



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

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March 7, 2008

**MEMORANDUM**

**CRC 08-06**

**TO:** Coastal Resources Commission

**FROM:** Jeffrey Warren, PhD  
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**SUBJECT:** Minor Amendments to 15A NCAC 07H.0306  
Alternate Setback Option for 15A NCAC 07H.0306  
Consistency between 15A NCAC 07H.0306 Static Line Exception and 15A  
NCAC 07H.0309 Single-Family Exception  
Minor Amendments to 15A NCAC 07J.1200

This memo addresses oceanfront setback policy in a broader context than one specific rule. Therefore, numerous topics and rule references are included in the subject line of this memo. When taken in context, the oceanfront setback policy issues and/or recommendations initially related to 15A NCAC 07H.0306 collectively are also addressed in 07H.0309 and 07J.1200. Draft rule language for all three rules is attached and reflects the Division of Coastal Management's (DCM) recommendations discussed below.

Public comments regarding draft rule language for 15A NCAC 07H.0306 were presented to the Coastal Resources Commission (CRC) at the January meeting, and DCM staff suggested two changes to the language that had been published in the State Register on November 1, 2007 (v. 22, #9): 1) removing structurally attached, covered porches from the calculation of total square footage for setback purposes, and 2) including roads with other "linear" utilities that receive an exception from oceanfront setbacks greater than 30 times the erosion rate. In addition, the CRC increased the maximum total floor area from 2,000 to 2,500 square feet for buildings developed using the proposed static line exception. Incorporating these three amendments, the CRC voted unanimously to send the amended draft rule language back to public hearing.

Following the meeting, it was noted by DCM staff that a minor clerical error had been made, and the following sentence should have been omitted from the draft language of 15A NCAC 07H.0306(a)(5):

*The enclosure of existing roof covered porches shall be exempt from [meeting oceanfront setback requirements] if the footprint is not expanded, modifications to existing foundations are not required and the existing porch is located landward of the vegetation line or measurement line which ever is applicable.*

When DCM staff made the initial recommendation to remove roof-covered, structurally attached porches from the calculation of total floor area, the intent was that future enclosure of such

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areas could be permitted as long as the building's additional heated square footage created by the enclosed portion met the applicable oceanfront setback. For example: the proposed rule dictates that enclosure of a 1,000 square foot porch structurally attached to 4,500 square feet of heated living space requires a setback factor of 60 rather than 30. Without omission of the language italicized above, this type of addition would continue to be exempt from the larger setback as long as the footprint was not expanded. The policy proposed, therefore, ensures that the enclosure of these porches meets applicable setback regulations.

**DCM staff recommends that the CRC amend the rule language approved for public hearing in January by omitting the sentence from 15A NCAC 07H.0306 listed above and send the revised language to public hearing.**

The need to bring the aforementioned issue back to the CRC has delayed the public hearing process by two months. Therefore, DCM would like to take advantage of this opportunity to address additional issues and provide recommendations to resolve them. The CRC has the opportunity to approve or revise these recommendations without further delay for a second public hearing. Adopting changes in this way (i.e., earlier rather than later) may, in the long run, move the rules more efficiently by removing the need for additional rounds of public hearings after this next round. Besides minor changes added for clarification (e.g., ensure that elevated parking structures meet the same setback requirements as buildings and that screening in a covered porch would not be considered "enclosure"), three additional issues identified by Staff are presented below.

### **1. Oceanfront Setbacks for non-Beach Fill Areas**

Overall, the static line exception policy provides a similar, yet separate, set of management tools for nourished versus non-nourished beaches. However, up to this point, the concept has only been considered for small-scale structures on non-conforming lots. While considering coastal development trends into the foreseeable future under conditions of rising sea level and a potential for more frequent and higher magnitude storms (hurricanes and nor'easters), the CRC has the opportunity to apply more stringent development criteria to regions not receiving the hazard mitigation benefits of large-scale, long-term beach fill.

During the November-December 2007 public comment period on the setback rules discussed herein (07H.0306), numerous comments were received regarding the potential economic impact of an increased, graduated setback on larger structures. A continuing dialog between DCM staff and stakeholders with interests in existing large-scale development (i.e., >100,000 square feet) indicate that relief for these structures is being sought through the form of a grandfather clause or an exception for continued use of the existing setbacks (i.e., 60 times erosion rate). Instead of loosening rules in areas that receive large-scale, long-term beach fill, the CRC could focus on tightening rules in areas that do not engage soft-engineered beach management. This could be achieved by adding the following sentence to the draft rule language:

*A building or other structure greater than or equal to 5,000 square feet in a community meeting the criteria set forth in 15A NCAC 07H.0306(a)(8) as well as the requirement in 15A NCAC 07J.1200 shall require a minimum setback factor of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater, and that the setback shall be measured landward from either the static vegetation line or vegetation line, whichever is further landward.*

**DCM staff recommends that the CRC apply the more stringent development setbacks to portions of the Ocean Erodible Area that cannot meet the requirement for a CRC-issued static line exception (i.e., appropriate sand and financial resources to build and maintain a 30-year-plus beach fill project).**

## **2. Consistency between Single-Family Exception and Static Line Exception**

An exception is provided in 15A NCAC 07H.0309(b) provides an exception for single-family residential structures on lots platted before June 1, 1979 that cannot meet the applicable oceanfront setback (although this exception currently is unavailable in Inlet Hazard Areas). The result is development that is allowed to be as far landward of the vegetation line as feasible (minimum setback of 60 feet). Single-family homes built using the current exception are limited to footprints of either 1,000 square feet or 10% of the lot size, whichever is greater. At the January CRC meeting, I briefly mentioned this exception and stated that there is no relationship between lot size and coastal hazards exposure. Furthermore, limiting development solely by footprint does not allow for a uniform size restriction. For example: variations in local height regulations can allow for a house in one community to be 1,000 square feet (single story), 2,000 square feet (two stories) in another community, and up to 3,000 square feet (three stories) in yet another community. However, because this exception requires development to be as far landward as feasible, completely abandoning a footprint restriction creates the potential for abuse wherein people opt for a one-story home that is 2,500 square feet rather than a two-story home with the same total square footage, a footprint of 1,250 square feet, and a home that is farther from the oceanfront (because it must be as far landward as feasible). Therefore, DCM recommends a restriction for this particular exception that limits total floor area to 2,500 square feet with a total floor area footprint no larger than 1,250 square feet. Keeping in mind that development reliant upon this exception cannot meet the standard oceanfront setback, DCM feels it is crucial to ensure that stable and natural vegetation is in place from which to measure the minimum 60-foot setback and that the exception cannot be applied in the Unvegetated Beach AEC. It is also important to clarify that, where a static vegetation line is in place, the minimum 60-foot setback must be measured from the static line rather than the

**DCM staff recommends that the CRC make the development limitations in the 07H.0309(b) exception consistent with the proposed 07H.0306 static line exception via the following amendments:**

- 1. Do not limit the 07H.0309(b) exception to “single-family” structures since the new setback proposal addresses size and not use (this affects nothing but, rather, creates continuity); and**
- 2. Limit the size of structures to 2,500 square feet of total floor area and a footprint of no more than 1,250 square feet without referencing structure size to lot size; and**
- 3. Do not allow either the 07H.0309 exception or the 07H.0306 static line exception to be used in the Unvegetated Beach AEC (a formally designated AEC where stable and natural vegetation is not present) in order to ensure development setbacks are measured from the first line of stable and natural vegetation and not a statistical approximation of the vegetation line; and**
- 4. Clarify the current policy that setback exceptions must be measured from the static vegetation line, if one is in place, at all locations where the static line is landward (more restrictive) than the stable vegetation.**

### **3. Minor Changes to the Static Line Exception Procedures**

At the September 2007 CRC meeting, a new set of rules was presented to define the procedures for receiving a static line exception (as defined in the draft of 07H.0306 presented in this memo). The CRC approved these rules for public hearing, but DCM staff has kept them idle until they could be placed on the same track as 07H.0306. Both rules reference each other and, if approved, must be presented to the Rules Review. During this time, DCM staff has identified minor amendments that will clarify the September 2007 language.

**DCM staff recommends that the CRC approve the minor amendments to 15A NCAC 07J.1200 presented in this memo.**

#### **SUMMARY OF DCM STAFF RECOMMENDATIONS**

- Approve all rule language presented herein for public hearings (15A NCAC 07H.0306, 07H.0309 and 07J.1200). These three rules will be on the same timeline for the requisite public comments and public hearing required by the NC Administrative Procedures Act.
- In order to provide additional forums for public input, DCM recommends four regional public hearings for these three rules to be held on the coast prior to the final hearing in front of the full CRC (which is likely to be Raleigh in July).

*NOTE: Traditionally, strikeout/underline format represents what has been deleted and added from existing rule language. For the sake of clarity, the following draft rule language represents changes made to the draft rule language approved for public hearing by the CRC in January 2008. Therefore, the strikeouts and underlines that follow represent deletions and additions made only to the January draft language for 07H.0306.*

### **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 these Rules shall be located according to whichever of the following rules is applicable.

- (1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. The setback distance shall be determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H.0304 ~~of this Section~~. Development size shall be defined by total floor area for buildings and structures or total area of footprint for development other than structures ~~and other than~~ buildings. The calculation of total floor area shall be based on the following criteria: ~~Total floor area is the total square footage of heated or air-conditioned living space. With the exception of roof covered porches and walkways, non heated or non air conditioned areas that are elevated above ground level and either structurally attached or included within the footprint of a building shall be included in the calculation of total floor area.~~
  - (A) The total square footage of heated or air-conditioned living space; and
  - (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; and
  - (D) 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.
- (2) With the exception of those types of development defined in 15A NCAC 07H.0309, No development, including any portion of a building or structure,'s total floor area may shall extend oceanward of the ocean hazard setback distance. This shall includeing roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established using the following conditions:
  - (A) A building or other structure less than 5,000 square feet shall require a minimum setback factor of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
  - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet shall require a minimum setback factor of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
  - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet shall require a minimum setback factor of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
  - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet shall require a minimum setback factor of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
  - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet shall require a minimum setback factor of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
  - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet shall require a minimum setback factor of 160 feet or 80 times the shoreline erosion rate, whichever is greater;

- (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet shall require a minimum setback factor of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
  - (H) A building or other structure greater than or equal to 100,000 square feet shall require a minimum setback factor of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
  - (I) Infrastructure ~~that is linear in nature including 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 shall require a minimum setback factor of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
  - (J) Parking lots ~~and parking structures~~ greater than or equal to 5,000 square feet shall require a setback factor of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
  - (K) A building or other structure greater than or equal to 5,000 square feet in a community meeting the criteria set forth in 15A NCAC 07H.0306(a)(8) as well as the requirements in 15A NCAC 07J.1200 shall require a minimum setback factor of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater, and that the setback shall be measured landward from either the static vegetation line or the vegetation line, whichever is further landward.
- (23) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the ocean hazard setback, whichever is farthest from the vegetation line, static vegetation line or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback but shall not be located on or oceanward of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (34) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the ocean hazard setback, whichever is farthest from the vegetation line, static vegetation line or measurement line, whichever is applicable.
- (45) If neither a primary nor frontal dune exist in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.
- (56) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area~~principal structure~~ and ~~both~~ shall meet the setback requirements established in ~~Paragraph (a) of~~ this Rule and 15A NCAC 07H.0309(a). ~~The enclosure of existing roof covered porches shall be exempt from this requirement if the footprint is not expanded, modifications to existing foundations are not required and the existing porch is located landward of the vegetation line or measurement line applicable.~~—New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (67) Established common-law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.

- (78) Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H.0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. Therefore, development setbacks measured from an established vegetation line in areas that have received beach fill may, over time, be located so as to be closer to the shoreline and more vulnerable to natural hazards along the oceanfront. Therefore, development setbacks in areas that have received large-scale beach fill shall be measured landward from the static vegetation line as defined in this Section. If development landward of the large-scale beach fill project does not meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Part (1) of this Rule, a local government or community may petition the Coastal Resources Commission for a “static line exception” to allow development of ~~oceanfront~~ property that lies both within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. If the request is approved, the Coastal Resources Commission may allow development under the following conditions:
- (A) The local government or community provides evidence of a long-term commitment to beach fill including:
    - (i) plans for design, construction and maintenance of a beach fill project designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work and designed for a period of at least 30 years; and
    - (ii) documentation by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work of the location, of compatible sand necessary to construct and maintain the beach fill project over its design life; and
    - (iii) identification of the financial resources or funding bases necessary to fully fund the beach fill project over its design life; and
  - (B) A minimum of five (5) years has passed since the onset of the initial large-scale beach fill construction associated with the static vegetation line as defined in 15A NCAC 07H.0305; and
  - (C) Development shall meet all setback requirements from the vegetation line ~~or measurement line~~ defined in this Rule, ~~whichever is applicable~~; and
  - (D) Total floor area ~~of a building~~ shall be no greater than 2,500 square feet; and
  - (E) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance; and
  - (F) No portion of a building ~~or structure's total floor area,~~ including roof overhangs ~~and~~ 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 or structure. When the ~~configuration geometry or orientation~~ of a lot precludes the placement of a building in line with the landward most adjacent ~~building or structure structure of similar use~~, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line ~~or measurement line, whichever is applicable,~~ a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater; and
  - (G) With the exception of swimming pools, the development ~~defined outlined~~ in 15A NCAC 07H.0309(a) may be allowed oceanward of the static vegetation line; and

(H) Development shall not be eligible for the ~~single family~~ exception defined in 15A NCAC 07H.0309(b); and

(I) ~~Issuance, R~~evocation and expiration of the static line exception shall occur under the conditions defined in 15A NCAC 07J.1200.

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon which would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable, and any disturbance of any other dunes shall be allowed only to the extent allowed by ~~15A NCAC 07H .0308(b)Rule .0308(b) of this Section.~~

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

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

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

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

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

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

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

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

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

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H.0308(a)(2)(B). The structure(s) shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach renourishment takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under 15A NCAC 07H.0308(a)(2) of this Section.

*History Note:* Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;  
Eff. September 9, 1977;  
Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;  
RRC Objection due to ambiguity Eff. January 24, 1992;  
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. November 1, 2004; June 27, 1995.

*NOTE: Unlike the strikeout/underline format for the previous draft rule language in this memo (07H.0306), the following language represents the traditional format showing what has been deleted and added from existing rule language.*

#### **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 the Subchapter if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) parking areas with clay, packed sand or gravel;
- (3) elevated decks not exceeding a footprint of 500 square feet;
- (4) beach accessways consistent with Rule .0308(c) of this Subchapter;
- (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;
- (8) sand fences; and
- (9) swimming pools.

In all cases, this development shall be permitted only if it is landward of the vegetation line; 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 Subchapter would preclude placement of permanent substantial structures on lots existing as of June 1, 1979, ~~single family residential structures~~ buildings and structures shall be permitted seaward of the applicable setback line in ocean erodible areas, but not inlet hazard areas or 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; and
- (2) The development is at least 60 feet landward of the vegetation line or the static vegetation line, whichever is further landward; and
- (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward toe of the frontal dune; and
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Subchapter.
  - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level; and
  - (B) The ~~footprint of the structure~~ structure shall be no more than ~~1,000~~ 2,500 square feet total floor area, as defined in 15A NCAC 07H.0306(a)(1), with a footprint of total floor area no greater than 1,250 square feet ~~or 10 percent of the lot size, whichever is greater;~~ and
  - (C) No portion of a structure, including roof overhangs or elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, shall extend oceanward of the maximum feasible ocean hazard setback; and
  - (~~C~~D) 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 ~~or~~ and is located landward of a paved public street or highway currently in use. In those cases concrete, asphalt or turfstone may also be used; and

- (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) Reconfiguration of lots and projects that have a grandfather status under Paragraph (b) of this Rule shall be allowed provided that the following conditions are met:
- (1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;
  - (2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences; and
  - (3) Development on lots qualifying for the exception in Paragraph (b) of this Rule shall meet the requirements of Paragraphs (1) through (5) of that Paragraph.
- For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined as the greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when extended to ground level.
- (d) 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 (excluding any pier house, office, or other enclosed areas); and
  - (2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.
- (e) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude replacement of a pier house associated with an existing ocean pier, replacement of the pier house shall be permitted if each of the following conditions are met:
- (1) The associated ocean pier provides public access for fishing or other recreational purposes whether on a commercial, public, or nonprofit basis;
  - (2) The pier house is set back from the ocean the maximum feasible distance while maintaining existing parking and sewage treatment facilities and is designed to reduce encroachment into the setback area;
  - (3) The pier house shall not be enlarged beyond its original dimensions as of January 1, 1996;
  - (4) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
  - (5) If the associated pier has been destroyed or rendered unusable, replacement of the pier house shall be permitted only if the pier is also being replaced and returned to its original function.
- (f) 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 ocean front processes, shall be permitted on those non-oceanfront portions of shoreline 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 07H .1100, .1200 and 07K .0203.

*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. 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.

*NOTE: Traditionally, strikeout/underline format represents what has been deleted and added from existing rule language. However, because Section 1200 below is a brand new section of the Rule, everything approved for public hearing represents new language and, therefore, is not subject to the traditional strikeout and underline format (with the exception that all language published in the State Register and presented to the Rules Review Commission will be underlined). For the sake of clarity, the following draft rule language represents changes made to the draft rule language approved for public hearing by the CRC in September 2007. The strikeouts and underlines that follow represent deletions and additions made to the September draft language for 07J.1200.*

**SUBCHAPTER 07J – PROCEDURES FOR PROCESSING AND ENFORCEMENT OF MAJOR AND MINOR DEVELOPMENT PERMITS, VARIANCE REQUESTS, APPEALS FROM PERMIT DECISIONS, DECLARATORY RULINGS AND STATIC LINE EXCEPTIONS**

**SECTION .1200 – STATIC VEGETATION LINE EXCEPTION PROCEDURES**

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

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

(b) A petitioner shall be eligible to submit a request for a static vegetation line exception after five (5) years have passed since the completion of construction of the initial large-scale beach fill project as defined in 15A NCAC 07H.0305 that required the creation of a static vegetation line. For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines or line segments within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception defined in 15A NCAC 07H.0305 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static line exception request shall be made in writing by the petitioner responsible for the management and maintenance of the long-term, large-scale beach fill project(s). For the purpose of this Rule, long-term refers to a period of no less than 30 years from the date of the static line exception request. A complete static line exception request shall include the following:

- (1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale project(s) and beach fill projects occurring prior to the initial large-scale project(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre- and post-project surveys and a project footprint;
- (2) Plans and related materials including; reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred and planned maintenance needed to achieve a design life providing no less than 30 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 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 Part 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 bases necessary to fund the large-scale beach fill project over its design life.
- (e) A static line exception request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed static line exception request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.
- (f) The Coastal Resources Commission shall consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

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

- (a) The Division of Coastal Management shall prepare a written report of the static line exception request to be presented to the Coastal Resources Commission. This report shall include:
- (1) A description of the area affected by the static line exception request;
  - (2) A summary of the large-scale beach fill project that required the static vegetation line as well as the completed and planned maintenance of the project(s);
  - (3) A summary of the evidence required for a static line exception; and
  - (4) A recommendation to grant or deny the static line exception.
- (b) The Division of Coastal Management shall provide the petitioner requesting the static line exception an opportunity to review the report prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

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

- (a) At the meeting that the static line exception is considered by the Coastal Resources Commission, the following shall occur:
- (1) The Division of Coastal Management shall orally present the report described in 15A NCAC 07J.1202.
  - (2) A representative for the petitioner may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.
  - (3) Additional parties may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.
- (b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings on each of the conditions contained in 15A NCAC 07H.0306(a)(7)(A). 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 ten business days following the meeting at which the decision is reached.
- (d) The decision to authorize or deny a static line exception is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123 and G.S. 150B-23.

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

(a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five (5) years from date the static line exception is authorized. The progress report shall address the three (3) conditions defined in 15A NCAC 07H.0306(a)(7)(A) 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 shall be presented to the Coastal Resources Commission to the petitioner.

(b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J.1203 at intervals no greater than every five (5) years from the initial authorization in order to renew its findings for each of the conditions defined in 15A NCAC 07H.0306(a)(7)(A). The Coastal Resources Commission shall also consider the following conditions:

- (1) Design changes to the initial long-term beach fill project defined in 15A NCAC 07J.1201(d)(2) provided that said changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said 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.1202(d)(2), including design changes defined in this Rule provided that said changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and
- (3) Changes in the financial resources or funding bases necessary to fund the long-term beach fill project defined in 15A NCAC 07H.0306(a)(7)(A). 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 bases necessary to fund said changes.

(c) The Division of Coastal Management shall prepare a written summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the ~~petitioner, local government or community~~ submitting the progress report and the Division of Coastal Management. This written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07H.0306(a)(7)(A) as well as this Rule have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

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

- (1) The Division of Coastal Management shall orally present the written summary of the progress report as defined in this Rule.
- (2) A representative for the petitioner may provide oral or written 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 comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for comments.

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

- (a) The static line exception shall be revoked immediately if the Coastal Resources Commission determines, during the review of the petitioner's progress report identified in 15A NCAC 07J.1204, that any of the conditions under which the static line exception is authorized, as defined in this Section, no longer exist.
- (b) The static line exception shall expire immediately at the end of the design life of the long-term beach fill project defined in 15A NCAC 07H.0306(a)(7)(A) and 15A NCAC 07J.1201(d) including subsequent design changes to said project as defined in 15A NCAC 07J.1204(b).
- (c) In the event a progress report is not received by the Division of Coastal Management within five years from either the static line exception or the previous progress report, the static line exception shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J.1204(b) for which the progress report was not received.
- (d) The revocation or expiration of a static line exception is considered a final agency decision and is subject to judicial review in accordance with G.S. 113A-123 and G.S. 150B-23.

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

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

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