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Subject: Information regarding beachfront emergency orders for sand scraping

Holly -

Marshall Taylor contacted our office and indicated that you were interested in obtaining additional information regarding beachfront emergency orders for sand scraping. As you are aware, the Department issues emergency orders pursuant to the authority granted under SC Code of Laws Section 48-39-130(D)(1). Guidelines for issuance of these emergency orders are further provided under SC Code of Regulations Chapter 30.

In the event of a hurricane or major storm, the Department may issue emergency orders at the request of property owners or local governments to provide temporary protection from wave uprush for structures that are in imminent danger. A structure is determined to be in imminent danger if the erosion is within ten feet of the structure (R.30-15.H).

Department issued emergency orders for renourishment by sand scraping include conditions based on criteria established under R.30-15.H(2). These orders specify the emergency, typically a named storm or other unusual incident which endangers the health, safety, and resources of the residents of the state pursuant to §48-39-10(U). The order authorizes the recipient to perform renourishment by sand scraping within the intertidal zone and according to requirements set forth in the order. Emergency orders also include an expiration date by which all work must be done. Requirements of an emergency order for sand scraping generally include:

- limiting sand scraping to the area between extended property lines, and to a maximum depth of one foot below the existing beach level;
- prohibiting the placement of sand to protect an existing functional erosion control device;
- directing placement of sand seaward of the eroded scarp or dune;
- limiting the dune of the scraped sand to a height of six feet above grade and width of twenty feet;
- limiting the scraping activities to one time per property for each emergency order;
- requiring contractors conducting the work to coordinate with SCDNR Marine Turtle Conservation Program to avoid impact to endangered species; and
- requiring all necessary permits and reviews from other local, state or federal agencies prior to commencement of work.

The property owner or other recipient of the emergency order for sand scraping must obtain any additional permit(s) and agency review(s) that may be required by other local, state or federal agencies. Sand scraping activities impact natural resources below mean high tide, an area under the jurisdiction of the US Army Corps of Engineers. The recipient of the emergency order would be required to receive an emergency permit from the Corps prior to commencement of work. In addition, Department issued emergency orders do not construe or imply authorization of entry upon private property without the owner's permission.

The above outlines the Department's criteria when issuing emergency orders via authorities granted in §48-39-10 et. seq. and the Coastal Division Regulations Chapter 30. Under a state declared emergency where the Governor might suspend these provisions (§25-1-440(a)(3)), the Department would benefit from having specific direction regarding the sections of law that are superseded by the declaration, and any additional criteria that may be implemented outside of those provided in law.

I hope that this information is helpful to you. Please feel free to contact me if you have any additional questions or would like to discuss in further detail.

Sincerely,
Elizabeth

Elizabeth B. von Kolnitz

Chief

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