

Implementation and Standards Committee
June 22, 2006
City Hotel and Bistro, Greenville

Bob Emory, Chair

Fresh Pond Public Water Supply AEC Boundary (I&S-06-14)

Ted Tyndall presented a proposal to the Committee for staff to have the boundary of the Fresh Pond located between Kill Devil Hills surveyed on the ground during high water level conditions and overlain on aerial photographs to create a precise measurement line to ensure consistent application of the applicable develop setbacks. Interest was expressed that the surveyed line needed to be placed on the ground and marked with monuments. It was also suggested that staff contact the Division of Water Quality to obtain data regarding water level conditions in the area of the pond. Ray Sturza made a motion for staff to proceed as proposed. The motion was seconded and passed unanimously.

Structure Repair vs. Replacement Rule – Continued (I&S-06-15)

Roy Brownlow presented a draft of a proposed rule revising CRC rules NCAC 15A 07J .0210 Replacement of Existing Structures and NCAC 15A 07K .0209 Exemption/Accessory Uses/Maintenance Repair/Replacement.

Roy stated this version of the rule is not substantially different from the version presented to the Committee at the March meeting, with the majority of the changes being editorial and formatting in nature. Staff recommended that the Committee approve this draft of the revised rules and send them to public hearing.

There was much discussion among committee members pertaining to the methods listed in the draft from which DCM staff shall accept in determining the cost to repair or replace a structure. At the end of the discussion, it was agreed to revise the last sentence of draft 7J .0210(a)(2) to specify that staff may use any or all the methods listed.

Spencer Rogers made a motion to approve the revised rule changes as amended and send it to the full Commission with a recommendation to send it to Public Hearing. The motion was seconded by Lee Wynns and passed unanimously. Spencer then requested that staff send a copy of the rule to Phil Letzinger of the North Carolina Floodplain Administration.

Amendment to 15A NCAC 7H.0308 – Beach Nourishment (I&S-06-16)

Tancred Miller presented some proposed amendments to 7H.0308. The rule is primarily being amended to remove the existing sediment compatibility rule language so that the Commission

will not have two standards in the rules once the new sediment criteria rules take effect. Tancred asked the Committee to recommend the changes for public hearing in November, and emphasized that the existing language will not be removed until after the new rule has taken effect. The Committee voted unanimously to recommend the amendment for public hearing in November.

Update on EMC's Universal Stormwater Management Program (I&S-06-17)

Mike Lopazanski provided an update on the development of a Universal Stormwater Management Program (USMP) by the Environmental Management Commission and the Division of Water Quality. This update was provided as part of the Committee's continued discussion of a possible buffer rule exception for local governments implementing a stormwater ordinance.

Lopazanski advised that the USMP Rule has gone to three public hearings throughout the State and the public comment period closed on May 15, 2006. Consideration of the public comments has caused the EMC to consider a maximum impervious surface limit of 36% for development within 575 feet of shellfishing waters making the program the most stringent proposed for the coastal area. Lopazanski further advised that while this proposed change is a strengthening of the rule, the threshold for requiring the stormwater controls has been raised from 5,000 to 10,000 square feet of land disturbance.

Because there has been little preliminary interest in the program on the part of local governments in the CAMA counties, Lopazanski stated that DWQ is proposing to administer the USMP for local governments located in the coastal area. DWQ will issue permits and handle all the compliance and enforcement responsibilities in an effort to encourage more participation in USMP.

Lopazanski stated that DWQ is expecting adoption of the USMP by the EMC at their July 13th meeting and an anticipated effective date of September 1, 2006.

Lopazanski anticipates having a revised buffer rule exception which incorporates the revision to the USMP and the model stormwater ordinance under development by the UNC Institute of Government for consideration at the September meeting of the I&S Committee.

Sandbag Alignment and Height (I&S-06-18)

Jim Gregson presented a brief history of recent changes to the use standards for temporary erosion control structures (sandbags). Jim went on to describe six areas where sandbag structures have become very large, extending in some cases up to 1,500 linear feet. Two of these areas, the Village of Bald Head Island and Figure Eight Island, have received variances from the CRC to allow the six-foot height limit to be exceeded.

Jim explained that DCM Staff currently measures sandbag height from the beach elevation on the oceanward side of the sandbags to the peak of the top bag. Existing CRC rules allow existing sandbag structures to be repaired or replaced within their originally permitted dimensions for their permitted lifespan. Exemptions are often written to add additional bags when the original bags become damaged, sink, slide, or when the lower rows of bags become covered with sand. Enforcement complications arise when the lower bags become uncovered and the structure is now greater than six feet in height. Jim stated that Staff currently does not require the individual sandbags to be oriented parallel to the shoreline and does allow perpendicular return sections to extend along the sides of the structure being protected.

Based in part on concerns raised in a March 2006 CRAC field trip, staff requested guidance from the Committee on the Division's current method for measuring sandbag height and the policy on sandbag orientation and perpendicular return sections.

After a fairly lengthy discussion and a brief history on past I&S actions by Spencer Rogers, Spencer made a motion to recommend that staff simply measure the sandbag structures themselves and not relative to the adjacent beach elevation. Spencer also recommended that staff not deal with the issue of the parallel nature of the sandbags at the present time. The Committee voted unanimously to send this recommendation to the full Commission for concurrence.

Pier Permits and Easements – AG's Opinion

Jill Hickey gave a brief summary of her research on easements and riparian rights. She prefaced her comments that she was not presenting a formal Attorney General's Office Opinion on the subject, but was offering her best professional advice to the Committee. She summarized her research on the issue by stating that an easement is sufficient to convey riparian access rights. She spoke of the formal AG Opinion for the Town of Oriental that concluded the same. Jill recommended that staff look at the wording of the easements that grants the access, but emphasized that an easement is adequate to go forward with the permit request subject to standard processing procedures and regulations

Update on Estuarine Shoreline Stabilization Subcommittee and the Biological & Physical Processes Workgroup (I&S-06-19)

Bonnie Divito stated that the workgroup has met four times and has made great strides toward making recommendations to the Estuarine Shoreline Stabilization Subcommittee. The workgroup has established a set of estuarine shoreline types and have reviewed recommendations for shoreline stabilization methods for five of the eleven shoreline types. A report should be completed and presented to the I&S Committee in September.

The Estuarine Shoreline Stabilization Subcommittee met yesterday and received a similar update and discussed the current estuarine shoreline rules including the General Permit 07H.1100 and the 7H.0208(b)(7) Use Standards.