Vegetation Line (existing rules)*** – *for a community that does not have a static line, and has/will not receive large-scale beach nourishment, nor wants a Development Line.*

(2) ***Static line (existing rules)*** – *for a community that has received large-scale beach nourishment in the past, has a static line that it wishes to keep, or does not yet have an approved Development Line.*

(3) ***Development Line (new rule)*** – *for communities that have a static line and wish to replace it with a Development Line, or a community that receives initial large-scale beach nourishment that wishes to have a Development Line instead of a static line."*

The Subcommittee's proposal also includes repealing the graduated setbacks based on structure size, only requiring that development be sited 30 times the erosion rate from the first line of stable and natural vegetation.

A second alternative was proposed by DCM staff focusing more narrowly on three amendments to the existing static line exception provisions. The CRC could 1) eliminate the 2,500 square foot maximum building size limit under the static line exception, 2) eliminate the five-year waiting period after an initial large-scale beach fill project (making areas immediately eligible to petition for the exception), and 3) increase the existing 300,000 $yds^3$ volumetric trigger for the static line as the definition of "large-scale beach fill projects." The trigger would change to a volume per linear foot along the beachfront, based on additional analysis and discussion with the Commission. Structure setbacks would continue to be based on the graduated setbacks from the first line of stable and natural vegetation and be sited no farther seaward than the landward-most adjacent structure. As is currently the case, local governments could petition the Commission to be granted the exception which would be approved based on demonstrating a commitment to long-term beach fill.

After discussing the details of the two proposals, DCM Staff was directed to draft rule language (attached) that incorporates the development line concept as well as DCM's proposed amendments to the static line and static line exception procedures rules. Staff was further directed to retain the graduated setbacks and to change the trigger for a static line from 300,000 cubic yards to an average of 100 cubic yards per linear foot. The draft rule language defines the development line in 7H .0305(10) as a replacement for static lines in areas that have had a large scale beach fill project. Development is restricted from being seaward of the development line in 7H .0306(a)(2). A new rule has been drafted for development line procedures in 7H .1300 by which local governments may petition the Commission for approval of a development line. The draft requirements to petition for a development line include a detailed survey, record of local adoption and documentation of incorporation into local ordinances.

As a reminder, the current rule 15A NCAC 07H.0305(a)(7) requires that oceanfront development setbacks in areas that have received a large-scale beach fill project (greater than 300,000 cubic yards of sediment or any storm protection project constructed by the US Army Corps of Engineers (USACE)) be measured from the Static Vegetation Line, which is the vegetation line in existence within one year prior to the onset of the project. Exceptions to this rule are allowed, provided that the local government has received a Static Line Exception from the Commission. The origins and rationale for the Static Line were presented at the previous meeting and the background memo (CRC-14-34) is attached as reference.

With the incorporated draft provisions, the main difference between the proposed development line concept versus DCM's proposed amendments to the existing static line rules is that local governments must demonstrate commitment to long-term beach fill under the static line rules. Communities without such a commitment have setbacks based on the vegetation line or the static line (pre-project vegetation line). Also, under the development line concept, structures would be allowed to encroach oceanward up to the approved development line whereas the existing rules require structures to be no further oceanward their landward-most adjacent neighbor.

It should be recognized that these are initial draft proposals that are intended for further discussion and exploration, DCM is not proposing either alternative for rulemaking at this time. We look forward to the discussions at your upcoming meeting as the Commission works to craft rule language that meets the management objective of minimizing losses of life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on the public beach, and preserving the natural conditions of the barrier dune and beach system to reduce public costs of inappropriately sited development.

**15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS**

The ocean hazard AECs contain all of the following areas:

(1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:

(a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at http://www.nccoastalmanagement.net; and

(b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.

(2) The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.

(3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet shall migrate, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas except for:

(a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and

(b) the former location of Mad Inlet, which closed in 1997.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Sub-item (1)(a) of this Rule. Photo copies are available at no charge.

(4) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis as follows:

(a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Sub-item (1)(a) of this Rule.

(b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an Unvegetated Beach Area for a specific period of time. At the

expiration of the time specified by the Coastal Resources Commission, the area shall return to its pre-storm designation.

*History Note:* *Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;*
*Eff. September 9, 1977;*
*Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;*
*Temporary Amendment Eff. October 10, 1996;*
*Amended Eff. April 1, 1997;*
*Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*
*Temporary Amendment Eff. October 22, 1997;*
*Amended Eff. May 1, 2014; February 1, 2013; January 1, 2010, February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998.*

**15A NCAC 7H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS**

(a) This section describes natural and man-made features that are found within the ocean hazard area of environmental concern.

(1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:
(A) the growth of vegetation occurs, or
(B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.

(3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).

(4) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.

(5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.

(6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of initial project construction shall be defined as the static vegetation line. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the

static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

(7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than ~~300,000~~ average of 100 cubic yards per linear foot or any storm protection project constructed by the U.S. Army Corps of Engineers. The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.

(8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(4) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(4)(a) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(4)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:

(A) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and

(B) locating the line of stable natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.

The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

(10) Development Line. The line established by local governments representing the seaward-most allowable location of oceanfront development. Development lines are approved by the Coastal Resources Commission in accordance with the procedures set forth in 15A NCAC 7J.1300. Areas that have received large-scale beach fill projects as defined in 15A NCAC 7H.0305A(7) will not have static vegetation lines if they have approved development lines.

(b) For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined 15A NCAC 07I .0500, a readily identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
*Eff. September 9, 1977;*
*Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;*
*Temporary Amendment Eff. October 10, 1996;*
*Amended Eff. January 1, 1997;*
*Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*

*Temporary Amendment Eff. October 22, 1997;*
*Amended Eff. April 1, 2008; August 1, 2002; August 1, 1998.*

**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 is 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 line shall be set at a distance in accordance with sub-sections (a)(3) through (9) of this Rule. In no case shall development be sited seaward of the development line.

(3) The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. 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 are not 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.

~~(2)~~(4) 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 distance. 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 is 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 requires 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 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)~~(2)~~(4) of this Rule;

(iv) the structure as replaced meets the minimum setback required under Part (a)~~(2)~~(4)(A) of this Rule; and

(v) the structure is rebuilt as far landward on the lot as feasible.

~~(3)~~(5) 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 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 which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

~~(4)~~(6) 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~~ ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, ~~or~~ measurement line, whichever is applicable.

~~(5)~~(7) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.

~~(6)~~(8) 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.

~~(7)~~(9) 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.

~~(8)~~(10) 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 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. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront if the beach fill project is not maintained. A development setback measured from the vegetation line ~~provides~~may provide less protection from ocean hazards. Therefore, 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.

(11) ~~However, in~~In order to allow for development landward of the large-scale beach fill project that ~~is less than 2,500 square feet and~~ 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 (1) and ~~(2)(A)~~ (4) of this Paragraph, a local government or community may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies 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)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. 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)(4) of this Rule;

~~(B) Total floor area of a building is no greater than 2,500 square feet;~~

~~(C)~~(B) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;

~~(D)~~(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;

~~(E)~~(D) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and

~~(F)~~(E) Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development is 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. Any disturbance of these other dunes is 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 documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources with knowledge of the property.

(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 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. 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.

(j) All relocation of structures requires 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 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 under 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, 2013.*

## SECTION .1200 – STATIC VEGETATION LINE EXCEPTION PROCEDURES

### 15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) Any local government or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

(b) A petitioner is eligible to submit a request for a static vegetation line exception after ~~five years have passed since~~ the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static line exception request shall be made in writing by the petitioner. A complete static line exception request shall include the following:

(1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;

(2) Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 30 ~~25~~ years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

(3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and

(4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception 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 static line exception 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.

(f) The Coastal Resources Commission shall consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when 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. March 23, 2009.*

### 15A NCAC 07J .1202 REVIEW OF THE STATIC LINE EXCEPTION REQUEST

(a) The Division of Coastal Management shall prepare a written report of the static line exception request to be presented to the Coastal Resources Commission. This report shall include:

(1) A description of the area affected by the static line exception request;

(2) A summary of the large-scale beach fill project that required the static vegetation line as well as the completed and planned maintenance of the project(s);

(3) A summary of the evidence required for a static line exception; and

(4) A recommendation to grant or deny the static line exception.

(b) The Division of Coastal Management shall provide the petitioner requesting the static line exception an opportunity to review the report prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff: March 23, 2009.*

**15A NCAC 07J .1203 PROCEDURES FOR APPROVING THE STATIC LINE EXCEPTION**

(a) At the meeting that the static line exception is considered by the Coastal Resources Commission, the following shall occur:

(1) The Division of Coastal Management shall orally present the report described in 15A NCAC 07J .1202.

(2) A representative for the petitioner may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(3) Additional parties may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings on each of the criteria presented in 15A NCAC 07J .1201(d)(1) through (d)(4). The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to authorize or deny a static line exception is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1204 REVIEW OF THE LARGE-SCALE BEACH-FILL PROJECT AND APPROVED STATIC LINE EXCEPTIONS**

(a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five years from date the static line exception is authorized. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission to the petitioner.

(b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J .1203 at intervals no greater than every five years from the initial authorization in order to renew its findings for the conditions defined in 15A NCAC 07J .1201(d)(2) through (d)(4). The Coastal Resources Commission shall also consider the following conditions:

(1) Design changes to the initial large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;

(2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes

have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and

(3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.

(c) The Division of Coastal Management shall prepare a written summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. This written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

(d) The following shall occur at the meeting at which the Coastal Resources Commission reviews the static line exception progress report:

(1) The Division of Coastal Management shall orally present the written summary of the progress report as defined in this Rule.

(2) A representative for the petitioner may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(3) Additional parties may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION**

(a) The static line exception shall be revoked immediately if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the static line exception is authorized, as defined in 15A NCAC 07J .1201(d)(2) through (d)(4) are not being met.

(b) The static line exception shall expire immediately at the end of the design life of the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) including subsequent design changes to the project as defined in 15A NCAC 07J .1204(b).

(c) In the event a progress report is not received by the Division of Coastal Management within five years from either the static line exception or the previous progress report, the static line exception shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.

(d) The revocation or expiration of a static line exception is considered a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH STATIC VEGETATION LINES AND STATIC LINE EXCEPTIONS**

A list of static vegetation lines in place for petitioners and the conditions under which the static vegetation lines exist, including the date(s) the static line was defined, shall be maintained by the Division of Coastal Management. A list of static line exceptions in place for petitioners and the conditions under which the exceptions exist, including the date the exception was granted, the dates the progress reports were received, the design life of the large-scale beach fill project and the potential expiration dates for the static line exception, shall be maintained by the Division

of Coastal Management. Both the static vegetation line list and the static line exception list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6), 113A-124*
*Eff. March 23, 2009.*

## SECTION .1300 – DEVELOPMENT LINE PROCEDURES

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

(a) Any local government or community herein referred to as the petitioner that is subject to ocean hazard setback provisions pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for a development line for the purposes of siting oceanfront development in accordance with the provisions of this Section.

(b) A development line request applies to the entire oceanfront jurisdiction of the petitioner.

(c) A development line request shall be made in writing by the petitioner. A complete development line request shall include the following:

(1) A detailed survey of the development line along the oceanfront jurisdiction; any local regulations associated with the development line; a record of local adoption of the development line including any meetings or public hearings; documentation of incorporation of development line into local ordinances;

(2) Surveyed development line spatial data shall be submitted to the Division of Coastal Management 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;

(3) Additional requirements???????????????

(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.

(f) 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, except when 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.*

### 15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE

(a) At the meeting that the development line request is considered by the Coastal Resources Commission, the following shall occur:

(1) A representative for the petitioner shall orally present the report described in 15A NCAC 07J .1301. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(2) Additional parties may provide written or oral comments relevant to the development line request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall approve a development line request based on the information presented in 15A NCAC 07J .1301(c)(1) through (3). The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to authorize or deny a development line is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff.*

### 15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT LINES

A list of development lines in place for petitioners and any conditions under which the development lines exist, including the date(s) the developments lines were approved, shall be maintained by the Division of Coastal

Management. The list of development lines shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6), 113A-124*

North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

Donald R. van der Vaart
Secretary

CRC-15-05

April 20, 2015

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Ken Richardson, Shoreline Management Specialist

**SUBJECT:** Static Line Exception Rule Amendments and Draft Development Line Rule

At the February 18, 2015 CRC meeting, further consideration was given to the proposed Development Line alternative to the Static Line Exception. During the CRAC's report to the Commission, Debbie Smith, CRAC Chair, affirmed the Council's support for maintaining the Static Line, while replacing the Static Line Exception with the Development Line alternative. The CRAC also expressed their support of the Commission's continued effort to draft Development Line rule language, and recommended that they retain language requiring communities to commit to maintaining beach fill projects.

Following the CRAC report was a brief presentation by the CRC Chair and Division staff outlining respective concerns each has with the current Static Line, Static Line Exception, and the proposed Development Line alternative. The CRC Chair presented specific issues with current rules, stating that communities are discouraged from designing beach fill projects above 300,000 cubic yards in order to avoid getting a static line. Instead, some are designing projects just under the large scale beach fill threshold, consequently resulting in smaller projects offering less protection from storms and erosion. Furthermore, the Chair expressed additional concerns about a local government's realistic ability to identify dependable funding sources for project maintenance; and local government budgets being unduly burdened by having to pay for consulting and engineering services associated with identifying compatible sand sources (geotechnical data collection), project monitoring, and updating Exception Reauthorization Reports as required under current rules (15A NCAC 07J .1201).

DCM Staff followed up with a brief presentation that underscored similarities between the two alternatives (see Table 1). Staff expressed concerns that the proposed rules might allow for seaward encroachment of oceanfront development, and eliminate requirements for a local government to demonstrate their commitment to maintain beach fill projects. The Division stated that while beach fill projects mitigate chronic erosion, they do not eliminate the cause. The Static Line serves as an indicator of where the hazard was prior to the beach fill project, and allowing structures to

potentially be placed seaward of the pre-project vegetation line may put them at greater risk should a beach fill project not be maintained.

**Table 1. Revised comparison of allowances under the Static Line Exception Rule amendments proposed by DCM, and the CRC's Subcommittee's most recent Development Line alternative recommendations.**

| Comparing SVL Alternatives | Development Line Alternative | Proposed SVL Amendments |
|---|---|---|
| Eliminate Static Line | ✓ | ✗ |
| Assurance of Community Commitment to Maintaining Beach Fill Project | ✗ | ✓ |
| Eliminate Maximum Structure sqft (~~2,500~~) | ✓ | ✓ |
| No Structures Seaward of Development Line / Adjacent Structures | ✓ | ✓ |
| Measure Setback from FLSNV | ✓ | ✓ |
| Maintain Setback Requirement | ✓ | ✓ |
| Development Line or SVL Exception Adopted/Approved by CRC | ✓ | ✓ |
| Eliminate 5-Year Waiting Period | ✓ | ✓ |

Following the discussion, the CRC Chair stated that the objective is not to allow seaward encroachment of structures, and asked the Commission to consider supporting the Division's proposed alternatives involving Static Line Exception rule changes, in addition to moving forward with drafting Development Line Rule language. Commissioner Renee Cahoon made a motion, seconded by Commissioner Greg Lewis, to move forward with drafting Development Line rule language and defining Development Line delineation criteria. The motion passed unanimously (CRC Minutes, February, 2015).

The CRC then appointed Gregory "Rudi" Rudolph to Chair a subcommittee to develop rule language that would accomplish two objectives; (1) review DCM's proposed alternative changes to the existing static line rules, and (2) draft the necessary rule language to create a Development Line alternative. The subcommittee felt that its biggest challenges were to:

1. Craft rule language that avoided seaward encroachment of development.
2. Constrain how a development line would be administered in areas with non-linear, or "staggered" development.

3. Reconcile how development currently located on public trust lands, or those considered to be "grossly" seaward of adjacent development would be considered when delineating a Development Line.

The CRC's subcommittee met in Wilmington, NC on March 11, 2015 to discuss its charge. The following summarizes their recommendations on both DCM's proposed alternative rule amendments and the Development Line alternative:

**Subcommittee Recommendations: DCM's Proposed Alternative - Static Line Rule Amendments**

1. 100 cubic yards per linear foot is too high of a threshold to trigger a static line; the definition of a large-scale project should remain at 300,000 cubic yards.
2. Supported staff's proposed alternative to remove the 2,500 square feet building floor area restriction. Structures still need to meet graduated setbacks based on structure size and setback factor, and cannot be seaward of adjacent neighbor(s) - 15A NCAC 07H.0306(a).
3. Supported staff's proposed alternative to remove the 5-year Static Line Exception request waiting period. This will allow local governments to seek an Exception immediately following a beach fill project - 15A NCAC 07J.1201(b).

**Subcommittee Recommendations: Proposed Development Line Rule**

1. The Development Line is an alternative to the Static Line Exception, and is a CRC-approved line established by local governments that represents the seaward-most allowable location of oceanfront development subsequent to a large-scale beach fill project.
2. In communities with an approved Development Line, setbacks are measured from the First Line of Stable Natural Vegetation (FLSNV), or measurement line (such as an area designated as an Unvegetated Beach).
3. The Petitioner is defined as a local government, governing body, group of local governments involved in a regional beach fill project, or a qualified homeowner's association as defined in NCGS 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 1 mile or more of ocean shoreline.
4. Development Line Delineation Criteria:
    a. Utilize adjacent neighbor sight-line approach resulting in an average line of structures. Where the seaward edge of existing development is not linear, the petitioner may determine an average line of structures on a case by case basis.
    b. In no case shall a DL be established seaward of the most seaward structure within the petitioner's oceanfront jurisdiction, or below the mean high water line.
    c. A Development Line request must apply at least to the entire project area of the large-scale project, and may be extended to the petitioner's entire oceanfront jurisdiction at their request.

5. Development Line Delineation Methods:
    a. Detailed survey of DL using on-ground observation and survey techniques, or spatially referenced aerial imagery (orthorectified photography).
6. If an approved DL is landward of an existing structure, that structure may remain in place until it is damaged more than 50%. If destroyed or damaged more than 50%, the structure would have to be rebuilt landward of the DL and meet applicable setback requirements.
7. Only the petitioner can request a DL change, not NC DCM.
8. Communities with a DL will not be required to demonstrate a commitment to maintain a beach fill project; therefore, a nourishment plan identifying sand and monetary resources will not be required.

## Background Review

At the December 2014 CRC meeting, the Commission discussed two alternatives for utilization of a Static Line for siting oceanfront development in areas with a large scale beach fill project. The first alternative proposed by the Commission Chair involves giving local governments the option to eliminate the use of the static line and static line exception procedures by replacing them with a new "development line" procedure. The general concept is that no new development or expansion of existing structures would be allowed seaward of the approved development line. In addition, new or replacement structures, and the allowable expansion of existing structures, would be determined based on the graduated setback from the existing vegetation line. This concept was further developed by a subcommittee appointed by the CRC Chair (Rudi Rudolph – CRAC, Spencer Rogers - CRAC, Steve Foster – Oak Island, Frank Rush – Emerald Isle, and David Kellam – Figure Eight Island). The proposal envisions communities choosing between three alternatives:

*(1)* ***Graduated setbacks associated with the Vegetation Line (existing rules)*** *– for a community that does not have a static line, and has/will not receive large-scale beach nourishment, nor wants a Development Line.*

*(2)* ***Static line (existing rules)*** *– for a community that has received large-scale beach nourishment in the past, has a static line that it wishes to keep, or does not yet have an approved Development Line.*

*(3)* ***Development Line (new rule)*** *– for communities that have a static line and wish to replace it with a Development Line, or a community that receives initial large-scale beach nourishment that wishes to have a Development Line instead of a static line.*

The Subcommittee's proposal also included repealing the graduated setbacks based on structure size, only requiring that development be sited 30 times the erosion rate from the first line of stable and natural vegetation. More recently, the CRC subcommittee removed this proposal based on a recommendation made by the CRC Chairman.

A second alternative was proposed by DCM staff focusing more narrowly on three amendments to the existing static line exception provisions. The CRC could 1) eliminate the 2,500 square foot maximum building size limit under the static line exception, 2) eliminate the five-year waiting period after an initial large-scale beach fill project (making areas immediately eligible to petition for the exception), and 3) increase the existing 300,000 $yds^3$ definition of "large-scale beach fill projects" as the volumetric trigger for a static line. The trigger would change to a volume per linear foot along the beachfront, based on additional analysis and discussion with the Commission. Structure setbacks would continue to be based on the graduated setbacks from the first line of stable and natural vegetation and be sited no farther seaward than the landward-most adjacent structure. As is currently the case, local governments could petition the Commission to be granted a static line exception.

After discussing the details of the two proposals, DCM Staff was directed to draft rule language (attached) that incorporates the development line concept as well as DCM's proposed alternative amendments to the static line and static line exception procedures. Staff was further directed to retain the graduated setbacks and to change the trigger for a static line from 300,000 cubic yards to an average of 100 cubic yards per linear foot. The draft rule language defines the development line in 7H .0305(10) as the seaward-most location of development in areas that have had a large scale beach fill project. Development is also prohibited from being seaward of the development line in 7H .0306(a)(2). A new rule has been drafted for development line procedures in 7H .1300 by which local governments may petition the Commission for approval of a development line. The draft requirements to petition for a development line include a detailed survey, record of local adoption and documentation of incorporation into local ordinances.

As a reminder, the current rule 15A NCAC 07H.0305(a)(7) requires that oceanfront development setbacks in areas that have received a large-scale beach fill project (greater than 300,000 cubic yards of sediment or any storm protection project constructed by the US Army Corps of Engineers (USACE)) be measured from the Static Vegetation Line, which is the vegetation line in existence within one year prior to the onset of the project. Exceptions to this rule are allowed, provided that the local government has received a Static Line Exception from the Commission. The origins and rationale for the Static Line were presented at the previous meeting and the background memo (CRC-14-34) is attached as reference.

With the incorporated draft amendments, the main difference between the proposed development line concept versus amendments to the existing static line rules is that local governments must demonstrate commitment to long-term beach fill under the existing static line rules. Communities without such a commitment have setbacks based on the vegetation line or the static line (pre-project vegetation line). Also, under the

development line concept, structures would be allowed to encroach oceanward up to the approved development line whereas the existing rules require structures to be no further oceanward their landward-most adjacent neighbor in most cases.

**DCM AND SUBCOMMITTEE RECOMMENDED LANGUAGE (4/6/15)**

**SUBCOMMITTEE CHAIR RECOMMENDED CHANGES (4/12/15)**

**15A NCAC 07H .0304AECS WITHIN OCEAN HAZARD AREAS**

The ocean hazard AECs contain all of the following areas:

(1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:

(a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at http://www.nccoastalmanagement.net; and

(b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.

(2) The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.

(3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet shall migrate, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas except for:

(a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and

(b) the former location of Mad Inlet, which closed in 1997.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and inno case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Sub-item (1)(a) of this Rule. Photo copies are available at no charge.

(4) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis as follows:

(a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the

Division of Coastal Management on the internet at the website referenced in Sub-item(1)(a) of this Rule.

(b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an Unvegetated Beach Area for a specific period of time. At the expiration of the time specified by the Coastal Resources Commission, the area shall return to its pre-storm designation.

*History Note:* *Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;*
*Eff. September 9, 1977;*
*Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;*
*Temporary Amendment Eff. October 10, 1996;*
*Amended Eff. April 1, 1997;*
*Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*
*Temporary Amendment Eff. October 22, 1997;*
*Amended Eff. May 1, 2014; February 1, 2013; January 1, 2010, February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998.*

**15A NCAC 7H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS**

(a) This section describes natural and man-made features that are found within the ocean hazard area of environmental concern.

(1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:

(A) the growth of vegetation occurs, or

(B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.

(3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).

(4) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.

(5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.

(6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of initial project construction shall be defined as the static vegetation line. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial

imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

(7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers. The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.

(8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(4) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(4)(a) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(4)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:

(A) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and

(B) locating the line of stable natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.

The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

(10) Development Line. The line established in accordance with 15A NCAC 07J.1300 by local governments representing the seaward-most allowable location of oceanfront development. ~~Development lines are approved by the Coastal Resources Commission in accordance with the procedures set forth in 15A NCAC 7J.1300.~~ In areas that have approved development lines, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of 15A NCAC 07H.0306(a)(2).

(b) For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined 15A NCAC 07I .0500, a readily identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*

*Eff. September 9, 1977;*
*Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;*
*Temporary Amendment Eff. October 10, 1996;*
*Amended Eff. January 1, 1997;*
*Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*
*Temporary Amendment Eff. October 22, 1997;*
*Amended Eff. April 1, 2008; August 1, 2002; August 1, 1998.*

**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 is 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 line shall be set at a distance in accordance with sub-sections (a)(3) through (9) of this Rule. 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 below the mean high water line.

~~(3)~~(4) The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. 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 are not 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.

~~(2)~~~~(4)~~(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 distance. 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 is 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 requires 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 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)~~(2)~~(5) of this Rule;

(iv) the structure as replaced meets the minimum setback required under Part (a)~~(2)~~(5)(A) of this Rule; and

(v) the structure is rebuilt as far landward on the lot as feasible.

~~(3)~~(6) 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 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 which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

~~(4)~~(7) 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~~ ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.

~~(5)~~(8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.

~~(6)~~(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.

~~(7)~~(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.

~~(8)~~(11) 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 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. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront if the

beach fill project is not maintained. A development setback measured from the vegetation line ~~provides~~ may provide less protection from ocean hazards. Therefore, 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.

~~(9)~~(12) ~~However, in~~ In order to allow for development landward of the large-scale beach fill project that ~~is less than 2,500 square feet and~~ 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 (1) and ~~(2)(A)~~(5) of this Paragraph, a local government ~~or community~~, group of local governments involved in a regional beach fill project, or qualified owner's association defined in NCGS 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 (1) 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 applies 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)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. 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) Total floor area of a building is no greater than 2,500 square feet;~~

~~(C)~~(B) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;

~~(D)~~(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;

~~(E)~~(D) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and

~~(F)~~(E) Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development is 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. Any disturbance of these other dunes is 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 documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources with knowledge of the property.

(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 general management objective for ocean hazard areas set forth in 15A NCAC07H .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. 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.

(j) All relocation of structures requires 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 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 under 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, 2013.*

## SECTION .1200 – STATIC VEGETATION LINE EXCEPTION PROCEDURES

### 15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) Any local government, group of local governments involved in a regional beach fill project, qualified owner's association defined in NCGS 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 (1) mile of ocean shoreline, or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

(b) A petitioner is eligible to submit a request for a static vegetation line exception after ~~five years have passed since~~ the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static line exception request shall be made in writing by the petitioner. A complete static line exception request shall include the following:

(1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;

(2) Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than30~~25~~ years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

(3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and

(4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception 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 static line exception 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.

(f) The Coastal Resources Commission shall consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when 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. March 23, 2009.*

**15A NCAC 07J .1202 REVIEW OF THE STATIC LINE EXCEPTION REQUEST**

(a) The Division of Coastal Management shall prepare a written report of the static line exception request to be presented to the Coastal Resources Commission. This report shall include:

(1) A description of the area affected by the static line exception request;

(2) A summary of the large-scale beach fill project that required the static vegetation line as well as the completed and planned maintenance of the project(s);

(3) A summary of the evidence required for a static line exception; and

(4) A recommendation to grant or deny the static line exception.

(b) The Division of Coastal Management shall provide the petitioner requesting the static line exception an opportunity to review the report prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff: March 23, 2009.*

**15A NCAC 07J .1203 PROCEDURES FOR APPROVING THE STATIC LINE EXCEPTION**

(a) At the meeting that the static line exception is considered by the Coastal Resources Commission, the following shall occur:

(1) The Division of Coastal Management shall orally present the report described in 15A NCAC 07J .1202.

(2) A representative for the petitioner may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(3) Additional parties may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings on each of the criteria presented in 15A NCAC 07J .1201(d)(1) through (d)(4). The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to authorize or deny a static line exception is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1204 REVIEW OF THE LARGE-SCALE BEACH-FILL PROJECT AND APPROVED STATIC LINE EXCEPTIONS**

(a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five years from date the static line exception is authorized. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission to the petitioner.

(b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J .1203 at intervals no greater than every five years from the initial authorization in order to renew its findings for the conditions defined in 15A NCAC 07J .1201(d)(2) through (d)(4). The Coastal Resources Commission shall also consider the following conditions:

(1) Design changes to the initial large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;

(2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and

(3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.

(c) The Division of Coastal Management shall prepare a written summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. This written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

(d) The following shall occur at the meeting at which the Coastal Resources Commission reviews the static line exception progress report:

(1) The Division of Coastal Management shall orally present the written summary of the progress report as defined in this Rule.

(2) A representative for the petitioner may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(3) Additional parties may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION**

(a) The static line exception shall be revoked immediately if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the static line exception is authorized, as defined in 15A NCAC 07J .1201(d)(2) through (d)(4) are not being met.

(b) The static line exception shall expire immediately at the end of the design life of the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) including subsequent design changes to the project as defined in 15A NCAC 07J .1204(b).

(c) In the event a progress report is not received by the Division of Coastal Management within five years from either the static line exception or the previous progress report, the static line exception shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.

(d) The revocation or expiration of a static line exception is considered a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff. March 23, 2009.*

**15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH STATIC VEGETATION LINES AND STATIC LINE EXCEPTIONS**

A list of static vegetation lines in place for petitioners and the conditions under which the static vegetation lines exist, including the date(s) the static line was defined, shall be maintained by the Division of Coastal Management.

A list of static line exceptions in place for petitioners and the conditions under which the exceptions exist, including the date the exception was granted, the dates the progress reports were received, the design life of the large-scale beach fill project and the potential expiration dates for the static line exception, shall be maintained by the Division of Coastal Management. Both the static vegetation line list and the static line exception list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6), 113A-124*
*Eff. March 23, 2009.*

## 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 permit holder herein referred to as the~~ 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 purposes of siting oceanfront development in accordance with the provisions of this Section. A qualified owner's association is an owner's association defined in NCGS 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 (1) mile of ocean shoreline.

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

(c)The petitioner shall utilize 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) An existing structure that is oceanward of an approved development line can remain in place until damaged greater than fifty percent in accordance with 15A NCAC 7J .0210 by fire, flood, or other disaster; and can only be replaced landward of the development line, and must meet the applicable ocean hazard setback requirements as defined in 15A NCAC 06~~7~~H .0309(a).

(e) A development line request shall be made in writing by the petitioner. A complete development line 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; any local regulations associated with the development line; a record of ~~local~~ adoption of the development by the petitioner ~~line including any meetings or public hearings~~; and documentation of incorporation of development line into local ordinances or rules and regulations of an owner's association.

(2) 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;

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

(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.

(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, except when 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.*

### 15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE

(a) At the meeting that the development line request is considered by the Coastal Resources Commission, the following shall occur:

(1) A representative for the petitioner shall orally present the request ~~report~~ described in 15A NCAC 07J .1301. The Chairman of the Coastal Resources Commission may limit the time allowed for oral presentations. ~~comments~~

(2) Additional persons ~~parties~~ may provide written or oral comments relevant to the development line request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall approve a development line request if the request contains the information required and meets the standards set forth in 15A NCAC 7J. 0301. ~~based on the information presented in 15A NCAC 07J .1301(c)(1) through (3)).~~ The final decision of the Coastal Resources Commission shall be made

at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to authorize or deny a development line is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124*
*Eff..*

**15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT LINES**

A list of development lines in place for petitioners and any conditions under which the development lines exist, including the date(s) the development lines were approved, shall be maintained by the Division of Coastal Management. The list of development lines shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6), 113A-124*
*Eff..*

Environmental Quality

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

May 11, 2016

**MEMORANDUM** **CRC-16-26**

**TO:** Coastal Resources Commission

**FROM:** Ken Richardson, *Shoreline Management Specialist*

**SUBJECT:** Summary of Local Government's Discussion of the Development Line

One of the Coastal Resources Commission's priorities identified in its 2014 Inlet Management Study was to consider alternative approaches to the Static Vegetation Line (SVL) and SVL Exception rules in place at that time. Since that time, the Commission has created new rules for the establishment of Development Lines by local governments and amended the SVL Exception rules, which became effective on April 1, 2016. Although both alternatives allow construction setbacks to be measured from First-Line of Stable and Natural Vegetation (FLSNV), each has differences in terms of how they are approved, managed and applied at the property level. The following serves as a general comparison of the two alternatives available to local governments when large-scale beach fill projects (equal to, or greater than 300,000 cubic yards) are constructed, to include related feedback and questions:

**Approval & Application of Static Vegetation Line Exception Rules (includes amendments):**

- A Static Vegetation Line represents where the FLSNV is located within one year prior to the completion of the large-scale beach fill project. Once established, the SVL never expires, nor is it updated. Without a SVL Exception, setbacks are measured from the SVL, or FLSNV, whichever is most landward (15A NCAC 07H.0305(a)(6)).

- The CRC approves a SVL Exception when a local government submits a 30-year beach plan that includes; initial large-scale beach fill project design, identification of sand sources and financial resources to maintain the project, summary of project performance and any maintenance design modifications). Once approved by the CRC, the local government is then required to request a recurring authorization from the Commission every five years (15A NCAC 07J.1200).

- With an approved SVL Exception:
  - Oceanfront construction setbacks are measured from the FLSNV using graduated setback requirements (15A NCAC 07H.0306(a)(5)).

  - For new construction, no portion of a building or structure can extend oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure, an average line of construction can be determined

by the DCM on a case-by-case basis. This rule serves to limit seaward encroachment of new structures (15A NCAC 07H.0306(a)(12)(C)).

- Swimming pools are not allowed oceanward of SVL (15A NCAC 07H.0306(a)(12)(D)).
- Structures greater than or equal to 5,000 square feet require a minimum setback of 120 feet, or 60 times the shoreline erosion rate in place at the time of permit issuance. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward (15A NCAC 07H.0306(a)(5)(K)).

**Approval & Application of Development Line Rules:**

- Development Lines (DVL) are delineated by the local government and approved by the CRC. Once approved, the CRC cannot make or request changes (15A NCAC 07J.1301(f))
  - Development Lines must apply to the entire large-scale project area, and at the local government's request, may be extended to include the entire oceanfront jurisdiction or legal boundary (15A NCAC 07J.1301(b))
  - The Development Line is delineated by local governments using an adjacent neighbor sight-line approach, that results in an average line of structures. In areas where the seaward edge of development is not linear, the local government 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 seaward-most structure. This rule serves to limit seaward encroachment of new structures (15A NCAC 07J.1301(c)).
- Oceanfront construction setbacks are measured from the FLSNV using graduated setback requirements (15A NCAC 07H.0306(a)(5))
- Although the location of the vegetation line prior to the large-scale beach fill project (SVL) must also be submitted to the CRC, the line will not serve as the reference point for measuring oceanfront setbacks.
- Without a SVL, pools are not restricted from being sited in the setback area.

**Local Government Discussions:**

Since the effective date (April 1st) of the rule amendments, Staff have met, or communicated via e-mail, with several local governments in an effort to assist them with understanding how to delineate the Development Line, as well as how each option could be applied in their community. Based on these discussions, the following have been primary questions and/or issues raised:

- **Why did the 300,000 cubic yards definition of "large-scale" remain unchanged?** Prior to 2008, a large-scale beach fill project was defined as one that placed more than a total volume of 200,000 cubic yards of material at an average ratio of more than 50 cubic yards of material per linear foot of shoreline, or a Hurricane Protection Project constructed by the U.S. Army Corps of Engineers (USACE). In order to avoid static lines, some local governments were designing projects that did not qualify as "large-scale," thus avoiding the establishment of a static vegetation line. While high-

frequency maintenance projects could be designed to avoid the static vegetation line, larger projects last longer and less frequent projects have fewer environmental impacts. In 2008, the definition of "large-scale" was changed to 300,000 cubic yards. The CRC increased the total volume threshold based on the fact that during the 30-year period between 1975 and 2004, 562 out of 608 (91%) of USACE inlet navigation maintenance projects disposed of less than 300,000 cubic yards of material. All but one of the larger projects was associated with dredging Oregon Inlet and placing sand on Pea Island. The intent was to ensure that beach disposal of typical inlet navigation projects in NC does not trigger a static vegetation line. When the CRC-appointed subcommittee met in early 2015 to discuss development line rule language, the committee discussed changing the volume trigger to 100 cubic yards per linear foot, and felt that would potentially increase the definition of "large-scale" to the point that no-one would need a development line or SVL Exception, and since the 300,000 cubic yards was based on data, the committee agreed to keep the 300,000 cubic yard standard.

- **Can pools be placed seaward of a Development Line?** There is no language in the Development Lines rules restricting pools seaward of the Development Line. Towns asked this question because pools are currently not allowed seaward of a Static Vegetation Line, and were curious how Development Line rules might affect the placement of pools. If a Town has a CRC-approved Development Line, pools can be placed in accordance with CAMA rules which apply to those without a SVL (15A NCAC 07H.0309(a)).

- **How should a Development Line be delineated?** Development Line rules specify that an "*adjacent neighbor sight-line*" approach be used, or where structures are not linear, "*an average line of construction*" be used on a case-by-case basis; restricted to not seaward of the seaward-most structure, and; not to be delineated below the mean high water line. When applied, this will likely result in a less restrictive interpretation "*average line of construction*" or "*landward-most adjacent neighbor*" as specified within SVL Exception rules. Staff believes they understand the intent of the Commission's Development Line rules, and have offered guidance to local governments who are currently mapping or considering a DVL (15A NCAC 07J.1300), (15A NCAC 07H.0306(a)(12)(C).

- **Can the Development Line extend beyond the boundaries of large-scale beach fill projects?** Yes. However, in some cases, applying Development Lines rules to areas that currently do not have a SVL, could make rules more restrictive than what is currently allowed. For example, in locations with an erosion rate of 2 feet per year, and ample vegetation between the structure and FLSNV, a DVL could potentially restrict property owners to adjacent neighbors, while current setback requirements would allow a more seaward placement of structures.

- **How are construction setbacks measured?** Both the DVL and SVL Exception rules allow oceanfront construction setbacks to be measured from FLSNV. However, only the SVL Exception allows structures greater than 5,000 square feet to meet a minimum setback of 120 feet, or 60 times the erosion rate at the time of permit issuance, whichever is greater (15A NCAC 07H.0306(a)(5)(K)).

- **Do grandfathering rules apply to structures adjacent to a Development Lines?** Yes. Structures meeting the grandfathering criteria specified in CRC rules are not excluded if they are adjacent to a DVL (15A NCAC 07H.0306(a)(5)(L)).

- **What are the real benefits of a DVL?**

- Pros: #1) cost savings of not having to compile information relative to a 30-year beach maintenance plan and submitting it to the CRC on a 5-year recurring cycle; #2) gives local government the ability to establish the seaward limit of development within limits of CRC DVL rules; pools are no longer restricted to being placed landward of the SVL; #3) setbacks no longer measured from the Static Vegetation Line and; #4) No long-term commitment to beach nourishment.
- Cons: if the DVL is extended beyond the limits of the large-scale beach fill project, the result could mean more restrictive rules than what is currently allowed for those property owners.

In summary, several local governments are actively mapping their proposed DVLs and working with elected officials to get their Development Line incorporated into local ordinances, while others are still weighing their options before acting.

Coastal Management
ENVIRONMENTAL QUALITY

PAT MCCRORY
*Governor*

DONALD R. VAN DER VAART
*Secretary*

BRAXTON DAVIS
*Director*

November 17, 2016

**MEMORANDUM** **CRC-16-42**

**TO:** Coastal Resources Commission

**FROM:** Ken Richardson, *Shoreline Management Specialist*

**SUBJECT:** Amendments to 15A NCAC 07H .0306 General Use Standards for Ocean Hazard Areas & 15A NCAC 7J .1300 Development Line Procedures

On April 1, 2016, the CRC's Development Line Procedures rules became effective, giving oceanfront communities an alternative to the Static Vegetation Line Exception. Once approved by the CRC, a development line allows a community with a static vegetation line to then measure construction setbacks from first line of stable and natural vegetation, and site development no further oceanward than the development line. To have a development line approved, a Town must adhere to the following use standards and procedures:

- Development Line delineation requirements:
  - In no case shall a development line be created or established oceanward of mean high water.
  - Must extend the length of the entire large-scale beach nourishment project, but can be extended the entire length of the Town's jurisdictional oceanfront.
  - The Town shall utilize 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.
- 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:
  - A detailed survey of the development line using on-ground observation and survey, or aerial imagery along the oceanfront jurisdiction or legal boundary; any local regulations associated with the development line; a record of local adoption of the development line by the petitioner; and documentation of incorporation of the development line into local ordinances or rules and regulations of an owner's association.
  - The survey shall include the development line, static vegetation line, mean high water line and static vegetation line.
  - 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.

At the September 2016 CRC meeting in Wilmington, the Towns of Carolina Beach and Oak Island were the first oceanfront communities to submit proposed development lines to the Commission for review and approval. The Town of Carolina Beach received the CRC's approval; while the Town of Oak Island received a conditional approval contingent on the modification a small portion of their development line that would reposition it landward of mean high water. The Town of Oak Island anticipates that the modifications to their development line will be approved by Town Council at their December 13th meeting, after which Town staff will resubmit required information to the Division of Coastal Management for final approval.

**Staff Proposal:**

Currently, CRC rules do not require the petitioner to submit maps or GIS data that illustrate the existing, or pre-project (before beach nourishment) location of the mean high water line(s), permanent easement line, or other applicable line(s) that could be used to distinguish the boundary between private and publically owned or managed lands. Following the conditional approval of the Town of Oak Island's development line, DCM staff noted that additional language is needed in current rules (15A NCAC 07H .0306 & 07J .1300) in order to provide clarity that will help petitioners better understand how to delineate a proposed development line, while also making the review process for both the CRC and DCM staff more efficient.

**Attachments:**

(A) Proposed Amendments 15A NCAC 07H .0306 General Use Standards for Ocean Hazard Areas
(B) Proposed Amendments 15A NCAC 07J .1300 Development Line Procedures

## ATTACHMENT (A):

## 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 is 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 line shall be set at a distance in accordance with Subparagraphs (a)(3) through (9) of this Rule. 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 any perpetual property easement line(s), whichever is more restrictive, ~~below the mean high water line.~~

(4) The setback distance 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 are not 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 distance. 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 is 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 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 which, 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(s) or tract(s) 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) Beach fill as defined in Rule .0305(a)(7) of this Section, represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 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. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront if the beach fill project is not maintained. A development setback measured from the vegetation line may provide less protection from ocean hazards. Therefore, 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 owner's association 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 applies 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, as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. 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 are 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 is allowed oceanward of the static vegetation line; and

(E) Development is not eligible for the exception defined in Rule .0309(b) of this Section.

(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 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 is 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.

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.

(j) All relocation of structures requires 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 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 under 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. April 1, 2016; September 1, 2013.*

## ATTACHMENT (B):

### 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 purposes of siting oceanfront development in accordance with the provisions of this Section. A "qualified owner's association" is an owner's association 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 applies 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) The petitioner shall utilize 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) 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).

(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; any local regulations associated with the development line; a record of local adoption of the development line by the petitioner; and documentation of incorporation of development line into local ordinances or rules and regulations of an owner's association.

(2) The survey shall include the development line, static vegetation line, mean high water line(s) ~~or~~ perpetual property easement line(s). ~~and any other information the Coastal Resources Commission deems necessary for a review of the petitioner's proposed development line. line and static vegetation line.~~

(3) 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.

(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.

(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.

(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, except when 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.*

**15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE**

(a) At the meeting that the development line request is considered by the Coastal Resources Commission, the following shall occur:

(1) A representative for the petitioner shall orally present the request described in Rule .1301 of this Section. The Chairman of the Coastal Resources Commission may limit the time allowed for oral presentations based upon the number of speakers wishing to present.

(2) Additional persons may provide written or oral comments relevant to the development line request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments based upon the number of speakers wishing to speak.

(b) The Coastal Resources Commission shall approve a development line request if the request contains the information required and meets the standards set forth in Rule .1301 of this Section.

(c) The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(d) The decision to authorize or deny a development line is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-123; 113A-124*
*Eff. April 1, 2016.*

**15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT LINES**

A list of development lines in place for petitioners and any conditions under which the development lines exist in accordance with 15A NCAC 07J .1300, including the date(s) the development lines were approved, shall be maintained by the Division of Coastal Management. The list of development lines shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557, during business hours or on the Division's website nccoastalmanagement.net.

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

Coastal Management
ENVIRONMENTAL QUALITY

ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
BRAXTON C. DAVIS
Director

September 13, 2017

**MEMORANDUM** **CRC-17-26**

**TO:** Coastal Resources Commission

**FROM:** Ken Richardson, *Shoreline Management Specialist*

**SUBJECT:** Rule Development, 7J .1300 Development Line Procedures

On April 1, 2016, the CRC's Development Line Procedures rules became effective, giving oceanfront communities an alternative to the Static Vegetation Line Exception. Once approved by the CRC, a development line allows a community with a static vegetation line to then measure construction setbacks from the first line of stable and natural vegetation, and site development no further oceanward than the development line. Currently, there are three communities with CRC approved Development Lines (Carolina Beach, Oak Island, Figure Eight); and one community (Kure Beach) presenting their proposal to the CRC at the September meeting in Wilmington.

Based on our experience in implementing this rule over the past year, staff has taken note of a reoccurring concern about the potential for seaward encroachment of oceanfront structures following successful beach nourishment projects. Staff has analyzed the potential for seaward movement of structures in a scenario where communities with existing Development Lines continue to maintain their large-scale beach nourishment project, promoting vegetation growth seaward. A detailed spatial analysis prepared by DCM staff, including the number of structures that can potentially move oceanward under different scenarios, will be presented at the September CRC meeting.

Challenges Faced with Drawing the Development Line

The rule (15A NCAC 07J. 1300(c)) directs communities to "utilize 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." As we have seen with the communities that have requested Development Lines so far, the seaward edge of existing development is not usually linear, and may vary by tens of feet between adjacent structures. This variation has resulted in approved Development Lines that will allow large numbers of structures to be moved oceanward, sometimes significantly. Staff's understanding is that the Commission did not intend to facilitate large-scale oceanward redevelopment under the Development Line rules. For comparison, rebuilding under the Static Line Exception rule is limited to being no farther oceanward than the landward-most adjacent neighbor.

Staff Proposal

After considering several alternatives for increased Staff involvement in the process, and for limiting the amount of potential seaward encroachment, Staff believes that our best role may be in quantifying any potential for seaward encroachment that a proposed Development Line might allow; thus, giving the Commission additional information in support of the decision-making process. My presentation in September will show the types of data we can provide on the potential impact of proposed Development Lines, and we look forward to the Commission's feedback on whether this type of information will be useful in future request

ROY COOPER
*Governor*
MICHAEL S. REGAN
*Secretary*
BRAXTON C. DAVIS
*Director*

NORTH CAROLINA
***Environmental Quality***

September 3, 2019

**MEMORANDUM** **CRC-19-31**

**TO:** Coastal Resources Commission

**FROM:** Ken Richardson, *Shoreline Management Specialist*

**SUBJECT:** Review of Ocean Hazard Area Management Boundaries, Lines & Grandfathering

## Ocean Hazard Areas (OHA):

Ocean Hazard Areas the grouping Areas of Environmental Concern (AECs), that are comprised of: 1) Ocean Erodible Areas (OEA); 2) Inlet Hazard Areas (IHA), and 3) Unvegetated Beach Areas (UBA). According to the Management Objectives for the Ocean Hazard Area (15A NCAC 7H .0303), these AECs collectively are considered natural hazard areas along the Atlantic Ocean shoreline where, because of their special vulnerability to erosion or other adverse effects of sand, wind, and water, uncontrolled or incompatible development could unreasonably endanger life or property. Ocean Hazard Areas include beaches, frontal dunes, inlet lands, and other areas in which geologic, vegetative and soil conditions indicate a substantial possibility of excessive erosion or flood damage. The location and form of hazard area landforms (beaches, inlets, dunes) are in a permanent state of flux, responding to changes in the wave climate, sand supplies, and sea levels.

The Commission's rules for these AECs further the goals set out in G.S. 113A-102(b), and serve to minimize losses of life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach system, and reducing the public cost of inappropriately sited development.

## 1) Ocean Erodible Areas of Environmental Concern:

The Ocean Erodible Area of Environmental Concern (AEC), also referred to as the OEA, is the area along the oceanfront where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation as a result of ocean related processes. Although day-to-day change is predominately influenced by natural forces, engineering practices such as beach nourishment can and do influence shoreline fluctuation. The oceanward boundary of this AEC starts at the mean low water line, while the landward boundary is measured landward from the first line of stable natural vegetation at a distance established by multiplying the long-term erosion rate setback factor by 90 (minimum distance of 180 feet). Because the erosion rate setback factor is not the same for all areas, and given that it is measured from the location of the vegetation line, this AEC boundary is not the same for all oceanfront locations, nor is it mapped regularly due to its potential to change significantly over a short period of time. Within this AEC there are multiple management lines used in the siting of development and identification of areas with known and/or measured high rates of erosion. For the purpose of this discussion, staff will describe each of the following lines used for siting construction: 1a) development setback; 2a) first line of stable and natural vegetation (FLSNV); 3a) Static Vegetation Line (SVL) & the SVL Exception; 4a) Development Line (DVL), and 5a) Measurement Line.

### *Construction Setback Lines:*

Oceanfront development setbacks were established by the Coastal Resources Commission (CRC) under the Coastal Area Management Act (CAMA) in 1979 for the primary purpose of minimizing losses of life and property resulting from storms and long-term erosion, while also preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately-sited development. In an effort to accomplish these management objectives, erosion rate setback factors were initially calculated and subsequently updated approximately every five years for two key reasons: 1) to properly site oceanfront development, and; 2) to determine the landward-most extent of the Ocean Erodible Area of Environmental Concern (OEA). The CRC's oceanfront setback rules are perhaps the most important with regards to the protection of life and property. In addition, the Federal Emergency Management Administration (FEMA) currently uses North Carolina's erosion rate updates to award Community Rating System (CRS) points to qualified coastal communities. The State's setback requirements help preserve spaces that can serve as undeveloped buffer areas for storm protection.

The OEA setbacks for siting oceanfront development are measured in a landward direction from the first line of stable and natural vegetation (vegetation line), the static vegetation line, or the measurement line. Setback distance is calculated by multiplying the erosion rate setback factor (a.k.a. "erosion rate") times a graduated variable that corresponds to the size of the proposed structure (*see Table 1*). The setback factor represents the statistically smoothed and blocked,

average, annual, long-term shoreline change rates, which are updated approximately every 5 years. For purposes of establishing a minimum development setback, "2" is the default minimum Setback Factor, which includes those areas with erosion rates less than 2 feet/year and areas where accretion is measured.

**Table 1.** Setback Factors & graduated setback.

| Structure Size | Setback Factor (feet) | example "setback factor = 2" |
|---|---|---|
| < 5,000 sqft. | Minimum 60 feet or **30** x setback factor | 2 x **30** = 60 feet |
| ≥ 5,000 sqft. | Minimum 120 feet or **60** x setback factor | 2 x **60** = 120 feet |
| ≥10,000 sqft. | Minimum 130 feet or **65** x setback factor | 2 x **65** = 130 feet |
| ≥20,000 sqft. | Minimum 140 feet or **70** x setback factor | 2 x **70** = 140 feet |
| ≥40,000 sqft. | Minimum 150 feet or **75** x setback factor | 2 x **75** = 150 feet |
| ≥60,000 sqft. | Minimum 160 feet or **80** x setback factor | 2 x **80** = 160 feet |
| ≥80,000 sqft. | Minimum 170 feet or **85** x setback factor | 2 x **85** = 170 feet |
| ≥100,000 sqft. | Minimum 180 feet or **90** x setback factor | 2 x **90** = 180 feet |

***First Line of Stable Natural Vegetation (FLSNV):***

The First Line of Stable & Natural Vegetation (FLSNV), also referred to as the "vegetation line" is the primary reference feature for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, and the more stable uplands. If the vegetation has been planted, it may be considered "stable" when most of the plant stems are from continuous rhizomes rather than planted individual root sets. Planted vegetation may be considered "natural" when most of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring.

While the vegetation line has been used as an oceanfront setback measurement line since 1979, the CRC has determined that when vegetation moves oceanward after a beach nourishment project, this creates an artificial situation that should not be considered "stable and natural" and therefore should not be used for measuring oceanfront setbacks. In 1995, the CRC codified a method of measuring setbacks on nourished beaches that utilizes the surveyed pre-project existing vegetation line, which became known as the "Static Vegetation Line."

***Static Vegetation Line (SVL):***

The static vegetation line is established in areas within the boundaries of a large-scale beach fill project (>300,000 cubic yards) and represents the vegetation line that existed within one year prior to the onset of project construction. A static line is established in coordination with the Division

of Coastal Management. Once a static line is established, setbacks are measured from either the static line or the vegetation line, whichever is more landward. In addition, once a static line is established it does not expire.

The CRC's static line rule was based on three primary issues: 1) evidence that nourished beaches can have higher erosion rates than natural beaches, 2) no assurance that funding for future nourishment projects would be available for maintenance work as the original project erodes away, and 3) structures could be more vulnerable to erosion damage since their siting was tied to an artificially-forced system. The intent of the static line provisions has been to recognize that beach nourishment is an erosion response necessary to protect existing development but should not be a stimulus for new development on sites that are not otherwise suitable for building.

**Static Vegetation Line Exception:**

Since the establishment of the Static Line rule and the increasing prevalence of beach fill projects, the Commission has found that some communities had demonstrated a long-term commitment to beach nourishment and maintenance of their nourished beaches. Due to this long-term commitment, beach vegetation had become stable and migrated oceanward of the static line. In many cases, proposed development on lots within these communities could meet the required setback from the new vegetation line but could not be permitted since they did not meet the setback from the static vegetation line.

To recognize local government efforts to address erosion through a documented long-term commitment to beach nourishment, and to offer relief from the static line requirements, the CRC adopted Static Vegetation Line Exception procedures in 2009. The Static Vegetation Line Exception allows a community to measure setbacks from the existing vegetation line rather than the static line, but includes certain limitations and conditions.

To be eligible for this exception, a community must petition the CRC by providing a beach management plan that describes the project area and design; identify sediment sources; identify funding sources to maintain the initial large-scale project; and, provide an update on project effectiveness and how it will continue to be maintained. The plan must be updated and presented to the CRC every five years for reauthorization. Under the exception, development must meet the required setback from the vegetation line, no portion of a building or structure can be oceanward of the landward-most adjacent neighbor or an average line of construction is determined by DCM, and no swimming pools may be permitted seaward of static line.

**Development Line:**

In 2016, the Commission provided a second alternative to the Static Line by promulgating "Development Line" procedures. The Development Line allows use of the existing vegetation line for setback determinations, with local governments setting the oceanward limit of structures, subject to CRC approval. Unlike with the Static Line Exception, there is no requirement for a demonstrated long-term commitment to beach nourishment or beach management plan and structures are allowed to be constructed, replaced, or expanded to be in line with their seaward-most adjacent neighbor (as opposed to landward-most adjacent neighbor under the Static Line Exception). Establishment of a Development Line requires the following:

1. It is mapped by the community using an average line of construction and must be referenced in local ordinance(s).
2. It is to represent the seaward-most allowable limit of oceanfront development.
3. Must be approved by the CRC. Once approved, only the community can request a change.
4. Development must meet the applicable setback from the vegetation line.
5. No swimming pools may be permitted seaward of the static line.

***Measurement Line:***

A Measurement Line represents the post-storm location of a vegetation line if a storm causes overwash or a loss of vegetation so that not enough vegetation exists to determine oceanfront setbacks. This line is located by using the most recent pre-storm aerial photography to map the pre-storm vegetation line, and then moving it landward a distance equal to the average width of the beach recession caused by the storm. Measurement lines are generally temporary until the vegetation is re-established to the point where it can once again be used for determining oceanfront setbacks but may also be permanently designated by the CRC.

In summary, there are currently twenty-one North Carolina communities with a static vegetation line. Eight of those communities have CRC-authorized Static Vegetation Line Exceptions, four have CRC-approved Development Lines, and two will have a section of their oceanfront with a temporary Measurement Line designation from the CRC (see Table 2).

**Table 2.** List of Communities with Static Vegetation Lines, SVL Exceptions, Development Lines, and Measurement Lines.

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

## 2. Lessons learned through Implementation

There are some notable differences between the Static Vegetation Line Exception and Development Line Rules. Implementation of these rules is 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).

Development Line Rules (15A NCAC 07J .1300) allow construction setbacks to be measured from the existing 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 walkovers, gazebos, and parking areas. It is Staff's understanding that decks and accessory structures should not be used to delineate DVLs. However, because DVLs have been delineated differently from one community

to the next, 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," this creates questions, and potentially difficulties when reviewing permits, when decks and other structures listed under .0309 Exceptions are being proposed seaward of a DVL.

**3. Grandfathering Rules:**

Current "grandfathering" rules (15A NCAC 07H .0306(a)(5)(L)) apply to 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, provided that the structure was built prior to August 11, 2009, does not exceed its original footprint or square footage, it is not possible for the structure to be rebuilt in a location that meets the required ocean hazard setback, and the structure can meet the minimum setback (60 feet from the FLSNV).

It is important to note that existing grandfathering provisions will also apply to structures within the proposed amendments to the Inlet Hazard Areas (15A NCAC 07H .0310). Staff will review several grandfathering rule provisions and looks forward to a discussion of how these various jurisdictional lines, setbacks, and exceptions apply in different scenarios.