

1 15A NCAC 07H .0304 is amended **with changes** as published in 35:08NCR 842-844 as follows:

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3 **15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS**

4 The ocean hazard AECs contain all of the following areas:

- 5 (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion
6 and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water
7 line. The landward extent of this area is the distance landward from the first line of stable and natural
8 vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying
9 the long-term annual erosion rate times 90; provided that, where there has been no long-term erosion
10 or the rate is less than two feet per year, this distance shall be set at 180 feet landward from the first
11 line of stable and natural vegetation. For the purposes of this Rule, the erosion rates are the long-
12 term average based on available historical data. The current long-term average erosion rate data for
13 each segment of the North Carolina coast is depicted on maps entitled "North Carolina 2019
14 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and
15 approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be
16 varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of
17 shoreline change shall be no less than two feet of erosion per year. The maps are available without
18 cost from any Local Permit Officer or the Division of Coastal Management on the internet at
19 <http://www.nccoastalmanagement.net>.
- 20 (2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to
21 erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to
22 dynamic ocean inlets. This area extends landward from the mean low water line a distance
23 encompassing that area within which the inlet migrates, based on statistical analysis, and shall
24 consider such factors as previous inlet territory, structurally weak areas near the inlet, and external
25 influences such as jetties, terminal groins, and channelization. The areas on the maps identified as
26 Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and
27 Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J.
28 Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard
29 Areas, except for:
- 30 (a) the location of a former inlet which has been closed for at least 15 years;
- 31 (b) inlets that due to shoreline migration, no longer include the current location of the inlet;
- 32 and
- 33 (c) inlets providing access to a State Port via a channel maintained by the United States Army
34 Corps of Engineers.
- 35 In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas
36 and in no case shall the width of the inlet hazard area be less than the width of the adjacent
37 ocean erodible area. This report is available for inspection at the Department of

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

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

- (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Item (1) of this Rule.
- (b) An area that is unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.

The Commission designates as temporary unvegetated beach areas those oceanfront areas of Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018. of:

- (i) Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018, 2018; and
- (ii) Oak Island in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration and Geological Survey imagery dated August 4, 2020 was destroyed as a result of Hurricane Isaias in August 2020.

The designation AEC boundaries can be found on the Division's website at

https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf.

https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf and

https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unveg_beachAEC_Oak_Island.zip. This

designation shall continue until such time as the stable and natural vegetation has reestablished, or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item (3)(a) of this Rule.

- (4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the mouth of the Cape Fear River, providing access to a State Port via a channel maintained by the United States Army Corps of Engineers. These areas are unique due to the influence of federally-

maintained channels, and the critical nature of maintaining shipping access to North Carolina's State Ports. These areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from the mean low water line landward as designated on maps approved by the Coastal Resources Commission and available without cost from the Division of Coastal Management, and on the internet at the website at https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state_port_aec.pdf.

History Note: Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;
Temporary Amendment Eff. October 10, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;
Temporary Amendment Eff. October 22, 1997;
Amended Eff. April 1, 2020; July 1, 2016; September 1, 2015; May 1, 2014; February 1, 2013;
January 1, 2010; February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998;
Readopted Eff. December 1, 2020;
Amended Eff. September 1, 2021.

15A NCAC 07H .0312 is amended as published with changes in 35:08 NCR 844-848 as follows:

15A NCAC 07H .0312 TECHNICAL STANDARDS FOR BEACH FILL PROJECTS

Placement of sediment along the oceanfront shoreline is referred to in this Rule as "beach fill." Sediment used solely to establish or strengthen dunes ~~or shall conform to the standards contained in 15A NCAC 07H .0308(b).~~ Sediment used to re-establish state-maintained transportation corridors across a barrier island breach in a disaster area as declared by the Governor is not considered a beach fill project under this Rule. Beach fill projects including beach nourishment, dredged material disposal, habitat restoration, storm protection, and erosion control may be permitted under the following conditions:

- (1) The applicant shall characterize the recipient beach according to the following ~~methodology;~~ methodology. Initial characterizations of the recipient beach shall serve as the baseline for subsequent beach fill projects:

- (a) Characterization of the recipient beach is not required for the placement of sediment directly from and completely confined to a cape shoal system, or maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal ~~system;~~ system. For purposes of this Rule, "cape shoal systems" include Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras;
- (b) Sediment sampling and analysis shall be used to capture the ~~three-dimensional~~ spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system;
- (c) Shore-perpendicular transects shall be established for topographic and bathymetric surveying of the recipient ~~beach shall be conducted to determine the beach profile.~~ beach. Topographic and bathymetric surveying shall occur along a minimum of five shore-perpendicular transects evenly spaced throughout the entire project ~~area.~~ area with spacing not to exceed 5,000 feet (1,524 meters) in the shore-parallel direction. Each transect shall extend from the frontal dune crest seaward to a depth of 20 feet (6.1 meters) or to the shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. ~~Transect spacing shall not exceed 5,000 feet (1,524 meters) in the shore parallel direction.~~ Elevation data for all transects shall be ~~referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);~~ compliant with Standards of Practice for Land Surveying in North Carolina [(21 NCAC 56.1600) of the N.C. General Statutes;] pursuant to 21 NCAC 56.1600. These rules are hereby incorporated by reference, including subsequent amendments;
- (d) ~~No fewer than 13 sediment samples shall be taken along each beach profile transect. At~~ Along each transect, at least one sample shall be taken from each of the following morphodynamic zones where present: frontal dune, frontal dune toe, mid berm, mean high

water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at even depth increments from 6 feet (1.8 meters) to 20 feet (6.1 meters) or to a shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;

(e) For the purpose of this Rule, "sediment grain size categories" are defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than 2 millimeters), "granular" (greater than or equal to 2 millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four grain size categories;

(f) A composite of the simple arithmetic mean for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for each transect. A grand mean shall be established for each of the four grain size categories by summing the mean for each transect and dividing by the total number of transects. The value that characterizes grain size values for the recipient beach is the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;

(g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment ~~samples along each transect defined in Sub-Item (1)(d) of this Rule.~~ samples. The value that characterizes the carbonate content of the recipient beach is a grand mean calculated by summing the average percentage by weight calcium carbonate for each transect and dividing by the total number of ~~transects; transects.~~ transects. ~~For beaches on which fill activities have taken place prior to the effective date of this Rule, the Division of Coastal Management shall consider visual estimates of shell content as a proxy for carbonate weight percent;~~

(h) The ~~total~~ number of sediments greater than or equal to one inch (25.4 millimeters) in diameter, and shell material greater than or equal to three inches (76 millimeters) in diameter, ~~observable on the surface of the beach between mean low water (MLW) and the frontal dune toe, shall be calculated for an area of 50,000 square feet (4,645 square meters) within the beach fill project boundaries. This area is considered a representative sample of the entire project area and referred to as the "background" value; diameter shall be differentiated and calculated through visual observation of an area of 10,000 square feet centered on each transect, and between mean tide level (MTL) and the frontal dune toe within the beach fill project boundaries. A simple arithmetic mean shall be calculated for both sediments and shell by summing the totals for each across all transects and dividing by the total number of transects, and these values shall be considered representative of the~~

entire project area, and referred to as the “background” values for large sediment and large shell material;

- (i) Beaches that received sediment prior to the effective date of this Rule shall be characterized in a way that is consistent with Sub-Items (1)(a) through (1)(h) of this Rule and ~~shall~~ may use data collected from the recipient beach prior to the addition of beach fill. ~~If such data were not collected or are unavailable, a dataset best reflecting the sediment characteristics of the recipient beach prior to beach fill shall be developed in coordination with the Division of Coastal Management; and fill where data are available, and in coordination with the Division of Coastal Management; and~~

- (j) All data used to characterize the recipient beach shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.

- (2) Characterization of borrow areas is not required if completely confined to a cape shoal system. For the purposes of this Rule, “cape shoal systems” include the Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras. The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:

- (a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal areas shall be designed to capture the ~~three-dimensional~~ spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;

- (b) The characterization of borrow sites ~~shall~~ may include ~~sediment characterization data provided by the Division of Coastal Management where available. These data can be found in individual project reports and studies, and shall be provided by the Division of Coastal Management upon request and where available; historical sediment characterization data where available and collected using methods consistent with Sub-Items (2)(c) through (2)(g) of this Rule, and in coordination with the Division of Coastal Management.~~

- (c) Seafloor surveys shall measure elevation and capture acoustic imagery of the seafloor. Measurement of seafloor elevation shall cover 100 ~~percent~~ percent, or the maximum extent practicable as determined in consultation with the Division of Coastal Management, of each submarine borrow site and use survey-grade swath sonar (*e.g.* multibeam or similar ~~technologies~~) ~~in accordance with current US Army Corps of Engineers standards for navigation and dredging technologies~~. Seafloor imaging without an elevation component (*e.g.* sidescan sonar or similar technologies) shall also cover 100 ~~percent~~ percent, or the maximum extent practicable, of each ~~borrow site and be performed in accordance with US Army Corps of Engineers standards for navigation and dredging site~~. Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). Alternative elevation surveying methods for

water depths less than 10 feet (3 meters) may be evaluated on a case-by-case basis by the Division of Coastal Management. Elevation data shall be tide- and motion-corrected and ~~referenced to NAVD 88 and NAD 83; compliant with Standards of Practice for Land Surveying in North Carolina~~ {(21 NCAC 56.1600) of the N.C. General Statutes}, pursuant to 21 NCAC 56 .1600. Seafloor imaging data without an elevation component shall ~~be referenced to the NAD 83. All final seafloor survey data shall conform to standards for accuracy, quality control and quality assurance as set forth by the US Army Corps of Engineers (USACE). The current surveying standards for navigation and dredging can be obtained from the Wilmington District of the USACE; also be compliant with Standards of Practice for Land Surveying in North Carolina~~ {(21 NCAC 56.1600) of the N.C. General Statutes}, pursuant to 21 NCAC 56 .1600. For offshore dredged material disposal sites, only one set of imagery without elevation is required. Sonar imaging of the seafloor without elevation is also not required for borrow sites completely confined to maintained navigation channels, and for sediment deposition basins within the active nearshore, beach or inlet shoal system;

- (d) Geophysical imaging of the seafloor subsurface shall be used to characterize each borrow site ~~and shall use survey grids with a line spacing not to exceed 1,000 feet (305 meters). Offshore dredged material disposal sites shall use a survey grid not to exceed 2,000 feet (610 meters) and only one set of geophysical imaging of the seafloor subsurface is required. Survey grids shall incorporate at least one tie point per survey line. site.~~ Because shallow submarine areas can pose technical challenges and physical limitations for geophysical techniques, subsurface data may not be required in water depths less than 10 feet (3 meters), and the Division of Coastal Management shall evaluate these areas on a case-by-case basis. Subsurface geophysical imaging shall not be required for borrow sites completely confined to maintained navigation channels, and for sediment deposition basins within the active nearshore, beach or inlet shoal system, or upland sites. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions and be ~~referenced to NAD 83; compliant with Standards of Practice for Land Surveying in North Carolina~~ {(21 NCAC 56.1600) of the N.C. General Statutes}, pursuant to 21 NCAC 56 .1600;

- (e) ~~Sediment~~ With the exception of upland borrow sites, sediment sampling of all borrow sites shall use a vertical sampling device no less than 3 inches (76 millimeters) in diameter. Characterization of each borrow site shall use no fewer than five evenly spaced cores or one core per 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system shall use no fewer than five evenly spaced vertical samples per channel or sediment basin, or

sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater. Two sets of sampling data (with at least one dredging event in between) from maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal ~~system~~ system, or offshore dredged material disposal site (ODMDS) may be used to characterize material for subsequent nourishment events from those areas if the sampling results are found to be compatible with Sub-Item (3)(a) of this Rule. ~~In submarine borrow sites other than maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system where water depths are no greater than 10 feet (3 meters), geophysical data of and below the seafloor are not required, and sediment sample spacing shall be no less than one core per six acres (grid spacing of 500 feet or 152 meters).~~ Vertical sampling shall penetrate to a depth equal to or greater than permitted dredge or excavation depth or expected dredge or excavation depths for pending permit applications. ~~All sediment samples shall be integrated with geophysical data to constrain the surficial, horizontal and vertical extent of lithologic units and determine excavation volumes of compatible sediment as defined in Item (3) of this Rule;~~ Because shallow submarine areas completely confined to a maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system can pose technical challenges and physical limitations for vertical sampling techniques, geophysical data of and below the seafloor may not be required in water depths less than 10 feet (3 meters), and shall be evaluated by the Division of Coastal Management on a case-by-case basis;

~~(f)~~ For offshore dredged material disposal sites, the grid spacing shall not exceed 2,000 feet (610 meters). Characterization of material deposited at offshore dredged material disposal sites after the initial characterization are not required if all of the material deposited complies with Sub-Item (3)(a) of this Rule as demonstrated by at least two sets of sampling data with at least one dredging event in between;

~~(g)~~ (f) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples and the thickness of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography;

~~(h)~~ (g) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core. Carbonate analysis is not required for sediment confined to maintained navigation channels

or associated sediment deposition basins within the active nearshore, beach or inlet shoal system; and

(i) (h) All data used to characterize the borrow site shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.

(3) ~~The Division of Coastal Management shall determine sediment~~ Compliance with these sediment standards shall be certified by an individual licensed pursuant to Chapter 89C or 89E of the N.C. General Statutes. Sediment compatibility ~~[is] shall be determined~~ according to the following criteria:

- (a) Sediment completely confined to the permitted dredge depth of a maintained navigation channel or associated sediment deposition basins within the active nearshore, beach or inlet shoal system ~~is shall be~~ considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;
- (b) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained sediment of the recipient beach characterization plus five percent;
- (c) The average percentage by weight of granular sediment (greater than or equal to 2 millimeters and less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus 10 percent;
- (d) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters and less than 76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five percent;
- (e) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and
- (f) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.

(4) Excavation and placement of sediment shall conform to the following criteria:

~~(a) Sediment excavation depths for all borrow sites shall not exceed the maximum depth of recovered core at each coring location;~~

~~(b)~~ (a) In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during ~~times~~ any seasonal environmental moratoria designated by the Division of Coastal Management in consultation with other State and Federal ~~agencies.~~ agencies, unless specifically approved by the Division of Coastal Management in consultation with other State and Federal agencies. The time limitations shall be established during the permitting process and shall be made known prior to permit issuance; and

(e) (b) ~~Sediment~~ The total sediments with a diameter greater than or equal to one inch (25.4 millimeters), and shell material with a diameter greater than or equal to three inches (76 millimeters) is considered incompatible if it has been placed on the beach during the beach fill project, is observed between ~~MLW~~ MTL and the frontal dune toe, and is in excess of twice the background value of material of the same size along any ~~50,000 square foot~~ (4,645 square meter) 10,000 square feet section of ~~beach~~ beach within the beach fill project boundaries. In the event that more than twice the background value of incompatible material is placed on the beach, it shall be the permittee's responsibility to remove the incompatible material in coordination with the Division of Coastal Management and other State and Federal resource agencies.

History Note: Authority G.S. 113-229; 113A-102(b)(1); 113A-103(5)(a); 113A-107(a); ~~113A-113(b)(5) and (6); 113A-113(b)(5); 113A-113(b)(6); 113A-118; 113A-124;~~
Eff. February 1, 2007;
Amended Eff. August 1, 2014; September 1, 2013; April 1, 2008;
Readopted December 1, 2020;
Amended Eff. September 1, 2021.

1 15A NCAC 07J .1203 is readopted with changes as follows:

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3 **15A NCAC 07J .1203 PROCEDURES FOR APPROVING THE STATIC LINE EXCEPTION**

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

6 (1) The Division of Coastal Management shall orally present the report described in 15A NCAC 07J
7 .1202.

8 (2) A representative for the petitioner may provide written or oral comments relevant to about the static
9 line exception request. The Chairman of the Coastal Resources Commission may limit the time
10 allowed for oral comments. comments in open session based upon the number of speakers wishing
11 to speak.

12 (3) Additional parties may provide written or oral comments relevant to about the static line exception
13 request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral
14 comments. comments in open session based upon the number of speakers wishing to speak.

15 (b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings
16 on each of if the request contains the information required and meets the criteria presented in 15A NCAC 07J
17 .1201(d)(1) through (d)(4). The final decision of the Coastal Resources Commission shall be made at the meeting at
18 which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted
19 to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

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

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

24 *Eff. March 23, 2009;*

25 *Readopted Eff. September 1, 2021.*
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1 15A NCAC 07J .1204 is readopted with changes as published in 34:09 NCR 763 as follows:

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4 **15A NCAC 07J .1204 REVIEW OF THE LARGE-SCALE BEACH-FILL PROJECT AND APPROVED**
5 **STATIC LINE EXCEPTIONS**

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

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

- 17 (1) Design changes to the initial large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2)
18 15A NCAC 07J .1201(d)(1) provided that the changes are designed and prepared by the U.S. Army
19 Corps of Engineers or persons meeting applicable State occupational licensing requirements for the
20 work;
- 21 (2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H
22 .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC
23 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been
24 designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State
25 occupational licensing requirements for the work; and
- 26 (3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill
27 project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design
28 changes defined in this Rule, then the Coastal Resources Commission shall consider the financial
29 resources or funding sources necessary to fund the changes.

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

(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.~~ comments in open session based upon the number of speakers wishing to speak.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;
Readopted Eff. September 1, 2021.*

1 15A NCAC 07J .1205 is readopted **with changes** as published in 34:09 NCR 763 as follows:

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3 **15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION**

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

7 (b) The static line exception shall expire **immediately** at the end of the design life of the large-scale beach fill project
8 defined in 15A NCAC 07J **.1201(d) (2) .1201(d)(2)**, including subsequent design changes to the project as defined in
9 15A NCAC 07J .1204(b).

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

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

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

17 *Eff. March 23, 2009;*

18 *Readopted Eff. September 1, 2021.*

1 15A NCAC 07J .1302 is readopted **with changes** as published in 34:09 NCR 763 as follows:

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3 **15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE**

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

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

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

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

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

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

19
20 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-123; 113A-124;*
21 *Eff. April 1, 2016;*
22 *Readopted Eff. September 1, 2021.*
23
24



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

July 15, 2021

Jennifer Everett
Coastal Resources Commission
Sent via email only to: Jennifer.Everett@ncdenr.gov

Re: Extension of the Period of Review for Rules 15A NCAC 07H .0304 and .0312; 07J .1201, .1202, .1203, .1204, .1205, .1206, .1301, .1302, and .1303

Dear Ms. Everett:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address the requested technical changes for some of the above-referenced rules and submit the rewritten rules at a later meeting. As the agency represented that the above-referenced rules that had no technical changes requested were intertwined with the rules that had technical changes requested, the Commission granted the agency's request to extend the period of review for all of the above-referenced rules.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Amanda J. Reeder
Commission Counsel

Donald R. van der Vaart, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

Linda T. Worth
Deputy Director

An Equal Employment Opportunity Employer

1711 New Hope Church Road, Raleigh, NC 27609
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www.oah.nc.gov

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0304

DEADLINE FOR RECEIPT: Friday, July 9, 2021

NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (3)(b)(i), Page 2, line 24, please replace the comma after "2018" with a semicolon.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 2, 2021

1 15A NCAC 07H .0304 is amended as published in 35:08NCR 842-844 as follows:

2
3 **15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS**

4 The ocean hazard AECs contain all of the following areas:

- 5 (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion
6 and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water
7 line. The landward extent of this area is the distance landward from the first line of stable and natural
8 vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying
9 the long-term annual erosion rate times 90; provided that, where there has been no long-term erosion
10 or the rate is less than two feet per year, this distance shall be set at 180 feet landward from the first
11 line of stable and natural vegetation. For the purposes of this Rule, the erosion rates are the long-
12 term average based on available historical data. The current long-term average erosion rate data for
13 each segment of the North Carolina coast is depicted on maps entitled "North Carolina 2019
14 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and
15 approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be
16 varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of
17 shoreline change shall be no less than two feet of erosion per year. The maps are available without
18 cost from any Local Permit Officer or the Division of Coastal Management on the internet at
19 <http://www.nccoastalmanagement.net>.
 - 20 (2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to
21 erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to
22 dynamic ocean inlets. This area extends landward from the mean low water line a distance
23 encompassing that area within which the inlet migrates, based on statistical analysis, and shall
24 consider such factors as previous inlet territory, structurally weak areas near the inlet, and external
25 influences such as jetties, terminal groins, and channelization. The areas on the maps identified as
26 Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and
27 Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J.
28 Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard
29 Areas, except for:
 - 30 (a) the location of a former inlet which has been closed for at least 15 years;
 - 31 (b) inlets that due to shoreline migration, no longer include the current location of the inlet;
32 and
 - 33 (c) inlets providing access to a State Port via a channel maintained by the United States Army
34 Corps of Engineers.
- 35 In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas
36 and in no case shall the width of the inlet hazard area be less than the width of the adjacent
37 ocean erodible area. This report is available for inspection at the Department of

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

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

- (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Item (1) of this Rule.
- (b) An area that is unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.

The Commission designates as temporary unvegetated beach areas those oceanfront areas of Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018, of:

- (i) Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018, and
- (ii) Oak Island in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration and Geological Survey imagery dated August 4, 2020 was destroyed as a result of Hurricane Isaias in August 2020.

The designation AEC boundaries can be found on the Division's website at

https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf.

https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf and

https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unveg_beachAEC_Oak_Island.zip. This

designation shall continue until such time as the stable and natural vegetation has reestablished, or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item (3)(a) of this Rule.

- (4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the mouth of the Cape Fear River, providing access to a State Port via a channel maintained by the United States Army Corps of Engineers. These areas are unique due to the influence of federally-

maintained channels, and the critical nature of maintaining shipping access to North Carolina's State Ports. These areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from the mean low water line landward as designated on maps approved by the Coastal Resources Commission and available without cost from the Division of Coastal Management, and on the internet at the website at https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state_port_aec.pdf.

History Note: Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;
Temporary Amendment Eff. October 10, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;
Temporary Amendment Eff. October 22, 1997;
Amended Eff. April 1, 2020; July 1, 2016; September 1, 2015; May 1, 2014; February 1, 2013;
January 1, 2010; February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998;
Readopted Eff. December 1, 2020;
Amended Eff. July 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0312

DEADLINE FOR RECEIPT: Friday, July 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (1)(c), line 33, please incorporate these rules by reference, as required by G.S. 150B-21.6. You can say, "... 56 .1600. These rules are hereby incorporated by reference, including subsequent amendments;" Please note, having done that here, you will not need to reincorporate the rules elsewhere within this Rule.

In (2)(c), Page 3, line 30, who will determine the "maximum extent practicable"?

In (2)(e), Page 5, line 14, so that I'm clear – is the term "beach or inlet shore system" referring to a "beach system" or an "inlet shore system"? I realize that the phrase is statutory language, but I wanted to be sure I understood it.

In (2)(h), Page 6, line 2, under what circumstances will this be requested?

In (3), line 5, please replace "is" with "shall be"

In the History Note, Page 7, line 10, please separate out the serial citations to G.S. 113A-113(b) so it reads "113A-113(b)(5); 113A-113(b)(6);"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 2, 2021

1 15A NCAC 07H .0312 is amended as published with changes in 35:08 NCR 844-848 as follows:

3 **15A NCAC 07H .0312 TECHNICAL STANDARDS FOR BEACH FILL PROJECTS**

4 Placement of sediment along the oceanfront shoreline is referred to in this Rule as "beach fill." Sediment used solely
5 to establish or strengthen dunes ~~or shall conform to the standards contained in 15A NCAC 07H .0308(b).~~ Sediment
6 used to re-establish state-maintained transportation corridors across a barrier island breach in a disaster area as
7 declared by the Governor is not considered a beach fill project under this Rule. Beach fill projects including beach
8 nourishment, dredged material disposal, habitat restoration, storm protection, and erosion control may be permitted
9 under the following conditions:

10 (1) The applicant shall characterize the recipient beach according to the following ~~methodology:~~
11 methodology. Initial characterizations of the recipient beach shall serve as the baseline for
12 subsequent beach fill projects:

13 (a) Characterization of the recipient beach is not required for the placement of sediment
14 directly from and completely confined to a cape shoal system, or maintained navigation
15 channel or associated sediment basins within the active nearshore, beach or inlet shoal
16 ~~system; system.~~ For purposes of this Rule, "cape shoal systems" include Frying Pan Shoals
17 at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras;

18 (b) Sediment sampling and analysis shall be used to capture the ~~three-dimensional~~ spatial
19 variability of the sediment characteristics including grain size, sorting and mineralogy
20 within the natural system;

21 (c) Shore-perpendicular transects shall be established for topographic and bathymetric
22 surveying of the recipient ~~beach shall be conducted to determine the beach profile.~~ beach.
23 Topographic and bathymetric surveying shall occur along a minimum of five shore-
24 perpendicular transects evenly spaced throughout the entire project ~~area.~~ area with spacing
25 not to exceed 5,000 feet (1,524 meters) in the shore-parallel direction. Each transect shall
26 extend from the frontal dune crest seaward to a depth of 20 feet (6.1 meters) or to the shore-
27 perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is
28 in a more landward position. ~~Transect spacing shall not exceed 5,000 feet (1,524 meters)~~
29 ~~in the shore parallel direction.~~ Elevation data for all transects shall be ~~referenced to the~~
30 ~~North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of~~
31 ~~1983 (NAD 83);~~ compliant with Standards of Practice for Land Surveying in North
32 Carolina [(21 NCAC 56.1600) of the N.C. General Statutes;] pursuant to 21 NCAC 56
33 .1600;

34 (d) ~~No fewer than 13 sediment samples shall be taken along each beach profile transect. At~~
35 Along each transect, at least one sample shall be taken from each of the following
36 morphodynamic zones where present: frontal dune, frontal dune toe, mid berm, mean high
37 water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at even depth

increments from 6 feet (1.8 meters) to 20 feet (6.1 meters) or to a shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;

(e) For the purpose of this Rule, "sediment grain size categories" are defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than 2 millimeters), "granular" (greater than or equal to 2 millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four grain size categories;

(f) A composite of the simple arithmetic mean for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for each transect. A grand mean shall be established for each of the four grain size categories by summing the mean for each transect and dividing by the total number of transects. The value that characterizes grain size values for the recipient beach is the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;

(g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment ~~samples along each transect defined in Sub-Item (1)(d) of this Rule.~~ samples. The value that characterizes the carbonate content of the recipient beach is a grand mean calculated by summing the average percentage by weight calcium carbonate for each transect and dividing by the total number of transects. ~~For beaches on which fill activities have taken place prior to the effective date of this Rule, the Division of Coastal Management shall consider visual estimates of shell content as a proxy for carbonate weight percent;~~

(h) The ~~total~~ number of sediments greater than or equal to one inch (25.4 millimeters) in diameter, and shell material greater than or equal to three inches (76 millimeters) in diameter, ~~observable on the surface of the beach between mean low water (MLW) and the frontal dune toe, shall be calculated for an area of 50,000 square feet (4,645 square meters) within the beach fill project boundaries. This area is considered a representative sample of the entire project area and referred to as the "background" value; diameter shall be differentiated and calculated through visual observation of an area of 10,000 square feet centered on each transect, and between mean tide level (MTL) and the frontal dune toe within the beach fill project boundaries. A simple arithmetic mean shall be calculated for both sediments and shell by summing the totals for each across all transects and dividing by the total number of transects, and these values shall be considered representative of the entire project area, and referred to as the "background" values for large sediment and large shell material;~~

- (i) Beaches that received sediment prior to the effective date of this Rule shall be characterized in a way that is consistent with Sub-Items (1)(a) through (1)(h) of this Rule and ~~shall~~ may use data collected from the recipient beach prior to the addition of beach fill. ~~If such data were not collected or are unavailable, a dataset best reflecting the sediment characteristics of the recipient beach prior to beach fill shall be developed in coordination with the Division of Coastal Management; and~~ fill where data are available, and in coordination with the Division of Coastal Management; and
- (j) All data used to characterize the recipient beach shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (2) Characterization of borrow areas is not required if completely confined to a cape shoal system. For the purposes of this Rule, “cape shoal systems” include the Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras. The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:
- (a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal areas shall be designed to capture the ~~three-dimensional~~ spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;
- (b) The characterization of borrow sites ~~shall~~ may include ~~sediment characterization data provided by the Division of Coastal Management where available. These data can be found in individual project reports and studies, and shall be provided by the Division of Coastal Management upon request and where available;~~ historical sediment characterization data where available and collected using methods consistent with Sub-Items (2)(c) through (2)(g) of this Rule, and in coordination with the Division of Coastal Management.
- (c) Seafloor surveys shall measure elevation and capture acoustic imagery of the seafloor. Measurement of seafloor elevation shall cover 100 ~~percent~~ percent, or the maximum extent practicable, of each submarine borrow site and use survey-grade swath sonar (*e.g.* multibeam or similar ~~technologies~~) ~~in accordance with current US Army Corps of Engineers standards for navigation and dredging.~~ technologies). Seafloor imaging without an elevation component (*e.g.* sidescan sonar or similar technologies) shall also cover 100 ~~percent~~ percent, or the maximum extent practicable, of each ~~borrow site and be performed in accordance with US Army Corps of Engineers standards for navigation and dredging.~~ site. Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). Alternative elevation surveying methods for water depths less than 10 feet (3 meters) may be evaluated on a case-by-case basis by the Division of Coastal Management. Elevation data shall be tide- and motion-corrected and ~~referenced to NAVD 88 and NAD 83.~~ compliant with Standards

of Practice for Land Surveying in North Carolina ~~[(21 NCAC 56.1600) of the N.C. General Statutes]~~, pursuant to 21 NCAC 56 .1600. Seafloor imaging data without an elevation component shall be referenced to the NAD 83. All final seafloor survey data shall conform to standards for accuracy, quality control and quality assurance as set forth by the US Army Corps of Engineers (USACE). The current surveying standards for navigation and dredging can be obtained from the Wilmington District of the USACE, also be compliant with Standards of Practice for Land Surveying in North Carolina ~~[(21 NCAC 56.1600) of the N.C. General Statutes]~~, pursuant to 21 NCAC 56 .1600. For offshore dredged material disposal sites, only one set of imagery without elevation is required. Sonar imaging of the seafloor without elevation is also not required for borrow sites completely confined to maintained navigation channels, and for sediment deposition basins within the active nearshore, beach or inlet shoal system;

- (d) Geophysical imaging of the seafloor subsurface shall be used to characterize each borrow site ~~and shall use survey grids with a line spacing not to exceed 1,000 feet (305 meters). Offshore dredged material disposal sites shall use a survey grid not to exceed 2,000 feet (610 meters) and only one set of geophysical imaging of the seafloor subsurface is required. Survey grids shall incorporate at least one tie point per survey line.~~ site. Because shallow submarine areas can pose technical challenges and physical limitations for geophysical techniques, subsurface data may not be required in water depths less than 10 feet (3 meters), and the Division of Coastal Management shall evaluate these areas on a case-by-case basis. Subsurface geophysical imaging shall not be required for borrow sites completely confined to maintained navigation channels, and for sediment deposition basins within the active nearshore, beach or inlet shoal system, or upland sites. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions and be ~~referenced to NAD 83; compliant with Standards of Practice for Land Surveying in North Carolina~~ ~~[(21 NCAC 56.1600) of the N.C. General Statutes]~~, pursuant to 21 NCAC 56 .1600;

- (e) ~~Sediment~~ With the exception of upland borrow sites, sediment sampling of all borrow sites shall use a vertical sampling device no less than 3 inches (76 millimeters) in diameter. Characterization of each borrow site shall use no fewer than five evenly spaced cores or one core per 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system shall use no fewer than five evenly spaced vertical samples per channel or sediment basin, or sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater. Two sets of sampling data (with at least one dredging event in between) from maintained navigation channels or sediment deposition basins within the active nearshore, beach or

inlet shoal ~~system~~ system, or offshore dredged material disposal site (ODMDS) may be used to characterize material for subsequent nourishment events from those areas if the sampling results are found to be compatible with Sub-Item (3)(a) of this Rule. ~~In submarine borrow sites other than maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system where water depths are no greater than 10 feet (3 meters), geophysical data of and below the seafloor are not required, and sediment sample spacing shall be no less than one core per six acres (grid spacing of 500 feet or 152 meters).~~ Vertical sampling shall penetrate to a depth equal to or greater than permitted dredge or excavation depth or expected dredge or excavation depths for pending permit applications. ~~All sediment samples shall be integrated with geophysical data to constrain the surficial, horizontal and vertical extent of lithologic units and determine excavation volumes of compatible sediment as defined in Item (3) of this Rule;~~ Because shallow submarine areas completely confined to a maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system can pose technical challenges and physical limitations for vertical sampling techniques, geophysical data of and below the seafloor may not be required in water depths less than 10 feet (3 meters), and shall be evaluated by the Division of Coastal Management on a case-by-case basis;

(f) ~~For offshore dredged material disposal sites, the grid spacing shall not exceed 2,000 feet (610 meters). Characterization of material deposited at offshore dredged material disposal sites after the initial characterization are not required if all of the material deposited complies with Sub-Item (3)(a) of this Rule as demonstrated by at least two sets of sampling data with at least one dredging event in between;~~

~~(g)~~ (f) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples and the thickness of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography;

~~(h)~~ (g) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core. Carbonate analysis is not required for sediment confined to maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system; and

- (h) All data used to characterize the borrow site shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (3) ~~The Division of Coastal Management shall determine sediment~~ Compliance with these sediment standards shall be certified by an individual licensed pursuant to Chapter 89C or 89E of the N.C. General Statutes. Sediment compatibility is determined according to the following criteria:
- (a) Sediment completely confined to the permitted dredge depth of a maintained navigation channel or associated sediment deposition basins within the active nearshore, beach or inlet shoal system is considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;
 - (b) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained sediment of the recipient beach characterization plus five percent;
 - (c) The average percentage by weight of granular sediment (greater than or equal to 2 millimeters and less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus 10 percent;
 - (d) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters and less than 76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five percent;
 - (e) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and
 - (f) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.
- (4) Excavation and placement of sediment shall conform to the following criteria:
- ~~(a) Sediment excavation depths for all borrow sites shall not exceed the maximum depth of recovered core at each coring location;~~
 - ~~(b)~~ (a) In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during ~~times~~ any seasonal environmental moratoria designated by the Division of Coastal Management in consultation with other State and Federal ~~agencies.~~ agencies, unless specifically approved by the Division of Coastal Management in consultation with other State and Federal agencies. The time limitations shall be established during the permitting process and shall be made known prior to permit issuance; and
 - ~~(c)~~ (b) ~~Sediment~~ The total sediments with a diameter greater than or equal to one inch (25.4 millimeters), and shell material with a diameter greater than or equal to three inches (76

millimeters) is considered incompatible if it has been placed on the beach during the beach fill project, is observed between ~~MLW~~ MTL and the frontal dune toe, and is in excess of twice the background value of material of the same size along any ~~50,000 square foot~~ (4,645 square meter) 10,000 square feet section of ~~beach~~ beach within the beach fill project boundaries. In the event that more than twice the background value of incompatible material is placed on the beach, it shall be the permittee's responsibility to remove the incompatible material in coordination with the Division of Coastal Management and other State and Federal resource agencies.

History Note: Authority G.S. 113-229; 113A-102(b)(1); 113A-103(5)(a); 113A-107(a); 113A-113(b)(5) and (6); 113A-118; 113A-124;
Eff. February 1, 2007;
Amended Eff. August 1, 2014; September 1, 2013; April 1, 2008;
Readopted December 1, 2020;
Amended Eff. July 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J and K

DEADLINE FOR RECEIPT: Friday, July 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Just so I'm clear – on the Submission for Permanent Rule Forms for each of these readoptions, the agency states on Box 8 that no fiscal note was required. As all readoptions were published together, several boxes were checked in the fiscal note publication information. I take it the determination was made that no fiscal note was necessary was due to G.S. 150B-21.3A(d)(2)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 2, 2021

1 15A NCAC 07J .1201 is readopted as published in 34:09 NCR 762 as follows:

2
3 **SECTION .1200 – STATIC AND VEGETATION LINE EXCEPTION PROCEDURES**

4
5 **15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION**

6 (a) A petitioner subject to a static vegetation line pursuant to 15A NCAC 07H .0305 may petition the Coastal
7 Resources Commission for an exception to the static vegetation line in accordance with the provisions of this Section.

8 A "petitioner" shall be defined as:

- 9 (1) Any local government;
- 10 (2) Any group of local governments involved in a regional beach fill project;
- 11 (3) Any qualified homeowner's association defined in G.S. 47F-1-103(3) that has the authority to
12 approve the locations of structures on lots within the territorial jurisdiction of the association, and
13 has jurisdiction over at least one mile of ocean shoreline; or
- 14 (4) A permit holder of a large-scale beach fill project.

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

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

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

- 28 (1) A summary of all beach fill projects in the area for which the exception is being requested including
29 the initial large-scale beach fill project associated with the static vegetation line, subsequent
30 maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial
31 large-scale projects(s). To the extent historical data allows, the summary shall include construction
32 dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding
33 sources, maps, design schematics, pre-and post-project surveys and a project footprint;
- 34 (2) Plans and related materials including reports, maps, tables and diagrams for the design and
35 construction of the initial large-scale beach fill project that required the static vegetation line,
36 subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life
37 providing no less than 30 years of shore protection from the date of the static line exception request.

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

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

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

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

(f) The Coastal Resources Commission shall consider a static vegetation 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;
Amended Eff. April 1, 2016;
Readopted Eff. July 1, 2021.

1 15A NCAC 07J .1202 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .1202 REVIEW OF THE STATIC LINE EXCEPTION REQUEST**

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

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

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

14
15 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
16 *Eff. March 23, 2009;*
17 *Readopted Eff. July 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1203

DEADLINE FOR RECEIPT: Friday, July 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule Form, Box 2, the name there does not match the name on the Rule. Please change one or the other to have the names match.

In (a), line 4, consider replacing "that" with "when" or "at which" (to mirror language in (b))

In (a)(2), line 8, and (a)(3), line 11, who will determine relevance here? Based upon what?

And I take it the limitation on the time allowed to present oral comments in (a)(2) and (3) will be announced in open session? If not, should there be a provision for notice of the limits within this Rule? Or should this mirror the language in .1302(a) to state the basis for the limitation?

In (b), line 13, what do you mean by "affirmative findings"? Should this instead mirror the language in Rule .1302(b) instead?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 2, 2021

1 15A NCAC 07J .1203 is readopted as published in 34:09 NCR 763 as follows:

2
3 **15A NCAC 07J .1203 PROCEDURES FOR APPROVING THE STATIC LINE EXCEPTION**

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

6 (1) The Division of Coastal Management shall orally present the report described in 15A NCAC 07J
7 .1202.

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

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

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

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

20
21 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*

22 *Eff. March 23, 2009;*

23 *Readopted Eff. July 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1204

DEADLINE FOR RECEIPT: Friday, July 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 6, and (b), line 13, how will the petitioner know the interval? Is this determined when the Commission grants the request? Should this be mentioned in Rule .1203?

On line 9, why not state, "The Division of Coastal Management shall provide the petitioner with written acknowledgment..." and then end the sentence after "Commission" on line 11?

If you wish to retain the language as written, please insert a comma after "Commission" on line 11.

In (b)(1), line 16, I am simply asking – should this cross-reference be to .1201(d)(1)?

In (c), line 30, what is the involvement of the local government or community? Is this to reference a specific statute that addresses the authority of the local government?

In (d)(1) and (2), Page 2, will the limitation on oral comments be set during open session?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 2, 2021

1 15A NCAC 07J .1204 is readopted as published in 34:09 NCR 763 as follows:

2
3 **15A NCAC 07J .1204 REVIEW OF THE LARGE-SCALE BEACH-FILL PROJECT AND APPROVED**
4 **STATIC LINE EXCEPTIONS**

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

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

- 16 (1) Design changes to the initial large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2)
17 provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or
18 persons meeting applicable State occupational licensing requirements for the work;
- 19 (2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC
20 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A
21 NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes
22 have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting
23 applicable State occupational licensing requirements for the work; and
- 24 (3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill
25 project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include
26 design changes defined in this Rule, then the Coastal Resources Commission shall consider the
27 financial resources or funding sources necessary to fund the changes.

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

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

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

9
10 *History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
11 *Eff. March 23, 2009;*
12 *Readopted Eff. July 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1205

DEADLINE FOR RECEIPT: Friday, July 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, and (b), line 7, what is "immediately" here?

On line 6, please insert a comma after (d)(4)

On line 8, please insert a comma after "(d)(2)"

In (c), line 10, you state "within five years" but Rule .1204 indicates the interval is up to five years. How does this work?

In (d), line 13, considered by whom? Should this state, "... exception shall be considered..."?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 2, 2021

1 15A NCAC 07J .1205 is readopted as published in 34:09 NCR 763 as follows:

2
3 **15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION**

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

7 (b) The static line exception shall expire immediately at the end of the design life of the large-scale beach fill project
8 defined in 15A NCAC 07J .1201(d) (2) including subsequent design changes to the project as defined in 15A NCAC
9 07J .1204(b).

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

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

15
16 *History Note:* *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*

17 *Eff. March 23, 2009;*

18 *Readopted Eff. July 1, 2021.*

1 15A NCAC 07J .1206 is readopted as published in 34:09 NCR 763 as follows:

2
3 **15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH STATIC VEGETATION**
4 **LINES AND STATIC LINE EXCEPTIONS**

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

12
13 *History Note: Authority G.S. 113A-107; 113A-113(b)(6), 113A-124;*
14 *Eff. March 23, 2009;*
15 *Readopted Eff. July 1, 2021.*

1 15A NCAC 07J .1301 is readopted as published in 34:09 NCR 763 as follows:

2
3 **SECTION .1300 – DEVELOPMENT LINE PROCEDURES**
4

5 **15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE**

6 (a) Any local government, group of local governments involved in a regional beach fill project, or qualified owner's
7 association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A
8 NCAC 07H .0305 may petition the Coastal Resources Commission for a development line for the purpose of siting
9 oceanfront development in accordance with the provisions of this Section. A "qualified owner's association" is an
10 owner's association, as defined in G.S. 47F-1-103(3), that has authority to approve the locations of structures on lots
11 within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline.

12 (b) A development line request shall apply to the entire large-scale project area as defined in 15A NCAC 07H
13 .0305(a)(7) and, at the petitioner's request, may be extended to include the entire oceanfront jurisdiction or legal
14 boundary of the petitioner.

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

19 (d) An existing structure that is oceanward of an approved development line may remain in place until damaged
20 greater than 50 percent in accordance with Rule .0210 of this Subchapter. At that time it may only be replaced landward
21 of the development line and shall meet the applicable ocean hazard setback requirements as defined in 15A NCAC
22 07H .0306(a).

23 (e) A request for a development line or amendment shall be made in writing by the petitioner and submitted to the
24 CRC by sending the written request to the Director of the Division of Coastal Management. A complete request shall
25 include the following:

- 26 (1) A detailed survey of the development line using on-ground observation and survey or aerial imagery
27 along the oceanfront jurisdiction or legal boundary, including;
- 28 (A) The development line, static vegetation line, mean high water line, and any other
29 information necessary for a review of the petitioner's proposed development line, such as
30 a pre-nourishment project mean high water line, local ordinances, or easements; and
 - 31 (B) Surveyed development line spatial data in a geographic information systems (GIS) format
32 referencing North Carolina State Plane North American Datum 83 US Survey Foot, to
33 include Federal Geographic Data Committee (FGDC) compliant metadata;
- 34 (2) All local regulations associated with the development line;
- 35 (3) A record of local adoption of the development line by the petitioner; and
- 36 (4) Documentation of incorporation of a development line into local ordinances or rules and regulations
37 of an owner's association.

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

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

7 (h) The Coastal Resources Commission shall consider a development line request no later than the second scheduled
8 meeting following the date of receipt of a complete request by the Division of Coastal Management, unless the
9 petitioner and the Division of Coastal Management agree upon a later date.

10
11 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*

12 *Eff. April 1, 2016;*

13 *Amended Eff. September 1, 2017;*

14 *Readopted Eff. July 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1302

DEADLINE FOR RECEIPT: Friday, July 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, consider replacing "that" with "when" or "at which" (to mirror language in (b))

In (a)(1) and (2), I take it the limitation on the time allowed to present oral comments in will be announced in open session? If not, should there be a provision for notice of the limits within this Rule?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 2, 2021

1 15A NCAC 07J .1302 is readopted as published in 34:09 NCR 763 as follows:

2
3 **15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE**

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

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

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

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

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

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

19
20 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-123; 113A-124;*
21 *Eff. April 1, 2016;*
22 *Readopted Eff. July 1, 2021.*

1 15A NCAC 07J .1303 is readopted as published in 34:09 NCR 763 as follows:

2
3 **15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT LINES**

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

9
10 *History Note: Authority G.S. 113A-107; 113A-113(b)(6), 113A-124;*

11 *Eff. April 1, 2016;*

12 *Readopted Eff. July 1, 2021.*

1 15A NCAC 07K .0208 is readopted as published in 34:09 NCR 763 as follows:

2
3 **15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES EXEMPTED**

4 (a) All single family residences constructed within the Coastal Shorelines Area of Environmental Concern that are
5 more than 40 feet landward of normal high water or normal water level, and involve no land disturbing activity within
6 the 40 feet buffer area are exempted from the CAMA permit requirement as long as this exemption is consistent with
7 all other applicable CAMA permit standards and local land use plans and rules in effect at the time the exemption is
8 granted.

9 (b) This exemption allows for the construction of a generally shore perpendicular access to the water, provided that
10 the access shall be no wider than six feet. The access may be constructed out of materials such as wood, composite
11 material, gravel, paver stones, concrete, brick, or similar materials. Any access constructed over wetlands shall be
12 elevated at least three feet above any wetland substrate as measured from the bottom of the decking.

13 (c) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters (ORW),
14 no CAMA permit shall be required if the proposed development is a single-family residence that has a built upon area
15 of 25 percent or less and is at least 40 feet from waters classified as ORW.

16 (d) Before beginning any work under this exemption, the CAMA local permit officer or the Department of
17 Environmental Quality representative shall be notified of the proposed activity to allow on-site review. Notification
18 may be by telephone at (252) 808-2808, in person, or in writing to the North Carolina Division of Coastal
19 Management, 400 Commerce Ave., Morehead City, NC 28557. Notification shall include:

- 20 (1) the name, address, and telephone number of the landowner and the location of the work, including
21 the county, nearest community, and water body; and
22 (2) the dimensions of the proposed project, including proposed landscaping and the location of normal
23 high water or normal water level.

24 (e) In eroding areas, this exemption shall apply only when the local permit officer has determined that the house has
25 been located the maximum feasible distance back on the lot but not less than forty feet.

26 (f) Construction of the structure authorized by this exemption shall be completed by December 31 of the third year
27 of the issuance date of this exemption.

28
29 *History Note: Authority G.S. 113A-103(5)c;*

30 *Eff. November 1, 1984;*

31 *Amended Eff. February 1, 2019; May 1, 2015; December 1, 2006; December 1, 1991; May 1, 1990;*

32 *October 1, 1989;*

33 *Readopted Eff. July 1, 2021.*