

**Routine Program Change
to the
North Carolina Coastal Management Program**

**Request for Concurrence
April 2010**

15A NCAC 7H .0306 General Use Standards For Ocean Hazard Areas
15A NCAC 7J .1200 Static Vegetation Line Exception Procedures

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1. Introduction

The following constitutes a request by the State of North Carolina for the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to concur in the incorporation of a Routine Program Change (RPC) to the North Carolina Coastal Management Program (NCCMP).

The state's coastal management regulations are contained within the NC Administrative Code (NCAC) Title 15A Chapter 7. This RPC concurrence request includes changes to Subchapter 7H. Descriptions and analyses of the changes are included in this submission. The State has concluded that these changes do not substantially affect the five Program Approval Areas defined in 15 CFR Part 923, Subparts B through F, and in OCRM's July 1996 Program Change Guidance.

The changes do not modify the uses subject to management under the NCCMP (Subpart B), the boundaries of the State's coastal zone (Subpart D) or coordination and public involvement (Subpart F). There are minor changes to special management areas (Subpart C) and authorities and organization (Subpart E). The changes are discussed in the following sections.

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

The NC Coastal Area Management Act (CAMA) grants authority to the NC Coastal Resources Commission (CRC) to establish objectives, policies and standards to be followed in the public and private use of land and water areas within the coastal area (NC G.S. 113A-102). These policies and standards address the nature of development appropriate within the various Areas of Environmental Concern (AEC) and are to be used in the review of permits issued for development [NC G.S. 113A-113(b); 113A-107(a); 113A-107(b)]. Specifically, development standards and policies for natural hazard areas are to be adopted where uncontrolled or incompatible development could unreasonably endanger life or property, especially areas vulnerable to erosion and flooding [NC G.S. 113A-113(b)(6a)].

The State has made changes to its administrative rules governing development in ocean hazard areas. T15A NCAC 07H .0306 contains the guidelines for development within the Ocean Hazard Area of Environmental Concern (AEC). Specific changes pertaining to the delineation of erosion setback lines based on the square footage of proposed structures, as well as special considerations for development adjacent to large-scale beach nourishment projects have been adopted. The adopted rule changes create separate management strategies for beaches that receive long-term, large-scale beach nourishment activities as well as those that do not. These changes are in response to concerns raised by municipalities over the restrictive nature of existing erosion setback lines, particularly on lots located adjacent to large-scale beach nourishment projects. Currently, communities that have received large-scale beach fill measure development setbacks from a static vegetation line (i.e., the location of the stable and natural vegetation prior to the initial beach fill project). If a lot was "unbuildable" prior to receiving a static line then it remains unbuildable in perpetuity. Municipalities often maintain that after a beach nourishment project is completed, development should be tied to the actual vegetation line instead of the static line (pre-project vegetation line). Following extensive stakeholder discussions and analysis, the State has amended its oceanfront setback rules to

allow development of lots incorporating setbacks based on the existing vegetation line, provided that certain conditions are satisfied, including a formal exception from the static line restrictions from the CRC.

The State has adopted rule changes where limited development may be considered when a community has a long-term (at least 30 years) beach fill program in place while also identifying beach compatible sand and a financial plan to build and maintain the project for its design life. Limited development under these conditions can be granted under a “static line exception.” In this way, lots deemed unbuildable prior to the initial beach fill project have the potential to become buildable if natural and stable vegetation is established at the appropriate distance (30 times the annual erosion rate) oceanward of the proposed development. However, size restrictions of development (i.e., 2,500 square feet) minimize risk to other structures in the event of a storm and make removal of the structure feasible under extreme conditions of coastal erosion. However, strict placement of structures using the static line exception prevents oceanward encroachment and continues to preserve and protect frontal and primary dunes as well as public access to the dry sand beach. Furthermore, this rules change provides incentives for beach fill, providing significant mitigation against storms and other coastal hazards, as well as facilitating the replacement of older, non-conforming structures with newer, conforming structures built to current building code with modern materials.

Consideration of climate change, the resultant rise in sea level rise and the potential increased frequency and magnitude of storm activity, has been the catalyst for the State to consider increasing its oceanfront setback policy in communities that are not actively engaged in coastal hazards mitigation through a long-term beach nourishment plan (i.e., the conditions of the “static line exception”).

A community is required to renew this “exception” with the Coastal Resources Commission every five years by providing evidence that their long-term, large-scale beach fill program continues to be active. In this way, unbuildable lots prior to the initial beach fill project have the potential to become buildable if natural and stable vegetation is established at the appropriate distance (30 times the annual erosion rate) oceanward of the proposed development.

In addition to making provisions for erosion setback exceptions, the amended language to 15A NCAC 7H.0306 includes a graduated setback scale for development that increases the distance from the shoreline development must be setback as the size of the structure increases. This requirement addresses the increased risk of loss of life and property when large structures are located immediately along the Atlantic Ocean, and specifically in highly erodible areas.

15A NCAC 7J .1200 Static Vegetation Line Exception Procedures

The aforementioned proposed rule changes to T15A NCAC 07H.0306 for oceanfront development setbacks contain a specific provision for limited development related to development currently unable to meet the setback from the static vegetation line. This rule change is referred to as the “static line exception.” This exception requires that a community have a long-term (at least 30 years), large-scale (>300,000 cubic yards) beach fill project in place for at least five years prior to requesting the exception from the CRC. Specifically, in

order for a community to be considered for an exception, they must meet three criteria: 1) a formal beach fill construction design, 2) documentation of the volume of compatible sand necessary to construct and maintain the beach fill project over its design life, and 3) identification of the financial resources or funding bases necessary to fund the beach fill project over its design life. Furthermore, to keep the exception active, a community must report to the CRC every five years showing that the three criteria above continue to be met.

The static line exception rule defines how the exception is formally requested, how the exception request is reviewed and under what conditions it is approved, how the exception is extended for additional five-year periods (i.e., beach fill project progress reports), and under what condition a static line exception can expire or be revoked. These procedural requirements of the static line exception are incorporated into 15A NCAC 7J which contains the procedures for processing and enforcement of major and minor development permits, variance requests, appeals from permit decisions, and declaratory rulings. This new section 15A NCAC 7J .1200 is entitled “Static Vegetation Line Exception Procedures.”

2. Analysis of Incorporation

2(a) 15A NCAC 7H .0306

Description of the Nature of the Program Change

The adopted changes to general use standards in ocean hazard areas are incorporated into 07H.0306(a)(1) through 07H.0306(a)(7). The proposed changes focus on three primary components; 1) setback requirements based solely on structure size rather than use [07H.0306(a)(1)]; 2) setback distances calculated based on graduated setback factors with the maximum factor increased from 60 to 90 times the erosion rate [07H.0306(a)(1)(A) – (a)(1)(J)]; and 3) a static setback exception for development adjacent to large-scale beach nourishment projects (07H.0306(a)(7)).

Setbacks Based on Size of Structure

The first component of the adopted change is that oceanfront setbacks will be determined by the size of the structure and not its use. In doing so, proposed oceanfront setbacks are thereby based on total square footage regardless of whether the structure is single-family, multi-family, or commercial. This is a change from the previous rule, which provides an exemption for single-family structures, regardless of size, to be set back 30 times the erosion rate. In recent history, the size of single-family residences (SFRs) has increased along the oceanfront. In January 2007 the NC Division of Coastal Management (DCM) conducted a survey of SFRs located within the municipalities of Bald Head Island, Currituck, North Topsail Beach, Holden Beach, Nags Head and Emerald Isle. The survey utilized statistical analysis of SFRs listed on each municipality’s property tax website. The results of this research have shown that while the size of SFRs has increased within these municipalities from 1920 to today, relatively few of 999 SFRs located along the oceanfront, exceed 5,000 ft². Most of these larger homes were all built after 1990.

The assumption that can be made given the statistical analysis performed that the majority of SFRs along the NC oceanfront are smaller than 5,000 ft² and will therefore be subject to similar setback requirements. The limited number of SFRs that are larger than 5,000 ft² will be required to meet more stringent setback requirements, with setbacks based on a graduated scale correlating to the structure's size.

Graduated Setback

In the second component of the adopted rule changes, the minimum setback factor remains 30 times the erosion rate for all structures less than 5,000 ft². Above 5,000 ft², and every 5,000 ft² thereafter, the setback factor increases from 60 to 90 in increments of five. The maximum setback factor becomes 90 times the erosion rate for structures greater than or equal to 100,000 ft². Development of roads, parking lots, and other public infrastructure such as utilities continue to have the same setback factors as under previous rules. These changes are incorporated in 07H.0306(a)(1)(A) through (a)(1)(J). This change also eliminates the setback reduction formula used in high erosion rate areas. Previously, for erosion rates of 3.5 feet per year or greater, the setback formula for non-residential structures over 5,000 ft² was 30 times the erosion rate, plus 105 feet. Under the adopted changes the setback will simply be the erosion rate times the applicable setback factor. The rule changes incorporate the additional erosion factor of the previous rule for larger structures located within highly erodible areas. Larger structures are required to meet increased setbacks under current erosion rate calculations in ocean hazard areas as an additional safety mechanism. The proposed changes to the rule simply create a graduated series of setbacks that increases as building size increases rather than grouping all structures greater than 5,000 ft² into one category. A recent inventory of large structures conducted by DCM resulted in a total of 24 structures that are six stories or taller along the NC oceanfront. These 24 structures are likely greater than 100,000 ft² and represent a minor classification of oceanfront development. These would likely be the only structures required to meet the most stringent of setback requirements under the proposed graduated system.

Static Oceanfront Erosion Setback Line

The third component of the 7H.0306 adopted rule changes pertains to static line exceptions. The exception was established to address development in areas adjacent to large-scale beach nourishment projects. Added language describing this exception is provided in 07H.0306(a)(7). The exception allows the oceanfront erosion setback to be measured from the first line of stable, natural vegetation rather than being measured from the static line. At no time is development allowed oceanward of the static line or the first line of natural stable vegetation. Specifically, the adopted rule change allows static line exceptions to be used in cases where development (adjacent to a 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 actual vegetation line established after a beach nourishment project. In this case 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. Development that may occur under a static line exception is limited to single family residences no greater than 2,500 ft², and can be located no further oceanward

than the nearest adjacent structure. The 2,500 ft² threshold was derived from DCM staff review of current building standards, information provided by NC Sea Grant on small building setbacks and house moving, and solicitation of comments from four currently operating house moving companies in coastal NC. While the Sea Grant information indicated that a realistic definition of an easily moveable building is a one story building, less than 17 feet from floor joists to peak of the roof, and with dimensions less than 30' by 60', the more recent survey of house movers resulted in an agreement that the 2,500 ft² size restriction was an acceptable guideline to be used as an upper limit for ease of moving structures from highly erodible areas. Procedures for applying for a static line exception are outlined in 07H.0306(a)(7).

In addition, the adopted rule changes prohibit cantilevering into the oceanfront setback area. Previous State rules allow cantilevering into the setback; however recent development trends have increased the oceanward reach of structures that “hang over” the setback line increasing hazards to life and property. The prohibition of cantilevering is explained in 07H.0306(a)(1).

2(b) 15A NCAC 7J .1200 Static Vegetation Line Exception Procedures

The NC Coastal Area Management Act (CAMA) grants authority to the NC Coastal Resources Commission (CRC) to establish objectives, policies and standards to be followed in the public and private use of land and water areas within the coastal area (NC G.S. 113A-102). These policies and standards address the nature of development appropriate within the various Areas of Environmental Concern (AEC) and are to be used in the review of permits issued for development [NC G.S. 113A-113(b); 113A-107(a); 113A-107(b)]. Specifically, development standards and policies for natural hazard areas are to be adopted where uncontrolled or incompatible development could unreasonably endanger life or property, especially areas vulnerable to erosion and flooding [NC G.S. 113A-113(b)(6a)]. The CAMA also grants the CRC authority to require a permit from every individual before undertaking any development in any area of environmental concern (NC G.S. 113A-118). Subchapter 7J of the NCAC Administrative Code defines the criteria that shall be followed for permit processing and enforcement, requests for variances, permit decision appeals and declaratory rulings made by the Coastal Resources Commission (CRC).

Section 15A NCAC 7J.1200 represents a new rule that defines the process of requesting a static line exception, the review and approval of the request, the necessity and frequency for progress reports in order to keep the static line exception active, and how such an exception would expire or be revoked.

Static Line Exception Requests

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 CRC for an exception to the static line. 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 7H.0305 that required the creation of a static vegetation line.

A static line exception request is to be made in writing by the petitioner responsible for the management and maintenance of the long-term, large-scale beach fill project(s). A complete static line exception request includes: 1) a formal beach fill construction design, 2) documentation of the volume of compatible sand necessary to construct and maintain the beach fill project over its design life, and 3) identification of the financial resources or funding bases necessary to fund the beach fill project over its design life. The requests are submitted to the DCM Director with 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 CRC, is provided to the petitioner by the DCM. The rule mandates the CRC consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request. The request can be heard at a later date if agreed upon by the petitioner and the DCM.

Provisions are made in the rule for when a jurisdiction has segmented static lines (such as when ocean piers are bypassed) or has had multiple beach fill projects. The rule requires that a static line exception request apply 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 proposed rule will be considered separately for each large-scale beach fill project.

Review of a Static Line Exception Request

Once a request for a static line exception is received by DCM, it is reviewed and an agency recommendation is provided to the CRC. The recommendation is provide in the form of a written report that includes: 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.

Procedures for Approving a Static Line Exception

Consideration of a static line exception request by the CRC involves: 1) a presentation by DCM and 2) a response or comments by the petitioner relevant to the static line exception request. The rule also allows additional parties to provide written or oral comments relevant to the request.

In order to grant the static line exception request, the CRC must find in the affirmative on each of the three conditions contained in 15A NCAC 07H.0306(a)(8)(A). The rule allows the CRC to make a final decision at the meeting at which the matter is heard but no later than the next scheduled meeting. The final decision is to be transmitted to the petitioner by registered mail within ten business days following the meeting at which the decision is reached. 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.

Review of the Long-term Beach fill Project and the Approved Static Line Exception

Once a local government or community receives a static line exception, the rule requires that progress reports be presented to the CRC every five years from the date the original exception is authorized. The intent of the progress report is to ensure that the local jurisdiction is in compliance with the three conditions under which a static line exception is granted (project design, documentation of volume of compatible sand necessary to build project, and identification of financial resources required build and/or maintain project) Progress reports are to be submitted in writing to the DCM Director. DCM will then 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 CRC to the petitioner.

The CRC is required to review a static line exception authorized under 15A NCAC 07J.1203 in order to renew its findings for each of the conditions defined in 15A NCAC 07H.0306(a)(8)(A). In the review, the CRC is also to consider: 1) design changes to initial project, 2) documentation changes for location and amount of compatible sediment to build project, and 3) changes in financial resources necessary to build project.

As with the original static line exception request, DCM is responsible for preparing a written summary of the progress report and presenting it to the CRC no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the DCM and local government or community submitting the progress report. The summary includes a recommendation from DCM on whether the conditions defined in 15A NCAC 07H.0306(a)(8)(A). The local jurisdiction submitting the progress report is provided an opportunity to review the written summary prepared by DCM no less than 10 days prior to the meeting at which it is to be considered by the CRC. DCM presents a summary of the progress report and the CRC reviews the static line exception progress report, making their decision.

Revocation and Expiration of the Static Line Exception

The rule allows the CRC to revoke a previously granted static line exception under the following conditions:

- If the CRC determines that any of the conditions under which the static line exception is authorized no longer exist.
- In the event a progress report is not received by DCM within five years from either the static line exception or the previous progress report.

The rule also provides for the expiration of the static line exception at the end of the design life of the long-term beach fill project, including subsequent design changes to the project. As with other permit related decisions, 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.

Listing of Static Vegetation Lines and Static Line Exceptions

The rule requires that the DCM maintain a list of static vegetation lines in place for local jurisdictions and the conditions under which the static vegetation lines exist, including the date(s) the static line was defined. The DCM will also maintain a list of static line exceptions in place for local jurisdictions 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.

Identification of any new or changed policies 15A NCAC 7H .0306

Changes to 15A NCAC 07H .0306 General Use Standards For Ocean Hazard Areas				
Citation	Addition/Modification/Deletion	Significance of Change	Enforcement Mechanism	Date Adopted Effective Date
15A NCAC 7H .0306(a)	No Change	NA	CAMA Permit	06/24/2004 11/1/2004
15A NCAC 7H .0306 (a)(1)	Modification Establishes that the oceanfront setback factor is determined by the total floor area of buildings or total area footprint for other structures. Determines how floor/footprint area is calculated as well portions of structures not to be included in the calculation.	Prior rule only classified large structures as being greater than 5,000 square feet exempting roofed porches from the area calculation. Single family residences were exempted from the large structure classification no matter what size.	CAMA Permit	09/26/2008 08/12/2009
15A NCAC 7H .0306 (a)(2)	Addition Establishes the criteria for calculating oceanfront setbacks based on structure size. Sets minimum set back for linear infrastructures such as roads and utilities. Includes prohibition of cantilevering into setback area. Allows existing structures over 5,000 square feet to use a reduced setback calculation factor provided that the local government has been granted a static line exception.	Prior rule considered use of the structure (single family residential vs other) in the determination of setbacks as well as allowed cantilevering into the setback. There was also no accommodation of linear infrastructure in areas with low erosion rates – had simply doubled the setback factor even in areas of accretion. Prior to the changes, no relief from large structure setback provided in spite of long-term beach fill projects.	CAMA Permit	09/26/2008 08/12/2009
15A NCAC 7H .0306 (a)(3) Renumbered – Old (2)	Modification Technical rewording for clarity and to address ambiguity.	Does not substantially change the uses, special management areas boundaries, authorities and organization, coordination, or affect public involvement or national interest in the coastal area.	CAMA Permit	09/26/2008 08/12/2009
15A NCAC 7H .0306 (a)(4) Renumbered – Old (3)	Modification Technical rewording for clarity and to address ambiguity.	Does not substantially change the uses, special management areas boundaries, authorities and organization, coordination, or affect public involvement or national interest in the	CAMA Permit	09/26/2008 08/12/2009

		coastal area.		
15A NCAC 7H .0306 (a)(4)	Deleted Removes the requirement for non-residential structures >5,000 sqft to double the oceanfront setback factor as well as eliminating relaxation of the setback factor when the erosion rate is 3.5 feet or greater.	Prior rule considered use of the structure (single family residential vs other) in the determination of setbacks. The rule previously allowed a setback of 30 times the erosion rate plus 105 feet in cases where the erosion rate exceeded 3.5 feet per year.	CAMA Permit	09/26/2008 08/12/2009
15A NCAC 7H .0306 (a)(5)	Addition Includes wording from previous rule indicating the placement of development in the absence of frontal or primary dunes. While new to this section, it has been a standing provision in 7H .0306.	Does not substantially change the uses, special management areas boundaries, authorities and organization, coordination, or affect public involvement or national interest in the coastal area.	CAMA Permit	09/26/2008 08/12/2009
15A NCAC 7H .0306 (a)(6) Renumbered – Old (5)	Modification Adds reference to “total floor area” to be consistent with provisions for calculation of the size of a structure and hence its setback factors. Removes the exclusion of the enclosure of existing porches from calculation of total floor area to determine size of structure. Calculation of structure size is now tied to heated or air-conditioned living space and not structure footprint. Covered porches are excluded from the calculation provided they are not heated or air conditioned.	The prior rule excluded enclosed porches in the calculation of total structure size provided no alterations of the foundation were necessary.	CAMA Permit	09/26/2008 08/12/2009
15A NCAC 7H .0306 (a)(7) Renumbered – Old (6)	No Change	NA	CAMA Permit	06/24/2004 11/1/2004
15A NCAC 7H .0306 (a)(8)	Addition Adds a definition of Beach Fill as well as referencing Sediment Compatibility Standards (15A NCAC &H .0312). Establishes that oceanfront setbacks are to be measured from the static line associated with beach fill projects.	The prior rule only allowed setbacks to be measured from the static line in areas that had experience large-scale beach fill projects. Properties that were unbuildable under the previous rule may now be buildable with limitations.	CAMA Permit	09/26/2008 08/12/2009

	Adds provision for local governments to seek a Static Line Exception referencing procedures in 15A NCAC 7H .1200. Allows existing structures over 5,000 square feet to use a reduced setback calculation factor provided that the local government has been granted a static line exception. Adds criteria by which development may occur under a Static Line Exception.			
15A NCAC 7H .0306 (b)	Modification Technical change to conform with NC Administrative Code standards.	Does not substantially change the uses, special management areas boundaries, authorities and organization, coordination, or affect public involvement or national interest in the coastal area.	CAMA Permit	09/26/2008 08/12/2009
15A NCAC 7H .0306 (c)	No Change	NA	CAMA Permit	06/24/2004 11/1/2004
15A NCAC 7H .0306 (d)	No Change	NA	CAMA Permit	06/24/2004 11/1/2004
15A NCAC 7H .0306 (e)	No Change	NA	CAMA Permit	06/24/2004 11/1/2004
15A NCAC 7H .0306 (f)	Modification Technical change to conform with NC Administrative Code standards	Does not substantially change the uses, special management areas boundaries, authorities and organization, coordination, or affect public involvement or national interest in the coastal area.	CAMA Permit	09/26/2008 08/12/2009
15A NCAC 7H .0306 (g)	No Change	NA	CAMA Permit	06/24/2004 11/1/2004
15A NCAC 7H .0306 (h)	No Change	NA	CAMA Permit	06/24/2004 11/1/2004
15A NCAC 7H .0306 (i)	No Change	NA	CAMA Permit	06/24/2004 11/1/2004
15A NCAC 7H .0306 (j)	No Change Technical rewording for clarity and to address ambiguity.	Does not substantially change the uses, special management areas boundaries, authorities and organization, coordination, or affect public involvement or national interest in the coastal area.	CAMA Permit	09/26/2008 08/12/2009

15A NCAC 7H .0306 (k)	Modification Technical change to conform with NC Administrative Code standards	Does not substantially change the uses, special management areas boundaries, authorities and organization, coordination, or affect public involvement or national interest in the coastal area.	CAMA Permit	09/26/2008 08/12/2009
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Identification of any new or changed policies 15A NCAC 7J .1200

Changes to 15A NCAC 7J .1200 General Use Standards For Ocean Hazard Areas				
Citation	Addition/Modification/Deletion	Significance of Change	Enforcement Mechanism	Date Adopted Effective Date
15A NCAC 7J .1201(a)	Addition Allows local jurisdictions to petition CRC for an exception to static lines	Creates an exception to static vegetation lines established in 15 A NCAC 7H .0305	Pursuant to NC G.S. 113A-107, the CRC is authorized to develop policies and standards to be followed in public and private use of land and water areas within the coastal area. The State can also pursue injunctive relief through NC G.S. 113A-126.	11/20/2008 03/23/2009
15A NCAC 7J .1201(b)	Addition Establishes minimum time (5yrs) that must elapse between completion of a beach fill project and requesting a static line exception. Provides mechanism for determining completion date.	Waiting period ensures stability of beach fill project prior to utilizing existing vegetation line for setback determinations.	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009
15A NCAC 7J .1201(c)	Addition Clarifies that a static line exception request will apply to the entire static line or segments of static lines	Prevents piecemeal application of the exception to achieve uniformity in the determination of oceanfront setbacks	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009

	within a jurisdiction.			
15A NCAC 7J .1201(d)1-4	Addition Provides the documentation that is to be included in the request for a static line exception.	Provides direction to local jurisdictions as to the requirements need for a static line exception review by the agency.	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009
15A NCAC 7J .1201(e)	Addition Notifies local jurisdictions that static line exception requests are to be sent to the Director of the DCM.	Provides instruction on where to submit static line exception requests.	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009
15A NCAC 7J .1202(a)1-4	Addition Provides direction to the DCM as to what is to be included in the presentation of the static line exception request to the CRC.	Ensures uniformity of presentation and consideration of static line exception requests by the CRC. Prevents bias in documentation.	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009
15A NCAC 7J .1203(a)1-3	Addition Outlines the procedure for consideration of static line exception requests at CRC meetings.	Ensures uniformity of presentation and consideration of static line exception requests by the CRC. Mandates that the CRC must find in the affirmative on all criteria to grant a static line exception.	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009
15A NCAC 7J .1204(a)	Addition Requires 5-year progress reports from local jurisdictions that have received static line exceptions.	Provides the basis for periodic review of long-term beach nourishment projects that justify continuation of the exception status.	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009
15A NCAC 7J .1204(b)1-3	Addition Require reaffirmation by the CRC of the CRC by which the static line exception was granted.	Ensures the local jurisdiction commitment to the long-term beach fill project.	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009
15A NCAC 7J .1204(c)	Addition Provides direction to the DCM as to what is to be included in the presentation of the static line exception 5-year review to the CRC.	Ensures uniformity of presentation and consideration of static line exception review by the CRC. Prevents bias in documentation.	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009
15A NCAC 7J .1204(d)1-3	Addition Outlines the procedure for consideration of static line exception requests at CRC meetings.	Ensures uniformity of presentation and consideration of static line exception review by the CRC.	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009
15A NCAC 7J .1205(a)	Addition Mandates the revocation of a static line exception if the CRC determines the criteria by which it was granted are no longer being met.	Provides the basis for the CRC to revoke a static line exception.	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009

15A NCAC 7J .1205(b)	<p style="text-align: center;">Addition</p> Mandates the expiration of a static line exception at the end of the design life of a long-term beach fill project.	Ensures that static line exception and corresponding development are linked to long-term beach fill projects.	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009
15A NCAC 7J .1205(c)	<p style="text-align: center;">Addition</p> Mandates the revocation of a static line exception in the event a local jurisdiction does not submit a 5-year progress report.	Ensures the local jurisdiction commitment to the long-term beach fill project that was the basis for the static line exception.	NC G.S. 113A-107 and 113A-126.	11/20/2008 03/23/2009
15A NCAC 7J .1205(d)	<p style="text-align: center;">Addition</p> Stipulates that revocation or expiration of a static line exception is an agency decision subject to judicial review.	As with other permit related decisions, 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.	G.S. 113A-123; 113A-121.1 and G.S. 150B-23.	11/20/2008 03/23/2009
15A NCAC 7J .1206	<p style="text-align: center;">Addition</p> Directs the DCM to maintain a list of static line exception.	Ensures availability of information to the general public.	G.S. 113A-113(b)(6)	11/20/2008 03/23/2009

Program Approval Areas

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

a. Uses Subject to Management (15 C.F.R. Part 923, Subpart B)

The rule change does not modify permissible land and water uses within the coastal zone, effect the planning process and enforceable policies for energy facilities, restrict or exclude land uses and water uses of regional benefit, or effect the designation of areas that contain one or more coastal resources of national significance.

b. Special Management Areas (15 CFR Part 923, Subpart C)

This rule change modifies the boundaries of the state's Ocean Erodible Area, which is one of the state's ocean hazard areas of environmental concern. This is an area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The seaward boundary of this area is the mean low water line. The landward boundary of the Ocean Erodible Area is partly a function of long-term average annual erosion rates times 60 and a distance from the preceding line to a recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year. In areas where the erosion rate is less than two feet per year, the distance is 120 feet from the first line of stable natural vegetation. Development on properties within AECs (NC G.S. 113A-113) is subject to permitting by the CMP (NC G.S. 113A-118; 120), and building setbacks may be determined by long-term annual erosion rates.

c. Boundaries (15 C.F.R. Part 923, Subpart D)

This rule change does not modify the boundaries of the North Carolina coastal zone.

d. Authorities and Organization (15 C.F.R. Part 923, Subpart E)

The rule changes represent minor modifications of the enforceable polices of the State at they pertain to the management of oceanfront development. The changes do not effect the State's overall management objective of as set forth in NC G.S 113A-102(b) with regard to minimizing losses of life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beaches, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. The changes involve the formula used to calculate oceanfront development setbacks which are still based on the long-term annual erosion rates. The change also acknowledges the benefit of long-term beach fill projects and provides an alternate point from which setbacks are calculated for local jurisdictions committing to long-term beach fill projects. No changes have been made to the State's policies regarding the preferred response measures to shoreline erosion which include AEC rules, land use planning, building setback lines, building relocation and management of vegetation (15A NCAC 7M .0202(b)). There no changes to the State's organization or organizational structure, authority, techniques for program implementation, coordination with other State agencies or any changes affecting the Coastal Nonpoint Pollution Control Program pursuant to section 6217 of the Coastal Zone Management Act Reauthorization

Amendments of 1990.

- e. Coordination, Public Involvement and National Interest (15 C.F.R. Part 923, Subpart F)
The rules changes do not affect mechanisms for consultation and coordination between the lead coastal program agency and local governments or other agencies within the coastal zone; national interest issues such the siting of energy facilities, procedures for public participation or federal consistency determinations.

15A NCAC 7J .1200 Static Vegetation Line Exception Procedures

- a. Uses Subject to Management (15 C.F.R. Part 923, Subpart B)
The rule change does not modify permissible land and water uses within the coastal zone, effect the planning process and enforceable policies for energy facilities, restrict or exclude land uses and water uses of regional benefit, or effect the designation of areas that contain one or more coastal resources of national significance.
- b. Special Management Areas (15 CFR Part 923, Subpart C)
This rule change modifies the planning process for lessening the impacts of shoreline erosion and restoring areas adversely affected by erosion. While no changes have been made to the State's policies regarding the preferred response measures to shoreline erosion (which include AEC rules, land use planning, building setback lines, building relocation and management of vegetation[15A NCAC 7M .0202(b)]), this rule change emphasizes the use of beach fill combined with vegetation management. This strategy is consistent with existing policy 15A NCAC 7M .0202(c) which acknowledges that the replenishment of sand on ocean beaches can provide storm protection and a viable alternative to allowing the ocean shoreline to migrate landward threatening to degrade public beaches and cause the loss of public facilities and private property. Experience in the State has further shown that beach restoration projects can present a feasible alternative to the loss or massive relocation of oceanfront development. Development on properties within AECs (NC G.S. 113A-113) is subject to permitting by the CMP (NC G.S. 113A-118; 120), and building setbacks may be determined by long-term annual erosion rates.
- c. Boundaries (15 C.F.R. Part 923, Subpart D)
This rule change does not modify the boundaries of the North Carolina coastal zone.
- d. Authorities and Organization (15 C.F.R. Part 923, Subpart E)
The rule changes represent minor modifications of the enforceable polices of the State at they pertain to the management of oceanfront development. The changes do not effect the State's overall management objective of as set forth in NC G.S 113A-102(b) with regard to minimizing losses of life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beaches, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. The changes involve the creation of a procedure to allow the emphasis of beach restoration and vegetation management to factor into the calculation of oceanfront development setbacks. No changes have been made to the State's policies regarding the preferred response measures to shoreline erosion which include AEC rules, land use planning, building

setback lines, building relocation and management of vegetation (15A NCAC 7M .0202(b)). There no changes to the State's organization or organizational structure, authority, techniques for program implementation, coordination with other State agencies or any changes affecting the Coastal Nonpoint Pollution Control Program pursuant to section 6217 of the Coastal Zone Management Act Reauthorization Amendments of 1990.

- e. Coordination, Public Involvement and National Interest (15 C.F.R. Part 923, Subpart F)
The rules changes do not affect mechanisms for consultation and coordination between the lead coastal program agency and local governments or other agencies within the coastal zone; national interest issues such the siting of energy facilities, procedures for public participation or federal consistency determinations.

3. Comments from other agencies and public during development and review

3(a) 15A NCAC 7H .0306 General Use Standards for Ocean Hazard Areas

The CRC held a public hearing on November 29, 2007 in Greenville, NC at which twenty people made verbal comments. In all, a total of 110 comments were received from a variety of stakeholders including municipalities, three non-governmental organizations, management companies, commercial interests and law firms. No comments were received from State agencies. More than three quarters of the comments solely addressed the static vegetation line exception while the majority of the remaining comments discussed the proposed increase in oceanfront setbacks. Less than five percent of the comments addressed both the static vegetation line and setbacks. Based on these comments, the CRC modified the draft rule to remove structurally attached covered porches and decks from the total floor area equation, and 2) provide an exemption of roads from any setback greater than the minimum (i.e., 30 times the erosion rate). These changes were substantial enough to merit an additional public comment period and public hearing. Six additional public hearings were held during July 2008. A total of sixteen comments were received on the amended draft rule with minor revisions made for clarity. The CRC adopted the rule as amended in September 2008 and it was sent to the NC Rules Review Commission (RRC) in January 2009. Under the NC Administrative Procedures Act (NC G.S 150B), a rule is automatically sent to the State Legislature for review if the RRC receives ten letters objecting to a rule. If no bill is introduced to disapprove the rule, it becomes effective on the 30th day of the legislative session. If a bill disapproving the rule is introduced within that time, the rule does not become effective until action is taken on the bill, or no action is taken by the end of the legislative session. While municipalities supported the provision of a static line exception, several had concerns regarding the timing of the effective date of the rule and whether they could prepare an exception request and when the increased setbacks would take effect. Their concerned centered on how this lag time would affect potential development projects on the oceanfront. In order to delay the effective date of the rule, letters were sent to the RRC and a disapproval bill was introduced. However, since the intent was only to delay the effective date, no action was taken on the bill and the rule went into effect August 11, 2009.

3(b) 15A NCAC 7J .1200 Static Vegetation Line Exception Procedures

The CRC held a public hearing on November 29, 2007 in Greenville, NC at which twenty people made verbal comments. In all, a total of 110 comments were received from a variety of stakeholders

including municipalities, three non-governmental organizations, management companies, commercial interests and law firms. No comments were received from State agencies. More than three quarters of the comments solely addressed the static vegetation line exception while the majority of the remaining comments discussed the proposed increase in oceanfront setbacks. Less than five percent of the comments addressed both the static vegetation line and setbacks. While the proposed static line exception procedures 15A NCAC 7J .1200 were sent to public hearing along with the increased oceanfront setback in 15A NCAC 7H .0306, very few comments were directed at the procedures themselves, resulting in minor modifications.

4. Conclusion

Pursuant to the Coastal Zone Management Act §306(e) and 15 CFR 923.80, the state of North Carolina has reviewed the regulatory changes submitted for incorporation into the state CMP (15A NCAC 7H .0306 General Use Standards for Ocean Hazard Areas and 15A NCAC 7J .1200 Static Vegetation Line Exception Procedures) and has concluded that the submitted changes are not Program Amendments. The state believes that these changes will not substantially change the enforceable authorities of the CMP, uses subject to management under the state CMP, or national interests in the state's coastal zone. The state also believes that the submitted changes improve the state's ability to manage, preserve, and sustain its coastal resources. Therefore, according to the standards set forth by 15 CFR §923.80(d) and 15 CFR §923.84, and by OCRM's Program Change Guidance of July 1996, the state of North Carolina submits these program changes as Routine Program Changes and requests OCRM's concurrence with this action.

Attachment A: Text of 15A NCAC 7H .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 the CRC's Rules shall be located according to whichever of the following is applicable:

- ~~(1) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable. In areas where the rate is less than two feet per year, the setback line shall be 60 feet from the vegetation line or measurement line, where applicable.~~
- (1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. Development size is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
 - (A) The total square footage of heated or air-conditioned living space;
 - (B) The total square footage of parking elevated above ground level; and
 - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load bearing; Decks, roof-covered porches and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.
- (2) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:
 - (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
 - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
 - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
 - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
 - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
 - (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
 - (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (J) Parking lots greater than or equal to 5,000 square feet requires a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater; and

- (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line or measurement line, whichever is farthest landward.
- ~~(2)~~(3) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the ~~long term erosion setback line;~~ ocean hazard setback, whichever is farthest from the ~~first line of stable natural vegetation line,~~ static vegetation line or measurement line, ~~where whichever is applicable.~~ For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located ~~seaward~~ oceanward of the primary dune. In such cases, the development ~~shall may~~ be located landward of the ~~long term erosion~~ ocean hazard setback line ~~and but~~ shall not be located on or ~~in front~~ 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.
- ~~(3)~~ (4) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the ~~long term erosion~~ ocean hazard setback line, whichever is farthest from the ~~first line of stable natural vegetation line,~~ static vegetation line or measurement line, ~~where whichever is applicable.~~
- ~~(4)~~ Because large structures located immediately along the Atlantic Ocean present increased risk of loss of life and property, increased potential for eventual loss or damage to the public beach area and other important natural features along the oceanfront, increased potential for higher public costs for federal flood insurance, erosion control, storm protection, disaster relief and provision of public services such as water and sewer, and increased difficulty and expense of relocation in the event of future shoreline loss, a greater oceanfront setback is required for these structures than is the case with smaller structures. Therefore, in addition to meeting the criteria in this Rule for setback landward of the primary or frontal dune or both the primary and frontal dunes, for all multi family residential structures (including motels, hotels, condominiums and moteliminiums) of more than 5,000 square feet total floor area, and for any non residential structure with a total area of more than 5,000 square feet, the erosion setback line shall be twice the erosion setback as established in Subparagraph (a)(1) of this Rule, provided that in no case shall this distance be less than 120 feet. In areas where the rate is more than 3.5 feet per year, this setback line shall be set at a distance of 30 times the long term annual erosion rate plus 105 feet.
- (5) If neither a primary nor frontal dune exist in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.
- ~~(5)~~ (6) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the ~~principal structure total floor area~~ and ~~both~~ shall meet the setback requirements established in ~~Paragraph (a) of this Rule and Rule .0309(a) of this Section.~~ 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 which ever is applicable.~~ New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- ~~(6)~~ (7) Established common-law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- ~~(8)~~ Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront. A development setback measured from the vegetation line provides less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section. However, in order to allow for

development landward of the large-scale beach fill project that is less than 2,500 square feet and cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraph (1) and (2)(A) of this Paragraph a local government or community may petition the Coastal Resources Commission for a “static line exception” in accordance with 15A NCAC 07J .1200 to allow development of property that lies both within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(2)(A) of this Rule;
- (B) Total floor area of a building is no greater than 2,500 square feet;
- (C) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
- (D) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
- (E) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and
- (F) Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

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

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

(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 ~~Rule .0303 of this Section.~~ 15A NCAC 07H .0303.

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

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

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

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

(j) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location; septic tanks may not be located ~~seaward~~ 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 ~~07H-0308(a)(2)(B)~~. 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 ~~Rule 0308(a)(2) of this Section~~. 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. December 1, 2008; April 1, 2007; November 1, 2004; June 27, 1995.

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

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

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

- (1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;
- (2) Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 25 years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;
- (3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and
- (4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed static line exception request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.1201(d)(2), including design changes defined in this Rule provided that the changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT C: Copy of Public Notice of Submittal to OCRM

PUBLIC & INTERESTED PARTIES NOTICE

Notice of Proposed Changes to the North Carolina Coastal Management Program

Notice of intended action: Pursuant to the federal Coastal Zone Management Act regulations (15 CFR §§923.80 – 923.84), The North Carolina Coastal Resources Commission (CRC) hereby provides notice that it is submitting the regulatory changes to the North Carolina Coastal Management Program (NCCMP) to the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management (OCRM).

Purpose of the notice: The Coastal Zone Management Act (15 C.F.R. §923.84) requires state Coastal Zone Management Programs to formally incorporate changes made to the laws, rules and policies that are used for Federal Consistency. The changes discussed here have already been made to each regulation, and the purpose of this action is to incorporate these changes into the North Carolina Coastal Management Program. These changes are considered to be Routine Program Changes, and therefore do not significantly affect the (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization or (5) coordination, public involvement and national interest components of the North Carolina Coastal Resources Management Program. Upon concurrence by the National Oceanic and Atmospheric Administration, the policies discussed below will be incorporated into the Program.

Description of Change: The CRC has updated the following rules and considers this action a routine change to the state's approved coastal management program. The CRC is requesting concurrence with this finding from OCRM. OCRM will review these changes to ensure they do not constitute an amendment as described in 15 CRF §923.80

- 1. 15A NCAC 7H.0306 General Use Standards for Ocean Hazard Areas**
Ties oceanfront setbacks to the size of the structure, not use. The revisions include graduated setback factors for buildings greater than 5,000 square feet and preclude oceanward cantilevering.
- 2. 15A NCAC 7J.1200 Static Vegetation Line Exceptions**
Creates the procedures for the CRC to grant static line exception requests in local jurisdictions with long-term beach fill projects.

Public Comment period:

How to Comment: Comments on these proposed changes should be submitted in writing directly to the National Oceanic and Atmospheric Administration by _____, 2010 at the following address:

Ms. Sarah van der Shalie
Coastal Programs Division
Office of Ocean and Coastal Resource Management
N/ORM 10th floor SSMC4
1305 East-West Highway
Silver Spring, MD 20910

Complete copies of the rules may be obtained by contacting Mike Lopazanski at the NC Division of Coastal Management's office at 400 Commerce Ave., Morehead City, or by calling 252-808-2808.

Dated: