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NORTH CAROLINA
Environmental Quality

CRC-21-10

April 16, 2021

MEMORANDUM

TO: Coastal Resources Commission
FROM: Mike Lopazanski
SUBJECT: Fiscal Analysis and Additional Amendments – Beach Management Plans

Since the November 2020 CRC meeting, the Commission as has been discussing a strategy and rule language for the development of local and subregional Beach Management Plans to replace both the Development Line and the Static Line Exception. Included in the discussion have been additional provisions for regulatory relief associated with CRC-approved beach management plans and suggestions for further streamlining and simplifying the Ocean Hazard AEC rules.

Staff are proposing several additional amendments to the proposed rules since our last discussion at the February 2021 meeting.

15A NCAC 7H .0306 General Use Standards for Ocean Hazard Areas

- 7H .0306(a)(1) - There was some discussion of substituting the word "structure" for the word "development" as it is used in the context of siting structures on the ocean shoreline. Staff recommend retaining the word "development" as it is more inclusive and is defined in CAMA.
- 7H .0306(3)(K) – Including the pre-project vegetation line (static line) defeats the benefits of having a beach management plan, as use of the existing vegetation line should be allowed and not the most restrictive line in this instance. Staff propose deletion.
- 7H .0306(a)(4) – Staff have re-examined the deletions originally proposed and have determined that the language is necessary for the proper siting of development in the vicinity of primary dunes. Staff recommends retaining the original language

15A NCAC 7H .0308 Specific Use Standards for Ocean Hazard Areas

- 7H .0308(c)(2)(C) – Clarification of existing language.

15A NCAC 7H .0309 Use Standards for Ocean Hazard Areas - Exceptions

- 7H .0309(b)(4)(C) – Clarification of existing language.

15A NCAC 7J .1200 Beach Management Plan Approval Procedures

- 7J .1201(e) – Clarifies that the local jurisdiction shall provide an opportunity for comment on the Beach Management Plan and that these comments are submitted to the Division along with the request for approval.
- 7J .1203(b) – Clarifies that public comments are to be related to the Beach Management Plan and not the premise of the request. Also clarifies that public comments will be considered in the approval process.
- 7J .1204(b) – Clarifies that public comments will be considered in the five-year update/approval process.
- 7J .1205(b) – Staff recommends deleting the provision for expiration of approval for Beach Management Plans at the end of the life of the project. The intent is that the next five-year update will contain information showing steps taken to renew or continue the beach nourishment efforts.

Sunset Provision for Local Jurisdictions with Existing Static Line Exceptions

In order to recognize that local jurisdictions with existing Static Line Exceptions already have most of what is needed for an approved Beach Management Plan under the proposed rules, Staff are proposing that 7J .1204(4) – "Review of Beach Management Plans" be amended to allow communities to supplement any additional information needed to be compliant with the provisions of 7H .1200 prior to or upon expiration of previously-approved Static Line Exceptions. Staff is also proposing that the regulatory relief associated with approved Beach Management Plans be extended to jurisdictions with unexpired Static Line Exceptions.

Fiscal Analysis

The Division has determined that the proposed amendments will have modest cost impacts on local governments depending on whether they choose to apply for an approved Beach Management Plan. The benefits to local governments and private property owners are assumed to be the similar to the existing Static Line Exception, as are the associated opportunity costs. Based on costs associated with development of a Static Line Exception request, an approved Beach Management Plan would require an average initial cost of $12,144 and an average five-year recurring cost of $6,175 to maintain.

Private property owners may experience some unquantified increase in the value of their property, or opportunity cost, if the community in which their property is located has a Pre-Project Vegetation Line and chooses to develop a Beach Management Plan. If a community does not apply for an approved Beach Management Plan, should vegetation growth occur oceanward of the Pre-Project Vegetation Line, property owners would still be required to measure oceanfront setbacks from the more restrictive Pre-Project Vegetation Line, potentially keeping more properties in a non-conforming status, negatively affecting their property values and limiting development options. Based on past discussions with coastal NC realtors, it is difficult to determine how much loss would be avoided by developing an approved Beach Management Plan when a structure is considered non-conforming since resale value is influenced by a wide range of factors, such as; amenities, location, proximity to sandbag structures, and the overall willingness of the buyer to take risks.

These proposed amendments to establish CRC-approved Beach Management Plans will similarly benefit oceanfront property owners by allowing the potential utilization of a more favorable measurement line for new construction or re-development. These potential benefits are tied to complex factors, such as amenities or the presence of sandbags, that drive local, regional, national, and global real estate markets, and any attempt to estimate them would be speculative on the part of the Division.

In assessing the impacts to private property owners associated with the repeal of the Development Line as compared to being located in an area with a CRC-approved Beach Management Plan, it should be noted that both scenarios allow for the use of the existing vegetation line as point from oceanfront development setbacks are to be measured. The primary difference between the two is that under the Development Line the seaward limit on the siting of structures is determined by an average line of existing construction. Whereas under the Static Line Exception and now proposed Beach Management Plan scenarios, this limit is the landward most adjacent structure. Under both scenarios, the siting of new construction is influenced by location of surrounding development. Given the uneven nature of development along oceanfront shoreline, it is possible that a property owner could build more oceanward under the Development Line, potentially allowing a property owner more space for construction of a larger structure, but only if setback requirements can be met. Without having contextual, historical property value data available, the ability to evaluate and quantify potential economic loss by repeal of the Development Line is not possible at this time. Quantifying this impact is also complicated by the variables associated with real estate markets as discussed above.

Pursuant to G.S. 150B-21.4, no impacts to NCDOT permitting are anticipated from the proposed amendments. The new and amended rules do not create any new procedures or restrictions that would affect NCDOT permits. Development such as roads, parking lots, and other public infrastructure such as utilities continue to have a minimum setback factor of sixty feet (60) or thirty (30) times the shoreline erosion rate (whichever is greater) as defined by 07H.0306(a)(2)(I). In the event NCDOT needs to build or maintain a road located within an Ocean Hazard AEC, the proposed amendments will not change the CRC's approach to permitting that activity.

The Division of Coastal Management's permit review process will not be changed by these amendments and DCM does not anticipate changes in permitting receipts due to the proposed action. There would be no increased cost for staff's time as a direct result of the proposed rules and amendments.

I look forward to discussing the additional amendments and the fiscal analysis at our upcoming meeting on the 28th.

Fiscal Analysis

Application of Erosion Rate Setback Factors
15A NCAC 07H .0104

AECs Within Ocean Hazard Areas
15A NCAC 7H .0304

General Identification and Description of Landforms
15A NCAC 07H .0305

General Use Standards for Ocean Hazard Areas
15A NCAC 07H .0306

Specific Use Standards for Ocean Hazard Areas
15A NCAC 7H .0308

Specific Use Standards for Inlet Hazard Areas
15A NCAC 7H .0310

Requesting the Static Vegetation Line Procedures
15A NCAC 07J .1200; .1201; 1202; .1203; .1204; .1205; .1206

Development Line Procedures
15A NCAC 07J .1301
15A NCAC 07J .1302
15A NCAC 07J .1303

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April 16, 2021

Basic Information

Agency	Department of Environmental Quality, Division of Coastal Management (DCM), Coastal Resources Commission (CRC)
Title	Proposed Amendments to Static Line Exception Procedures and Amendments to Use Standards for Ocean Hazard Areas
Citation	15A NCAC 07H .0305, 15A NCAC 07H .0306, 15A NCAC 07J .1201, and 15A NCAC 07J .1301 - .1303
Description of the Proposed Rule	15A NCAC 07J .1200 (.1201 through .1206) create procedures for requesting and approving Beach Management Plans for oceanfront communities constructing large-scale beach fill projects in order to provide regulatory relief from oceanfront development setback provisions. Amendments to the General Use Standards for Ocean Hazard Areas 15A NCAC 07H .0306 are associated with the Beach Management Plan Procedures. Amendments to 15A NCAC 7H .0104; .0304; .0305; .0308; and .0309; and .0310 address inconsistencies/outdated provision within the rules and provide clarifying language.
Agency Contact	Mike Lopazanski Deputy Director Mike.Lopazanski@ncdenr.gov (252) 808-2808 ext. 223
Authority	G.S. 113A-107; 113A-113; 113A-124
Necessity	The Coastal Resources Commission proposes the Beach Management Plan Procedures and amendments to current rules collectively to allow local government alternative management options following a large scale beach fill project.
Impact Summary	State government: Minimal Local government: Yes Substantial impact: No Federal government: No

Summary

The North Carolina Coastal Resources Commission (CRC) requires that oceanfront development be set back from a defined reference line that is generally either the oceanward edge of natural vegetation, or a surveyed line for communities that have completed large beach nourishment projects.

The Commission is proposing amendments to its rules that address the siting of oceanfront development. These revisions are based on the existing rule for Static Line Exceptions (15A NCAC 7J .1200), which will now incorporate provisions for CRC approved Beach Management Plans. Beach Management Plans would be considered for approval once an initial nourishment project has been completed and would be due for re-authorization every five years. These Plans would include existing elements of the Static Line Exception: a summary of beach fill projects in the jurisdiction, subsequent maintenance projects with 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.

In keeping with the Commission's intent to simply and clarify existing rules language, the term "Static Vegetation Line" is being changed to "Pre-Project Vegetation Line." The terminology can be confusing and seemingly vague, whereas "pre-project vegetation line" is better fitted to being self-defining. "Vegetation Line" is also used throughout the rules as it is defined as the first line of stable and natural vegetation.

The Commission is proposing other changes to streamline and simplify the oceanfront development rules. These changes include repealing 15A NCAC 7H .0104, as the provision (addressing lots created prior to 1979) are effectively the same as those in 15A NCAC 7H .0309(b) which allow for similar development of a structure no greater than 2,000 square feet. As the Commission's intent is to replace both the Static Line Exception (15A NCAC 7J .1200) and the Development Line rules with provisions for Beach Management Plans, the Development Line rules (15A NCAC 7J .1300) will also be repealed.

The proposed amendments will have modest cost impacts on local governments depending on whether they choose to apply for an approved Beach Management Plan. The benefits to local governments and private property owners are assumed to be the similar to the existing Static Line Exception, as are the associated opportunity costs.

This proposal will have no impact on Department of Transportation projects or on DCM permit receipts.

The estimated effective date of these rules is January 1, 2021.

Description of Proposed Actions

Residential and commercial development sited adjacent to the ocean shoreline may be vulnerable to erosion and storm surge. Under the NC Coastal Area Management Act (CAMA), hardened erosion protection structures are generally not allowed on the ocean shoreline; therefore, local governments use beach fill (nourishment) as a means to protect oceanfront property from storm damage and to address chronic erosion issues.

While the first line of stable-natural vegetation (FLSNV) has been used as an oceanfront setback measurement line since 1979, the CRC determined that the vegetation on nourished beaches was not in a natural state and without continued maintenance projects, are prone to increased erosion. The existing vegetation on nourished beaches 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 vegetation line, which became known as the "static line." The CRC's static line rule was based on three primary issues: 1) evidence that nourished beaches can have higher erosion rates than natural ones, 2) no assurance that funding for future nourishment projects would be available for maintenance work as the original project erodes, 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. Once a static line is established it does not expire.

Prior to 2009, a community that completed construction of a large-scale beach fill project was required to measure construction setbacks from the static line or the first line of stable-natural vegetation, whichever was more landward. Over time, the Commission 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, the 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 natural 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 long-term beach nourishment and offer relief from the Static Vegetation Line requirements, the CRC adopted Static Vegetation Line Exception Procedures in 2009. The procedures require local communities to petition the CRC for an exception to the static line that allows property owners within that community to measure construction setbacks from the first line of stable-natural vegetation instead of the static line, under specific conditions. To qualify for the exception, communities must demonstrate that they have a source of sand and a funding mechanism to continue beach nourishment for at least 30 years. The CRC also requires communities to update this information every five years in order to maintain the exception. Currently there are eight local governments with CRC approved Static Line Exceptions and have now had them in place for up to ten years.

In 2014, the CRC created the Development Line rules as another alternative for managing the siting of oceanfront development. 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:

- It is mapped by the community using an average line of construction and must be referenced in local ordinance(s).
- It is to represent the seaward-most allowable limit of oceanfront development.
- Must be approved by the CRC. Once approved, only the community can request a change.
- Development must meet the applicable setback from the vegetation line.

- No swimming pools may be permitted seaward of the static line. The subcommittee's proposal envisioned communities.

In 2019, the Commission began discussion of implementation issues related to the Development Line that presented additional management challenges, including defining the limits of development, the siting of decks and other accessory structures such as dune walkovers, gazebos, and parking areas. Additionally, local governments with approved Development Lines were also requesting Static Line Exception re-authorization. Local governments utilization of both the Static Line Exception and the Development was not contemplated by the Commission, but the corresponding rules' silence regarding a local government's ability and the Commission's intent presented further implementation issues.

The Commission also began to note that recurring concerns of seaward encroachment of oceanfront structures under the Development Line rules. While the Development Line rules to do not require DCM's review other than that verifying 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." As the seaward edge of existing development is not usually linear and may vary by tens of feet between adjacent structures, approved Development Lines 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. The Commission Expressed their intent that large-scale oceanward redevelopment should not be facilitated 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.

To address these implementation issues, the Commission assigned a subcommittee to discuss alternatives that included amending existing rules or drafting a new strategy for siting oceanfront development. In discussing the alternatives, the Commission supported for the following:

- The State should retain oversight in areas where beach nourishment projects are installed;
- In order to gain regulatory flexibility for construction setbacks, beach communities should demonstrate a local commitment to maintaining beach nourishment projects;
- Beach nourishment projects should not be used as a stimulus for new development in areas that would otherwise not be suitable;
- Alternatives should not encourage seaward encroachment of new or expanded structures;
- Limitation on seaward encroachment of structures is preferred through the landward-most adjacent neighbor rule rather than a new oceanward-most adjacent neighbor policy, but there is a need for flexibility in addressing unique circumstances (curved shorelines, development around cul-de-sacs, or peculiar lot configurations) utilizing a sight-line or average line of construction approach.

In November 2020, the Commission began development of a strategy for the development of local and subregional Beach Management Plans to replace both the Development Line and the Static Line Exception. Also included were additional provisions for regulatory relief associated with CRC-approved beach management plans and further streamlining and simplification of the Ocean Hazard AEC rules.

Beach Management Plans

The Commission has incorporated the provisions from the subcommittee into its rules that address the siting of oceanfront development, Part of the revisions are based on the existing rule for Static Line Exceptions (15A NCAC 7J .1200), which will now incorporate provisions for CRC approved Beach Management Plans. Beach Management Plans would be considered for approval once an initial nourishment project has been completed and would be due for re-authorization every five years. These Plans would include existing elements of the Static Line Exception: a summary of beach fill projects in the jurisdiction, subsequent maintenance projects with 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. In addition to the past documentation required for a Static Line Exception, Beach Management Plans will also include historic and projected volumetric losses due to erosion and storm events, anticipated maintenance event triggers and schedules, long-term volumetric sand needs and annual monitoring protocols, and planned maintenance needed to achieve a design life providing 30 years of shore protection. Requirements for the identification of financial resources are also expanded to include specific information such as the dedicated percentage or occupancy taxes, special tax districts and anticipated federal funding.

Enhanced Exceptions

The Commission has proposed amendments so that areas with approved Beach Management Plans include the existing Static Line Exception provision granting graduated setback relief to large structures. Under this provision, structures greater than 5,000 square feet require a minimum setback of 120 feet or 60 times the erosion rate.

The existing provisions allowing the replacement of oceanfront structures that do not meet current setbacks (original dimensions, minimum 60-foot setback, as far landward as practicable) is currently limited to single family and duplex residential structures and commercial and multifamily residential structures up to 10,000 square feet and constructed prior to August 2009. Staff is proposing to allow all structures to take advantage of this replacement provision if located in an area with an approved Beach Management Plan. The Commission is also proposing to remove the references to residential or commercial structures generally, as the Commission has moved away from the use distinctions since 2009.

With regard to approving Beach Management Plans, the Commission is proposing to require that local governments present their Beach Management Plans to the Commission rather than DCM summarizing the Plans as it is more appropriate for DCM to focus on its recommendations on whether a Plan meets the Commission's criteria for approval. Also proposed for deletion are provisions incorporating written or oral comments from third parties regarding Plan approval requests. The Commission is incorporating a public comment requirements for local government that will address third party concerns.

Setback Related Nomenclature

In keeping with the Commission's intent to simply and clarify existing rules language, the term "Static Vegetation Line" is being changed to "Pre-Project Vegetation Line." The terminology can be confusing and seemingly vague, whereas "pre-project vegetation line" is better fitted to being self-defining. "Vegetation Line" is also used throughout the rules as it is defined as the first line of stable and natural vegetation.

Implementation

There are 24 oceanfront communities (~86%) that currently have static vegetation lines. Eight of these communities already have a CRC-approved Static Line Exception and four also have a Development Line. To address transitional issues, the Commission is proposing that these communities continue to utilize the Static Line Exception provisions until they expire, at which point they will be eligible to petition for a CRC approved Beach Management Plan. These communities will also be able to apply for an approved Beach Management Plan by supplementing the information previously provided for the Static Line Exception to address missing criteria for Beach Management Plans rather than starting new plans.

Other Proposed Changes

The Commission is proposing other changes to streamline and simplify the oceanfront development rules. These changes include repealing 15A NCAC 7H .0104, as the provision (addressing lots created prior to 1979) are effectively the same as those in 15A NCAC 7H .0309(b) which allow for similar development of a structure no greater than 2,000 square feet.

- Clarifying and simplify rule language related to the siting of structures in relation to primary and frontal dunes.
- Consolidating rules related to dune alteration in 15A NCAC 7H .0308(b)(1).
- Amending the required permit condition that requires structures to be relocated or removed within two years of becoming imminently threatened to eight years. This change mirrors provisions for the management of temporary erosion control structures (sandbags).
- Removing provisions allowing for the use of erosion rates at the time the lot was platted in determining setbacks. While seldom used, this language has caused confusion for the Division and Local Permitting Officers.
- Removing or consolidating redundant rule language.

Summary of Rule Changes

Beach Management Plans

15A NCAC 7H .1200 & .1202 Beach Management Plan Approval Procedures

- Replaces/improves Static Line Exception Process
- Eligible for approval after initial beach fill project
- Covers all pre-project vegetation lines within jurisdiction of plan
- Provides Commission with a summary of past and future beach nourishment plans
- Historic & projected volumetric losses from erosion/storms (NEW)
- Anticipated maintenance triggers (NEW)
- Long-term volumetric sand needs (NEW)
- Annual monitoring protocols (NEW)
- Additional identification of financial resources specifics (NEW)
- Opportunity for public input on plan at local level, for consideration by CRC (NEW)

15A NCAC 7J .1202 Review of Beach Management Plan Approval Request

- Petitioner to provide a summary of the beach management plan to CRC (NEW)
- DCM will provide the CRC a review and recommendation to grant or deny the request (NEW)

15A NCAC 7J .1203 Procedures for Approving A Beach Management Plan

- Remove provision for third parties to provide written/oral comments on the request at the CRC meeting (NEW)

15A NCAC 7J .1204 Review of Beach Management Plans

- Same provision for five-year review and reauthorization of beach management plans as Static Line Exception.
- The five-year progress report is prepared and presented to CRC by the local government (NEW)
- DCM will review and provide CRC with a recommendation on the reauthorization request (NEW)
- Remove provision for third parties to written/oral comments on the request at the CRC meeting (NEW)
- Local governments with a previously approved, unexpired Static Line Exception to petition the Commission for approval of a Beach Management Plan by supplementing information required under the Static Line Exception to be compliant with the provisions of 7J .1200. (NEW)

15A NCAC 7J .1205 Revocation and Expiration of Beach Management Plan Approval

- Delete reference to Static Line Exception expiration.

15A NCAC 7J .1206 Local Govts and Communities with Approved Beach Management Plans

- No significant changes

Enhanced Exceptions

15A NCAC 7J .0306 General Use Standards for Ocean Hazard Areas

- Structures 5,000 square feet or greater require a minimum setback of 120 feet or 60 times the erosion rate. (Already a benefit of Static Line Exception)
- Replacement of all structures 10,000 square feet or less require minimum setback of 30 times the erosion rate, with conditions (NEW)
- Replacement of structures 10,000 sf or less (with conditions) now allowed for structures built after 2009 in communities with a CRC-approved beach management plan (NEW)
- Under CRC-approved beach plan, an exception for small structures would be allowed where proposed structures cannot meet graduated setback from the Vegetation Line.

Other Proposed Changes

15A NCAC 7H .0104 Application of Erosion Rate Setback Factors

- Proposed for **repeal** as the provision (addressing lots created prior to 1979) are effectively the same as those in 15A NCAC 7H .0309(b) which allow for similar development of a structure no greater than 2,000 square feet.
- Repeal will remove provisions allowing for the use of erosion rates at the time the lot was platted in determining setbacks. While seldom used, this language has caused confusion for the Division and Local Permitting Officers.

15A NCAC 7H .0304 AECs Within Ocean Hazard Areas

- "First Line of Stable and Natural Vegetation" changed to "Vegetation Line"

15A NCAC 7H .0305 Definition and Description of Landforms

- "Static Vegetation Line" changed to "Pre-Project Vegetation Line"

15A NCAC 7H .0306(a)(6)

- Static Vegetation Line" changed to "Pre-Project Vegetation Line"

15A NCAC 7H .0306(b)

- Consolidating rules (moved) related to dune alteration in 15A NCAC 7H .0308(b)(1).

15A NCAC 7H .0306(k)

- Amending the required permit condition that requires structures to be relocated or removed within two years of becoming imminently threatened to eight years. This change mirrors provisions for the management of temporary erosion control structures (sandbags).

15A NCAC 7H .0308 Specific Use Standards for Ocean Hazard Areas

- "First Line of Stable and Natural Vegetation" changed to "Vegetation Line"
- Relocated 15A NCAC 7H .0306(b)

15A NCAC 7H .0309 Use Standards for Ocean Hazard Areas: Exceptions

- Allow existing decks greater than 500 square feet to be replaced for safety reasons. Per previous CRC approval.
- Allow fill not associated with dune creation per previous CRAC discussion and CRC approval.
- Allow application of pre-1979 lot provisions for small structure exceptions to apply in Inlet Hazard and Unvegetated Beach AECs (15A NCAC 07H.0309(b))
- "Static Vegetation Line" changed to "Pre-Project Vegetation Line"

15A NCAC 7H .0310 Use Standards for Inlet Hazard Areas

- "First Line of Stable and Natural Vegetation" changed to "Vegetation Line"

15A NCAC 7J .1300 Development Line Procedures

- Repeal

Anticipated Impacts

Local Governments:

As with a Development Line or Static Vegetation Line Exception, requesting approval of a Beach Management Plan is voluntary for communities; therefore, these new rules do not require local governments to incur any additional expenditures unless they choose to do so. Currently, there are 16 communities with static vegetation lines. Of those, eight have CRC-approved Static Vegetation Line Exceptions (Ocean Isle, Carolina Beach, Wrightsville Beach, Emerald Isle, Indian Beach, Salter Path, Pine Knoll Shores, and Atlantic Beach) and four (Carolina Beach, Figure Eight Island, Kure Beach and Oak Island) have Development Lines. In the course of developing the Beach Management Plan rules, the Division reached out to local governments and reviewed available beach nourishment plans and documentation. The Division has determined that the majority of the remaining 15 oceanfront communities either already have a beach and/or inlet management plan, or have the information needed that can be used to create a plan with minimal effort and cost. Additionally, these communities also perform regular surveys to

monitor beach sediment losses and gains. According to the Division's research, 60% have identified reliable funding sources; 60% have identified sand source(s); and 60% perform annual beach monitoring.

The Division has also reviewed the Bogue Banks Beach Master Nourishment Plan for the oceanfront municipalities of Carteret County. The multidecadal Plan was developed using several parameters to monitor the beaches and trigger future maintenance for the entire 25-mile long island of Bogue Banks. As a regional plan, the Bogue Banks Master Plan has been considered a model in beach nourishment planning and the Division worked with the County on a streamlined permitting process to facilitate implementation of the Master Plan.

Under the proposed amendments, local governments will have two oceanfront development setback options:

1) Continue to measure setbacks from the Pre-project Vegetation Line or Vegetation Line, whichever is applicable; or
2) Request an approve Beach Management Plan from the CRC, utilize the existing vegetation line for the siting of oceanfront structures and be eligible for the provisions granting regulatory relief from graduated oceanfront setbacks.
3) Local jurisdictions with unexpired Static Line Exceptions will continue to be able to utilize the existing vegetation line for the siting of oceanfront structures and be eligible for the provisions granting regulatory relief from graduated oceanfront setbacks until their Static Line Exceptions expire. Once the Static Line Exception expires, local jurisdiction may choose between the first two options. However, if they seek an approved Beach Management Plan, they will only need to bring their existing plans up to date according to the 15A NCAC 7J .1200 Beach Management Plans rather than start a new plan.

The proposed Beach Management Plan rule amendments are based on the Static Line Exception providing a voluntary option to local governments wanting to utilize the existing first line of stable and natural vegetation instead of the pre-project static vegetation line for the siting of new oceanfront development. Therefore, the impact of this proposal to local governments is a result of choosing between different options:

a) If a community chooses not to do anything different than what current rules allow, they would incur no impact;
b) If one of the eight communities that currently has a Static Line Exception chooses to opt for an approved Beach Management Plan, they will need to bring information related to the Static Line Exception up to date with the standards associated with 15A NCAC 7J .1200 which will be a reduced cost relative to initiating a new Beach Management Plan.
c) If a community currently has a Static Vegetation Line and does not have a Static Line Exception, they may find it beneficial to incur the cost of developing a Beach Management Plan, average of $12,144 (see Table 1), if the additional value to property owners outweighs that cost (see discussion of impact on property owners below).

Table 1. Estimated Cost of Beach Management Plan Development

Location (shoreline miles)	**Estimated Beach Management Plan Cost**		
	2010 Initial SVL Exception	**2015 SL Exception 5-Year Reauthorization**	***Initial Cost or Re-authorization*** ***Adjusted for Inflation***
Sunset Beach (2)	N/A	N/A	*$12,144*
Ocean Isle (5.3)*	$300	$159	*$165*
Holden Beach (7.9)	N/A	N/A	*$12,144*
Oak Island (8.6)	N/A	N/A	*$12,144*
Caswell Beach (2.8)	N/A	N/A	*$12,144*
Bald Head Island (4.2)	N/A	N/A	*$12,144*
Kure Beach (2.9)	N/A	N/A	*$12,144*
Carolina Beach (3.5)	$13,250	$0	*$2,798*
Wrightsville Beach (4.0)	$13,250	$2,320	*$2,798*
Figure Eight Island (4.3)	N/A	N/A	*$12,144*
Topsail Beach (4.4)	N/A	N/A	*$12,144*
Surf City (5.9)	N/A	N/A	*$12,144*
North Topsail Beach (11)	N/A	N/A	*$12,144*
Emerald Isle (11)	$13,775	$5,120	*$6,175*
Indian Beach (1.2)	$5,800	$5,120	*$6,175*
Salter Path (1.3)	$5,800	$5,120	*$6,175*
Pine Knoll Shores (4.8)	$11,600	$5,120	*$6,175*
Atlantic Beach (4.6)	$7,000	$5,120	*$6,175*
Hatteras (2)	N/A	N/A	*$12,144*
Frisco (3.7)	N/A	N/A	*$12,144*
Buxton (4.6)	N/A	N/A	*$12,144*
Avon (4)	N/A	N/A	*$12,144*
Rodanthe (Mirlo Beach) (5.5)	N/A	N/A	*$12,144*
Nags Head (12)	N/A	N/A	*$12,144*
Kill Devil Hills (4.7)	N/A	N/A	*$12,144*
Kitty Hawk (3.5)	N/A	N/A	*$12,144*
Southern Shores (3.7)	N/A	N/A	*$12,144*
Duck (6)	N/A	N/A	*$12,144*
Corrolla/Currituck Co. (11.6)	N/A	N/A	*$12,144*
Sum	***$70,775***	***$27,920***	***$291,660***
Average	***$10,068***	***$3,989***	***$10,058***

*Ocean Isle is not included in the average since the cost is low and considered an outlier.

Assumptions:

Static Line Exception costs are real expenditures reported by communities with Static Line Exceptions (Table 1) and are used for the following assumptions to estimate costs for those communities without an exception.

- As stated earlier, Carteret County and the municipalities of Bogue Banks (Atlantic Beach, Pine Knoll Shores, Salter Path, Indian Beach and Emerald Isle) are considered the model

for development of beach management plans. The municipalities of New Hanover County (Carolina Beach and Wrightsville Beach) have similarly developed beach management plans to a high standard. The cost associated with the development of these plans has been averaged based both on initial development and the five-year update. Costs have been adjusted for inflation.

- Communities without an Exception can anticipate an average first-time cost of approximately $12,144 to assemble required information to be submitted to the CRC for an approval based on current information.

- Communities choosing to seek an approved Beach Management Plan after expiration of their Static Line Exception can anticipate average costs to be approximately $6,175.

- Based on these estimates, it is assumed that costs will remain constant over the next few years.

- The Static Line Exception and Beach Management Plan address non-conforming lots similarly, in that each have to meet construction setbacks measured from the first line of stable and natural vegetation.

- Local governments interested in Static Line Exceptions, Development Lines and Beach Management Plans are already undertaking beach fill projects and in some cases already assume the costs of long-term commitments to beach nourishment.

- Currently, 16 out of 34 oceanfront communities have Static Vegetation Lines. Since 1996, at least one oceanfront community has installed a large-scale beach nourishment project once every five years; thus qualifying them for a Static Vegetation Line. Based on this historic trend, it can be assumed that the number of communities with a Static Vegetation Line is unlikely to change much in the next five to ten years.

Public infrastructure (e.g., parking lots and public utilities) has a minimum setback factor of sixty (60) feet or thirty (30) times the shoreline erosion rate (whichever is greater) as defined by 07H.0306(a)(2)(I). In the event that local governments need to replace or rebuild public infrastructure within an Ocean Hazard AEC, the proposed amendments will not change the CRC's approach to permitting that activity.

Private Property Owners:

The static vegetation rules apply only when oceanfront property owners are seeking a Coastal Area Management Act (CAMA) permit for the purpose of development. Development includes construction of new a structure, or replacement of an existing structure defined as requiring more than fifty percent (50%) repair or re-construction.

To the extent that a community is more likely to apply for a Beach Management Plan under the proposed rules than it would have for a Static Vegetation Line Exception under the current rules is uncertain. In terms of property value, any potential benefits gained would be the same for both the Static Line Exception and Beach Management Plan alternatives. Each allow for construction setbacks to be measured from First Line of Stable and Natural Vegetation instead of the potentially more restrictive Static Vegetation Line; thus resulting in a net impact of zero.

Private property owners may experience some unquantified increase in the value of their property, or opportunity cost, if the community in which their property is located has a Static Vegetation Line and chooses to apply for a Beach Management Plan. If a community does not apply for an approved Beach Management Plan, should vegetation growth occur oceanward of the Static Vegetation Line, property owners would still be required to measure oceanfront setbacks from the more restrictive Static Vegetation Line, potentially keeping more properties in a non-conforming status, negatively affecting their property values and limiting development options. Based on past discussions with coastal NC realtors, it is difficult to determine how much loss would be avoided by opting for a Static Line Exception when a structure is considered non-conforming since resale value is influenced by a wide range of factors, such as; amenities, location, proximity to sandbag structures, and the overall willingness of the buyer to take risks. The logic would apply to Beach Management Plans as well.

These proposed amendments to the Static Line Exception to Beach Management Plans will similarly benefit oceanfront property owners by allowing the potential utilization of a more favorable measurement line for new construction or re-development. These potential benefits are tied to complex factors, like amenities and the presence of sandbags, that drive local, regional, national, and global real estate markets, and any attempt to estimate them would be speculative on the part of the Division.

In assessing the impacts to private property owners associated with the repeal of the Development Line as compared to being located in an area with a CRC approved Beach Management Plan, it should be noted that both scenarios allow for the use of the existing vegetation line as point from oceanfront development setbacks are to be measured. The primary difference between the two is that under the Development Line the seaward limit on the siting of structures is determined by an average line of existing construction. Whereas under the Static Line Exception and now proposed Beach Management Plan scenarios, this limit is the landward most adjacent structure. Under both scenarios, the siting of new construction is influenced by location of surrounding development.

Given the uneven nature of development along oceanfront shoreline, approved Development Lines 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. The proposed repeal of the Development Line corrects this unintended outcome and prevents large-scale oceanward redevelopment. Without having contextual historic property value data available, the ability to evaluate and quantify potential long-term life and property protection benefits, beach recreation-related benefits, and property value losses by repeal of the Development Line is not possible at this time. Quantifying this impact is also complicated by the variables associated with real estate markets as discussed above and site-specific erosion factors and long-term management practices.

NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, no impacts to NCDOT permitting are anticipated from the proposed amendments. The new and amended rules do not create any new procedures or restrictions that would affect NCDOT permits. Development such as roads, parking lots, and other public infrastructure such as utilities continue to have a minimum setback factor of sixty feet (60) or thirty (30) times the shoreline erosion rate (whichever is greater) as defined by 07H.0306(a)(2)(I). In the event NCDOT needs to build or maintain a road located within an Ocean Hazard AEC, the proposed amendments will not change the CRC's approach to permitting that activity.

Division of Coastal Management:

The Division of Coastal Management's permit review process will not be changed by these amendments and DCM does not anticipate changes in permitting receipts due to the proposed action. There would be no increased cost for staff's time as a direct result of the proposed rules and amendments.

Cost/Benefit Summary

The proposed amendments address implementation issues with current rules for siting oceanfront development. Beach Management Plans will replace both the Development Line and the Static Line Exceptions. The amendments aim to prevent seaward encroachment and potential large-scale oceanward redevelopment after a beach nourishment project. Also included are additional provisions for regulatory relief for communities that demonstrate a local commitment to maintaining beach nourishment projects and further streamlining and simplification of the Ocean Hazard AEC rules.

The proposed amendments will have modest cost impacts on local governments depending on whether they choose to apply for an approved Beach Management Plan. The benefits to local governments and private property owners are assumed to be the similar to the existing Static Line Exception, as are the associated opportunity costs.

- Based costs associate with development of Static Line Exception request, an approved Beach Management Plan would require an average initial cost of $12,144 and an average five-year recurring cost of $6,175 to maintain.

Appendix A

Proposed Amendments to 15A NCAC 7H .0104 Application of Erosion Rate Factors

15A NCAC 07H .0104 APPLICATION OF EROSION RATE SETBACK FACTORS

~~(a) Development on lots created on or after June 1, 1979 shall utilize the current erosion rate setback factor in the calculation of the development setback pursuant to 15A NCAC 07H .0304. If application of the current erosion rate setback factor in the calculation of the development setback would preclude the placement of permanent buildings, then the erosion rate in effect at the time that the lot was created may be utilized in the calculation of the development setback, provided that the development:~~

~~(1) shall comply with the current erosion rate setback factor to the maximum extent possible;~~

~~(2) is located at the landward most position of the lot without violating local zoning requirements;~~

~~(3) shall extend no further oceanward than the landward most adjacent building; and~~

~~(4) shall be no more than 2,000 square feet in total floor area.~~

~~(b) Development on lots created prior to June 1, 1979 shall comply with the provisions of 15A NCAC 07H .0309(b) and (c).~~

~~*History Note: Authority G.S. 113A-107; 113A-113; 113A-124;*~~
~~*Eff. September 15, 1979;*~~
~~*Amended Eff. August 1, 2010; April 1, 2004; April 1, 1997; April 1, 1995; May 1, 1990; November 1, 1988; September 1, 1988;*~~
~~*Readopted Eff. July 1, 2020.*~~

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 where 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 the distance landward from the ~~first line of stable and natural~~ vegetation line as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; 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 180 feet landward from the ~~first line of stable and natural vegetation.~~vegetation line. 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 "North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be varied in individual contested cases or in 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.

(2) 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 encompassing that area within which the inlet migrates, 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, terminal groins, and channelization. The areas on the maps identified as 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 location of a former inlet which has been closed for at least 15 years;

(b) inlets that due to shoreline migration, no longer include the current location of the inlet; and

(c) inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

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 Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Item (1) of this Rule.

(3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable and natural vegetation is present may be designated as Unvegetated Beach Areas 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 due to 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 Item (1) of this Rule.

(b) An area that is unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.

The Commission designates as temporary unvegetated beach areas those oceanfront areas of Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018. The designation AEC boundaries can be found on the Division's website at https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf. This designation shall continue until such time as the stable and natural vegetation has reestablished, or

until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item (3)(a) of this Rule.

(4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the mouth of the Cape Fear River, providing access to a State Port via a channel maintained by the Unites States Army Corps of Engineers. These areas are unique due to the influence of federally-maintained channels, and the critical nature of maintaining shipping access to North Carolina's State Ports. These areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from the mean low water line landward as designated on maps approved by the Coastal Resources Commission and available without cost from the Division of Coastal Management, and on the internet at the website at https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state_port_aec.pdf.

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. April 1, 2020; July 1, 2016; September 1, 2015; May 1, 2014; February 1, 2013; January 1, 2010; February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998.

15A NCAC 07H .0305 ~~GENERAL IDENTIFICATION~~ DEFINITION AND DESCRIPTION OF LANDFORMS

(a) This Paragraph 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. Primary dunes extend 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 the first mound of sand located landward of ocean beaches that has stable and natural vegetation present.

(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. Planted 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 and 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~~ Pre-project 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 project construction shall be defined as the ~~"static vegetation line".~~ "pre-project vegetation line". The "onset of project construction" shall be defined as the date sediment placement begins, with the exception of projects completed prior to the original effective date of this Rule, in which case the award of the contract date will be considered the onset of construction. A ~~static~~ pre-project 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~~ pre-project 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~~ pre-project vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A ~~static~~ pre-project vegetation line shall not be established where a ~~static~~ pre-project 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~~ pre-project 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 in 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~~ pre-project 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.

(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(3) of this Section. In areas designated pursuant to Rule .0304(3)(b) of this Section, the Division of Coastal Management shall establish a measurement line by:

(A) determining the average distance the pre-storm vegetation line receded at the closest vegetated site adjacent to the area designated by the Commission as the unvegetated beach AEC; and

(B) mapping a line equal to the average recession determination in Part (A) of this Subparagraph, measured in a landward direction from the first line of stable and natural vegetation line on the most recent pre-storm aerial photography in the area designated as an unvegetated beach AEC.

~~(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. In areas that have development lines approved by the CRC, 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 Rule .0306(a)(2) of this Section.~~

~~(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 in 15A NCAC 07I .0500, an identifiable land area within which the ocean hazard areas occur. This designated notice area shall 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, 2020; April 1, 2016; 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 shall be measured in a landward direction from the vegetation line, the ~~static~~ pre-project vegetation line, or the measurement line, whichever is applicable.

~~(2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.~~

~~(3) In no case shall a development line be created or established on state-owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.~~

~~(4)~~(2) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

(A) The total square footage of heated or air-conditioned living space;

(B) The total square footage of parking elevated above ground level; and

(C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

~~(5)~~(3) With the exception of those types of development defined in 15A NCAC 07H.0309(a), ~~15A NCAC 07H .0309,~~ no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:

(A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

(B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;

(C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;

(D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;

(E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;

(F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;

(G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;

(H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;

(I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

(J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;

(K) Notwithstanding any other setback requirement of this Subparagraph, construction of a new building or other structure greater than or equal to 5,000 square feet in a community with a static line exception or CRC-approved Beach Management Plan in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the ~~static vegetation line,~~ the vegetation line, or measurement line, whichever is farthest landward; and

(L) Notwithstanding any other setback requirement of this Subparagraph, replacement of ~~single-family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi-family residential structures~~ a structure with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:

(i) the structure is in a community with a static line exception or CRC-approved Beach Management Plan or 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;~~ a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater; and

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

~~(6)~~(4) 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~~ pre-project 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. ~~frontal dune or the development line~~. ~~The words~~ For the purposes of this rule, "existing lots" ~~in this Rule~~ shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.

~~(7)~~(5) 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 or ocean hazard setback, ~~or development line,~~ whichever is farthest from the vegetation line, ~~static~~ pre-project 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)~~(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.

~~(10)~~(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.~~restricted nor shall such development increase the risk of damage to public trust areas. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.

~~(11)~~(8) 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~~ pre-project vegetation line as defined in this Section, unless a ~~development line~~ static line exception or Beach Management Plan has been approved for the local jurisdiction by the Coastal Resources Commission in accordance with15A NCAC 07J .1200. ~~15A NCAC 07J .1300.~~

~~(12)~~(9) ~~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~~ A local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for ~~a "static line exception"~~ an approved "Beach Management Plan" in accordance with 15A NCAC 07J .1200. ~~The static line exception shall apply to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, and the boundaries of the large-scale beach fill project.~~ If the request for a Beach Management Plan is approved, the Coastal Resources Commission shall allow development setbacks to be measured from ~~a~~ the vegetation line that is oceanward of the ~~static~~ pre-project vegetation line under the following conditions:

(A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and ~~(a)(5)~~(a)(3) of this Rule;

(B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;

(C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a ~~lot~~ lot, street or shoreline 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~~ exceptions defined in Rule .0309(a) of this Section shall be allowed oceanward of the ~~static~~ pre-project vegetation line; and

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

~~(b) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area~~

~~shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by 15A NCAC 07H .0308(b).~~

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

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

~~(k)~~(g) 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~~ eight 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~~ eight years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H .0308(a)(2).

History Note: *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
Eff. September 9, 1977;
Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;
RRC Objection due to ambiguity Eff. January 24, 1992;
Amended Eff. March 1, 1992;
RRC Objection due to ambiguity Eff. May 21, 1992;
Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;
RRC Objection due to ambiguity Eff. May 18, 1995;
Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;
Temporary Amendment Eff. January 3, 2013;
Amended Eff. September 1, 2017; February 1, 2017; April 1, 2016; September 1, 2013.

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

(1) Use Standards Applicable to all Erosion Control Activities:

(A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.

(B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.

(C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.

(D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(h) of this Section.

(E) Project construction shall be timed to minimize adverse effects on biological activity.

(F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.

(G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:

(i) the erosion control structure is necessary to protect a bridge that provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
(iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.

(H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:

(i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule;
(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
(iii) the structure is limited in extent and scope to that necessary to protect the site; and
(iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.

(I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:

(i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
(ii) dredging alone is not practicable to maintain safe access to the affected channel;

(iii) the structure is limited in extent and scope to that necessary to maintain the channel;
(iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and
(v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.

(J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:

(i) the structure will not be enlarged beyond the dimensions set out in the permit;
(ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
(iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

(A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.

(B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. 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 when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

(C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.

(D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected.

The landward side of such temporary erosion control structures shall not be located more than 20 feet waterward of the structure to be protected, or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.

(F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.

(G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project, or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:

(i) a building and its septic system shall be considered separate structures,
(ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.

(H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:

(i) has been issued an active CAMA permit, where necessary, approving such project; or
(ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
(iii) has received a favorable economic evaluation report on a federal project; or
(iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of

the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

(I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

(J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.

(K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.

(M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

(3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.

(4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the ~~first line of~~ vegetation line to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:

(A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;

(B) The activity shall not exceed the lateral bounds of the applicant's property unless ~~he has~~ permission is obtained ~~of~~ from the adjoining land owner(s);

(C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;

(D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;

(E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Protection, Establishment, ~~Establishment~~ Restoration, and Stabilization.

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

~~(1)~~ (2) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.

~~(2)~~(3) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.

~~(3)~~(4) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.

~~(4)~~(5) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.

~~(5)~~(6) No new dunes shall be created in inlet hazard areas.

~~(6)~~(7) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.

~~(7)~~(8) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.

(c) Structural Accessways:

(1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.

(2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:

(A) The accessway is exclusively for pedestrian use;

(B) The accessway is a maximum of six feet in width;

(C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the ~~dune.~~ dune. ~~Where this is deemed by the Division of Coastal Management to be impossible due to~~ in accordance with any more restrictive local, state, and/or federal building ~~requirements,~~ requirements; ~~the structure shall touch the dune only to the necessary;~~ and

(D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

(3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers are ~~not prohibited~~ allowed provided all other applicable standards of this Rule are met.

(4) In order to preserve the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.

(5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the FLSNV as described in Rule .0309(a) of this Section.

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of this Section and 15A NCAC 07J .0210 shall comply with the following standards:

(1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.

(2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.

(3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.

(4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124;*
Eff. June 1, 1979;
Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989;
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RRC Objection Eff. November 19, 1992 due to ambiguity;
RRC Objection Eff. January 21, 1993 due to ambiguity;
Amended Eff. March 1, 1993; December 28, 1992;
RRC Objection Eff. March 16, 1995 due to ambiguity;
Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;
Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1, 2002.

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

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

(1) campsites;
(2) driveways and parking areas with clay, packed sand, or gravel;
(3) elevated decks not exceeding a footprint of 500 square feet. ~~feet;~~ Existing decks exceeding a footprint of 500 square feet may be replaced with no enlargement beyond their original dimensions;
(4) beach accessways consistent with Rule .0308(c) of this Section;
(5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
(6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
(7) temporary amusement stands consistent with Section .1900 of this Subchapter;
(8) sand fences; and
(9) swimming pools.
(10) fill not associated with dune creation that is obtained from an upland source and is of the same general characteristics as the sand in the area in which it is to be placed.

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

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

(1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
(2) The development is at least 60 feet landward of the vegetation ~~line or static~~ line, measurement line, or pre-project vegetation line, whichever is applicable;
(3) The development is not located on or ~~in front~~ oceanward of a frontal dune, but is entirely behind the landward toe of the frontal dune;
(4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Section.
    (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
    (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;
    (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those ~~cases~~ cases, other materials may be used; ~~concrete, asphalt, or turfstone may also be used;~~
    (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent building. When the geometry or orientation of a lot or shoreline precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction

shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

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

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

(1) piers providing public access; and

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

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

(1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;

(2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;

(3) The pier house shall be limited to a maximum of two stories;

(4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;

(5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;

(6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and

(7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.

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

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

(1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule .0305 of this Section, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and

(2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

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

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124;*
Eff. February 2, 1981;
Amended Eff. April 1, 2020; June 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987.

15A NCAC 07H .0310 USE STANDARDS FOR INLET HAZARD AREAS

(a) Inlet areas as defined by Rule .0304 of this Section are subject to inlet migration, rapid and severe changes in watercourses, flooding and strong tides. Due to the ~~this~~ extremely hazardous nature of the Inlet Hazard Areas, all development within these areas shall be permitted in accordance with the following standards:

(1) All development in the inlet hazard area shall be set back from the ~~first line of stable natural~~ vegetation line a distance equal to the setback required in the adjacent ocean hazard area;

(2) Permanent structures shall be permitted at a density of no more than one commercial or residential unit per 15,000 square feet of land area on lots subdivided or created after July 23, 1981;

(3) Only residential structures of four units or less or non-residential structures of less than 5,000 square feet total floor area shall be allowed within the inlet hazard area, except that access roads to those areas and maintenance and replacement of existing bridges shall be allowed;

(4) Established common-law and statutory public rights of access to the public trust lands and waters in Inlet 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;

(5) All other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the Inlet Hazard Areas.

(b) The inlet hazard area setback requirements shall not apply to the types of development exempted from the ocean setback rules in 15A NCAC 7H .0309(a), nor, to the types of development listed in 15A NCAC 7H .0309(c).

(c) In addition to the types of development excepted under Rule .0309 of this Section, small scale, non-essential development that does not induce further growth in the Inlet Hazard Area, such as the construction of single-family piers and small scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated Inlet Hazard Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 7H .1100, .1200 and 7K .0203.

History Note: *Filed as a Temporary Amendment Eff. October 30, 1981, for a period of 70 days to expire on January 8, 1982;*
Filed as an Emergency Rule Eff. September 11, 1981, for a period of 120 days to expire on January 8, 1982;
Authority G.S. 113A-107; 113A-113(b); 113A-124;
Eff. December 1, 1981;
Amended Eff. April 1, 1999; April 1, 1996; December 1, 1992; December 1, 1991; March 1, 1988.

SECTION .1200 – ~~STATIC AND VEGETATION LINE EXCEPTION~~ BEACH MANAGEMENT PLAN APPROVAL PROCEDURES

15A NCAC 07J .1201 REQUESTING ~~THE STATIC LINE EXCEPTION~~ BEACH MANAGEMENT PLAN APPROVAL

(a) A petitioner subject to a ~~static~~ pre-project vegetation line pursuant to 15A NCAC 07H .0305 may petition the Coastal Resources Commission to ~~for an~~ to approve a Beach Management Plan ~~exception to the static vegetation line~~ in accordance with the provisions of this Section. A "petitioner" shall be defined as:

(1) Any local government;

(2) Any group of local governments involved in a regional beach fill project; or

(3) Any qualified homeowner'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. ~~shoreline; or~~

~~(4) A permit holder of a large-scale beach fill project.~~

(b) A petitioner shall be eligible to submit a request ~~for~~ to approve a Beach Management Plan ~~a static vegetation line exception~~ after 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 pre-project ~~static~~ vegetation line(s). For a ~~static~~ pre-project 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~~ pre-project vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A ~~static vegetation line exception~~ Beach Management Plan ~~request~~ applies to all ~~the entire static~~ pre-project vegetation ~~line~~ lines within the ~~jurisdiction~~ Ocean Hazard Area in ~~of~~ the petitioner's ~~petitioner~~ jurisdiction. ~~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 vegetation 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 vegetation line exception request shall be made in writing by the petitioner.~~ A complete ~~static vegetation line exception~~ Beach Management Plan ~~request~~ shall consist of a comprehensive document with supporting appendices and data that includes ~~include~~ the following:

(1) A review ~~summary~~ of all beach fill projects in the area of the Beach Management Plan ~~for which the exception is being requested~~ including the initial large-scale beach fill project associated with the ~~static~~ pre-project 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) A review of the maintenance needed to achieve a design life of no less than 30 years of shore protection. ~~Plans~~ The plan shall include anticipated maintenance event volume triggers and schedules, long-term volumetric sand needs, annual monitoring protocols, an analysis of the impacts of any erosion control structures, and any relevant maps, tables, diagrams, studies or reports. ~~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 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, ~~project~~ over ~~its~~ the project design life. ~~life.~~ such as dedicated percentage of occupancy taxes, special tax districts and anticipated federal funding.

(e) Public Comment Requirements. The local jurisdiction shall provide an opportunity for public comments on the Beach Management Plan prior to submission to the Coastal Resources Commission for approval. Written comments on the Beach Management Plan shall be submitted by the local jurisdiction to the Division along with the request to approve the Beach Management Plan.

~~(e)~~(f) A request to approve a Beach Management Plan ~~static vegetation 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 vegetation 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)~~(g) The Coastal Resources Commission shall consider a request to approve a ~~static vegetation line~~ Beach Management Plan ~~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;
Amended Eff. April 1, 2016.

15A NCAC 07J .1202 REVIEW OF ~~THE STATIC LINE EXCEPTION~~ BEACH MANAGEMENT PLAN APPROVAL-REQUEST

(a) The Petitioner ~~Division of Coastal Management~~ shall provide a summary of the ~~prepare a written report of the static line exception~~ Beach Management Plan ~~request to be presented~~ to the Coastal Resources Commission. This ~~report~~ summary shall include all of the elements required in 15A NCAC 7J .1201.

~~(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 Commission a review of the Beach Management Plan including a recommendation to grant or deny the request. The Division shall provide the petitioner requesting approval of a Beach Management Plan ~~the static line exception~~ an opportunity to review the ~~report~~ recommendation 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 BEACH MANAGEMENT PLAN

(a) At the meeting that approval of a Beach Management Plan ~~the static line exception~~ is considered by the Coastal Resources Commission, the following shall occur:

(1) The ~~Division of Coastal Management~~ Petitioner shall orally present ~~the report~~ a summary of the Beach Management Plan described in 15A NCAC 07J .1202.

(2) The Division of Coastal Management shall orally present its review of the Beach Management Plan and its recommendation to grant or deny the approval request. ~~A representative for the petitioner may provide written or oral comments relevant to the static line exception . 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~~ approve a Beach Management Plan following affirmative findings on each of the criteria presented in15A NCAC 07J .1201(d)(1) through (d)(4), the Division of Coastal Management recommendation, and public comments on the Beach Management Plan submitted with the request to approve the Beach Management Plan. ~~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~~ approve or deny a ~~static line exception~~ Beach Management Plan 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~~ BEACH MANAGEMENT PLANS

(a) Progress Reports. The petitioner that received ~~the static line exception~~ Beach Management Plan approval shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five years from date the ~~static line exception~~ Beach Management Plan is ~~authorized.~~ approved. 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 Beach Management Plan ~~static line exception authorized~~ approved 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).~~ 15A NCAC 07J .1201(d) through (d)(4) and (e). The Coastal Resources Commission shall also consider the following conditions:

(1) ~~Design changes~~ Updates to the Beach Management Plan, including performance of past projects and maintenance events, changes in conditions, and design changes to future projects. ~~initial large-scale beach fill project and 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.

(4) Local governments with a previously approved Static Line Exception may petition the Commission for approval of a Beach Management Plan by supplementing information required under the Static Line Exception to be compliant with the provisions of 7J .1200 prior to or upon the expiration of the previously approved Static Line Exception.

(c) The Petitioner ~~Division of Coastal Management~~ shall orally present ~~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~~ The Division of Coastal Management shall provide the Coastal Resources Commission a review and recommendation ~~from the Division of Coastal~~ Management of the progress report 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 recommendation ~~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.~~

(d) Local governments with previously approved Static Line

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~~ BEACH MANAGEMENT PLAN APPROVAL

(a) ~~The static line exception~~ Beach Management Plan approval 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~~ Beach management Plan 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)~~(b) In the event a progress report is not received by the Division of Coastal Management within five years from either the approval of the Beach management Plan ~~static line exception~~ or the previous progress report, ~~the static line exception~~ Beach management Plan approval 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)~~(c) The revocation or expiration of a ~~static line exception~~ Beach Management Plan approval 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.

Proposed Amendments to 15A NCAC 7J .1206 Local Governments and Communities with Approved State Vegetation Line Exceptions

15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH APPROVED BEACH MANAGEMET PLANS ~~STATIC VEGETATION LINES AND STATIC LINE EXCEPTIONS~~

A list of CRC approved Beach Management Plans ~~static vegetation lines in place for petitioners~~ and the conditions under which the pre-project ~~static~~ vegetation lines exist, including the date(s) the ~~static~~ pre-project vegetation line was defined, shall be maintained by the Division of Coastal Management. A list of CRC approved Beach Management Plans ~~static line exceptions in place for petitioners~~ and the conditions under which the Plans ~~exceptions~~ exist, including the date the Plan ~~exception~~ was ~~granted,~~ approved, the dates the progress reports were received, the design life of the large-scale beach fill project and the potential expiration dates for the Beach Management Plan ~~static line exception~~, shall be maintained by the Division of Coastal Management. Both the ~~static~~ pre-project vegetation line list and the CRC approved Beach Management Plan ~~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 qualified owner's association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A NCAC 07H .0305 may petition the Coastal Resources Commission for a development line for the purpose of siting oceanfront development in accordance with the provisions of this Section. A "qualified owner's association" is an owner's association, as defined in G.S. 47F-1-103(3), that has authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline.

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

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

(d) 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, including;

(A) The development line, static vegetation line, mean high water line, and any other information necessary for a review of the petitioner's proposed development line, such as a pre-nourishment project mean high water line, local ordinances, or easements; and

(B) Surveyed development line spatial data in a geographic information systems (GIS) format referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include Federal Geographic Data Committee (FGDC) compliant metadata;

(2) All local regulations associated with the development line;

(3) A record of local adoption of the development line by the petitioner; and

(4) Documentation of incorporation of a development line into local ordinances or rules and regulations of an owner's association.

(f) 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, unless the petitioner and the Division of Coastal Management agree upon a later date.

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

15A NCAC 07H .0104 APPLICATION OF EROSION RATE SETBACK FACTORS

(a) Development on lots created on or after June 1, 1979 shall utilize the current erosion rate setback factor in the calculation of the development setback pursuant to 15A NCAC 07H .0304. If application of the current erosion rate setback factor in the calculation of the development setback would preclude the placement of permanent buildings, then the erosion rate in effect at the time that the lot was created may be utilized in the calculation of the development setback, provided that the development:

(1) shall comply with the current erosion rate setback factor to the maximum extent possible;

(2) is located at the landward most position of the lot without violating local zoning requirements;

(3) shall extend no further oceanward than the landward most adjacent building; and

(4) shall be no more than 2,000 square feet in total floor area.

(b) Development on lots created prior to June 1, 1979 shall comply with the provisions of 15A NCAC 07H .0309(b) and (c).

History Note: Authority G.S. 113A-107; 113A-113; 113A-124;
Eff. September 15, 1979;
Amended Eff. August 1, 2010; April 1, 2004; April 1, 1997; April 1, 1995; May 1, 1990; November 1, 1988; September 1, 1988;
Readopted Eff. July 1, 2020.

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 where 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 the distance landward from the ~~first line of stable and natural~~ vegetation line as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; 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 180 feet landward from the ~~first line of stable and natural vegetation.~~vegetation line. 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 "North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be varied in individual contested cases or in 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.

(2) 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 encompassing that area within which the inlet migrates, 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, terminal groins, and channelization. The areas on the maps identified as 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 location of a former inlet which has been closed for at least 15 years;

(b) inlets that due to shoreline migration, no longer include the current location of the inlet; and

(c) inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

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 Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Item (1) of this Rule.

(3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable and natural vegetation is present may be designated as Unvegetated Beach Areas 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 due to 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 Item (1) of this Rule.

(b) An area that is unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.

The Commission designates as temporary unvegetated beach areas those oceanfront areas of Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018. The designation AEC boundaries can be found on the Division's website at https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf. This designation shall continue until such time as the stable and natural vegetation has reestablished, or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item (3)(a) of this Rule.

(4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the mouth of the Cape Fear River, providing access to a State Port via a channel maintained by the Unites States Army Corps of Engineers. These areas are unique due to the influence of federally-maintained channels, and the critical nature of maintaining shipping access to North Carolina's State Ports. These areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from the mean low water line landward as designated on maps approved by the Coastal Resources Commission and available without cost from the Division of Coastal Management, and on the internet at the website at https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state_port_aec.pdf.

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. April 1, 2020; July 1, 2016; September 1, 2015; May 1, 2014; February 1, 2013; January 1, 2010; February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998.

15A NCAC 07H .0305 ~~GENERAL IDENTIFICATION~~ DEFINITION AND DESCRIPTION OF LANDFORMS

(a) This Paragraph 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. Primary dunes extend 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 the first mound of sand located landward of ocean beaches that has stable and natural vegetation present.

(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. Planted 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 and 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~~ Pre-project 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 project construction shall be defined as the ~~"static vegetation line".~~ “pre-project vegetation line”. The "onset of project construction" shall be defined as the date sediment placement begins, with the exception of projects completed prior to the original effective date of this Rule, in which case the award of the contract

date will be considered the onset of construction. A ~~static~~ pre-project 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~~ pre-project 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~~ pre-project vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A ~~static~~ pre-project vegetation line shall not be established where a ~~static~~ pre-project 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~~ pre-project 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 in 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~~ pre-project 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.

(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(3) of this Section. In areas designated pursuant to Rule .0304(3)(b) of this Section, the Division of Coastal Management shall establish a measurement line by:

(A) determining the average distance the pre-storm vegetation line receded at the closest vegetated site adjacent to the area designated by the Commission as the unvegetated beach AEC; and

(B) mapping a line equal to the average recession determination in Part (A) of this Subparagraph, measured in a landward direction from the first line of stable and natural vegetation line on the most recent pre-storm aerial photography in the area designated as an unvegetated beach AEC.

~~(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. In areas that have development lines approved by the CRC, 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 Rule .0306(a)(2) of this Section.~~

~~(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 in 15A NCAC 07I .0500, an identifiable land area within which the ocean hazard areas occur. This designated notice area shall 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, 2020; April 1, 2016; 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 shall be measured in a landward direction from the vegetation line, the ~~static~~ pre-project vegetation line, or the measurement line, whichever is applicable.

~~(2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.~~

~~(3) In no case shall a development line be created or established on state-owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.~~

~~(4)~~(2) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

(A) The total square footage of heated or air-conditioned living space;

(B) The total square footage of parking elevated above ground level; and

(C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

~~(5)~~(3) With the exception of those types of development defined in 15A NCAC 07H.0309(a), ~~15A NCAC 07H .0309,~~ no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:

(A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

(B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;

(C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;

(D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;

(E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;

(F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;

(G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;

(H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;

(I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

(J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;

(K) Notwithstanding any other setback requirement of this Subparagraph, construction of a new building or other structure greater than or equal to 5,000 square feet in a community with a static line exception or CRC-approved Beach Management Plan in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the ~~static vegetation line~~, the vegetation line, or measurement line, whichever is farthest landward; and

(L) Notwithstanding any other setback requirement of this Subparagraph, replacement of ~~single family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi-family residential structures~~ a structure with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:

(i) the structure is in a community with a static line exception or CRC-approved Beach Management Plan or 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;~~ a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater; and

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

~~(6)~~(4) 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~~ pre-project 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. ~~frontal dune or the development line~~. ~~The words~~ For the purposes of this rule, "existing lots" ~~in this Rule~~ shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.

~~(7)~~(5) 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 or ocean hazard setback, ~~or development line,~~ whichever is farthest from the vegetation line, ~~static~~ pre-project 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)~~(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.

~~(10)~~(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.~~restricted nor shall such development increase the risk of damage to public trust areas. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.

~~(11)~~(8) 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~~ pre-project vegetation line as defined in this Section, unless a ~~development line~~ static line exception or Beach Management Plan has been approved for the local jurisdiction by the Coastal Resources Commission in accordance with 15A NCAC 07J .1200. ~~15A NCAC 07J .1300.~~

~~(12)~~(9) ~~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~~ A local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for ~~a "static line exception"~~ an approved "Beach Management Plan" in accordance with 15A NCAC 07J .1200. ~~The static line exception shall apply to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, and the boundaries of the large-scale beach fill project.~~ If the request for a Beach Management Plan is approved, the Coastal Resources Commission shall allow development setbacks to be measured from ~~a~~ the vegetation line that is oceanward of the ~~static~~ pre-project vegetation line under the following conditions:

(A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and ~~(a)(5)~~(a)(3) of this Rule;

(B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;

(C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a ~~lot~~ lot, street or shoreline 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~~ exceptions defined in Rule .0309(a) of this Section shall be allowed oceanward of the ~~static~~ pre-project vegetation line; and

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

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

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

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

~~(k)~~(g) 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~~ eight 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~~ eight years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H .0308(a)(2).

History Note: *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
Eff. September 9, 1977;
Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;

RRC Objection due to ambiguity Eff. January 24, 1992;
Amended Eff. March 1, 1992;
RRC Objection due to ambiguity Eff. May 21, 1992;
Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;
RRC Objection due to ambiguity Eff. May 18, 1995;
Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;
Temporary Amendment Eff. January 3, 2013;
Amended Eff. September 1, 2017; February 1, 2017; April 1, 2016; September 1, 2013.

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

(1) Use Standards Applicable to all Erosion Control Activities:

(A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.

(B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.

(C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.

(D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(h) of this Section.

(E) Project construction shall be timed to minimize adverse effects on biological activity.

(F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.

(G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:

(i) the erosion control structure is necessary to protect a bridge that provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and

(iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.

(H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:

(i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule;

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;

(iii) the structure is limited in extent and scope to that necessary to protect the site; and

(iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.

(I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:

(i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;

(ii) dredging alone is not practicable to maintain safe access to the affected channel;

(iii) the structure is limited in extent and scope to that necessary to maintain the channel;

(iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and

(v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.

(J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:

(i) the structure will not be enlarged beyond the dimensions set out in the permit;

(ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and

(iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

(A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.

(B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. 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 when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

(C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.

(D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet waterward of the structure to be protected, or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.

(F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.

(G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project, or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or

property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:

(i) a building and its septic system shall be considered separate structures,

(ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.

(H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:

(i) has been issued an active CAMA permit, where necessary, approving such project; or

(ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or

(iii) has received a favorable economic evaluation report on a federal project; or

(iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

(I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days

of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

(J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.

(K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.

(M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

(3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.

(4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the ~~first line of~~ vegetation line to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:

(A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;

(B) The activity shall not exceed the lateral bounds of the applicant's property unless ~~he has~~ permission is obtained ~~of~~ from the adjoining land owner(s);

(C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;

(D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;

(E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Protection, Establishment, ~~Establishment~~ Restoration, and Stabilization.

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

~~(1)~~ (2) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.

~~(2)~~(3) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.

~~(3)~~(4) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.

~~(4)~~(5) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.

~~(5)~~(6) No new dunes shall be created in inlet hazard areas.

~~(6)~~(7) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.

~~(7)~~(8) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.

(c) Structural Accessways:

(1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.

(2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:

(A) The accessway is exclusively for pedestrian use;

(B) The accessway is a maximum of six feet in width;

(C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the ~~dune.~~ dune. ~~Where this is deemed by the~~

~~Division of Coastal Management to be impossible due to~~ in accordance with any more restrictive local, state, and/or federal building ~~requirements,~~ requirements; ~~the structure shall touch the dune only to the necessary;~~ and

(D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

(3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers are ~~not prohibited~~ allowed provided all other applicable standards of this Rule are met.

(4) In order to preserve the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.

(5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the FLSNV as described in Rule .0309(a) of this Section.

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of this Section and 15A NCAC 07J .0210 shall comply with the following standards:

(1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.

(2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.

(3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.

(4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124;*
Eff. June 1, 1979;
Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989;
Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;
RRC Objection Eff. November 19, 1992 due to ambiguity;
RRC Objection Eff. January 21, 1993 due to ambiguity;
Amended Eff. March 1, 1993; December 28, 1992;
RRC Objection Eff. March 16, 1995 due to ambiguity;
Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;
Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1, 2002.

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

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

(1) campsites;
(2) driveways and parking areas with clay, packed sand, or gravel;
(3) elevated decks not exceeding a footprint of 500 square feet. ~~feet;~~ Existing decks exceeding a footprint of 500 square feet may be replaced with no enlargement beyond their original dimensions;
(4) beach accessways consistent with Rule .0308(c) of this Section;
(5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
(6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
(7) temporary amusement stands consistent with Section .1900 of this Subchapter;
(8) sand fences; and
(9) swimming pools.
(10) fill not associated with dune creation that is obtained from an upland source and is of the same general characteristics as the sand in the area in which it is to be placed.

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

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

(1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
(2) The development is at least 60 feet landward of the vegetation ~~line or static~~ line, measurement line, or pre-project vegetation line, whichever is applicable;
(3) The development is not located on or ~~in front~~ oceanward of a frontal dune, but is entirely behind the landward toe of the frontal dune;
(4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Section.
    (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
    (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;
    (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those ~~cases~~ cases, other materials may be used; ~~concrete, asphalt, or turfstone may also be used;~~
    (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent building. When the geometry or orientation of a lot or shoreline precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

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

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

(1) piers providing public access; and
(2) maintenance and replacement of existing state-owned bridges, and causeways and accessways to such bridges.

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

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

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

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

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

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

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124;*
Eff. February 2, 1981;
Amended Eff. April 1, 2020; June 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987.

15A NCAC 07H .0310 USE STANDARDS FOR INLET HAZARD AREAS

(a) Inlet areas as defined by Rule .0304 of this Section are subject to inlet migration, rapid and severe changes in watercourses, flooding and strong tides. Due to the ~~this~~ extremely hazardous nature of the Inlet Hazard Areas, all development within these areas shall be permitted in accordance with the following standards:

(1) All development in the inlet hazard area shall be set back from the ~~first line of stable natural~~ vegetation line a distance equal to the setback required in the adjacent ocean hazard area;

(2) Permanent structures shall be permitted at a density of no more than one commercial or residential unit per 15,000 square feet of land area on lots subdivided or created after July 23, 1981;

(3) Only residential structures of four units or less or non-residential structures of less than 5,000 square feet total floor area shall be allowed within the inlet hazard area, except that access roads to those areas and maintenance and replacement of existing bridges shall be allowed;

(4) Established common-law and statutory public rights of access to the public trust lands and waters in Inlet 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;

(5) All other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the Inlet Hazard Areas.

(b) The inlet hazard area setback requirements shall not apply to the types of development exempted from the ocean setback rules in 15A NCAC 7H .0309(a), nor, to the types of development listed in 15A NCAC 7H .0309(c).

(c) In addition to the types of development excepted under Rule .0309 of this Section, small scale, non-essential development that does not induce further growth in the Inlet Hazard Area, such as the construction of single-family piers and small scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated Inlet Hazard Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 7H .1100, .1200 and 7K .0203.

History Note: *Filed as a Temporary Amendment Eff. October 30, 1981, for a period of 70 days to expire on January 8, 1982;*
Filed as an Emergency Rule Eff. September 11, 1981, for a period of 120 days to expire on January 8, 1982;
Authority G.S. 113A-107; 113A-113(b); 113A-124;
Eff. December 1, 1981;
Amended Eff. April 1, 1999; April 1, 1996; December 1, 1992; December 1, 1991;
March 1, 1988.

SECTION .1200 – ~~STATIC AND VEGETATION LINE EXCEPTION~~ BEACH MANAGEMENT PLAN APPROVAL PROCEDURES

15A NCAC 07J .1201 REQUESTING ~~THE STATIC LINE EXCEPTION~~ BEACH MANAGEMENT PLAN APPROVAL

(a) A petitioner subject to a ~~static~~ pre-project vegetation line pursuant to 15A NCAC 07H .0305 may petition the Coastal Resources Commission to ~~for an~~ to approve a Beach Management Plan ~~exception to the static vegetation line~~ in accordance with the provisions of this Section. A "petitioner" shall be defined as:

(1) Any local government;

(2) Any group of local governments involved in a regional beach fill project; or

(3) Any qualified homeowner'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. ~~shoreline; or~~

~~(4) A permit holder of a large-scale beach fill project.~~

(b) A petitioner shall be eligible to submit a request ~~for~~ to approve a Beach Management Plan ~~a static vegetation line exception~~ after 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 pre-project ~~static~~ vegetation line(s). For a ~~static~~ pre-project 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~~ pre-project vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A ~~static vegetation line exception~~ Beach Management Plan ~~request~~ applies to all ~~the entire static~~ pre-project vegetation ~~line~~ lines within the ~~jurisdiction~~ Ocean Hazard Area in ~~of~~ the petitioner's ~~petitioner~~ jurisdiction. ~~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 vegetation 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 vegetation line exception request shall be made in writing by the petitioner.~~ A complete ~~static vegetation line exception~~ Beach Management Plan ~~request~~ shall consist of a comprehensive document with supporting appendices and data that includes ~~include~~ the following:

(1) A review ~~summary~~ of all beach fill projects in the area of the Beach Management Plan ~~for which the exception is being requested~~ including the initial large-scale beach fill project associated with the ~~static~~ pre-project 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) A review of the maintenance needed to achieve a design life of no less than 30 years of shore protection. ~~Plans~~ The plan shall include anticipated maintenance event volume triggers and schedules, long-term volumetric sand needs, annual monitoring protocols, an analysis of the impacts of any erosion control structures, and any relevant maps, tables, diagrams, studies or reports. ~~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 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, ~~project~~ over ~~its~~ the project design life, ~~life.~~ such as dedicated percentage of occupancy taxes, special tax districts and anticipated federal funding.

(e) Public Comment Requirements. The local jurisdiction shall provide an opportunity for public comments on the Beach Management Plan prior to submission to the Coastal Resources Commission for approval. Written comments on the Beach Management Plan shall be submitted by the local jurisdiction to the Division along with the request to approve the Beach Management Plan.

~~(e)~~(f) A request to approve a Beach Management Plan ~~static vegetation 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 vegetation 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)~~(g) The Coastal Resources Commission shall consider a request to approve a ~~static vegetation line~~ Beach Management Plan ~~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;
Amended Eff. April 1, 2016.

15A NCAC 07J .1202 REVIEW OF ~~THE STATIC LINE EXCEPTION~~ BEACH MANAGEMENT PLAN APPROVAL ~~REQUEST~~

(a) The Petitioner ~~Division of Coastal Management~~ shall provide a summary of the ~~prepare a written report of the static line exception~~ Beach Management Plan ~~request to be presented~~ to the Coastal Resources Commission. This ~~report~~ summary shall include all of the elements required in 15A NCAC 7J .1201.

~~(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 Commission a review of the Beach Management Plan including a recommendation to grant or deny the request. The Division shall provide the petitioner requesting approval of a Beach Management Plan ~~the static line exception~~ an opportunity to review the ~~report~~ recommendation 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 BEACH MANAGEMENT PLAN

(a) At the meeting that approval of a Beach Management Plan ~~the static line exception~~ is considered by the Coastal Resources Commission, the following shall occur:

(1) The ~~Division of Coastal Management~~ Petitioner shall orally present ~~the report~~ a summary of the Beach Management Plan described in 15A NCAC 07J .1202.

(2) The Division of Coastal Management shall orally present its review of the Beach Management Plan and its recommendation to grant or deny the approval request. ~~A representative for the petitioner may provide written or oral comments relevant to the static line exception . 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~~ approve a Beach Management Plan following affirmative findings on each of the criteria presented in15A NCAC 07J .1201(d)(1) through (d)(4), the Division of Coastal Management recommendation, and public comments on the Beach Management Plan submitted with the request to approve the Beach Management Plan. ~~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~~ approve or deny a ~~static line exception~~ Beach Management Plan 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~~ BEACH MANAGEMENT PLANS

(a) Progress Reports. The petitioner that received ~~the static-line exception~~ Beach Management Plan approval shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five years from date the ~~static-line exception~~ Beach Management Plan is ~~authorized.~~ approved. 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 Beach Management Plan ~~static-line exception authorized~~ approved 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).~~ 15A NCAC 07J .1201(d) through (d)(4) and (e). The Coastal Resources Commission shall also consider the following conditions:

(1) ~~Design changes~~ Updates to the Beach Management Plan, including performance of past projects and maintenance events, changes in conditions, and design changes to future projects. ~~initial large-scale beach fill project and 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.

(4) Local governments with a previously approved Static Line Exception may petition the Commission for approval of a Beach Management Plan by supplementing information required under the Static Line Exception to be compliant with the provisions of 7J .1200 prior to or upon the expiration of the previously approved Static Line Exception.

(c) The Petitioner ~~Division of Coastal Management~~ shall orally present ~~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~~ The Division of Coastal Management shall provide the Coastal Resources Commission a review and recommendation ~~from the Division of Coastal~~ Management of the progress report 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 recommendation ~~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.~~

(d) Local governments with previously approved Static Line

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~~ BEACH MANAGEMENT PLAN APPROVAL

(a) ~~The static line exception~~ Beach Management Plan approval 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~~ Beach management Plan 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)~~(b) In the event a progress report is not received by the Division of Coastal Management within five years from either the approval of the Beach management Plan ~~static line exception~~ or the previous progress report, ~~the static line exception~~ Beach management Plan approval 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)~~(c) The revocation or expiration of a ~~static line exception~~ Beach Management Plan approval 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 APPROVED BEACH MANAGEMET PLANS ~~STATIC VEGETATION LINES AND STATIC LINE EXCEPTIONS~~

A list of CRC approved Beach Management Plans ~~static vegetation lines in place for petitioners~~ and the conditions under which the pre-project ~~static~~ vegetation lines exist, including the date(s) the ~~static~~ pre-project vegetation line was defined, shall be maintained by the Division of Coastal Management. A list of CRC approved Beach Management Plans ~~static line exceptions in place for petitioners~~ and the conditions under which the Plans ~~exceptions~~ exist, including the date the Plan ~~exception~~ was ~~granted,~~ approved, the dates the progress reports were received, the design life of the large-scale beach fill project and the potential expiration dates for the Beach Management Plan ~~static line exception~~, shall be maintained by the Division of Coastal Management. Both the ~~static~~ pre-project vegetation line list and the CRC approved Beach Management Plan ~~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 qualified owner's association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A NCAC 07H .0305 may petition the Coastal Resources Commission for a development line for the purpose of siting oceanfront development in accordance with the provisions of this Section. A "qualified owner's association" is an owner's association, as defined in G.S. 47F-1-103(3), that has authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline.

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

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

(d) 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, including;

(A) The development line, static vegetation line, mean high water line, and any other information necessary for a review of the petitioner's proposed development line, such as a pre-nourishment project mean high water line, local ordinances, or easements; and

(B) Surveyed development line spatial data in a geographic information systems (GIS) format referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include Federal Geographic Data Committee (FGDC) compliant metadata;

(2) All local regulations associated with the development line;

(3) A record of local adoption of the development line by the petitioner; and

(4) Documentation of incorporation of a development line into local ordinances or rules and regulations of an owner's association.

(f) 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, unless the petitioner and the Division of Coastal Management agree upon a later date.~~

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