

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

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

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

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

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

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

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

- (1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale project(s) and beach fill projects occurring prior to the initial large-scale project(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre- and post-project surveys and a project footprint;
- (2) Plans and related materials including: reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred and planned maintenance needed to achieve a design life providing no less than 30 years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;
- (3) Documentation, including maps, geophysical and geological data, to delineate the location and volume of compatible sediment as defined in 15A NCAC 07H.0312 necessary to construct and maintain the large-scale beach fill project defined in Part 2 of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and
- (4) Identification of the financial resources or funding bases necessary to fund the large-scale beach fill project over its design life.

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

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

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

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

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

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

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

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

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

(b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings on each of the conditions contained in 15A NCAC 07H.0306(a)(8)(A). The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within ten business days following the meeting at which the decision is reached.

(c) The decision to authorize or deny a static line exception is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123 and G.S. 150B-23.

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

(a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five (5) years from date the static line exception is authorized. The progress report shall address the three (3) conditions defined in 15A NCAC 07H.0306(a)(8)(A) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report shall be presented to the Coastal Resources Commission to the petitioner.

(b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J.1203 at intervals no greater than every five (5) years from the initial authorization in order to renew its findings for each of the conditions defined in 15A NCAC 07H.0306(a)(8)(A). The Coastal Resources Commission shall also consider the following conditions:

- (1) Design changes to the initial long-term beach fill project defined in 15A NCAC 07J.1201(d)(2) provided that said changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

- (2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H.0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J.1202(d)(2), including design changes defined in this Rule provided that said changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and
- (3) Changes in the financial resources or funding bases necessary to fund the long-term beach fill project defined in 15A NCAC 07H.0306(a)(8)(A). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding bases necessary to fund said changes.

(c) The Division of Coastal Management shall prepare a written summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. This written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07H.0306(a)(8)(A) as well as this Rule have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

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

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

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

(a) The static line exception shall be revoked immediately if the Coastal Resources Commission determines, during the review of the petitioner's progress report identified in 15A NCAC 07J.1204, that any of the conditions under which the static line exception is authorized, as defined in this Section, no longer exist.

(b) The static line exception shall expire immediately at the end of the design life of the long-term beach fill project defined in 15A NCAC 07H.0306(a)(8)(A) and 15A NCAC 07J.1201(d) including subsequent design changes to said project as defined in 15A NCAC 07J.1204(b).

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

(d) The revocation or expiration of a static line exception is considered a final agency decision and is subject to judicial review in accordance with G.S. 113A-123 and G.S. 150B-23.

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

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

*Draft Rule Language approved for Public Hearing by CRC on March 27, 2008*

vegetation line list and the static line exception list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

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