



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

January 9, 2008

MEMORANDUM

CRC 08-01

TO: Coastal Resources Commission
FROM: Jeffrey Warren, PhD
Coastal Hazards Specialist
SUBJECT: Public Comments and Staff Recommendations for 15A NCAC 07H.0305
(General Identification and Description of Landforms)

Draft rule language for 15A NCAC 07H.0305 was approved for public hearing by the CRC on July 27, 2007 at their meeting in Raleigh. As per GS 150B, following fiscal review of the rule by DCM (and subsequent approval of said review by DENR and the State Budget Office), the rule was published in the State Register (vol. 22, #9) on November 1, 2007. The public hearing was held on November 29, within the 60-day comment period (November 1 through December 31). A synopsis of the comments for each rule is provided in the body of this memo. This memo also has numerous appendices included in your mail-out package:

Appendix A – Draft rule language with color-coded annotation to clarify modifications and changes from the existing rules, as well as the draft rules subjected to public comment

Appendix B – Non-annotated, revised draft rule language (i.e., “clean copy”) incorporating changes by DCM that are recommended for additional public comment (i.e., recommended approval of this version for public hearing)

Appendix C – Transcript from the November public hearing

Appendix D – Written comments received by DCM via mail, fax and email during the official public comment period

SUMMARY OF PUBLIC HEARING COMMENTS

Nine people made verbal comments at the public hearing, five of which submitted written comments following the hearing. These 9 stakeholders represented two municipalities (Oak Island and Ocean Isle Beach), one non-governmental organization or NGO (NC Coastal Federation), one law firm representing the Village of Bald Head Island, and five oceanfront homeowners (Oak Island, Topsail Beach, Wrightsville Beach). The transcript from the public hearing is in Appendix C. Due to the similarities between the verbal and written comments, both are addressed concurrently in the discussion that follows.

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SUMMARY OF WRITTEN COMMENTS

Eight written comments were received during the official public comment period and are included in their entirety in Appendix D. Of these submissions, one was submitted by a municipality (Oak Island), four by NGOs (NC Beach, Inlet and Waterway Association; Business Alliance for a Sound Economy; NC Association of Realtors; NC Home Builders Association), two by law firms (representing the Village of Bald Head Island and Figure 8 Island), and two by citizens (Oak Island and Topsail Beach). Due to the similarities between the verbal and written comments, both are addressed concurrently in the discussion that follows.

In addition, 39 written comments were submitted by persons with interests in the Village of Bald Head Island. Although the majority of these submissions were identified in their headings or textual bodies as being relevant to 15A NCAC 07H.0305, they instead addressed the proposed boundary changes to the State's Inlet Hazard Areas (IHAs). These comments are not germane to the rule being considered herein (15A NCAC 07H.0305) and are, therefore, not included as an appendix to this memo.

DISCUSSION OF VERBAL AND WRITTEN COMMENTS

Definition of the Vegetation Line. Numerous comments were made on the definition of the vegetation line with a concern that the definition was being changed. This definition already exists in the current language of this rule (15A NCAC 07H.0305) but is spread throughout numerous sections. Therefore, these proposed changes organize, streamline and clarify. To illustrate this, the proposed amendments to the definition are broken down sentence by sentence:

- 1. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density.**

DCM response: *Current practice relies on both DCM and/or the Local Permit Officer (LPO) to stake the first line of vegetation. LPOs act as agents of DCM by allowing direct local government involvement in the issuance of CAMA minor development permits. This first sentence of the proposed rule merely codifies, for the purpose of objective clarity, what already is common and standard practice. The LPOs receive training and oversight by DCM. Often, DCM is contacted by the LPO to assist in, or make, a final vegetation line determination. An LPO Field Guide has been written by DCM and receives regular updates and is supplemented with seminars and workshops. It should be noted that a few comments addressed what they felt was an inconsistency between the definition of the vegetation line in the proposed rule language versus the LPO Field Guide. The LPO manual provides explanations and additional information to assist with the interpretation and enforcement of the CRC's rules. The Handbook consistently has more detailed definitions and explanations intended as an auxiliary to the rules. However, the handbook is not a rule and is not legally binding.*

- 2. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual root sets.**

DCM response: *Currently, 15A NCAC 07H.0305(g)(3)(B) considers planted vegetation to be natural and reestablished when "the majority of stems are from continuous rhizomes rather than planted individual root sets...."*

- 3. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring.**

DCM response: *Much of this sentence already exists in existing rule language but has been moved for organizational clarity. Currently, 15A NCAC 07H.0305(g)(3)(A) considers vegetation to be natural when “the dune grasses appear the same in terms of species composition and stem density as adjacent non-project areas.”*

- 4. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.**

DCM response: *The current rule, 15A NCAC 07H.0305(f), authorizes the creation of a vegetation line between adjacent vegetation on either side. In the proposed rule, the “connect-the-dots” method of using adjacent vegetation with which to define a line between is retained and properly defined using the term interpolation. The use of on-ground observations and aerial photography for vegetation line determination currently is allowed in 15A NCAC.0305(g)(2).*

Additional Comments

Comments were received that questioned the change in what constitutes a “large-scale” beach fill project. The current rule (15A NCAC 07H.0305) defines a large-scale beach fill project as being greater than 200,000 cubic yards at an average distribution of 50 cubic yards per linear foot. The proposed rule language changes this definition to “greater than 300,000 cubic yards”.

DCM response: *Dredge data from over 600 inlet dredging events (navigation maintenance) over a 39-year period (1975 to 2004) show that 92% of the dredge disposal events were less than 300,000 cubic yards. One of the goals of the rule is to not create a situation where beach disposal of beach-quality sand from routine inlet maintenance would trigger a static vegetation line. In addition, the volume per linear foot metric has been removed from the rule language to remove the disincentive for towns to do small projects (relative to volume per linear foot) in order to avoid receiving a static vegetation line.*

Multiple comments were made regarding the creation of a static vegetation line specifically for Oak Island and Ocean Isle Beach in the proposed rule language.

DCM response: *In the proposed policy, the Alternative Vegetation Line (AVL) has been deleted from the existing rule because its methodology is complex and inconsistent. However, the spirit, purpose and intent of the AVL provision is to provide relief for towns who have static lines that represent a vegetation line that has been translated landward (in some cases by hundreds of feet) by recent hurricane or storm events. For example, Oak Island and Ocean Isle Beach received static line determinations in 2000 prior to the onset of their large-scale beach fill projects. The vegetation had been severely affected primarily by Hurricane Floyd (1999) and, to a lesser extent, Hurricane Bonnie (1998). The unique situation of these two towns convinced the CRC and the CRC Science Panel that relief was necessary and, hence, the AVL rule was*

created. Because DCM has a set of oceanfront aerial orthophotography from June 1998 (prior to Bonnie), it was decided by DCM that the easiest way to eliminate the AVL method while retaining the spirit of the policy was to use the location of the vegetation immediately preceding Bonnie and merely write it in to the rule. One stakeholder specifically requested that Oak Island's static vegetation line be restored to pre-storm conditions.

A few stakeholders questioned the usage of "may" versus "shall" in numerous locations.

DCM response: *Staff have reviewed each usage of each of the terms in the proposed rule language and are not recommending any changes in the use of may versus shall.*

DCM STAFF RECOMMENDATIONS

Although 15A NCAC 07H.0305 consistently has been discussed alongside 15A NCAC 07H.0306, it primarily provides the definitions for Section .0300 and does not contain policy changes to setback and static vegetation lines addressed in 07H.0306. DCM recommends that the CRC adopt the rule language proposed herein (see Appendix B) with the minor amendments made to Part (g) and (g)(2) (see Appendix A).