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CRC-21-25

September 1, 2021

## MEMORANDUM

**To:** Coastal Resources Commission  
**From:** Tancred Miller, Policy & Planning Section Chief  
**Subject:** Static Line Exception Implementation

In 2009, the CRC created the Static Line Exception to recognize local government efforts at making a long-term commitment to beach management through large-scale beach nourishment projects. Under the Exception, oceanfront structures may utilize the existing vegetation line as opposed to the more restrictive Static Line as a reference in establish building setback. In implementing the Static Line Exception, Staff has encountered a few implementation issues related to the provisions in 7H .0306, and is seeking guidance on interpretation and potential revisions to the rule for the sake of clarity.

- 1) 7H .0306(a)(12) contains the preamble “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” (emphasis added).... may petition the Coastal Resources Commission for a “static line exception” in accordance with 15A NCAC 07J .1200. This has been interpreted by at least one local government to mean that if a proposed development **can** meet the oceanfront setback from a community’s static vegetation line, that it must do so, even if the community has a static line exception. Staff would like the Commission to clarify whether this is the Commission’s interpretation. If not, deleting the preamble as shown in the attached rule amendment can remove the ambiguity.
- 2) 7H. 0306(a)(12)(C) prohibits any portion of a structure from extending farther oceanward than the landward-most adjacent building or structure. This provision presents four implementation issues:
  - a) **How should “adjacent” be defined?** And how should vacant lots and roadways be treated for determining “adjacent”? DCM has defined “adjacent” in the Adjacent Riparian Property Owner Notification for Minor Permits (updated July 2021) as “...a property that shares a boundary line with the site of proposed development.” Unless the Commission directs otherwise, staff will use this definition in the determination of landward-most adjacent. If no adjacent structures exist, the proposed development would be sited in accordance with the “average line of construction” identified by the DCM director as described below.
  - b) **Can LPOs establish an “Average Line of Construction” under the Static Line Exception?** There is the potential for inconsistent treatment of unusual lot configurations that “preclude the placement of a building or structure in line with the landward-most adjacent building or



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structure”. The current rule specifically provides for the Division of Coastal Management to determine an “average line of construction” on a case-by-case basis, and to use that as the measurement line for determining the construction setback. It is somewhat unclear whether this means only DCM staff can establish the average line of construction, or if this authority is also delegated to Local Permit Officers in accordance with 15A NCAC 07J .0102. In these rare circumstances, staff prefers that the DCM Director be the only individual authorized to demarcate the average line of construction, based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline, and extending 500 feet in either direction. If no structures exist within 500 feet in either direction, the proposed structure would need to meet the applicable setback from the Vegetation Line but would not be held to the landward-most adjacent structure or an average line of structures.

- c) **What constitutes a “building or structure”?** In order to prevent gazebos, boardwalks, sheds, pools, and other types of accessory structures from being treated as an adjacent building or structure, staff proposes that only habitable structures of any size be used for measurement.
  - d) **From what part of an adjacent building or structure should the “landward-most” standard apply?** Staff proposes that the most oceanward point of the building or structure’s roof line, including roofed decks, but not the 500 square feet of uncovered decked (allowed as an exception in 7H .0309) be the standard.
- 3) 7H. 0306(a)(12)(D) authorizes, with the exception of swimming pools, the development exceptions in 7H .0309(a) to be located oceanward of the static vegetation line, but is silent on whether those types of development can be placed oceanward of the landward-most adjacent building or structure. These types of development include elevated decks no greater than 500 square feet, beach accessways, gazebos and sheds no greater than 200 square feet, sand fences, driveways and parking, and other temporary or small-scale development. Staff needs the Commission’s determination on which types of development may be allowed oceanward of the landward-most adjacent building. Staff recommends that all .0309(a) exceptions, except swimming pools, be allowed seaward of the landward-most adjacent structure under the SLE.

While the implementation issues raised here pertain solely to the static line exception provisions in 7H .0306, staff proposes to include any desired rule amendments into the draft Beach Management Plan rules that will be presented to the Commission in November.

## 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. In no case shall new development be sited seaward of the development line.
  - (3) In no case shall a development line be created or established on State-owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.
  - (4) 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 habitable building or structure. The alignment shall be measured from the most oceanward point of the adjacent building or structure's roof line, including roofed decks, if applicable. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent buildings or structures exist, or 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 only by the Director of the Division of Coastal Management based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline, extending 500 feet in either direction. If no structures exist within this distance, the proposed structure must meet the applicable setback from the Vegetation Line but will not be held to the landward-most adjacent structure or an average line of structures. The ocean hazard setback that is shall extend 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;~~ line, the landward-most adjacent habitable building or structure, or the average line of construction as determined under (a)(12)(C); 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 acknowledgement shall state that the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) 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;  
Readopted Eff. December 1, 2020.*

