

NORTH CAROLINA
Environmental Quality

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Governor

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CRC-20-16

August 27, 2020

MEMORANDUM

TO: Coastal Resources Commission

FROM: Ken Richardson

SUBJECT: Development Line Implementation Subcommittee Report

Background Review:

At the February 2020 Coastal Resources Commission (CRC) meeting, NC Division of Coastal Management (DCM) Staff presented a detailed review of the CRC's Static Vegetation Line (SVL), Static Line Exception (SLE), and Development Line (DL) rules, followed by continued discussion with the CRC that began in September 2019 on matters of rule implementation. DCM Staff requested clarification on the siting of exceptions listed in in 07H.0309, such as decks, dune walkovers, gazebos, and parking areas, in communities with approved DLs. Staff also asked the CRC whether communities are able to have both a DL and a SLE, and if so, how the rules should be applied to development applications. Although each management alternative allows oceanfront development setbacks to be measured from the actual vegetation line, rather than the SVL, there are significant differences between these two rules. Most notably, and perhaps challenging to resolve, are that the DL rules: 1) do not require a demonstrated commitment to maintaining projects; 2) have little State oversight in mapping or managing them once approved by the CRC; 3) can allow seaward encroachment of new development, including the expansion of existing structures; and 4) have different setback requirements for large structures. Recognizing the time needed to examine solutions and the complexities associated with amending DL rules, the CRC Chair appointed a subcommittee of CRC members (Commissioners Neal Andrew, Phil Norris, and Robin Smith), who were tasked to assist with identifying potential strategies and alternatives for consideration.

CRC Subcommittee Meeting Summaries & Report:

March 3, 2020 (Subcommittee Meeting):

The subcommittee had a conference call with DCM Staff to further discuss rule implementation issues, and how they could be resolved. Details of this discussion centered around three options: 1) Amend the SLE, provide additional incentives to communities that adopt a formal "beach plan,"



and eliminate the DL rules; 2) map a more precise DL, allow existing SLEs to expire, and eliminate the long-term commitment to beach nourishment requirement; or 3) map a more precise DL, eliminate SLEs and long-term commitment to beach nourishment requirement, and offer incentives for voluntary long-term nourishment plans. The subcommittee did not reach a conclusion on how to retain both the SLE and DL rules, while also eliminating rule implementation issues; however, they did favor an approach that would simplify SLE and DL rules. DCM Staff was asked by the subcommittee to summarize provisions that could be considered, and to prepare the different options and recommendations for presentation to the full Commission.

April 15, 2020 (Subcommittee Meeting):

The subcommittee and DCM Staff held a follow up conference call/WebEx to discuss the details of what combining the two rules might look like, along with Staff recommendations. In addition, a second option was discussed that would simplify existing rules, eliminate both DL and SLE rules, and require structures to meet setback from the actual vegetation line and be limited to the landward-most adjacent neighbor. Given the complexities of these options, the subcommittee felt that the alternatives should be introduced to the full Commission and discussed before any decisions are made on moving forward, and before DCM Staff begins drafting rule language for the Commission to consider.

June 11, 2020 (CRC Meeting):

At the June 2020 CRC meeting (via WebEx), a brief update was given to the full Commission on the CRC Subcommittee's discussions of two possible options being considered to resolve identified rule implementation issues (Attachment A). The Subcommittee expressed their desire to have an additional meeting to try and find focus on one of the two and come back to the full CRC with a recommendation for them to consider.

August 13, 2020 (Subcommittee Meeting):

Given that seven months had passed since the full Commission last discussed this matter, and considering the details of potential rule amendments associated with the two options being discussed by the subcommittee, DCM Staff felt it would be helpful to review the evolution of both Static Vegetation Line (and Exception) and Development Line rules. Staff provided the Subcommittee with factors being considered at the time these rules were being drafted, guided by the CRC's recognition that beach nourishment projects are responses to erosion, and that nourishment projects should not be a stimulus for new development in areas with erosion problems. DCM Staff then reviewed issues resulting from implementing both SLE and DL rules, followed by a review of the two primary options drafted by Staff that may resolve issues (Attachment A).

Members of the Subcommittee acknowledged that although there is some appeal to having straightforward and simpler rules, they felt that the State should retain some oversight, especially in areas where beach nourishment projects are installed, and expressed support for a demonstrated local commitment to maintaining those projects. Based on staff's understanding, the Subcommittee also considered the following points:

- Beach nourishment should not be used as a stimulus for new development in areas that would otherwise not be suitable, nor should it encourage deliberate seaward encroachment of new or expanded structures.

- In defining a limitation on seaward encroachment of structures, the Subcommittee favored the landward-most adjacent neighbor limits over oceanward-most adjacent neighbor. However, they also favored flexibility in addressing unique circumstances, such as when the adjacent neighbor approach does not work, e.g., where development follows curved shorelines (i.e., inlets), development around cul-de-sacs, or peculiar lot configurations. (It is worth mentioning that the SLE rules already allow for a sight-line approach in unique circumstances, and since the SLE rules went into effect in 2009, only one variance request over a period of 11 years in the 8 localities with approved SLE has come before the CRC related to the landward-most adjacent neighbor limitation).
- Did not favor a scenario that treated all communities the same, regardless of whether they are being proactive in managing beach and inlet projects. The Subcommittee indicated that if a community is committed to regular long-term maintenance and can provide assurances to property owners and the CRC, then there should continue to be some degree of regulatory relief.
- Prefer to change the term “Static Vegetation Line” to “Pre-Project Vegetation Line.” The terminology can be confusing and seemingly vague, whereas “pre-project vegetation line” is better fitted to being self-defining.
- Re-examine the definition of a “large-scale” beach nourishment project. In 1996, the CRC defined “large-scale” as those projects where 200,000 cubic yards, or 50 cubic yards per linear foot, of sediment is placed on the recipient beach. In 2006, the definition was changed to 300,000 cubic yards.

To address rule implementation issues associated with the DL and SLE, the CRC Subcommittee generally favored Option 1, which retains State oversight and continues to offer regulatory relief to those communities who are committed to the long-term maintenance of their beach and inlet projects. Option 1 would require the consolidation of Static Line Exception and Development Line rules and require some time for Staff to draft rule amendments. Before asking Staff to begin that process, the Subcommittee agreed that the two options should be discussed by the full Commission, which can then provide direction to Staff on how to proceed.

Large-scale Beach Fill Project Definition:

In preparation for discussion by the CRC, the Subcommittee requested additional information - the basis for changing the definition of “large-scale” beach fill projects, and how many communities already have beach (and/or inlet) management plans; or at a minimum, have the information needed to fulfill the Static Line Exception requirement defined in 07J. 1201(d), which includes: 1) historic summary of beach fill projects; 2) plans describing initial project construction, and any changes for subsequent projects; 3) plans for maintaining initial project, and; 4) identification of sediment and financial resources

Should the CRC consider changing the definition of large-scale beach fill project, the Subcommittee agreed that a change should be done on the basis of information associated with previous projects. As mentioned, the current threshold of 300,000 cubic yards is based on projects that were installed between 1975 and 2004. These projects were only associated with USACE storm protection and inlet navigational projects (or beneficial use of dredged sediment). During

that time, 91% of those types of projects resulted in the placement of less than 300,000 cubic yards. Therefore, the CRC chose this threshold to avoid the establishment of a static vegetation line where inlet-based or beneficial use projects are being installed. Since this definition of “large scale” became effective (2009), DCM Staff have determined that beach fill projects installed between 2010 and 2019 have resulted in an overall average placement of 660,000 cubic yards of material. However, an assessment of the average size of only inlet/beneficial use projects needs to be conducted to present a clearer picture.

Beach & Inlet Management Plans:

Currently, there are 23 oceanfront communities (~80%) that have static vegetation lines. Once their project is finalized, the addition of Surf City’s SVL will bring the total to 24 (~86%). Of those communities, eight have already provided the CRC with the information required for an approved Static Line Exception. After reaching out to local governments and reviewing available documentation, DCM Staff have determined that the majority of the 23 communities either already have a beach and/or inlet management plan, or have the information needed that can be used to create a plan with minimal effort and cost. Additionally, these communities also perform regular surveys to monitor beach sediment losses and gains.

Staff Recommendation:

In an effort to more quickly resolve issues caused by: 1) communities having both a Static Line Exception and Development Line, and; 2) Rule exceptions in 07H. 0309 that allow specific types of development seaward of the setback line, but not the Development Line, DCM Staff are recommending that the CRC’s consider approval of proposed rule amendments for immediate rulemaking. Staff is looking for guidance as to which management line takes precedence, the DL or the SLE. The proposed amendments are currently written both ways and the Commission can settle on the final language at the upcoming meeting.

Additionally, DCM Staff are seeking guidance from the CRC on the two options discussed by the CRC’s Subcommittee (Attachment A). Regardless of choice, each option would require significant rule amendments over the coming months.

ATTACHMENT A: Discussion Points: Static Vegetation Line Exception & Development Line Options.

ATTACHMENT B: Original CRC Concerns with Static Vegetation Line (in 2015)

ATTACHMENT C: Proposed Rule Amendments

ATTACHMENT A:

Discussion Points: Static Vegetation Line Exception & Development Line Options

Option 1:

Consolidate Static Line and Development Line Rules - Incentives for Beach Plans:

DCM Recommendation 1: Change “Static Line” to “Pre-Project Vegetation Line,” Change “FLSNV” to “Vegetation Line,” and define both terms in Rule. The terms “Static Line” and “Static Line Exception” are complex and result in unclear regulatory meanings and intent for the public and property owners. (Reconsider threshold for Pre-Project Vegetation Line in Rule).

DCM Recommendation 2: Provide regulatory and other incentives for local and/or regional beach plans; encourage local development lines.

- Plans demonstrate long-term local commitment to beach maintenance, and CRC oversees implementation through 5-year re-authorizations. Communities continue to demonstrate intent to maintain beaches and/or inlets areas by providing a review of project design and performance, identifying potential sand sources and funding mechanism(s), and highlighting local ordinances that limit development expansion in vulnerable areas, including local development lines.
- In communities with CRC-approved beach plan:
 - Measure construction setbacks from the Vegetation Line.
 - Limit new or expanded construction to the landward-most adjacent structures on adjacent lots.
 - Streamline permitting for beach maintenance projects – see “Bogue Banks model” where a CAMA Major permit was issued for Master Plan and each project that corresponds with approved plan and standards only requires agency notification process rather than new Major Permit. Formalize this process in 15A NCAC 07J Rules.
 - Retain large-structure relief from graduated setback; minimum setback 120 feet, or 60 x SBF for structures >5,000 sf
- In communities with approved Inlet Management Plans, (see for example Terminal Groin provisions in CAMA or inlet relocation plans (e.g. Bogue Inlet & Mason Inlet), remove density and 5000sf size limit restrictions.
- Consider additional benefits of plan approval:
 - Higher state match on projects?
 - Potential to leverage state/federal financial support for geological / sand resource studies to assist in plan development
 - Promotes resolution of regional conflicts involving overlapping sand resources
- Until a community has an approved plan, measure setbacks from Pre-Project Vegetation Line.

DCM Recommendation 3: Enhance grandfathering rules to include structures built after August 11, 2009. Also assess costs/benefits of other grandfathering provisions in 15A NCAC 07H rules.

Option 2:

Measure all oceanfront construction setbacks from Vegetation Line:

- Eliminate Static Line, Static Line Exception, and Development Line rules
- In areas where a significant (>300K cy?) beach nourishment project has occurred, essentially “automatically” apply the former SLE rules, without requiring Commission approval and oversight of local beach plans:
 - Limit new or expanded oceanfront construction to the landward-most adjacent structures on adjacent lots (setbacks measured from post-project vegetation line).

Where no development exists on adjacent lots, use “sight-line” approach (already exists in SLE rules)

Attachment B:

Original CRC Concerns with Static Vegetation Line (in 2015):

The following is a list of primary concerns expressed by the Coastal Resources Commission (CRC) in 2015. DCM Staff have provided updated responses to those same questions using up-to-date information.

1. **Communities discouraged from constructing large-scale projects in order to avoid getting a static vegetation line.**
 - a. **Staff update (2020):** The reality is that 80% of the oceanfront communities (incorporated and unincorporated) have installed large-scale projects on some portion (26% to 100%) of their oceanfront jurisdiction. These communities are seeing the benefits that can come with larger projects: 1) reduced storm damage; 2) recreational and ecological quality of the beaches are maintained, and; 3) projects can potentially last longer than smaller projects. The graphs below show that over time, NC beach communities are spending more on projects that are increasing larger in terms of length and volume (Figures 1-6):

Figure 1. This graph illustrates the total cost per year spent on beach nourishment projects from 1939 to 2019.



Figure 2. This graph illustrates the total length of beach nourishment projects per year from 1939 to 2019.

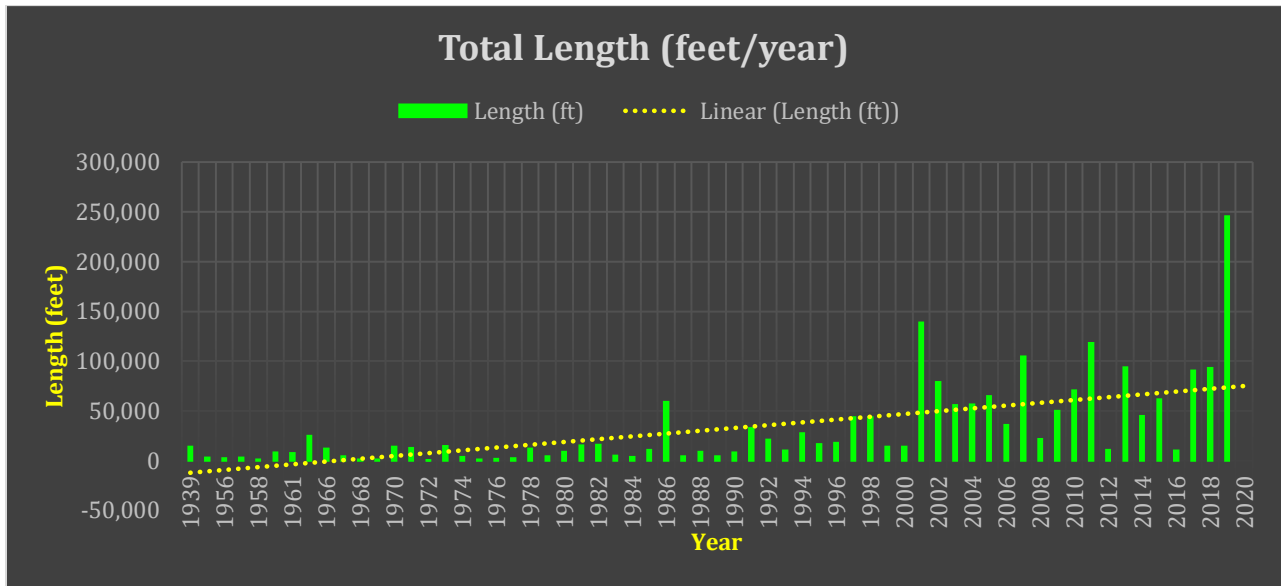


Figure 3. This graph illustrates the total volume (cubic yards) of sediment placed on NC's beaches from 1939 to 2019.

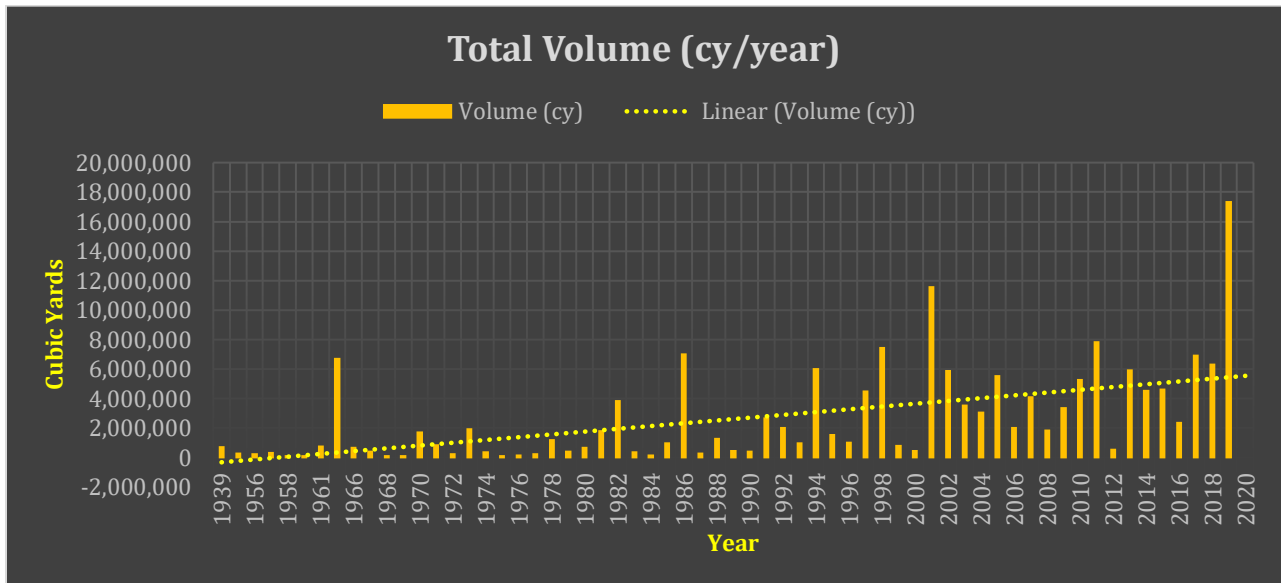


Figure 4. This graph illustrates the average cost per decade spent on beach nourishment projects from 1939 to 2019.

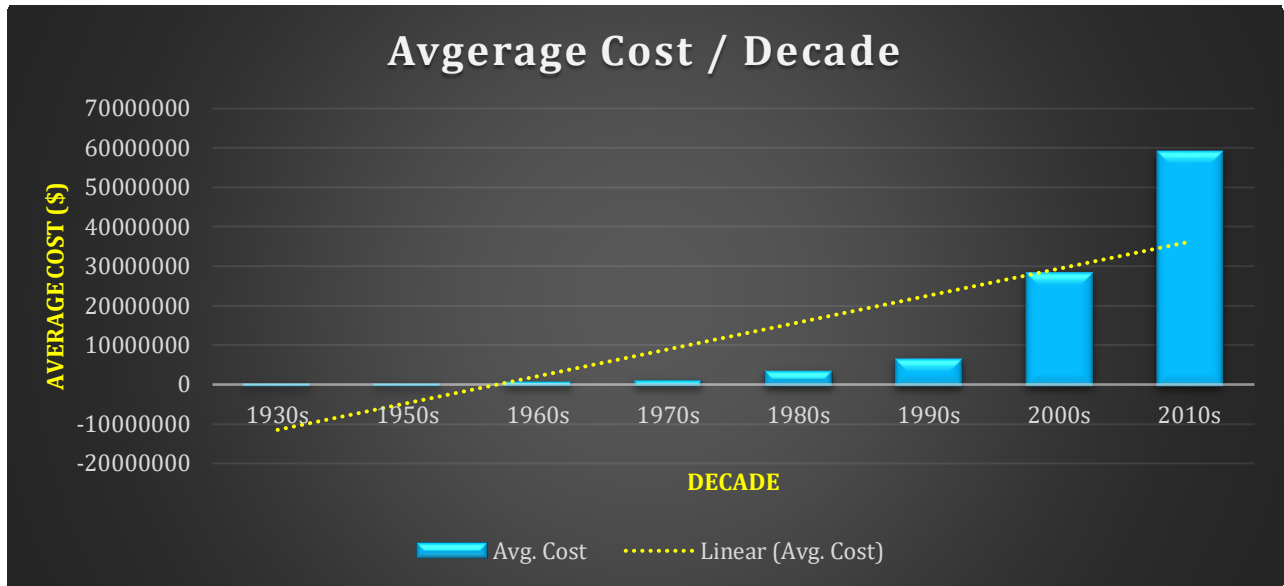


Figure 5. This graph illustrates the average length of beach nourishment projects per decade from 1939 to 2019.

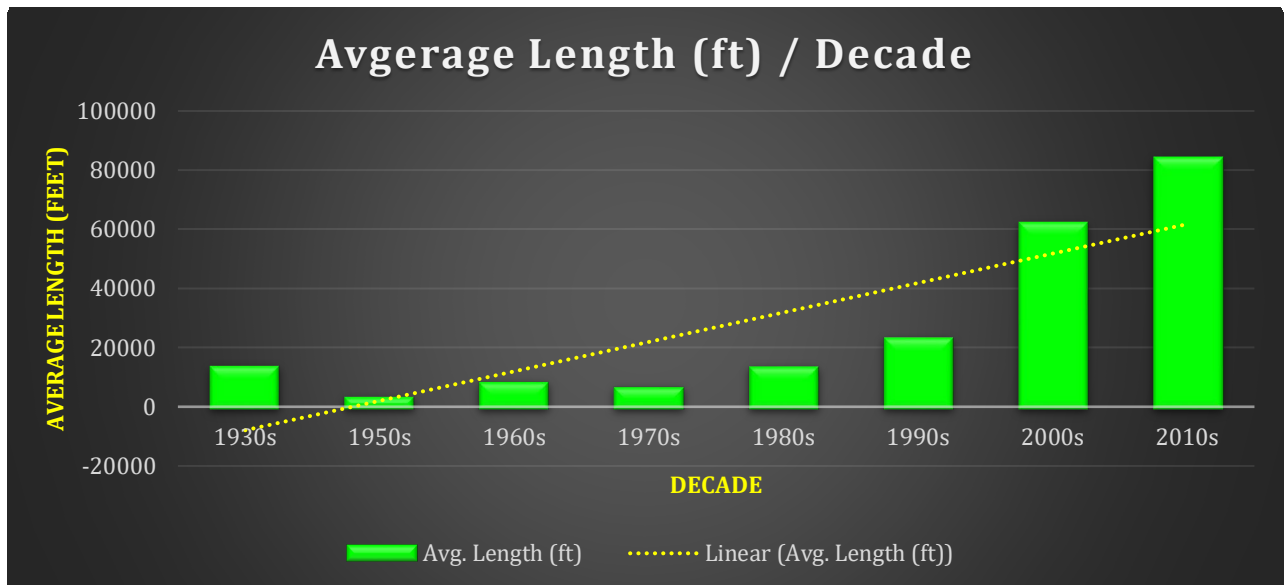
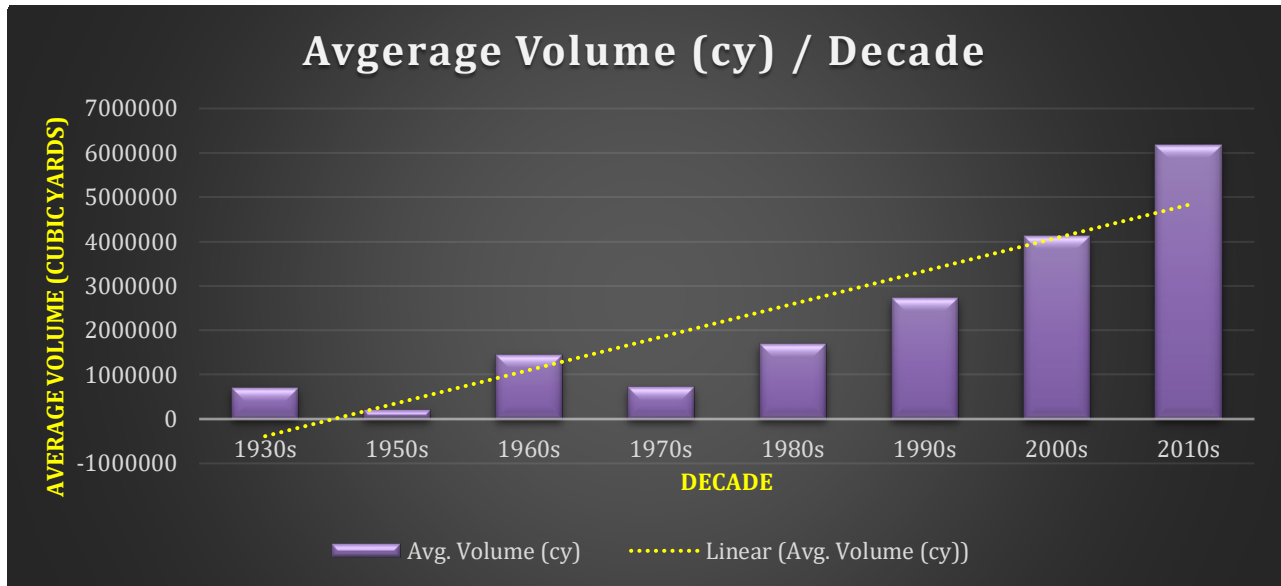


Figure 6. This graph illustrates the average volume (cubic yards) of sediment per decade that was placed on NC’s beaches from 1939 to 2019.



2. CRC questioned the realistic ability of Towns to identify funding or sand sources (do they have a taxing authority?).

- a. **Staff update (2020):** Given that most of NC’s beach communities are investing more in larger beach re-nourishment projects, they have also gone through efforts to identify sand sources and a mechanism for which to help fund those projects. Currently, over 60% of NC’s oceanfront beach communities have identified a reliable tax source to pay for all, or at least a portion of their projects. These sources include an occupancy tax at the county or local level, or property taxes collected from those within a specific municipal district. In addition to those annual recurring tax sources, many municipalities also set aside a portion of their annual General Fund budget to be used specifically for beach nourishment. USACE Coastal Storm Damage Reduction (CSDR) projects are still cost-share funded (65% federal, and 35% local), which does offset cost for some communities. It is important to note that beach communities are taking this investment very seriously, and most (>60%) are performing annual beach profile surveys in an effort to document how much sand is lost or gained each year. This is done in an effort to meet the qualifications for FEMA’s Public Assistance Program that will fund 75% of the re-nourishment project to replace sediment lost during a major storm event; and for those communities who qualify and are considered an “engineered beach,” this can serve as a source of relief because they’ve not lost all of their initial investment, and they are not having to fund 100% of the post-storm project. Based on trends, DCM Staff are expecting that more communities will be committing to maintain large-scale projects.

3. CRC concerned that cost associated with generating Static Line Exception re-authorization reports is costly, and those funds could be used for other nourishment expenses.

- a. **Staff update (2020):** Based on the 2016 fiscal analysis (CRC Memo 16-06) associated with the development line rules and static vegetation line exception (SVLE) rule amendments, the average cost to develop the initial Static Vegetation Line Exception authorization report is \$8,847; and the average cost update those reports for SVLE re-authorizations is \$3,510. Currently seven communities have an active SVLE. In addition, a Bogue Banks Master Plan has been approved for 50 years and there is ongoing development of a beach plan for Oak Island (see https://www.oakislandnc.com/wp-content/uploads/2016/12/MoffattNichol_060316.pdf).
- b. The last three re-authorizations reports were completed by Town staff and did not require additional expenses (Wrightsville Beach in 2019, Ocean Isle in 2020, and Carolina Beach in 2020). Given that most oceanfront communities are installing larger projects, monitoring their beaches on a regular basis (annually, or other), and have documented plans to maintain their beaches, the information that the CRC requires to evaluate SVL Exceptions is more readily available to Town staff, which could make it easier for the reports to be generated internally, and not contracted out with additional cost. This includes identification of potential sand sources, a mechanism to fund, or partially fund projects, and monitoring data to report project performance.

LOCATION	Number of Oceanfront Structures Adjacent to SVL	Structures Seaward of SVL	% Structures Seaward of SVL
Ocean Isle <i>(SVL Exception)</i>	268	5	1.9%
Holden Beach	335	0	0.0%
Oak Island	526	74	14.1%
Caswell Beach	83	0	0.0%
Bald Head Island	89	8	9.0%
Kure Beach	205	0	0.0%
Carolina Beach <i>(SVL Exception)</i>	227	0	0.0%
Wrightsville Beach <i>(SVL Exception)</i>	194	4	2.1%
Topsail Beach	337	0	0.0%
North Topsail Beach	544	30	5.5%
Emerald Isle <i>(SVL Exception)</i>	362	92	25.4%
Indian Beach <i>(SVL Exception)</i>	46	0	0.0%
Salter Path <i>(SVL Exception)</i>	31	2	6.5%
Pine Knoll Shores <i>(SVL Exception)</i>	198	6	3.0%
Atlantic Beach <i>(SVL Exception)</i>	286	0	0.0%
Fort Macon	5	0	0.0%
Buxton	54	40	74.1%
Rodanthe (at Mirlo Beach) – Pea Island	50	25	50.0%
Nags Head	764	85	11.1%
Kill Devil Hills	156	24	15.4%
Kitty Hawk	208	84	40.4%
Southern Shores	29	0	0.0%
Duck	108	0	0.0%
TOTAL:	5105	479	9.4%

Attachment C: Rule Amendments

Proposed Amendments to 07H.0306 General Use Standards for Ocean Hazard Areas

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.
- (2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. **With the exception of those types of development defined in 15A NCAC 07J .1301(e), in no case shall new development be sited seaward of the development line. In areas with a Static Line Exception approved in accordance with 15A NCAC 7J .1200, the Development Line shall take precedence.**
- (3) In no case shall a development line be created or established on state owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.
- (4) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
 - (A) The total square footage of heated or air-conditioned living space;
 - (B) The total square footage of parking elevated above ground level; and
 - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.
- (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:
 - (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
 - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
 - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
 - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
 - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;

- (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- (I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and
- (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi-family residential structures with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:
 - (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed, the development shall be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.
- (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.
- (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.
- (9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (11) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section, unless a development line has been approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.
- (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback

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

- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;
- (B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;
- (C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
- (D) With the exception of swimming pools, the development defined in Rule .0309(a) of this Section shall be allowed oceanward of the static vegetation line; and
- (E) Development shall not be eligible for the exception defined in Rule .0309(b) of this Section.

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

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or the National Historical Registry.

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

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

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

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

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

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

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

(j) All relocation of structures shall require permit approval. Structures relocated with public funds shall comply with the applicable setback line and other applicable AEC rules. Structures, including septic tanks and other essential accessories, relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of

the present location. Septic tanks shall not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

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

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

Proposed Amendments to Section .1200 – STATIC AND VEGETATION LINE EXCEPTION PROCEDURES

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

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

A "petitioner" shall be defined as:

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

(b) A petitioner shall be eligible to submit a request for a static vegetation line exception **if the petitioner does not have a Coastal Resources Commission approved development line as defined in 15A NCAC 07J. 1300, and** after the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

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

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

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

Proposed Amendments to 07J.1300 Development Line Procedures

SECTION .1300 – DEVELOPMENT LINE PROCEDURES

15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE

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

(b) A petitioner shall be eligible to submit a request for a development line if the petitioner does not have a Coastal Resources Commission approved Static Line Exception as defined in Rule 15A NCAC 07J. 1200.

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

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

(e) The following types of development shall be permitted seaward of the development line if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) beach accessways consistent with Rule 15A NCAC 07H .0308(c);
- (3) unenclosed, uninhabitable uninhabitable, detached gazebos with a footprint of 200 square feet or less;
- (4) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (5) temporary amusement stands; and
- (6) sand fences consistent with Rule 15A NCAC 07H .0311.

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

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

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

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

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

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

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

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