§ 34-0108. Rules and regulations.

1. After consultation with affected state agencies and representatives of local governments, and after conducting public hearings and review of any other comments submitted, the commissioner shall adopt rules and regulations implementing the provisions of this article within one hundred eighty days after the effective date hereof.

2. The rules and regulations adopted by the commissioner shall include a procedure pursuant to which any owner of land in an erosion hazard area identified pursuant to section 34-0104 of this article may appeal from the inclusion of such land in such erosion hazard area. Such procedure shall provide that the sole basis for such appeal shall be technical information indicating either (a) that the long-term average annual recession or other method used in identifying the erosion hazard area was incorrect, or (b) that an area has been identified as a natural protective area erroneously, and that the commissioner shall decide such appeal within thirty days after receipt thereof, and shall adjust the boundaries of the identified erosion hazard area or identified natural protective features accordingly.

3. The rules and regulations adopted by the commissioner pursuant to sections 34-0105, 34-0106 and 34-0107 of this article shall establish minimum standards and criteria to be applied to activities or development in erosion hazard areas. Such standards and criteria shall be used to deny, condition or modify a proposed action, if necessary, to implement the policies and purposes of this article. Standards and criteria promulgated pursuant to this section shall include but shall not be limited to:

(a) minimum setback requirements for structures within coastal erosion hazard areas taking into consideration recession rates, the useful life of the proposed structure, and the protection afforded by natural protective features and existing erosion protection structures.

(b) regulation of activities or development, including placement of erosion protection structures or use of non-structural measures so there will be no measurable increase in erosion to the development site or at other locations.

(c) regulation of activities or development, including placement of erosion protection structures, so as to minimize adverse effects upon natural protective features, existing erosion protection structures or natural resources, such as significant fish and wildlife habitat.

(d) standards and criteria shall provide that erosion protection structures that are proposed for construction or reconstruction shall have a reasonable probability of controlling long-term erosion on the immediate site for a period of at least thirty years and that a long-term maintenance program is provided for such structures; however such standards and criteria may allow for such protection structures to be constructed of materials which by themselves have a working life of less than thirty years, when the maintenance program assures that they will be regularly maintained and replaced as necessary to attain the required thirty years of erosion protection.

(e) restoration and stabilization standards for activities which are to be undertaken in connection with activities or development to insure that land areas are maintained and where necessary restored to minimize erosion on the site or to other nearby lands.

4. The rules and regulations shall provide procedure pursuant to which the strict application of their standards and criteria may be varied or modified in cases where practical difficulty or unnecessary hardship is shown, provided that in granting any such variance, the following criteria are met:

(a) for any proposed activities and development where public funds are utilized the public benefits clearly outweigh the long-range adverse effects.

(b) no reasonable prudent alternative site is available.

(c) all responsible means and measures to mitigate adverse impacts on natural systems in the area have been incorporated into the project design and will be implemented at the developer's expense.

(d) the development will be reasonably safe from flood and erosion damage.

(e) the variance provided will be the minimum necessary to overcome the practical difficulty or unnecessary hardship which was the basis for requesting such variance.

5. Notwithstanding section 34-0105 or 34-0106 of this article, in the case of any department, bureau, commission, board or other agency of the state, or any public benefit corporation, any member of which is appointed by the governor, a permit shall be obtained from the department pursuant to section 34-0109 of this article provided, however, in cases where there is a local law or ordinance in effect the commissioner shall make a finding prior to the issuance of the permit that the conditions of such local law or ordinance have been met, insofar as such conditions relate to the standards and criteria adopted pursuant to section 34-0108 of this article.