

we could tell you with confidence that all of these Divisions including the Department were alright with this definition. DMF has been transparent. Four of the CRC's staff are on the committee for this definition.

Lee Wynns stated that he supports the position of the rest of the Commission who have addressed their concerns. Jim Leutze stated that the CRC needs to be better informed, but he hopes this will not destroy the concept of coordination of all the agencies. Chairman Emory stated his perspective is things have not been done a great deal differently than it was two years ago. He further stated that he has no significant reservations about the two agencies working together and that he has no less confidence in our staff today than he did prior to today.

Draft Amendments to Shoreline Stabilization Rules (CRC 08-08)

Bonnie Bendell, Division of Coastal Management, stated we discussed this issue in November 2005. DCM recognizes that this is a controversial and complicated topic. We have run into some complications with the Division of Water Quality and the bulkhead placement. We are still working through those with DWQ and will be going before the CHPP steering committee on April 11, 2008. We will be asking the other Divisions to discuss it with us and ask for recommendations. DCM would like to come back to the CRC in May with those recommendations. In the meantime, DCM has done a lot of work that can still move forward. Over the past two years there are three other rules we have worked on that we would like to go to public hearing. These rules are the proposed changes for the general permit for groins (7H .1400), marsh enhancement breakwaters (7H .2100) and the general permit for riprap for wetland protection (7H .2400).

7H .1400 is the general permit for groin placement we have changed the spacing on how to place the groins. Spacing changes would be changed to two times the groin design length to a maximum of fifty feet apart. It will allow more flexibility in the rule; allow more flexibility in placement and more property owners would be allowed to apply for this permit. Clarifications were made on how to measure distances and lengths and to correct any ambiguous language.

7H .2100 is the general permit for marsh enhancement breakwaters we would like to do some terminology changes. Changes would entail changing "marsh enhancement breakwater" to "sheetpile sill". This was done at the request of the CRC to create a separate general permit for breakwaters without marsh enhancement. Ambiguous language was also corrected in this rule.

7H .2400 is the general permit for placement of riprap for wetland protection (riprap waterward of any marsh). The term "riprap" has been changed to "riprap revetment". A maximum distance waterward allowed has been added. This change allows extension to six feet because there are also slope requirements.

Chuck Bissette commented that the six-foot waterward requirement for riprap revetment is difficult to keep exact. The stone is substantial in size and you just physically cannot quite stack it perfectly. Ted Tyndall stated this is for lower wetland areas. The 7H .1200 general permit still allows the riprap protection to go out ten feet along non-wetland shorelines.

Renee Cahoon stated that after the CHPP steering committee meeting, she would like Staff to bring the proposed changes to bulkhead general permit and the comments received from the other agencies.

Doug Langford made a motion to accept the changes to the shoreline stabilization rules (7H .1400, 7H .2100, 7H .2400) and send them to public hearing. Joan Weld seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Rule Interpretation – 15A NCAC 7H .0308(a)(2) Temporary Erosion Control Structures (CRC 08-17)

Jim Gregson, Director for Division of Coastal Management, stated that recently he has become more uncomfortable in the way DCM is authorizing some of the sandbag structures based on the rule. 7H .0308(a)(2)(B) requires that temporary erosion control structures be used to protect only imminently threatened road and associated right-of-ways, buildings or septic systems. A structure will be considered to be imminently threatened when its foundation, septic system or right-of-way in the case of roads is less than twenty feet away from the erosion scarp. Buildings and roads located more than twenty feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions such as a flat beach profile or accelerated erosion tend to increase the risk of imminent damage to the structure. 15A NCAC 07H .0308(a)(E) states that the landward side of sandbags shall not be located more than twenty feet seaward of the structure to be protected. More and more frequently, DCM is allowing sandbags to be placed along the seaward side of the erosion scarp when structures are determined to be imminently threatened due to accelerated erosion, even when the scarp is located more than twenty feet from the structure. In some cases, the landward side of the sandbags have been placed forty feet or more from the structure. (Photos were shown to illustrate these instances). In DCM's opinion, the rule is very clear but in all of the illustrated cases these structures are considered threatened but it is eroding so quickly we would not be able get sandbags in. We could issue permits to put sandbags within twenty feet of the house, but in some cases it would mean placing the sandbags in the swimming pool, taking a pool out, or in the case of the east end of Ocean Isle Beach the sandbags may be going between the road right-of-way and a house.

Wayland Sermons stated that the exception to the 20-feet based on flat beach profile or accelerated erosion is the correct interpretation and it can be more than 20-feet away if the Division determines these conditions exist. If it is imminently threatened, the Director can determine where the bags go even if it is more than 20-feet away. Continue the practice DCM is exercising. It is a common sense approach.

Melvin Shepard asked if the rule needed to be amended to allow for a permanent change. He stated that he fears the Commission will make a fatal step that in the legalities that are coming due to sandbags will put DCM in a bad position.

Frank Crawley, CRC Counsel, stated that buried in the APA under the definition of a rule there is an exception called an interpretive ruling. An interpretive ruling is different from engaging in rulemaking. This is what has been done. The DCM Director has asked for an interpretive ruling with respect to how to interpret this section in 7H .0308 and the CRC has accomplished this by voting for the motion.

Wayland Sermons made a motion to allow the current practice being exercised in the implementation of 7H .0308 to allow sandbags more than twenty feet away within the Director's interpretation based upon the imminently threatened language already in the rule. Renee Cahoon seconded the motion. The motion passed with eleven votes (Shepard,