



North Carolina Department of Environment and Natural Resources
Division of Coastal Management

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

September 10, 2008

MEMORANDUM

TO: CRC & Interested Parties
FROM: Tancred Miller
SUBJECT: Rulemaking Update

Along with this memo is a spreadsheet that contains all of the Commission's rules that are currently in the rulemaking process—from those being proposed for initial action to those reviewed by the Rules Review Commission since the last CRC meeting. Listed below is a description and recent history of the CRC's action on each rule. Complete drafts of rules scheduled for public hearing at this meeting will be available on the DCM website.

RULE DESCRIPTIONS

1. 15A NCAC 7H.0205 Coastal Wetlands (Marsh Alteration)

Status: Public hearing in September.

The purpose of the proposed amendments to this rule is to begin regulating certain types of marsh alteration, primarily mowing and burning. The CRC has received two Attorney General Opinions asserting the Commission's authority to regulate marsh alteration as development. Staff does not feel that alteration is a ubiquitous problem, and has scientific evidence that most mowing and burning seen in NC is not detrimental to the marsh. CRC approved draft rule language in March.

2. 15A NCAC 7H.0208 Estuarine System Use Standards (Docks & Piers provisions)

Status: Approved for public hearing.

The CRC approved this rule for public hearing in July 2007, conditional on review and approval of the MFC's new definition of SAV habitat and satisfactory permitting coordination with DCM. DMF and DCM reported on the SAV habitat definition in May and on the interagency coordination agreement that has been developed. The CRC approved the docks and piers provisions in July 2008, to be sent to public hearing.

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

Status: Completed public hearings and eligible for adoption in September 2008.

The amendments to 7H.0306 tie beachfront building setbacks to the size of the structure, not the use. The revisions include graduated setback factors for buildings greater than 5,000 square feet, and do not allow for cantilevering oceanward of the setback line. Staff will present responses to public comments, and recommend final rule language, in September.

400 Commerce Avenue, Morehead City, North Carolina 28557
Phone: 252-808-2808 \ FAX: 252-247-3330 \ Internet: www.nccoastalmanagement.net

4. 15A NCAC 7H.0308 Specific Use Standards for Ocean Hazard Areas
Status: Going to public hearing.
Staff presented proposed changes in July to the sandbag provisions in this rule. The changes lengthen the duration and number of times that sandbags can be used in inlet hazard areas when a community is pursuing inlet relocation, and allow sandbags to be placed more than 20 feet from the structure being protected if the Director finds that it is justified. The Commission approved the changes for public hearing.
5. 15A NCAC 7H.0309 Use Standards for Ocean Hazard Areas: Exceptions
Status: Going to public hearing.
The CRC approved draft changes in March to make the development limitations in this rule conform with pending changes to 7H.0306, and approved additional changes to the pier house section in May to allow construction and expansion of pier houses oceanward of the setback. The Commission approved the changes for public hearing.
6. 15A NCAC 7H.0310 Use Standards for Inlet Hazard Areas
Status: Scheduled for discussion in November 2008.
The CRC has seen the new inlet hazard area delineations prepared by its Science Panel on Coastal Hazards and had further discussion in July 2008. Staff will present draft rule language to the CRC at the November meeting.
7. 15A NCAC 7H.1100 GP for Construction of Bulkheads & Placement of Riprap
Status: Going to public hearing.
The Commission approved this rule in May for public hearing. Proposed changes to this rule result from the CHPP recommendation that the CRC encourage alternatives to vertical stabilization structures on estuarine shorelines. See Bonnie Bendell's March memo CRC-08-08 for a complete discussion of the proposed changes.
8. 15A NCAC 7H.1200 GP for Construction of Piers, Docks & Boat Houses
Status: Going to public hearing.
The CRC approved this rule for public hearing in July 2007, conditional on review and approval of the MFC's new definition of SAV habitat and permitting coordination with DCM. Staff presented an update in July on the interagency coordination protocols and review draft rule changes and the CRC approved the rule for public hearing.
9. 15A NCAC 7H.1400 GP for Construction of Groins in Estuarine & Public Trust Waters
Status: Public hearing in September.
Proposed changes to this rule result from the CHPP recommendation that the CRC encourage alternatives to vertical stabilization structures on estuarine shorelines. Proposed changes include allowing materials other than wood, prescribing a maximum spacing and frequency, and clarifying how structures are measured. See Bonnie Bendell's March memo CRC-08-08 for a complete discussion of the proposed changes.
10. 15A NCAC 7H.2100 GP for Marsh Enhancement Breakwaters
Status: Public hearing in September.
Proposed changes to this rule result from the CHPP recommendation that the CRC encourage alternatives to vertical stabilization structures on estuarine shorelines. Proposed changes are primarily definitional and to ensure consistency with other shoreline stabilization rules. See Bonnie Bendell's March memo CRC-08-08 for a complete discussion of the proposed changes.

11. 15A NCAC 7H.2400 GP for Placement of Riprap for Wetland Protection

Status: Public hearing in September.

Proposed changes to this rule result from the CHPP recommendation that the CRC encourage alternatives to vertical stabilization structures on estuarine shorelines. Proposed changes include a definitional clarification and changes to the dimensions and geometry of structures. See Bonnie Bendell's March memo CRC-08-08 for a complete discussion of the proposed changes.

12. 15A NCAC 7J.0701 Variance Petitions

Status: Public hearing in September.

CRC adopted amendments to 7J.0701 that require claimants to initially file either a variance request or a contested case, and not pursue both options at the same time. Proposed rule changes have been through public hearing but were returned to the CRC because of an objection by the RRC. CRC's Variance Subcommittee proposed changes to address RRC's objection and recommended sending the rule back to public hearing.

13. 15A NCAC 7J.0702 Staff Review of Variance Petitions

Status: Completed legislative review, effective 07/03/2008.

CRC adopted amendments to 7J.0702 that outline procedures for staff review, including the timing and preparation of stipulated facts and staff recommendations. More than 10 individuals objected to the proposed rule after it had been approved by the RRC. Under the APA, the rule was subject to legislative review. The rule was not disapproved by the Legislature, and is now effective.

14. 15A NCAC 7J.0703 Procedures for Deciding Variance Petitions

Status: Public hearing in September.

CRC adopted amendments to 7J.0703 that outline procedures for situations in which the Commission cannot reach a final decision due to incomplete stipulated facts. Proposed rule changes have been through public hearing but were returned to the CRC because of an objection by the RRC. This rule was also objected to by more than 10 individuals, but is not subject to legislative review because it was not approved by the RRC. CRC's Variance Subcommittee proposed changes to address the RRC's objection and recommended sending the rule back to public hearing.

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

Status: Eligible for adoption.

Staff developed 7J.1200 to define the administrative requirements of applying for, receiving, and maintaining a static line exception. The rule also describes the criteria for qualifying for an exception, CRC procedures for granting an exception, and circumstances that would cause an exception to expire or be repealed. The CRC reviewed this proposed rule in September 2007 and approved it for public hearing. Staff is coordinating the timing between this rule and 7H.0306.

16. 15A NCAC 7M.0300 Shorefront Access Policies

Status: Public hearing in September.

Amendments to 7M. 0300 would establish a reporting requirement for user fees collected at state-funded access sites; give DCM the ability to take the lead in acquiring land and constructing access facilities without a city or county applicant; and includes provisions to utilize funds outside the usual funding cycle in order to take advantage of unique opportunities.