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Document No. 4897

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 30

Statutory Authority: 1976 Code Sections 48‑39‑10 et seq.

30‑1. Statement of Policy.

30‑14. Administrative Procedures.

**Synopsis**:

The Department of Health and Environmental Control (“Department”) is amending R.30‑1.D(43) and R.30‑14.E., F., and G. to incorporate state statutory changes. The Beachfront Management Reform Act, Act 173 of 2018 (“Act”), establishes the position of the jurisdictional baselines and setback lines for the 2018 establishment cycle. The purpose of the jurisdictional lines is to delineate the extent of the Department’s direct permitting authority for activities within the defined beaches and beach/dune system critical areas. Section 8 of the Act requires the Department to promulgate regulations in order to implement provisions of the Act, which includes regulations the Department will use to establish the jurisdictional lines and locate a primary oceanfront sand dune.

The Department convened a Beachfront Jurisdictional Line Stakeholder Workgroup in 2018 to provide input into this process. The amendments are based on final recommendations of the Workgroup and associated public engagement and input. The amendments provide clarity and standards to be utilized in the establishment of the state’s beachfront jurisdictional lines. The amendments also modify specific procedures related to appeals and movement of the jurisdictional lines to comply with Act 173 and Coastal Zone Critical Areas, Act 197 of 2016.

The Department had a Notice of Drafting published in the April 26, 2019, *South Carolina State Register*.

**Instructions:**

Amend Coastal Regulations 30-1, Statement of Policy, and 30-14, Administrative Procedures, pursuant to each individual instruction provided with the text below.

**Text:**

30‑1. Statement of Policy.

30‑14. Administrative Procedures.

Statutory Authority: S.C. Code Sections 48‑39‑10 et seq.

**Revise 30‑1.D(43), definition of “Primary Oceanfront Sand Dunes” to read:**

 (43) Primary Oceanfront Sand Dunes ‑ those dunes that constitute the front row of dunes adjacent to the Atlantic Ocean. For the purposes of establishing the jurisdictional baseline, the dune must have a minimum height of thirty‑six (36) inches, as measured vertically from the seaward toe to the crest of the dune. The dune must also form a nearly continuous dune ridge for 500 shore parallel feet and may exhibit minimal breaks such as those resulting from pedestrian or emergency vehicle access points. This dune typically exhibits the presence of stable, native vegetation, and is not scarped, eroded, or overtopped by the highest predicted astronomical tides. However, this dune may be inundated by storm surge which normally accompanies major coastal storm events.

**Revise R.30‑14.E to read:**

E. Procedures for Adopting Baselines and Setback Lines.

 (1) The Department must establish baselines and setback lines for all geographic areas where baselines and setback lines were established on or before January 31, 2012. The baselines and setback lines must be established anew during establishment cycles that are not less than every seven (7) years, but not more than every ten (10) years following a previous establishment cycle and must be based upon the best available data. Until the Department establishes new baselines and setback lines for a geographic area, the existing baselines and setback lines for the geographic area must be used.

 (2) In each new establishment cycle of the baselines and setback lines, the Department must:

 (a) stagger the establishment of the baselines and setback lines by geographic area and provide a tentative schedule of establishment for each geographic area on the Department’s website at least one hundred twenty (120) days prior to beginning a new establishment cycle;

 (b) publish proposed locations of baselines and setback lines for a geographic area on the Department’s website for public input at least one hundred twenty (120) days prior to establishing the baselines and setback lines for the geographic area;

 (c) on the date of the publication of the proposed locations of baselines and setback lines for a geographic area:

 (i) provide notice of the publication in a newspaper of general statewide circulation and a newspaper of local circulation in the geographic area; and

 (ii) make readily available to the public, including on the Department’s website, the information and raw data that the Department used to determine the locations of the proposed baselines and setback lines and explanations for these determinations;

 (d) hold at least one (1) public hearing in the county or municipality of a geographic area at least ninety (90) days prior to establishing the baselines and setback lines for the geographic area; and

 (e) accept and review data up to thirty (30) days prior to establishing baselines and setback lines for a geographic area to determine if a proposed baseline or setback line for the geographic area should be revised.

 (3) Upon the publication of the tentative schedule established under R.30‑14.E(2)(a), a municipality, county, agency, or organization undertaking a beach renourishment project may submit a request to the Department, within the one hundred twenty (120)‑day notice period, to revise the establishment date for the baseline and setback line in its geographical area. The Department may revise the establishment schedule if submitted information demonstrates the following:

 (a) the municipality, county, agency, or organization has an issued Department permit in effect for a beach renourishment project, or an issued Department coastal zone consistency certification associated with a federal beach renourishment project;

 (b) the request does not extend the establishment date outside of the establishment cycle timeframe set forth by R.30‑14.E(1);

 (c) the municipality, county, agency, or organization has encumbered funds to complete the beach renourishment project; and

 (d) the municipality, county, agency, or organization will start construction of the beach renourishment project within one (1) year of the initiation of the new establishment cycle.

 (4) If the construction of the qualifying beach renourishment project under R.30‑14.E(3)(d) has not started within one (1) year of the initiation of the new establishment cycle, the Department must establish the baselines and setback lines using the best available scientific and historical data within the required timeframes under R.30‑14.E(1).

**Delete the text of R.30‑14.F and reserve section to read:**

F. [Reserved]

**Delete the text of R.30‑14.G and reserve section to read:**

G. [Reserved]

**Fiscal Impact Statement:**

The Department estimates no additional cost incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of this amendment. The Department will use existing staff and resources to implement these amendments.

**Statement of Need and Reasonableness:**

The following presents an analysis of the factors listed in 1976 Code Sections 1‑23‑115(C)(1)‑(3) and (9)‑(11):

DESCRIPTION OF REGULATION: 30‑1, Statement of Policy, and 30‑14, Administrative Procedures.

Purpose: The Department is amending R.30‑1.D.(43) and R.30‑14.E., F., and G. to incorporate state statutory changes. The Beachfront Management Reform Act, Act 173 of 2018 (“Act”), requires the Department to establish, based on best available data, the position of baselines and setback lines during establishment cycles not less than every seven (7) years and not more than every ten (10) years following a previous establishment cycle. The purpose of these jurisdictional lines is to delineate the extent of the Department’s direct permitting authority for activities within the defined beaches and beach/dune system critical areas. Section 8 of the Act requires the Department to promulgate regulations for implementation, including provisions to locate a primary oceanfront sand dune. The amendments provide clarity and standards to be utilized in the establishment of the state’s beachfront jurisdictional lines. The amendments also modify specific procedures related to appeals and movement of the jurisdictional lines to comply with Act 173 and Coastal Zone Critical Areas, Act 197 of 2016.

Legal Authority: 1976 Code Sections 48‑39‑10 et seq.

Plan for Implementation: The DHEC Regulation Development Update (accessible at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/) provides a summary of and link to these proposed amendments. Additionally, printed copies are available for a fee from the Department’s Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendments and any associated information.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The Department is amending R.30‑1.D.(43) and R.30‑14.E., F., and G. to incorporate state statutory changes. The Department convened a Beachfront Jurisdictional Line Stakeholder Workgroup in 2018 to provide input into this process. The amendments are based on final recommendations of the Workgroup and associated public engagement and input. The amendments modify specific procedures related to appeals and movement of the jurisdictional lines to comply with Act 173 and Coastal Zone Critical Areas, Act 197 of 2016.

The amendments are reasonable and necessary to manage the long‑term health and sustainability of the state’s beaches and beach/dune systems while providing sufficient public input into Department decisions. The amendments also clarify existing regulations to better enable Department staff to more effectively implement the stated policies of the Act.

DETERMINATION OF COSTS AND BENEFITS:

The Department does not anticipate additional cost to the state resulting from administration of these proposed amendments. Benefits to the state include improved management of coastal resources through increased clarity of the regulations. The Department does not anticipate additional cost to the regulated community as a result of these amendments.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Implementation of these amendments seeks to benefit the environment by providing more clarity to the Department’s Coastal Division statutory directives to manage the state’s beaches and beach/dune critical areas for its citizens. These amendments refine the Department’s processes for establishing the state’s direct regulatory jurisdiction along the beach and within the beach/dune system. The amendments also provide more clarity to those seeking to utilize these resources.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There is no anticipated detrimental effect on the environment and/or public health if these amendments are not implemented beyond not benefiting from the amendments’ implementation. Implementation of these amendments seeks to benefit the environment by providing more clarity to the Department’s Coastal Division statutory directives to manage the state’s beaches and beach/dune critical areas for its citizens.

**Statement of Rationale:**

The Department is amending R.30‑1.D.(43) and R.30‑14.E., F., and G. to incorporate state statutory changes. The Beachfront Management Reform Act, Act 173 of 2018 (“Act”), requires the Department to establish, based on best available data, the position of baselines and setback lines during establishment cycles not less than every seven (7) years and not more than every ten (10) years following a previous establishment cycle. Section 8 of the Act requires the Department to promulgate regulations for implementation, including provisions to locate a primary oceanfront sand dune. The amendments provide clarity and standards to be utilized in the establishment of the state’s beachfront jurisdictional lines. The amendments also modify specific procedures related to appeals and movement of the jurisdictional lines to comply with Act 173 and Coastal Zone Critical Areas, Act 197 of 2016.