

**Title 48 - Environmental Protection and Conservation
August 2006**

CHAPTER 39.
COASTAL TIDELANDS AND WETLANDS

SECTION 48-39-10. Definitions.

As used in this chapter:

(A) "Applicant" means any person who files an application for a permit under the provisions of this chapter.

(B) "Coastal zone" means all coastal waters and submerged lands seaward to the State's jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas. These counties are Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper and Georgetown.

(C) "Division" means the Coastal Division of the South Carolina Department of Health and Environmental Control.

(D) "CDPS" means Coastal Division Permitting Staff.

(E) "Saline waters" means those waters which contain a measurable quantity of sea water, at least one part chloride ion per thousand.

(F) "Coastal waters" means the navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high-water mark. Provided, however, that the department may designate boundaries which approximate the mean extent of saline waters until such time as the mean extent of saline waters can be determined scientifically.

(G) "Tidelands" means 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.

(H) "Beaches" means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.

(I) "Primary ocean front sand dunes" means those dunes which constitute the front row of dunes adjacent to the Atlantic Ocean.

(J) "Critical area" means any of the following:

(1) coastal waters;

(2) tidelands;

(3) beaches;

(4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280.

(K) "Person" means any individual, organization, association, partnership, business trust, estate trust, corporation, public or municipal corporation, county, local government unit, public or private authority and shall include the State of South Carolina, its political subdivisions and all its departments, boards, bureaus or other agencies, unless specifically exempted by this chapter.

(L) "Estuarine sanctuary" means a research area designated as an estuarine sanctuary by the Secretary of Commerce.

(M) "Marine sanctuary" means any water and wetland areas designated as a marine sanctuary by the Secretary of Commerce.

(N) "Minor development activities" means the construction, maintenance, repair or alteration of any private piers or erosion control structure, the construction of which does not involve dredge activities.

(O) "Dredging" means the removal or displacement by any means of soil, sand, gravel, shells or other material, whether of intrinsic value or not, from any critical area.

(P) "Filling" means either the displacement of saline waters by the depositing into critical areas of soil, sand, gravel, shells or other material or the artificial alteration of water levels or water currents by physical structure, drainage ditches or otherwise.

(Q) "Submerged lands" means those river, creek and ocean bottoms lying below mean low-water mark.

(R) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of specific gravity, that are produced in liquid form by ordinary production methods, but does not include liquid hydrocarbons that were originally in a gaseous phase in the reservoir.

(S) "Gas" means all natural gas and all other fluid hydrocarbons not hereinabove defined as oil, including condensate because it originally was in the gaseous phase in the reservoir.

(T) "Fuel" means gas and oil.

(U) "Emergency" means any unusual incident resulting from natural or unnatural causes which endanger the health, safety or resources of the residents of the State, including damages or erosion to any beach or shore resulting from a hurricane, storm or other such violent disturbance.

(V) "Department" means the South Carolina Department of Health and Environmental Control.

(W) "Board" means the board of the department.

SECTION 48-39-20. Legislative declaration of findings.

The General Assembly finds that:

(A) The coastal zone is rich in a variety of natural, commercial, recreational and industrial resources of immediate and potential value to the present and future well-being of the State.

(B) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal and harvesting of fish, shellfish and other living marine resources have resulted in the decline or loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use and shoreline erosion.

(C) A variety of federal agencies presently operate land use controls and permit systems in the coastal zone. South Carolina can only regain control of the regulation of its critical areas by developing its own management program. The key to accomplishing this is to encourage the state and local governments to exercise their full authority over the lands and waters in the coastal zone.

(D) The coastal zone and the fish, shellfish, other living marine resources and wildlife therein, may be ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

(E) Important ecological, cultural, natural, geological and scenic characteristics, industrial, economic and historical values in the coastal zone are being irretrievably damaged or lost by ill-planned development that threatens to destroy these values.

(F) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone while balancing economic interests, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

SECTION 48-39-30. Legislative declaration of state policy.

(A) The General Assembly declares the basic state policy in the implementation of this chapter is to protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone and of all the people of the State.

(B) Specific state policies to be followed in the implementation of this chapter are:

(1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program;

(4) To formulate a comprehensive beach erosion and protection policy including the protection of necessary sand dunes.

(5) To encourage and assist state agencies, counties, municipalities and regional agencies to exercise their responsibilities and powers in the coastal zone through the development and

implementation of comprehensive programs to achieve wise use of coastal resources giving full consideration to ecological, cultural and historic values as well as to the needs for economic and social development and resources conservation.

(C) In the implementation of the chapter, no government agency shall adopt a rule or regulation or issue any order that is unduly restrictive so as to constitute a taking of property without the payment of just compensation in violation of the Constitution of this State or of the United States.

(D) Critical areas shall be used to provide the combination of uses which will insure the maximum benefit to the people, but not necessarily a combination of uses which will generate measurable maximum dollar benefits. As such, the use of a critical area for one or a combination of like uses to the exclusion of some or all other uses shall be consistent with the purposes of this chapter.

(E) It shall be the policy of the State to coordinate the coastal planning and management program effort with other coastal states and organizations of coastal states.

SECTION 48-39-35. Coastal Division created.

The Coastal Division of the Department of Health and Environmental Control is created July 1, 1994.

SECTION 48-39-40. Creation of Coastal Zone Management Appellate Panel; members; terms of office.

(A) On July 1, 1994, there is created the Coastal Zone Management Appellate Panel which consists of fourteen members, which shall act as an advisory council to the Department of Health and Environmental Control. The members of the panel shall be constituted as follows: eight members, one from each coastal zone county, to be elected by a majority vote of the members of the House of Representatives and a majority vote of the Senate members representing the county from three nominees submitted by the governing body of each coastal zone county, each House or Senate member to have one vote; six members, one from each of the congressional districts of the State, to be elected by a majority vote of the members of the House of Representatives and the Senate representing the counties in that district, each House or Senate member to have one vote. The panel shall elect a chairman, vice-chairman, and other officers it considers necessary.

(B) Terms of all members are for four years and until successors are appointed and qualify. Members from congressional districts serve terms of two years only as determined by lot at the first meeting of the panel. Vacancies must be filled in the original manner of selection for the remainder of the unexpired term.

(C) On July 1, 1994, members of the South Carolina Coastal Council, become members of the South Carolina Coastal Zone Appellate Panel and continue to serve until their terms expire. Upon the expiration of their terms, members must be selected as provided within this section.

SECTION 48-39-50. Powers and duties of Department.

The South Carolina Department of Health and Environmental Control shall have the following powers and duties:

(A) To employ the CDPS consisting of, but not limited to, the following professional members: An administrator and other staff members to include those having expertise in biology, civil and hydrological engineering, planning, environmental engineering and environmental law.

- (B) To apply for, accept and expend financial assistance from public and private sources in support of activities undertaken pursuant to this chapter and the Federal Coastal zone Management Act of 1972.
- (C) To undertake the related programs necessary to develop and recommend to the Governor and the General Assembly a comprehensive program designed to promote the policies set forth in this chapter.
- (D) To hold public hearings and related community forums and afford participation in the development of management programs to all interested citizens, local governments and relevant state and federal agencies, port authorities and other interested parties.
- (E) To promulgate necessary rules and regulations to carry out the provisions of this chapter.
- (F) To administer the provisions of this chapter and all rules, regulations and orders promulgated under it.
- (G) To examine, modify, approve or deny applications for permits for activities covered by the provisions of this chapter.
- (H) To revoke and suspend permits of persons who fail or refuse to carry out or comply with the terms and conditions of the permit.
- (I) To enforce the provisions of this chapter and all rules and regulations promulgated by the department and institute or cause to be instituted in courts of competent jurisdiction of legal proceedings to compel compliance with the provisions of this chapter.
- (J) To manage estuarine and marine sanctuaries and regulate all activities therein, including the regulation of the use of the coastal waters located within the boundary of such sanctuary.
- (K) To establish, control and administer pipeline corridors and locations of pipelines used for the transportation of any fuel on or in the critical areas.
- (L) To direct and coordinate the beach and coastal shore erosion control activities among the various state and local governments.
- (M) To implement the state policies declared by this chapter.
- (N) To encourage and promote the cooperation and assistance of state agencies, coastal regional councils of government, local governments, federal agencies and other interested parties.
- (O) To exercise all incidental powers necessary to carry out the provisions of this chapter.
- (P) To coordinate the efforts of all public and private agencies and organizations engaged in the making of tidal surveys of the coastal zone of this State with the object of avoiding unnecessary duplication and overlapping.
- (Q) To serve as a coordinating state agency for any program of tidal surveying conducted by the federal government.
- (R) To develop and enforce uniform specifications and regulations for tidal surveying.

(S) To monitor, in coordination with the South Carolina Department of Natural Resources, the waters of the State for oil spills. If such Department observes an oil spill in such waters it shall immediately report such spill to the South Carolina Department of Health and Environmental Control, the United States Coast Guard and Environmental Protection Agency. This in no way negates the responsibility of the spiller to report a spill.

(T) To direct, as the designated state agency to provide liaison to the regional response team, pursuant to Section 1510.23 of the National Contingency Plan, state supervised removal operations of oil discharged into the waters within the territorial jurisdiction of this State and entering such waters after being discharged elsewhere within the State, and to seek reimbursement from the National Contingency Fund for removal operations cost expended by it and all other agencies and political subdivisions including county, municipal and regional governmental entities in removing such oil as provided for in Section 311(C)(2) of the Federal Water Pollution Control Act.

(U) To act as advocate, where the department deems such action appropriate, on behalf of any person who is granted a permit for a specific development by the department but is denied a permit by a federal agency for the same specific development.

(V) To delegate any of its powers and duties to the CDPS.

SECTION 48-39-60. Department of Natural Resources to provide additional personnel.

When requested by the department, the South Carolina Department of Natural Resources shall provide additional staff for the department, including any additional enforcement officers, necessary to administer the provisions of this chapter and for which funds are available.

SECTION 48-39-70. Cooperation of other agencies and commissions; administration of oaths; subpoenas.

(A) All other state and local agencies and commissions shall cooperate with the department in the administration of enforcement of this chapter. All agencies currently exercising regulatory authority in the coastal zone shall administer such authority in accordance with the provisions of this chapter and rules and regulations promulgated thereunder.

(B) The department, in the discharge of its duties may administer oaths and affirmations, take depositions and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary in connection with the work of the department. The only exception shall be, that information considered proprietary by the applicant. If in the opinion of the department a proper decision cannot be rendered without the submission of such proprietary information, the department shall be empowered to execute an agreement on confidentiality with the applicant and such information shall not be made a part of the public record of current or future proceedings.

(C) In case the contumacy by any person or refusal to obey a subpoena issued to any person, any circuit court of this State or circuit judge thereof within the jurisdiction of which such person guilty of contumacy or refusal to obey is found, resides or transacts business, upon application by the department, may issue to such person an order requiring him to appear before the department to produce evidence if so ordered or give testimony touching the matter under investigation. Any failure to obey an order of the court may be punished as a contempt hereof. Subpoenas shall be issued in the name of the department and signed by the department director. Subpoenas shall be issued to such persons as the department may designate.

SECTION 48-39-80. Development of coastal management program.

The department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program in accordance with the provisions of this chapter and any rules and regulations promulgated under this chapter. In developing the program the department shall:

- (A) Provide a regulatory system which the department shall use in providing for the orderly and beneficial use of the critical areas.
- (B) In devising the management program the department shall consider all lands and waters in the coastal zone for planning purposes. In addition, the department shall:
 - (1) Identify present land uses and coastal resources.
 - (2) Evaluate these resources in terms of their quality, quantity and capability for use both now and in the future.
 - (3) Determine the present and potential uses and the present and potential conflicts in uses of each coastal resource.
 - (4) Inventory and designate areas of critical state concern within the coastal zone, such as port areas, significant natural and environmental, industrial and recreational areas.
 - (5) Establish broad guidelines on priority of uses in critical areas.
 - (6) Provide for adequate consideration of the local, regional, state and national interest involved in the siting of facilities for the development, generation, transmission and distribution of energy, adequate transportation facilities and other public services necessary to meet requirements which are other than local in nature.
 - (7) Provide for consideration of whether a proposed activity of an applicant for a federal license or permit complies with the State's coastal zone program and for the issuance of notice to any concerned federal agency as to whether the State concurs with or objects to the proposed activity.
 - (8) Provide for a review process of the management plan and alterations thereof that involves local, regional, state and federal agencies.
 - (9) Conduct other studies and surveys as may be required, including the beach erosion control policy as outlined in this chapter.
 - (10) Devise a method by which the permitting process shall be streamlined and simplified so as to avoid duplication.
 - (11) Develop a system whereby the department shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan.
- (C) Provide for a review process of the management program and alterations that involve interested citizens as well as local, regional, state and federal agencies.
- (D) Consider the planning and review of existing water quality standards and classifications in the coastal zone.

(E) Provide consideration for nature-related uses of critical areas, such as aquaculture, mariculture, waterfowl and wading bird management, game and nongame habitat protection projects and endangered flora and fauna.

SECTION 48-39-85. "Adopt-a-Beach" program.

(A) In order to promote safe and clean litter-free beaches, the department shall develop a program to be known as "Adopt-A-Beach", whereby an industry or a private civic organization may adopt one mile, or other feasible distance, of South Carolina beach for the sole purpose of controlling litter along that section of beach.

(B) Included in the responsibilities of any industry or private civic organization which chooses to participate in the program shall be the following:

(1) development of a functional plan to influence and encourage the public to improve the appearance of the adopted section of beach;

(2) a general cleanup of the area at least twice a year; and

(3) assistance to the department in securing media coverage for the program.

SECTION 48-39-90. Public hearings on management plan.

(A) The department, on thirty days' notice, shall hold statewide public hearings on the proposed coastal zone management plan to obtain the views of all interested parties, particularly all interested citizens, agencies, local governments, regional organizations and port authorities.

(B) All department documents associated with such hearings shall be conveniently available to the public for review and study at least thirty days prior to a hearing. A report on each hearing shall be prepared and made available to the public within forty-five days of such hearing.

(C) After sufficient hearings and upon consideration of the views of interested parties the department shall propose a final management plan for the coastal zone to the Governor and the General Assembly.

(D) Upon review and approval of the proposed management plan by the Governor and General Assembly, the proposed plan shall become the final management plan for the State's coastal zone.

(E) Any change in or amendment to the final management plan shall be implemented by following the procedures established in subsections (A), (B), (C) and (D) of this section and upon the review and approval of the Governor and the General Assembly.

SECTION 48-39-100. Plan developed in cooperation with local governments.

(A) The management program specified in Section 48-39-90 shall be developed in complete cooperation with affected local governments in the coastal zone. This cooperation shall include, but not be limited to:

(1) Involvement of local governments or their designees in the management program.

(2) Provision of technical assistance and grants to aid local governments in carrying out their responsibilities under this chapter.

(3) Dissemination of improved informational data on coastal resources to local and regional governmental units.

(4) Recommendations to local and regional governmental units as to needed modifications or alterations in local ordinances that become apparent as a result of the generation of improved and more comprehensive information.

(B) Any city or county that is currently enforcing a zoning ordinance, subdivision regulation or building code, a part of which applies to critical areas, shall submit the elements of such ordinances and regulations applying to critical areas to the department for review. The department shall evaluate such ordinances and plans to determine that they meet the provisions of this chapter and rules and regulations promulgated hereunder. Upon determination and approval by the department, such ordinances and regulations shall be adopted by the department, followed by the department in meeting its permit responsibilities under this chapter and integrated into the Department's Coastal Management Program. Any change or modification in the elements of approved zoning ordinances, subdivision regulations or building codes applying to critical areas shall be disapproved by the department if it is not in compliance with the provisions of this chapter and rules and regulations promulgated hereunder.

(C) Any city or county that is not currently enforcing ordinances or regulations on the critical areas within its jurisdiction at its option may elect to develop a management program for such critical areas by notifying the department of its intent within one hundred and eighty days following the twenty-fourth day of May, 1977. Such proposed ordinances and regulations applying to critical areas shall be subject to the process specified in Section 48-39-100(B).

(D) Any county or city may delegate some or all of its responsibilities in developing a coastal management program for critical areas under its jurisdiction to the regional council of government of which it is a part, provided the county or city has notified the department in writing at least thirty days prior to the date on which such action is to be taken.

SECTION 48-39-110. Submission of plan by State Ports Authority.

The South Carolina State Ports Authority shall prepare and submit to the department a management plan for port and harbor facilities and navigation channels. Upon approval by the department of such management plan it shall become part of the comprehensive coastal management program developed by the department. The South Carolina State Ports Authority shall include in the management plan a designation of the geographical area appropriate for use by public and private port and harbor facilities and military and naval facilities and submit this to the department for approval.

SECTION 48-39-120. Development of beach erosion control policy; issuance of permits for erosion control structures; removal of structures; limitation on development of property.

(A) The department shall develop and institute a comprehensive beach erosion control policy that identifies critical erosion areas, evaluates the benefits and costs of erosion control structures funded by the State, considers the dynamic littoral and offshore drift systems, sand dunes and like items.

(B) The department for and on behalf of the State may issue permits for erosion control structures following the provisions of this section and Sections 48-39-140 and 48-39-150, on or upon the tidelands and coastal waters of this State as it may deem most advantageous. Provided, however, that no property rebuilt or accreted as a result of natural forces or as a result of a permitted structure shall exceed the original property line or boundary. Provided, further, that no person or governmental agency may develop ocean front property accreted by natural forces or as the result of permitted or nonpermitted structures beyond the mean high

water mark as it existed at the time the ocean front property was initially developed or subdivided, and such property shall remain the property of the State held in trust for the people of the State.

(C) The department shall have the authority to remove all erosion control structures which have an adverse effect on the public interest.

(D) The department is authorized for and in behalf of the State to accept such federal monies for beach or shore erosion control in areas to which the public has full and complete access as are available and to sign all necessary agreements and to do and perform all necessary acts in connection therewith to effectuate the intent and purposes of such federal aid.

(E) If a beach or shore erosion emergency is declared by the department, the State, acting through the department, may spend whatever state funds are available to alleviate beach or shore erosion in areas to which the public has full and complete access, including any funds which may be specifically set aside for such purposes.

(F) The department, for and on behalf of the State, may issue permits not otherwise provided by state law, for erosion and water drainage structure in or upon the tidelands, submerged lands and waters of this State below the mean high-water mark as it may deem most advantageous to the State for the purpose of promoting the public health, safety and welfare, the protection of public and private property from beach and shore destruction and the continued use of tidelands, submerged lands and waters for public purposes.

SECTION 48-39-130. Permits required to utilize critical areas.

(A) Ninety days after July 1, 1977, no person shall utilize a critical area for a use other than the use the critical area was devoted to on such date unless he has first obtained a permit from the department.

(B) Within sixty days of July 1, 1977, the department shall publish and make available the interim rules and regulations it will follow in evaluating permit applications. These interim rules and regulations shall be used in evaluating and granting or denying all permit applications until such time as the final rules and regulations are adopted in accordance with this section and Chapter 23 of Title 1. Within one hundred and twenty days of July 1, 1977 the department shall publish and make available to local and regional governments and interested citizens for review and comment a draft of the final rules and regulations it will follow in evaluating permit applications. Sixty days after making such guidelines available the department shall hold a public hearing affording all interested persons an opportunity to comment on such guidelines. Following the public hearing the department, pursuant to the Administrative Procedures Act, shall in ninety days publish final rules and regulations. Provided, however, the interim rules and regulations shall not be subject to the provisions of Chapter 23 of Title 1.

(C) Ninety days after July 1, 1977 no person shall fill, remove, dredge, drain or erect any structure on or in any way alter any critical area without first obtaining a permit from the department. Provided, however, that a person who has legally commenced a use such as those evidenced by a state permit, as issued by the Budget and Control Board, or a project loan approved by the rural electrification administration or a local building permit or has received a United States Corps of Engineers or Coast Guard permit, where applicable, may continue such use without obtaining a permit. Any person may request the department to review any project or activity to determine if he is exempt under this section from the provisions of this chapter. The department shall make such determinations within forty-five days from the receipt of any such request.

(D) It shall not be necessary to apply for a permit for the following activities:

(1) The accomplishment of emergency orders of an appointed official of a county or municipality or of the State, acting to protect the public health and safety, upon notification to the department. However, with regard to the beach/dune critical area, only the use of sandbags, sandscraping, or renourishment, or a combination of them, in accordance with guidelines provided by the department is allowed pursuant to this item.

(2) Hunting, erecting duckblinds, fishing, shellfishing and trapping when and where otherwise permitted by law; the conservation, repletion and research activities of state agencies and educational institutions or boating or other recreation provided that such activities cause no material harm to the flora, fauna, physical or aesthetic resources of the area.

(3) The discharge of treated effluent as permitted by law; provided, however, that the department shall have the authority to review and comment on all proposed permits that would affect critical areas.

(4) Dredge and fill performed by the United States Corps of Engineers for the maintenance of the harbor channels and the collection and disposal of the materials so dredged; provided, however, that the department shall have authority to review and certify all such proposed dredge and fill activities.

(5) Construction of walkways over sand dunes in accordance with regulations promulgated by the department.

(6) Emergency repairs to an existing bank, dike, fishing pier, or structure, other than oceanfront erosion control structures or devices, which has been erected in accordance with federal and state laws or provided for by general law or acts passed by the General Assembly, if notice is given in writing to the department within seventy-two hours from the onset of the needed repairs.

(7) Maintenance and repair of drainage and sewer facilities constructed in accordance with federal or state laws and normal maintenance and repair of any utility or railroad.

(8) Normal maintenance or repair to any pier or walkway provided that such maintenance or repair not involve dredge or fill.

(9) Construction or maintenance of a major utility facility where the utility has obtained a certificate for such facility under 'The Utility Facility Siting and Environmental Protection Act', Chapter 33 of Title 58 of the 1976 Code. Provided, however, that the South Carolina Public Service Commission shall make the department a party to certification proceedings for utility facilities within the coastal zone.

SECTION 48-39-140. Submission of development plans; application for permits.

(A) Any person who wishes may submit development plans to the department for preliminary review. If a permit is necessary, the department will make every effort to assist the applicant in expediting the permit application.

(B) Each application for a permit shall be filed with the department and shall include:

(1) Name and address of the applicant.

(2) A plan or drawing showing the applicant's proposal and the manner or method by which the proposal shall be accomplished.

(3) A plat of the area in which the proposed work will take place.

(4) A copy of the deed, lease or other instrument under which the applicant claims title, possession or permission from the owner of the property, to carry out the proposal.

(5) A list of all adjoining landowners and their addresses or a sworn affidavit that with due diligence such information is not ascertainable.

(C) The department within thirty days of receipt of an application for a permit shall notify, in writing, interested agencies, all adjoining landowners, local government units in which the land is located and other interested persons of the application and shall indicate the nature of the applicant's proposal. Public notice shall be given at least once by advertisement in state and local newspapers of general circulation in the area concerned. The department may hold a public hearing on applications which have any effect on a critical area if it deems a hearing necessary. The public hearing shall be held in the county where the land is located and if in more than one county the department shall determine in which county to hold the hearing or may hold hearings in both counties.

Provided, all interested agencies, all adjoining landowners, local government units and other interested persons shall have thirty days to file a written comment to such application after receipt of any such notice by the department.

SECTION 48-39-145. Application fee for permit to alter critical area; special provision as to construction of marinas and commercial dock facilities.

(A) The department may charge an administrative fee upon application for a permit for alteration of a critical area as defined in Section 48-39-10. Applications for permits which are noncommercial/nonindustrial in nature and provide personal benefits that have no connection with a commercial/industrial enterprise must pay an administrative fee of two hundred fifty dollars, unless the application is for a dock one hundred feet or less in length, in which case the fee must be one hundred and fifty dollars. Applications for amendments or modifications of permits that must be placed on public notice must be charged an administrative fee of one hundred dollars. The department may raise or lower the fee by regulation after complying with the requirements of the Administrative Procedures Act. A reasonable fee, determined by the department, must be charged for permit applications when the planned or ultimate purpose of the activity is commercial or industrial in nature.

(B) Permit applicants for construction of marina and commercial dock facilities pursuant to this section are not required to demonstrate a need for the facilities before consideration of the application.

SECTION 48-39-150. Approval or denial of permits; appeal to Council.

(A) In determining whether a permit application is approved or denied the department shall base its determination on the individual merits of each application, the policies specified in Sections 48-39-20 and 48-39-30 and be guided by the following general considerations:

(1) The extent to which the activity requires a waterfront location or is economically enhanced by its proximity to the water.

(2) The extent to which the activity would harmfully obstruct the natural flow of navigable water. If the proposed project is in one or more of the State's harbors or in a waterway used for commercial navigation and shipping or in an area set aside for port development in an approved management plan, then a certificate from the South Carolina State Ports Authority declaring the proposed project or activity would not unreasonably interfere with commercial navigation and shipping must be obtained by the department prior to issuing a permit.

(3) The extent to which the applicant's completed project would affect the production of fish, shrimp, oysters, crabs or clams or any marine life or wildlife or other natural resources in a particular area including but not limited to water and oxygen supply.

(4) The extent to which the activity could cause erosion, shoaling of channels or creation of stagnant water.

(5) The extent to which the development could affect existing public access to tidal and submerged lands, navigable waters and beaches or other recreational coastal resources.

(6) The extent to which the development could affect the habitats for rare and endangered species of wildlife or irreplaceable historic and archeological sites of South Carolina's coastal zone.

(7) The extent of the economic benefits as compared with the benefits from preservation of an area in its unaltered state.

(8) The extent of any adverse environmental impact which cannot be avoided by reasonable safeguards.

(9) The extent to which all feasible safeguards are taken to avoid adverse environmental impact resulting from a project.

(10) The extent to which the proposed use could affect the value and enjoyment of adjacent owners.

(B) After considering the views of interested agencies, local governments and persons, and after evaluation of biological and economic considerations, if the department finds that the application is not contrary to the policies specified in this chapter, it shall issue to the applicant a permit. The permit may be conditioned upon the applicant's amending the proposal to take whatever measures the department feels are necessary to protect the public interest. At the request of twenty citizens or residents of the county or counties affected, the department shall hold a public hearing on any application which has an effect on a critical area, prior to issuing a permit. Such public hearings shall be open to all citizens of the State. When applicable, joint public hearings will be held in conjunction with any such hearings required by the U. S. Army Corps of Engineers. On any permit application pertaining to a specific development which has been approved by the department, the department may support the applicant with respect to any federal permit applications pertaining to the same specific development.

(C) The department shall act upon an application for a permit within ninety days after the application is filed. Provided, however, that in the case of minor developments, as defined in Section 48-39-10, the department shall have the authority to approve such permits and shall act within thirty days. In the event a permit is denied the department shall state the reasons for such denial and such reasons must be in accordance with the provisions of this chapter.

(D) Any applicant having a permit denied or any person adversely affected by the granting of the permit has the right of direct appeal from the decision of the Administrative Law Judge to the Coastal Zone Management Appellate Panel. Any applicant having a permit denied may challenge the validity of any or all reasons given for denial.

(E) Any permit may be revoked for noncompliance with or violation of its terms after written notice of intention to do so has been given the holder and the holder given an opportunity to present an explanation to the department.

(F) Work authorized by permits issued under this chapter must be completed within five years after the date of issuance. The time limit may be extended for good cause showing that due diligence toward completion of the work has been made as evidenced by significant work progress. An extension only may be granted if the permitted project meets the policies and regulations in force when the extension is requested or the permittee agrees to accept additional conditions which would bring the project into compliance. The time periods required by this subsection must be tolled during the pendency of an administrative or a judicial appeal of the permit issuance.

SECTION 48-39-160. Violations; jurisdiction of courts.

The circuit court of the county in which the affected critical area or any part thereof lies shall have jurisdiction to restrain a violation of this chapter at the suit of the department, the Attorney General or any person adversely affected. In the event the affected critical area lies in more than one county, jurisdiction shall be in the circuit court of any county in which any part of the area lies. In the same action the circuit court having jurisdiction over the affected area may require such area to be restored to its original condition, if possible, and environmentally desirable. In the alternative, the department may complete the restoration at the expense of the person altering the area in which case suit for recovery of the amount so expended may be brought in any court having jurisdiction to restrain a violation. No bond shall be required as a condition of the granting of a temporary restraining order under this section, except that the court may in its discretion require that a reasonable bond be posted by any person requesting the court to restrain a violation of this chapter.

SECTION 48-39-170. Penalties.

(A) Any person violating any provision of this chapter is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not more than five thousand dollars, or both, for the first offense, and imprisoned not more than one year, or fined not more than ten thousand dollars, or both, for each subsequent offense.

(B) Any violation of any provision of this chapter involving five yards square (225 square feet) or less of critical area may be treated as a minor violation, the penalty for which shall be a fine of not less than fifty dollars nor more than two hundred dollars. The enforcement officers of the Natural Resources Enforcement Division of the South Carolina Department of Natural Resources may serve warrants under this provision and otherwise enforce this chapter. The magistrates of this State have jurisdiction over minor violations of this chapter. Each day of noncompliance with any order issued relative to a minor violation or noncompliance with any permit, regulation, standard, or requirement relative to a minor violation shall constitute a separate offense; provided, however, that violations which involve the construction or repair of water control structures shall not be considered minor violations regardless of the area involved.

(C) Any person who is determined to be in violation of any provision of this chapter by the department shall be liable for, and may be assessed by the department for, a civil penalty of not less than one hundred dollars nor more than one thousand dollars per day of violation. Whenever the department determines that any person is in violation of any permit, regulation, standard, or requirement under this chapter, the department may issue an order requiring such person to comply with such permit, regulation, standard, or requirement, including an order requiring restoration when deemed environmentally appropriate by the department; in addition, the department may bring a civil enforcement action under this section as well as seeking an appropriate injunctive relief under Section 48-39-160.

(D) All penalties assessed and collected pursuant to this section shall be deposited in the general fund of the State.

SECTION 48-39-180. Judicial review of permit determinations.

Any applicant whose permit application has been finally denied, revoked, suspended or approved subject to conditions of the department by the Coastal Zone Management Appellate Panel, or any person adversely affected by the permit, may, within twenty days after receiving notice thereof, file petition in the circuit court having jurisdiction over the affected land for a review of the department's action "de novo" or to determine whether the department's action so restricts or otherwise affects the use of the property as to deprive the owner of its existing practical use and is an unreasonable exercise of the State's police power because the action constitutes the equivalent of taking without compensation. If the court finds the action to be an unreasonable exercise of the police power it shall enter a finding that the action shall not apply to the land of the plaintiff, or in the alternative, that the department shall pay reasonable compensation for the loss of use of the land. The use allowed by any permit issued under this chapter may, in the discretion of the court, be stayed pending decision on all appeals that may be taken. The circuit court may in its discretion require that a reasonable bond be posted by any person. It is specifically intended that any person whose permit application has been denied may have such permit issued by the circuit court having jurisdiction if such person can prove the reasons given for denial to be invalid.

SECTION 48-39-190. Lands not affected by chapter.

Nothing in this chapter shall affect the status of the title of the State or any person to any land below the mean highwater mark. The State shall in no way be liable for any damages as a result of the erection of permitted works.

SECTION 48-39-200. Repealed by 1993, Act No. 181, Section 1235, eff from and after July 1, 1994.

SECTION 48-39-210. Department only state agency authorized to permit or deny alterations or utilizations within critical areas.

(A) The department is the only state agency with authority to permit or deny any alteration or utilization within the critical area except for the exemptions granted under Section 48-39-130(D) and the application for a permit must be acted upon within the time prescribed by this chapter.

(B) A critical area delineation for coastal waters or tidelands established by the department is valid only if the line is depicted on a survey performed by a professional surveyor, the line is reviewed by the department, the department validates the location of the boundaries of the coastal waters or tidelands critical area on the survey by affixing a stamp and date to the survey, and the survey contains clearly on its face in bold type the following statement: "The area shown on this plat is a representation of department permit authority on the subject property. Critical areas by their nature are dynamic and subject to change over time. By delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not."

(C) Notwithstanding any other provision of this chapter, a critical area line established pursuant to subsection (B) expires after five years from the department date on the survey described in subsection (B).

(D) Exceptions to subsection (C) are eroding coastal saltwater stream banks where it can be expected that the line will move due to the meandering of the stream before the expiration of the five year time limit and where manmade alterations change the critical area line.

SECTION 48-39-220. Legal action to determine interest in tidelands.

(A) Any person claiming an interest in tidelands which, for the purpose of this section, means all lands except beaches in the Coastal zone between the mean high-water mark and the mean low-water mark of navigable waters without regard to the degree of salinity of such waters, may institute an action against the State of South Carolina for the purpose of determining the existence of any right, title or interest of such person in and to such tidelands as against the State. Service of process shall be made upon the secretary of the State Budget and Control Board.

(B) Any party may demand a trial by jury in any such action by serving upon the other party(s) a demand therefor in writing at any time after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

(C) Nothing contained in this chapter shall be construed to change the law of this State as it exists on July 1, 1977, relative to the right, title, or interest in and to such tidelands, except as set forth in this section.

(D) The Attorney General shall immediately notify the department upon receipt of any private suit made under this section, his response to that suit, and the final disposition of the suit. The department will publish all such notifications in the state register.

SECTION 48-39-250. Legislative findings regarding the coastal beach/dune system.

The General Assembly finds that:

(1) The beach/dune system along the coast of South Carolina is extremely important to the people of this State and serves the following functions:

(a) protects life and property by serving as a storm barrier which dissipates wave energy and contributes to shoreline stability in an economical and effective manner;

(b) provides the basis for a tourism industry that generates approximately two-thirds of South Carolina's annual tourism industry revenue which constitutes a significant portion of the state's economy. The tourists who come to the South Carolina coast to enjoy the ocean and dry sand beach contribute significantly to state and local tax revenues;

(c) provides habitat for numerous species of plants and animals, several of which are threatened or endangered. Waters adjacent to the beach/dune system also provide habitat for many other marine species;

(d) provides a natural healthy environment for the citizens of South Carolina to spend leisure time which serves their physical and mental well-being.

(2) Beach/dune system vegetation is unique and extremely important to the vitality and preservation of the system.

(3) Many miles of South Carolina's beaches have been identified as critically eroding.

(4) Chapter 39 of Title 48, Coastal Tidelands and Wetlands, prior to 1988, did not provide adequate jurisdiction to the South Carolina Coastal Council to enable it to effectively protect the integrity of the beach/dune system.

Consequently, without adequate controls, development unwisely has been sited too close to the system. This type of development has jeopardized the stability of the beach/dune system,

accelerated erosion, and endangered adjacent property. It is in both the public and private interests to protect the system from this unwise development.

(5) The use of armoring in the form of hard erosion control devices such as seawalls, bulkheads, and rip-rap to protect erosion-threatened structures adjacent to the beach has not proven effective. These armoring devices have given a false sense of security to beachfront property owners. In reality, these hard structures, in many instances, have increased the vulnerability of beachfront property to damage from wind and waves while contributing to the deterioration and loss of the dry sand beach which is so important to the tourism industry.

(6) Erosion is a natural process which becomes a significant problem for man only when structures are erected in close proximity to the beach/dune system. It is in both the public and private interests to afford the beach/dune system space to accrete and erode in its natural cycle. This space can be provided only by discouraging new construction in close proximity to the beach/dune system and encouraging those who have erected structures too close to the system to retreat from it.

(7) Inlet and harbor management practices, including the construction of jetties which have not been designed to accommodate the longshore transport of sand, may deprive downdrift beach/dune systems of their natural sand supply. Dredging practices which include disposal of beach quality sand at sea also may deprive the beach/dune system of much-needed sand.

(8) It is in the state's best interest to protect and to promote increased public access to South Carolina's beaches for out-of-state tourists and South Carolina residents alike.

(9) Present funding for the protection, management, and enhancement of the beach/dune system is inadequate.

(10) There is no coordinated state policy for post-storm emergency management of the beach/dune system.

(11) A long-range comprehensive beach management plan is needed for the entire coast of South Carolina to protect and manage effectively the beach/dune system, thus preventing unwise development and minimizing man's adverse impact on the system.

SECTION 48-39-260. Policy statement.

In recognition of its stewardship responsibilities, the policy of South Carolina is to:

(1) protect, preserve, restore, and enhance the beach/dune system, the highest and best uses of which are declared to provide:

(a) protection of life and property by acting as a buffer from high tides, storm surge, hurricanes, and normal erosion;

(b) a source for the preservation of dry sand beaches which provide recreation and a major source of state and local business revenue;

(c) an environment which harbors natural beauty and enhances the well-being of the citizens of this State and its visitors;

(d) natural habitat for indigenous flora and fauna including endangered species;

(2) create a comprehensive, long-range beach management plan and require local comprehensive beach management plans for the protection, preservation, restoration, and

enhancement of the beach/dune system. These plans must promote wise use of the state's beachfront to include a gradual retreat from the system over a forty-year period;

(3) severely restrict the use of hard erosion control devices to armor the beach/dune system and to encourage the replacement of hard erosion control devices with soft technologies as approved by the department which will provide for the protection of the shoreline without long-term adverse effects;

(4) encourage the use of erosion-inhibiting techniques which do not adversely impact the long-term well-being of the beach/dune system;

(5) promote carefully planned nourishment as a means of beach preservation and restoration where economically feasible;

(6) preserve existing public access and promote the enhancement of public access to assure full enjoyment of the beach by all our citizens including the handicapped and encourage the purchase of lands adjacent to the Atlantic Ocean to enhance public access;

(7) involve local governments in long-range comprehensive planning and management of the beach/dune system in which they have a vested interest;

(8) establish procedures and guidelines for the emergency management of the beach/dune system following a significant storm event.

SECTION 48-39-270. Definitions.

As used in this chapter:

(1) Erosion control structures or devices include:

(a) seawall: a special type of retaining wall that is designed specifically to withstand normal wave forces;

(b) bulkhead: a retaining wall designed to retain fill material but not to withstand wave forces on an exposed shoreline;

(c) revetment: a sloping structure built along an escarpment or in front of a bulkhead to protect the shoreline or bulkhead from erosion.

(2) Habitable structure means a structure suitable for human habitation including, but not limited to, single or multifamily residences, hotels, condominium buildings, and buildings for commercial purposes. Each building of a condominium regime is considered a separate habitable structure but, if a building is divided into apartments, then the entire building, not the individual apartment, is considered a single habitable structure. Additionally, a habitable structure includes porches, gazebos, and other attached improvements.

(3) Department means the Department of Health and Environmental Control.

(4) Beach nourishment means the artificial establishment and periodic renourishment of a beach with sand that is compatible with the existing beach in a way so as to create a dry sand beach at all stages of the tide.

(5) The beach/dune system includes all land from the mean highwater mark of the Atlantic Ocean landward to the setback line described in Section 48-39-280.

(6) A standard erosion zone is 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 influenced directly by tidal inlets or associated inlet shoals.

(7) An inlet erosion zone is a segment of shoreline along or adjacent to tidal inlets which is influenced directly by the inlet and its associated shoals.

(8) Master plan means 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.

(9) Planned development means 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 multifamily or commercial projects not otherwise referenced by the terms, master plan, or planned unit development.

(10) Planned unit development means a residential, commercial, or industrial development, or all three, designed as a unit and approved by local government.

(11) Destroyed beyond repair means that more than sixty-six and two-thirds percent of the replacement value of the habitable structure or pool has been destroyed. If the owner disagrees with the appraisal of the department, he may obtain an appraisal to evaluate the damage to the building or pool. If the appraisals differ, then the two appraisers must select a third appraiser. If the two appraisers are unable to select a third appraiser, the clerk of court of the county where the structure lies must make the selection. Nothing in this section prevents a court of competent jurisdiction from reviewing, de novo, the appraisal upon the petition of the property owner.

(12) Pool is a structure designed and used for swimming and wading.

(13) Active beach is that area seaward of the escarpment or the first line of stable natural vegetation, whichever first occurs, measured from the ocean.

SECTION 48-39-280. Forty-year retreat policy.

(A) A forty-year policy of retreat from the shoreline is established. The department must implement this policy and must utilize the best available scientific and historical data in the implementation. The department must establish a baseline which parallels the shoreline for each standard erosion zone and each inlet erosion zone.

(1) The baseline for each standard erosion zone is established at the location of the crest of the primary oceanfront sand dune in that zone. In standard erosion zones in which the shoreline has been altered naturally or artificially by the construction of erosion control devices, groins, or other manmade alterations, the baseline must be established by the department using the best scientific and historical data, as where the crest of the primary oceanfront sand dunes for that zone would be located if the shoreline had not been altered.

(2) The baseline for inlet erosion zones that are not stabilized by jetties, terminal groins, or other structures must be determined by the department as the most landward point of erosion at any time during the past forty years, unless the best available scientific and historical data of the inlet and adjacent beaches indicate that the shoreline is unlikely to return to its former position. In collecting and utilizing the best scientific and historical data available for the implementation of the retreat policy, the department, as part of the State Comprehensive Beach Management Plan provided for in this chapter, among other factors, must consider: historical inlet migration, inlet stability, channel and ebb tidal delta changes, the effects of

sediment bypassing on shorelines adjacent to the inlets, and the effects of nearby beach restoration projects on inlet sediment budgets.

(3) The baseline within inlet erosion zones that are stabilized by jetties, terminal groins, or other structures must be determined in the same manner as provided for in item (1). However, the actual location of the crest of the primary oceanfront sand dunes of that erosion zone is the baseline of that zone, not the location if the inlet had remained unstabilized.

(4) Notwithstanding any other provision of this section, where a department-approved beach nourishment project has been completed, the local government or the landowners, with notice to the local government, may petition an Administrative Law Judge to move the baseline as far seaward as the landward edge of the erosion control structure or device or, if there is no existing erosion control structure or device, then as far seaward as the post project baseline as determined by the department in accordance with Section 48-39-280(A)(1) by showing that the beach has been stabilized by department-approved beach nourishment. If the petitioner is asking that the baseline be moved seaward pursuant to this section, he must show an ongoing commitment to renourishment which will stabilize and maintain the dry sand beach at all stages of the tide for the foreseeable future. If the Administrative Law Judge grants the petition to move the baseline seaward pursuant to this section, no new construction may occur in the area between the former baseline and the new baseline for three years after the initial beach nourishment project has been completed as determined by the department. If the beach nourishment fails to stabilize the beach after a reasonable period of time, the department must move the baseline landward to the primary oceanfront sand dune as determined pursuant to items (1), (2), and (3) for that section of the beach. Any appeal of an Administrative Law Judge's decision under this section may be made to the Coastal Zone Management Appellate Panel.

(B) To implement the retreat policy provided for in subsection (A), a setback line must be established landward of the baseline a distance which is forty times the average annual erosion rate or not less than twenty feet from the baseline for each erosion zone based upon the best historical and scientific data adopted by the department as a part of the State Comprehensive Beach Management Plan.

(C) The department, before July 3, 1991, must establish a final baseline and setback line for each erosion zone based on the best available scientific and historical data as provided in subsection (B) and with consideration of public input. The baseline and setback line must not be revised before July 1, 1998, nor later than July 1, 2000. After that revision, the baseline and setback line must be revised not less than every eight years but not more than every ten years after each preceding revision. In the establishment and revision of the baseline and setback line, the department must transmit and otherwise make readily available to the public all information upon which its decisions are based for the establishment of the final baseline and setback line. The department must hold one public hearing before establishing the final baseline and setback lines. Until the department establishes new baselines and setback lines, the existing baselines and setback lines must be used. The department may stagger the revision of the baselines and setback lines of the erosion zones so long as every zone is revised in accordance with the time guidelines established in this section.

(D) In order to locate the baseline and the setback line, the department must establish monumented and controlled survey points in each county fronting the Atlantic Ocean. The department must acquire sufficient surveyed topographical information on which to locate the baseline. Surveyed topographical data typically must be gathered at two thousand foot intervals. However, in areas subject to significant near-term development and in areas currently developed, the interval, at the discretion of the department, may be more frequent. The resulting surveys must locate the crest of the primary oceanfront sand dunes to be used as the baseline for computing the forty-year erosion rate. In cases where no primary oceanfront sand dunes exist, a study conducted by the department is required to determine where the upland location of the crest of the primary oceanfront sand dune would be located if

the shoreline had not been altered. The department, by regulation, may exempt specifically described portions of the coastline from the survey requirements of this section when, in its judgment, the portions of coastline are not subject to erosion or are not likely to be developed by virtue of local, state, or federal programs in effect on the coastline which would preclude significant development, or both.

(E) A landowner claiming ownership of property affected who feels that the final or revised setback line, baseline, or erosion rate as adopted is in error, upon submittal of substantiating evidence, must be granted a review of the setback line, baseline, or erosion rate, or a review of all three. The requests must be forwarded to the Coastal Zone Management Appellate Panel and handled in accordance with the department's regulations on appeals.

SECTION 48-39-290. Restrictions on construction or reconstruction seaward of the baseline or between the baseline and the setback line; exceptions; special permits.

(A) No new construction or reconstruction is allowed seaward of the baseline except:

(1) wooden walkways no larger in width than six feet;

(2) small wooden decks no larger than one hundred forty-four square feet;

(3) fishing piers which are open to the public. Those fishing piers with their associated structures including, but not limited to, baitshops, restrooms, restaurants, and arcades which existed September 21, 1989, may be rebuilt if they are constructed to the same dimensions and utilized for the same purposes and remain open to the public. In addition, those fishing piers with their associated structures which existed on September 21, 1989, that were privately owned, privately maintained, and not open to the public on this date also may be rebuilt and used for the same purposes if they are constructed to the same dimensions;

(4) golf courses;

(5) normal landscaping;

(6) structures specifically permitted by special permit as provided in subsection (D);

(7) pools may be reconstructed if they are landward of an existing, functional erosion control structure or device;

(8) existing groins may be reconstructed, repaired, and maintained. New groins may only be allowed on beaches that have high erosion rates with erosion threatening existing development or public parks. In addition to these requirements, new groins may be constructed and existing groins may be reconstructed only in furtherance of an on-going beach renourishment effort which meets the criteria set forth in regulations promulgated by the department and in accordance with the following:

(a) The applicant shall institute a monitoring program for the life of the project to measure beach profiles along the groin area and adjacent and downdrift beach areas sufficient to determine erosion/accretion rates. For the first five years of the project, the monitoring program must include, but is not necessarily limited to:

(i) establishment of new monuments;

(ii) determination of the annual volume and transport of sand; and

(iii) annual aerial photographs.

Subsequent monitoring requirements must be based on results from the first five-year report.

(b) Groins may only be permitted after thorough analysis demonstrates that the groin will not cause a detrimental effect on adjacent or downdrift areas. The applicant shall provide a financially binding commitment, such as a performance bond or letter of credit that is reasonably estimated to cover the cost of reconstructing or removing the groin and/or restoring the affected beach through renourishment pursuant to subsection (c).

(c) If the monitoring program established pursuant to subsection (a) shows an increased erosion rate along adjacent or downdrift beaches that is attributable to a groin, the department must require either that the groin be reconfigured so that the erosion rate on the affected beach does not exceed the pre-construction rate, that the groin be removed, and/or that the beach adversely affected by the groin be restored through renourishment.

(d) Adjacent and downdrift communities and municipalities must be notified by the department of all applications for a groin project.

(e) Nothing in the section shall be construed to create a private cause of action, but nothing in this section shall be construed to limit a cause of action under recognized common law or other statutory theories. The sole remedies, pursuant to this section, are:

(i) the reconstruction or removal of a groin; and/or

(ii) restoration of the adversely affected beach and adjacent real estate through renourishment pursuant to subsection (c).

An adjacent or downdrift property owner that claims a groin has caused or is causing an adverse impact shall notify the department of such impact. The department shall render an initial determination within sixty (60) days of such notification. Final agency action shall be rendered within twelve months of notification. An aggrieved party may appeal the decision pursuant to the Administrative Procedures Act.

A permit must be obtained from the department for items (2) through (8).

(B) Construction, reconstruction, or alterations between the baseline and the setback line are governed as follows:

(1) Habitable structures:

(a) New habitable structures: If part of a new habitable structure is constructed seaward of the setback line, the owner must certify in writing to the department that the construction meets the following requirements:

(i) The habitable structure is no larger than five thousand square feet of heated space. The structure must be located as far landward on the property as practicable. A drawing must be submitted to the department showing a footprint of the structure on the property, a cross section of the structure, and the structure's relation to property lines and setback lines which may be in effect. No erosion control structure or device may be incorporated as an integral part of a habitable structure constructed pursuant to this section.

(ii) No part of the building is being constructed on the primary oceanfront sand dune or seaward of the baseline.

(b) Habitable structures which existed on the effective date of Act 634 of 1988 or constructed pursuant to this section:

(i) Normal maintenance and repair of habitable structures is allowed without notice to the department.

(ii) Additions to habitable structures are allowed if the additions together with the existing structure do not exceed five thousand square feet of heated space. Additions to habitable structures must comply with the conditions of new habitable structures as set forth in subitem (a).

(iii) Repair or renovation of habitable structures damaged, but not destroyed beyond repair, due to natural or manmade causes is allowed.

(iv) Replacement of habitable structures destroyed beyond repair due to natural causes is allowed after notification is provided by the owner to the department that all of the following requirements are met:

a. The total square footage of the replaced structure seaward of the setback line does not exceed the total square footage of the original structure seaward of the setback line. The linear footage of the replaced structure parallel to the coast does not exceed the original linear footage parallel to the coast.

b. The replaced structure is no farther seaward than the original structure.

c. Where possible, the replaced structure is moved landward of the setback line or, if not possible, then as far landward as is practicable, considering local zoning and parking regulations.

d. The reconstruction is not seaward of the baseline unless permitted elsewhere in Sections 48-39-250 through 48-39-360.

(v) Replacement of habitable structures destroyed beyond repair due to manmade causes is allowed provided the rebuilt structure is no larger than the original structure it replaces and is constructed as far landward as possible, but the new structure must not be farther seaward than the original structure.

(2) Erosion control devices:

(a) No new erosion control structures or devices are allowed seaward of the setback line except to protect a public highway which existed on the effective date of this act.

(b) Erosion control structures or devices which existed on the effective date of this act must not be repaired or replaced if destroyed:

(i) more than eighty percent above grade through June 30, 1995;

(ii) more than sixty-six and two-thirds percent above grade from July 1, 1995, through June 30, 2005;

(iii) more than fifty percent above grade after June 30, 2005.

(iv) Damage to seawalls and bulkheads must be judged on the percent of the structure remaining intact at the time of damage assessment. The portion of the structure or device above grade parallel to the shoreline must be evaluated. The length of the structure or device parallel to the shoreline still intact must be compared to the length of the structure or device parallel to the shoreline which has been destroyed. The length of the structure or device parallel to the shoreline determined to be destroyed divided by the total length of the original

structure or device parallel to the shoreline yields the percent destroyed. Those portions of the structure or device standing, cracked or broken piles, whalers, and panels must be assessed on an individual basis to ascertain if these components are repairable or if replacement is required. Revetments must be judged on the extent of displacement of stone, effort required to return these stones to the prestorm event configuration of the structure or device, and ability of the revetment to retain backfill material at the time of damage assessment. If the property owner disagrees with the assessment of a registered professional engineer acting on behalf of the department, he may obtain an assessment by a registered professional engineer to evaluate, as set forth in this item, the damage to the structure or device. If the two assessments differ, then the two engineers who performed the assessments must select a registered professional engineer to perform the third assessment. If the first two engineers are unable to select an engineer to perform the third assessment, the clerk of court of the county where the structure or device lies must make the selection of a registered professional engineer. The determination of percentage of damage by the third engineer is conclusive.

(v) The determination of the degree of destruction must be made on a lot by lot basis by reference to county tax maps.

(vi) Erosion control structures or devices must not be enlarged, strengthened, or rebuilt but may be maintained in their present condition if not destroyed more than the percentage allowed in Section 48-39-290(B)(2)(b)(i), (ii), and (iii). Repairs must be made with materials similar to those of the structure or device being repaired.

(c) Erosion control structures or devices determined to be destroyed more than the percentage allowed in Section 48-39-290(B)(2)(b)(i), (ii), and (iii) must be removed at the owner's expense. Nothing in this section requires the removal of an erosion control structure or a device protecting a public highway which existed on the effective date of Act 634 of 1988.

(d) The provisions of this section do not affect or modify the provisions of Section 48-39-120(C).

(e) Subitem (a) does not apply to a private island with an Atlantic Ocean shoreline of twenty thousand, two hundred ten feet of which twenty thousand, ninety feet of shoreline is revetted with existing erosion control devices and one hundred twenty feet of shoreline is not revetted with existing erosion control devices. Nothing contained in this subitem makes this island eligible for beach renourishment funds.

(3) Pools, as defined in Section 48-39-270(12):

(a) No new pools may be constructed seaward of the setback line unless the pool is built landward of an erosion control structure or device which was in existence or permitted on the effective date of this act and is built as far landward as practical.

(b) Normal maintenance and repair is allowed without notice to the department.

(c) If a pool, existing on July 1, 1988, is destroyed beyond repair, as determined by the department pursuant to Section 48-39-270(11), it may be replaced if the owner certifies in writing to the department that:

(i) It is moved as far landward as practical. This determination of practicality must include the consideration of local zoning requirements.

(ii) It is rebuilt no larger than the destroyed pool.

(iii) It is constructed according to acceptable standards of pool construction and cannot be reinforced in a manner so as to act as an erosion control structure or device.

(d) If a pool is not destroyed beyond repair as determined by the department pursuant to Section 48-39-270(11) but the owner wishes to replace it, the owner may do so if:

(i) The dimensions of the pool are not enlarged.

(ii) The construction conforms to sub-subitem (iii) of subitem (c).

(4) All other construction or alteration between the baseline and the setback line requires a department permit. However, the department, in its discretion, may issue general permits for construction or alterations where issuance of the general permits would advance the implementation and accomplishment of the goals and purposes of Sections 48-39-250 through 48-39-360.

(C)(1) Notwithstanding the provisions relating to new construction, a person, partnership, or corporation owning real property that is affected by the setback line as established in Section 48-39-280 may proceed with construction pursuant to a valid building permit issued as of the effective date of this section. The person, partnership, or corporation may proceed with the construction of buildings and other elements of a master plan, planned development, or planned unit development notwithstanding the setback line established in this chapter if the person, partnership, or corporation legally has begun a use as evidenced by at least one of the following:

(a) All building permits have been applied for or issued by a local government before July 1, 1988.

(b) There is a master plan, planned development, or planned unit development:

(i) that has been approved in writing by a local government before July 1, 1988; or

(ii) where work has begun pursuant to approval as evidenced by the completion of the utility and infrastructure installation designed to service the real property that is subject to the setback line and included in the approved master plan, planned development, or planned unit development.

(2) However, repairs performed on a habitable structure built pursuant to this section are subject to the guidelines for repairs as set forth in this section.

(3) Nothing in this section prohibits the construction of fishing piers or structures which enhance beach access seaward of the baseline, if permitted by the department.

(D) Special permits:

(1) If an applicant requests a permit to build or rebuild a structure other than an erosion control structure or device seaward of the baseline that is not allowed otherwise pursuant to Sections 48-39-250 through 48-39-360, the department may issue a special permit to the applicant authorizing the construction or reconstruction if the structure is not constructed or reconstructed on a primary oceanfront sand dune or on the active beach and, if the beach erodes to the extent the permitted structure becomes situated on the active beach, the permittee agrees to remove the structure from the active beach if the department orders the removal. However, the use of the property authorized under this provision, in the determination of the department, must not be detrimental to the public health, safety, or welfare.

(2) The department's Permitting Committee is the committee to consider applications for special permits.

(3) In granting a special permit, the committee may impose reasonable additional conditions and safeguards as, in its judgment, will fulfill the purposes of Sections 48-39-250 through 48-39-360.

(4) A party aggrieved by the committee's decision to grant or deny a special permit application may appeal to the full Coastal Zone Management Appellate Panel pursuant to Section 48-39-150(D).

(E) The provisions of this section and Section 48-39-280 do not apply to an area in which the erosion of the beaches located in its jurisdiction is attributed to a federally authorized navigation project as documented by the findings of a Section 111 Study conducted under the authority of the federal Rivers and Harbors Act of 1968, as amended by the federal Water Resources Development Act of 1986, and approved by the United States Army Corps of Engineers. Nothing contained in this subsection makes this area ineligible for beach renourishment funds. The baseline determined by the local governing body and the department is the line of erosion control devices and structures and the department retains its jurisdiction seaward of the baseline. In addition, upon completion of a department approved beach renourishment project, including the completion of a sand transfer system if necessary for long-term stabilization, an area under a Section 111 Study becomes subject to all the provisions of this chapter. For the purposes of this section, a beach nourishment project stabilizing the beach exists if a successful restoration project is completed consisting of at least one hundred fifty cubic yards a foot over a length of five and one-half miles, with a project design capable of withstanding a one-in-ten-year storm, as determined by department, and renourishment is conducted annually at a rate, agreed upon by the department and local governing body, equivalent to that which would occur naturally if the navigation project causing the erosion did not exist. If the two parties cannot agree, then the department must obtain the opinion of an independent third party. Any habitable structure located in an area in which the erosion of the beaches located in its jurisdiction is attributed to a federally authorized navigation project as documented by the findings of a Section 111 Study, which was in existence on September 21, 1989, and was over forty years old on that date and is designated by the local governing body as an historical landmark may be rebuilt seaward of the baseline if it is rebuilt to the exact specifications, dimensions, and exterior appearance of the structure as it existed on that date.

SECTION 48-39-300. Local governments given authority to exempt certain erosion control structures from restrictions.

A local governing body, if it notifies the department before July 1, 1990, may exempt from the provisions of Section 48-39-290, relating to reconstruction and removal of erosion control devices, the shorelines fronting the Atlantic Ocean under its jurisdiction where coastal erosion has been shown to be attributed to a federally authorized navigation project as documented by the findings of a Section 111 Study conducted under the authority of the Rivers and Harbors Act of 1968, as amended by the Water Resources Development Act of 1986 and approved by the United States Army Corps of Engineers. Erosion control devices exempt under this section must not be constructed seaward of their existing location, increased in dimension, or rebuilt out of materials different from that of the original structure.

SECTION 48-39-305. Judicial determination of ownership and whether construction prohibition applies or requires compensation; burden of proof.

(A) A person having a recorded interest or interest by operation of law in or having registered claim to land seaward of the baseline or setback line which is affected by the prohibition of construction or reconstruction may petition the circuit court to determine whether the petitioner is the owner of the land or has an interest in it. If he is adjudged the owner of the

land or to have an interest in it, the court shall determine whether the prohibition so restricts the use of the property as to deprive the owner of the practical uses of it and is an unreasonable exercise of police power and constitutes a taking without compensation. The burden of proof is on the petitioner as to ownership, and the burden of proof is on the State to prove that the prohibition is not an unreasonable exercise of police power.

(B) The method provided in this section for the determination of the issue of whether the prohibition constitutes a taking without compensation is the exclusive judicial determination of the issue, and it must not be determined in another judicial proceeding. The court shall enter a judgment in accordance with the issues. If the judgment is in favor of the petitioner, the order must require the State either to issue the necessary permits for construction or reconstruction of a structure, order that the prohibition does not apply to the property, or provide reasonable compensation for the loss of the use of the land or the payment of costs and reasonable attorney's fees, or both. Either party may appeal the court's decision.

SECTION 48-39-310. Prohibition of destruction of any beach or dune vegetation seaward of setback line.

The destruction of beach or dune vegetation seaward of the setback line is prohibited unless there is no feasible alternative. When there is destruction of vegetation permitted seaward of the setback line, mitigation, in the form of planting of new vegetation where possible, for the destruction is required as part of the permit conditions.

SECTION 48-39-320. Comprehensive beach management plan.

(A) The department's responsibilities include the creation of a long-range and comprehensive beach management plan for the Atlantic Ocean shoreline in South Carolina. The plan must include all of the following:

(1) development of the data base for the state's coastal areas to provide essential information necessary to make informed and scientifically based decisions concerning the maintenance or enhancement of the beach/dune system;

(2) development of guidelines and their coordination with appropriate agencies and local governments for the accomplishment of:

(a) beach/dune restoration and nourishment, including the projected impact on coastal erosion rates, cost/benefit of the project, impact on flora and fauna, and funding alternatives;

(b) development of a beach access program to preserve the existing public access and enhance public access to assure full enjoyment of the beach by all residents of this State;

(c) maintenance of a dry sand and ecologically stable beach;

(d) protection of all sand dunes seaward of the setback line;

(e) protection of endangered species, threatened species, and important habitats such as nesting grounds;

(f) regulation of vehicular traffic upon the beaches and the beach/dune system which includes the prohibition of vehicles upon public beaches for nonessential uses;

(g) development of a mitigation policy for construction allowed seaward of the setback line, which must include public access ways, nourishment, vegetation, and other appropriate means;

(3) formulation of recommendations for funding programs which may achieve the goals set forth in the State Comprehensive Beach Management Plan;

(4) development of a program on public education and awareness of the importance of the beach/dune system, the project to be coordinated with the South Carolina Educational Television Network and Department of Parks, Recreation and Tourism;

(5) assistance to local governments in developing the local comprehensive beach management plans.

(B) The plan provided for in this section is to be used for planning purposes only and must not be used by the department to exercise regulatory authority not otherwise granted in this chapter, unless the plan is created and adopted pursuant to Chapter 23 of Title 1.

SECTION 48-39-330. Disclosure statement.

Thirty days after the initial adoption by the department of setback lines, a contract of sale or transfer of real property located in whole or in part seaward of the setback line or the jurisdictional line must contain a disclosure statement that the property is or may be affected by the setback line, baseline, and the seaward corners of all habitable structures referenced to the South Carolina State Plane Coordinate System (N.A.D.-1983) and include the local erosion rate most recently made available by the department for that particular standard zone or inlet zone as applicable. Language reasonably calculated to call attention to the existence of baselines, setback lines, jurisdiction lines, and the seaward corners of all habitable structures and the erosion rate complies with this section.

The provisions of this section are regulatory in nature and do not affect the legality of an instrument violating the provisions.

SECTION 48-39-340. Distribution of funding.

Funding for local governments to provide for beachfront management must be distributed in a fair and equitable manner. Consideration must be given to the size of the locality, the need for beach management in the area, the cost/benefits of expenditures in that area, and the best interest of the beach/dune system of the State as established by priority by the department.

SECTION 48-39-345. Coastal Division of DHEC to administer funds reimbursed to nonfederal project sponsors under local cooperative agreement with army corps of engineers for cost-shared beach renourishment project.

Any funds reimbursed to nonfederal project sponsors under the terms of a Local Cooperative Agreement (LCA) with the Army Corps of Engineers for a federally cost-shared beach renourishment project, where the reimbursement is for credit to the nonfederal sponsor for federally approved effort and expenditures toward the nonfederal project sponsor obligations detailed in the LCA and where the State has provided funding to the nonfederal sponsor to meet the financial cost-sharing responsibilities under the LCA, must be refunded by the nonfederal sponsor to the State with the State and the nonfederal sponsor sharing in this reimbursement in the same ratio as each contributed to the total nonfederal match specified in the LCA. The Coastal Division of the South Carolina Department of Health and Environmental Control shall administer these funds and make these funds available to other beach renourishment projects.

SECTION 48-39-350. Local comprehensive beach management plan.

(A) The local governments must prepare by July 1, 1991, in coordination with the department, a local comprehensive beach management plan which must be submitted for approval to the department. The local comprehensive beach management plan, at a minimum, must contain all of the following:

(1) an inventory of beach profile data and historic erosion rate data provided by the department for each standard erosion zone and inlet erosion zone under the local jurisdiction;

(2) an inventory of public beach access and attendant parking along with a plan for enhancing public access and parking;

(3) an inventory of all structures located in the area seaward of the setback line;

(4) an inventory of turtle nesting and important habitats of the beach/dune system and a protection and restoration plan if necessary;

(5) a conventional zoning and land use plan consistent with the purposes of this chapter for the area seaward of the setback line;

(6) an analysis of beach erosion control alternatives, including renourishment for the beach under the local government's jurisdiction;

(7) a drainage plan for the area seaward of the setback zone;

(8) a post disaster plan including plans for cleanup, maintaining essential services, protecting public health, emergency building ordinances, and the establishment of priorities, all of which must be consistent with this chapter;

(9) a detailed strategy for achieving the goals of this chapter by the end of the forty-year retreat period. Consideration must be given to relocating buildings, removal of erosion control structures, and relocation of utilities;

(10) a detailed strategy for achieving the goals of preservation of existing public access and the enhancement of public access to assure full enjoyment of the beach by all residents of this State. The plan must be updated at least every five years in coordination with the department following its approval. The local governments and the department must implement the plan by July 1, 1992.

(B) Notwithstanding the provisions of Section 48-39-340, if a local government fails to act in a timely manner to establish and enforce a local coastal beach management plan, the department must impose and implement the plan or the State Comprehensive Beach Management Plan for the local government. If a local government fails to establish and enforce a local coastal beach management plan, the government automatically loses its eligibility to receive available state-generated or shared revenues designated for beach/dune system protection, preservation, restoration, or enhancement, except as directly applied by the department in its administrative capacities.

SECTION 48-39-355. Documentation of authorized activity.

A permit is not required for an activity specifically authorized in this chapter. However, the department may require documentation before the activity begins from a person wishing to undertake an authorized construction or reconstruction activity. The documentation must provide that the construction or reconstruction is in compliance with the terms of the exemptions or exceptions provided in Sections 48-39-280 through 48-39-360.

SECTION 48-39-360. Application of chapter.

The provisions of Sections 48-39-250 through 48-39-355 do not apply to an area which is at least one-half mile inland from the mouth of an inlet.