Agency Name: Coastal Council - Department of Health and Environmental Control

Statutory Authority: 48-39-10 et seq.

Document Number: 4995

Proposed in State Register Volume and Issue: 44/9

House Committee: Regulations and Administrative Procedures Committee

Senate Committee: Fish, Game and Forestry Committee

120 Day Review Expiration Date for Automatic Approval: 05/12/2021

Status: Pending

Subject: Statement of Policy; and Specific Project Standards for Tidelands and Coastal Waters

History: 4995

By Date Action Description Jt. Res. No. Expiration Date

- 09/25/2020 Proposed Reg Published in SR

- 01/12/2021 Received by Lt. Gov & Speaker 05/12/2021

H 01/12/2021 Referred to Committee

S 01/12/2021 Referred to Committee

S 02/24/2021 Resolution Introduced to Approve 606

Document No. 4995

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 30

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

30‑1. Statement of Policy.

30‑12. Specific Project Standards for Tidelands and Coastal Waters.

**Synopsis**:

Pursuant to the S.C. Coastal Zone Management Act, S.C. Code Sections 48‑39‑10 et seq., the Department of Health and Environmental Control (“Department”) amends R.30‑1 and R.30‑12 to provide a definition and add project standards for living shorelines. Coastal property owners and other stakeholders in South Carolina have expressed an increased interest in the use of living shorelines as an alternative to hardened erosion control structures within the estuarine environment. Coastal Division regulations currently do not provide guidance specific for living shoreline installations. The lack of a regulatory definition or specific project standards for living shorelines has resulted in longer permitting review times and uncertainties about project performance. New sections R.30‑1.D(31) and R.30‑12.Q allow for a more efficient authorization process by defining which projects qualify as a living shoreline and establishing specific standards for living shoreline installations. The new sections also help ensure a project’s design will accomplish its intended goals.

The Department developed the new sections using scientific data and monitoring results from existing living shoreline installations in South Carolina and with input from state, local, and federal agencies, the Living Shoreline Working Group, and additional stakeholder engagement.

The Department had a Notice of Drafting published in the April 24, 2020, *South Carolina State Register*.

**Instructions:**

Amend R.30-1, *Statement of Policy*, and R.30-12, *Specific Project Standards for Tidelands and Coastal Waters*, pursuant to each individual instruction provided with the text below.

~~Indicates Matter Stricken~~

Indicates New Matter

**Text:**

30‑1. Statement of Policy.

30‑12. Specific Project Standards for Tidelands and Coastal Waters.

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

**Add New 30‑1.D(31), definition of “Living Shoreline” to read as follows and renumber remaining definitions:**

(31) Living Shoreline ‑ A shoreline stabilization approach utilized in intertidal wetland environments that maintains, restores, and/or enhances natural estuarine processes through the strategic placement of native vegetation and/or use of green infrastructure as described in 30‑12.Q. Living shorelines promote wetland resiliency and water quality, and enhance the diverse intertidal habitat.

(3~~1~~2) Major Development Activity ‑ any construction activity that is not a Minor Development Activity.

(3~~2~~3) Marinas ‑ a marina is any of the following:

(a) locked harbor facility;

(b) any facility which provides fueling, pump‑out, maintenance or repair services (regardless of length);

(c) any facility which has effective docking space of greater than 250 linear feet or provides moorage for more than 10 boats;

(d) any water area with a structure which is used for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than ten boats, such as a mooring field; or

(e) a dry stack facility.

(3~~3~~4) Master Plan ‑ a document or a map prepared by a developer or a city as a policy guide to decisions about the physical development of the project or community.

(3~~4~~5) Minor Development Activity ‑ the construction, maintenance, repair or alteration of any private pier or erosion control structure, the construction of which does not involve dredging.

(3~~5~~6) Nonwater‑dependent ‑ a facility which cannot demonstrate that dependence on, use of, or access to coastal waters is essential to the functioning of its primary activity.

(3~~6~~7) Normal Maintenance and Repair ‑ work performed on any structure within the critical area as part of a routine and ongoing program to maintain the integrity of the structure provided that the structure is still generally intact and functional in its present condition and the work only extends to the original dimensions of the structure. See R.30‑5(D).

(3~~7~~8) OCRM ‑ the South Carolina Department of Health and Environmental Control’s Office of Ocean and Coastal Resource Management.

(3~~8~~9) Offshore Breakwater ‑ a structure which is designed to protect an area from wave action, is generally built parallel to the shore, may or may not be submerged, and may be built singly or in series. Breakwaters may interfere with natural wave action and wave induced currents.

(~~39~~40) Party ‑ each person or agency named or admitted as a party or properly seeking and entitled to be admitted as a party, including a license or permit applicant.

(4~~0~~1) Planned Development ‑ a development plan which has received local approval for a specified number of dwelling and other units. The siting and size of structures and amenities are specified or restricted within the approval. This term specifically references multi‑family or commercial projects not otherwise referenced by the terms master plan or planned unit development.

(4~~1~~2) Planned Unit Development ‑ a residential, commercial, or industrial development, or all three, designed as a unit and approved in writing by local government.

(4~~2~~3) Pool ‑ a structure designed and used for swimming and wading.

(4~~3~~4) 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.

(4~~4~~5) Public Interest ‑ As used within these Rules and Regulations, public interest refers to the beneficial and adverse impacts and effects of a project upon members of the general public, especially residents of South Carolina who are not the owners and/or developers of the project. To the extent that, in the opinion of the Department, the value of such public benefits is greater than the public costs embodied in adverse environmental, economic and fiscal effects, a proposed project may be credited with net public benefits.

(4~~5~~6) Setback Area ‑ the area located between the setback line and the baseline.

(4~~6~~7) Setback Line ‑ the line landward of the baseline that is established at a distance which is forty times the average annual erosion rate as determined by historical and other scientific means and adopted by the Department in the State Comprehensive Beach Management Plan. However, all setback lines shall be established no less than twenty feet landward of the baseline, even in cases where the shoreline has been stable or has experienced net accretion over the past forty years.

(4~~7~~8) Significant Dune ‑ A dune located completely seaward of the setback line, which because of its size and/or location is necessary to protect the beach/dune system of which it is a part.

(4~~8~~9) Special Geographic Circumstances ‑ physical characteristics and land uses of surrounding uplands and waters may warrant additional consideration toward dock sizes. Special Geographic Circumstances identified by OCRM include: tidal ranges of greater than 6 feet; lots with greater than 500 feet of water frontage; and no potential access via dockage from the opposite side of the creek. At the discretion of Department staff, one or more of these circumstances may be applied to dock applications, which may allow up to an additional fifty percent (50%) to what is allowed in 30‑12.A(2)(c).

(~~49~~50) Standard Erosion Zone ‑ a segment of shoreline which is subject to essentially the same set of coastal processes, has a fairly constant range of profiles and sediment characteristics, and is not directly influenced by tidal inlets or associated inlet shoals.

(5~~0~~1) Tidelands ‑ all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. Coastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Provided, however, nothing in this definition shall apply to wetland areas that are not an integral part of an estuarine system. Further, until such time as the exact geographic extent of this definition can be scientifically determined, the Department shall have the authority to designate its approximate geographic extent.

(5~~1~~2) Transmittal Form ‑ the official form prepared by the agency with subject matter jurisdiction that is filed with the division notifying it of a request by any person for a contested case hearing.

(5~~2~~3) Water‑dependent ‑ a facility which can demonstrate that dependence on, use of, or access to coastal waters is essential to the functioning of its primary activity.

(5~~3~~4) Waterfront property ‑ For purposes of these regulations, waterfront property will generally be defined as upland sites where a straight‑line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000’ of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.

**Add New 30‑12.Q to read:**

Q. Living Shorelines: Living shorelines, as defined in 30‑1.D, are encouraged as an alternative to traditional hardened erosion control structures in estuarine environments because they provide an environmental benefit and reduce the environmental impacts associated with hardened structures. Living shoreline methods involve planting of native vegetation and/or the installation of other green infrastructure. Green infrastructure includes softer approaches to protecting estuarine shorelines and consists of materials that promote growth of native biological components and maintain continuity of the natural land‑water interface. Environmental conditions of a site will be considered in the evaluation of living shoreline applications including whether the type of living shoreline has demonstrated success. Demonstrated success can include an increase in the presence of native vegetation and/or oysters, and an increase in elevation on the landward side of the living shoreline installation.

The following standards are applicable for all living shoreline installations:

(1) Living shorelines are limited to waterfront parcels or lots as defined in R.30‑1.D.

(2) Living shorelines must be constructed within extended property boundaries of the permittee for individual projects. One application may be submitted for a living shoreline installation that involves more than one adjoining waterfront parcel. The Department may consider an alternative alignment on a site‑by‑site basis if site‑specific characteristics warrant such an alignment.

(3) Living shorelines must be shore parallel and aligned to conform to the natural contours of the shoreline to the maximum extent feasible.

(4) Living shorelines must not be installed in creeks less than twenty (20) feet in width as measured from marsh vegetation on each side unless special geographic circumstances exist. In all cases, the Department will consider any navigational concerns when evaluating the siting of living shoreline projects.

(5) All living shoreline applications must demonstrate that the installations are designed to promote growth of native biological components. Only native vegetation may be used if the site is planted. Living shoreline installations must be composed of Department approved materials. Approval of materials by the Department may require the applicant to submit a certified letter from the supplier of the source material.

(6) The size and extent of the living shoreline must be limited to that which is reasonable for the intended purpose. All living shoreline applications must demonstrate that the living shoreline is designed and constructed in a manner that:

(a) does not restrict the reasonable navigation or public use of state lands and waters;

(b) has minimal effect on natural water movement and in no case prohibits water flow;

(c) does not prevent movement of aquatic organisms between the waterbody and the shore;

(d) maintains, restores, and/or enhances shoreline ecological processes;

(e) maintains continuity of the natural land‑water interface; and

(f) prevents the installation from being displaced which can result in marine debris.

(7) Filling or excavation of vegetated tidelands for the construction of a living shoreline is prohibited. Minimal impacts to non‑vegetated tidelands may be permitted to achieve a successful installation only if no feasible alternative exists. Projects with proposed non‑vegetated tideland impacts must provide sufficient evidence that no feasible alternative exists and must demonstrate avoidance and minimization of impacts. Construction of living shorelines must not disturb established, live shellfish beds. Living shoreline installations must not be constructed in a manner that results in the creation of upland.

(8) Living shorelines must be maintained by the permittee such that the installation is generally intact and functional. The Department may require the permittee to monitor the living shoreline subject to the critical area permit to determine whether the installation is functioning as intended, results in marine debris, or impedes navigation or public use of state lands and waters.

(9) The Department may require remediation or removal of a living shoreline for reasons that include, but are not limited to:

(a) the installation is no longer generally intact and functional;

(b) the installation has resulted in marine debris;

(c) the installation impedes navigation or public use of state lands and waters; or

(d) the installation is not accomplishing the intended purpose of the living shoreline.

(10) If a living shoreline is destroyed by natural events, the installation may be rebuilt to its previously permitted configuration so long as reconstruction is completed within one (1) year of the date of the event unless there are extenuating circumstances justifying more time.

**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 these amendments. 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 30‑12, Specific Project Standards for Tidelands and Coastal Waters.

Purpose: These amendments are based on interest from coastal property owners and other stakeholders in South Carolina who have expressed an increased interest in the use of living shorelines as an alternative to hardened erosion control structures within the estuarine environment. Coastal Division regulations currently do not provide guidance specific for living shoreline installations. The lack of a regulatory definition or specific project standards for living shorelines has resulted in longer permitting review times and uncertainties about project performance. The amendments allow for a more efficient authorization process by defining which projects qualify as a living shoreline and establishing specific standards for living shoreline installations. The new sections also help ensure a project’s design will accomplish its intended goals.

Due to this citizen interest, the Department commenced a Living Shoreline initiative and worked in partnership with the South Carolina Department of Natural Resources and South Carolina’s two National Estuarine Research Reserves to evaluate the performance of different living shoreline methods over time and under a range of environmental conditions. The Department developed the amendments using scientific data and monitoring results from existing living shoreline installations in South Carolina and with input from state, local, and federal agencies, the Living Shoreline Working Group, and additional stakeholder engagement.

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 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 adds new sections R.30‑1.D(31) and R.30‑12.Q to provide a definition and add project standards for living shorelines. Coastal property owners and other stakeholders in South Carolina have expressed an increased interest in the use of living shorelines as an alternative to hardened erosion control structures within the estuarine environment. Coastal Division regulations currently do not provide guidance specific for living shoreline installations. The lack of a regulatory definition or specific project standards for living shorelines has resulted in longer permitting review times and uncertainties about project performance.

The amendments are reasonable and necessary to manage the long‑term health and sustainability of the state’s tidelands critical area. The amendments allow for a more efficient authorization process by defining which projects qualify as a living shoreline and establishing specific standards for living shoreline installations. By providing living shorelines as an alternative method of estuarine shoreline stabilization, additional benefits to water quality, tidal wetland resiliency, and oyster stock may also be realized.

DETERMINATION OF COSTS AND BENEFITS:

The Department does not anticipate additional cost to the state resulting from administration of these amendments. Benefits to the state include improved management of coastal resources by providing standards for alternative natural shoreline stabilization approaches. The amendments allow for a more efficient authorization process for the state and the regulated public. 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 the amendments benefit the environment by providing more clarity to the Department’s Coastal Division statutory directives to manage the state’s tideland critical areas. Living shorelines benefit the state’s tideland ecosystems by maintaining, restoring, or enhancing natural estuarine processes that improve water quality, reduce shoreline erosion, protect property, and enhance aquatic habitats.

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 associated with these amendments. Not implementing these amendments will continue to result in longer permitting review times for proposed living shoreline installations and continued uncertainties about living shoreline project performance. The amendments allow for a more efficient authorization process to encourage the use of living shorelines as an alternative to traditional hardened erosion control structures.

**Statement of Rationale:**

Here below is the Statement of Rationale pursuant to S.C. Code Section 1‑23‑110(h):

Coastal property owners and other stakeholders in South Carolina have expressed an increased interest in the use of living shorelines as an alternative to hardened erosion control structures within the estuarine environment. Coastal Division regulations currently do not provide guidance specific for living shoreline installations. The lack of a regulatory definition or specific project standards for living shorelines has resulted in longer permitting review times and uncertainties about project performance.

The amendments allow for a more efficient authorization process by defining which projects qualify as a living shoreline and establishing specific standards for living shoreline installations. This helps ensure a project’s design will accomplish its intended goals. The Department developed the amendments using scientific data and monitoring results from existing living shoreline installations in South Carolina and with input from state, local, and federal agencies, the Living Shoreline Working Group, and additional stakeholder engagement.