

NC COASTAL RESOURCES COMMISSION (CRC)

December 11-12, 2013

Hilton DoubleTree

Atlantic Beach, NC

Present CRC Members

Frank Gorham, Chair

Renee Cahoon, Vice-Chair

Neal Andrew

Larry Baldwin

Suzanne Dorsey

Bob Emory

Marc Hairston

Greg Lewis

Bill Naumann

Jamin Simmons

Harry Simmons

John Snipes

Lee Wynns

Present Attorney General's Office Members

Mary Lucasse

Christine Goebel

Amanda Little

CALL TO ORDER/ROLL CALL

Frank Gorham called the meeting to order reminding the Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called.

Angela Willis called the roll. Chairman Gorham stated he has no known conflict but wants to disclose that Bill Raney is a personal friend and he will be one of the attorneys involved in a variance request. Mr. Raney is also the Chairman's personal lawyer and is the lawyer for Figure Eight HOA. Chairman Gorham stated that he has not talked with Mr. Raney about the variance request. Neal Andrew stated he has a potential conflict on the Cape Fear River AEC Feasibility study. Larry Baldwin stated he has a conflict on the Cape Fear River AEC study. Renee Cahoon stated she has a conflict with the Town of Nags Head Land Use Plan. Suzanne Dorsey stated she has a potential conflict with the Cape Fear River AEC study. Harry Simmons stated he has a potential conflict with the Cape Fear River AEC study. John Snipes read into the record his Statement of Economic Interest evaluation letter received from the State Ethics Commission. Chairman Gorham stated at the last meeting he had Commissioners Dorsey and H. Simmons recuse themselves from the Cape Fear River AEC study and thinks he was wrong in asking them to do that. He stated he did not feel that they have a conflict, but have some knowledge that he would appreciate hearing. We will be briefed by CRC counsel on the conflict of interest issues and she will help us determine conflicts. All duly appointed Commissioners were present and based upon this roll call Chairman Gorham declared a quorum.

MINUTES

Renee Cahoon made a motion to approve the minutes of the November 2013 Coastal Resources Commission meeting. Marc Hairston seconded the motion. The motion passed unanimously (Andrew, Baldwin, Cahoon, Dorsey, Emory, Gorham, Hairston, Lewis, Naumann, J. Simmons, H. Simmons, Snipes, Wynns).

EXECUTIVE SECRETARY'S REPORT

Braxton Davis, DCM Director, gave the following report:

I would like to welcome to the Commission our two newly appointed Commissioners and I look forward to having an opportunity to meet with each of you soon to discuss the work of the Commission and the Division of Coastal Management. At this point in each Commission meeting I typically review the activities of the Division since your last meeting and keep you posted on the status and trends of permitting-related activities. Today, I have some significant news to report to you about some major changes at the Division that were announced earlier this week. At the November meeting, I briefed the Commission on our general operating budget, which is made up of a mix of grant funds from the National Oceanic and Atmospheric Administration (NOAA) under the federal Coastal Zone Management Act (CZMA), state appropriated funds, and revenue from permit fees. Our federal grant makes up over half of our operating budget, while state appropriations represent about 1/3 and permit receipts about 10%. What I did not discuss in detail at the last meeting is that the Division has experienced significant funding reductions over the past several years, including federal and state appropriations as well as reduced funding from permit receipts. Starting with our federal funding, for more than a decade this has been level as costs have increased due to inflation. But in the most recent fiscal year, our federal (NOAA) grant was reduced by about 6% due to the well-known "sequester" of funds by Congress. State appropriations for DCM are also down approximately 35% since 2009, and permit receipts have also been down approximately 30% in comparison with past years due to the drop-off in permit activity during the recession. As each year's budget has been developed over the past few years, staff have done an excellent job squeezing as much as we could from our budget, and we have met our mission and covered our core operating responsibilities well. However, we have had to eliminate Land Use Planning grants to local governments, we've abolished four positions over the past three years, we've cut various other special projects, and we've trimmed operating expenses. We have done a lot to improve efficiencies, but in the current fiscal year we are continuing to fund three staff positions using a prior year's grant award. This is unsustainable and we anticipate additional federal and state funding reductions next year. Simply put, we needed to make significant changes to reduce our operating costs. As a result, I spent considerable time this year reviewing our organizational chart, operations, and position responsibilities to identify opportunities for realignment and cost-savings. After careful consideration, I recently proposed a re-organization plan to the Department which will become effective at the end of this month. The plan eliminates five positions from our organizational chart, which is almost 10% of our total staff. Eliminated positions include the Assistant Director position, Federal Consistency Coordinator, Coastal Planning Director, IT Support position, and a vacant Policy Analyst position. The responsibilities of each position will be distributed across our remaining staff. This was not an easy decision to come to, and I want to be clear that this plan had nothing whatsoever to do with job performance. The affected individuals are wonderful people who have made outstanding contributions to our organization for many years. We will miss them both personally and professionally. Many of us will

****AMENDED 2/20/14**

have to take on significant additional duties as a result of their departure. I would be happy to discuss this in further detail with you after the meeting.

We worked with the Executive Committee to develop this meeting's agenda and I will just touch on a few items. Staff will provide an orientation on the Regulatory program with a focus on operations, CAMA major permits, compliance/enforcement activities, and rule development procedures. John Thayer will provide a brief overview of the land use planning program with a focus on the information that will be relevant to your action items related to approval of local plan amendments and status reports. Also on the agenda are a series of proposed rules and fiscal analyses that we will be seeking your approval to go to public hearing. We recognize that there is a lot to digest in this meeting, and we do not want to overload you with new information and action items. However, I wanted to let you know that these rule proposals follow from an internal staff review of CRC rules by the Division in late 2011 to help identify unnecessary burdens or negative impacts on customer service. We would like to continue with the rule development process by sending these proposals to public hearing, after which you would have additional opportunities to hear public comments and to decide on the best path forward. We are certainly willing to hold off on these if you need more time to get up to speed, I just wanted to let you know why we have included them on today's agenda and how these proposals originated.

On January 22, in partnership with the NC Coastal Federation and the Business Alliance for a Sound Economy, we will be holding a second regional workshop in Plymouth to solicit input from local governments and stakeholders on the future of the CAMA Land Use Planning program. This follows on our recent workshop in Wilmington, where over 85 participants provided a great deal of input. We hope to release summary notes from that meeting in the next few weeks. We will be sending out invitations to stakeholders, local governments, and to the Commission very soon.

In other staff news, Alice Johnson, DCM Human Resources manager, will be retiring at the end of this year. In addition, John Fear, our Research Coordinator for the Coastal Reserve Program, has taken a new position as Deputy Director with NC Sea Grant and the Water Resources Research Institute. We are happy for both Alice and John and wish them the very best, they will certainly be missed.

Last, we are tentatively planning for the February Commission meeting to be held at Jennette's Pier in Nags Head. For our new commissioners, please let me know what we can do to help you get up to speed and I hope that we can meet soon. Please feel free to stop by our office anytime for a tour. With that I'd be happy to answer any questions the Commission may have.

PRESENTATIONS

Regulatory Program

Ted Tyndall

Ted Tyndall, DCM Assistant Director, stated the Coastal Area Management Act (CAMA) was passed in 1974 by the General Assembly. The reason it was passed was to stop some of the destructive development practices that were taking place at that time. The coastal area was under intense development and the valuable resources that the coast held were being damaged or destroyed uncontrollably. CAMA established how the CRC is formed, how the CRAC is formed and how activities will be managed. The regulatory program concentrates on three aspects of the Act. CAMA defines the coastal area as the counties that are adjacent to, adjoining, intersected by or

bounded by the Atlantic Ocean or any coastal sound. CAMA also defines development as any activity in a duly designated AEC involving, requiring, consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings, clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake or canal. The Act went on to describe areas of environmental concern (AECs). CAMA states that the CRC shall by rule designate geographic areas of the coastal area as AECs and shall specify the boundaries thereof, in a manner provided in any one or more of nine specific areas.

Before the cutbacks just announced by DCM's Director, the regulatory section was structured with 1 Assistant Director, 4 District Managers, 11 field representatives, 4 compliance officers, 1 major permit/federal consistency manager, 2 assistant major permit coordinators, 4 DOT representatives (2 housed in Raleigh), 2 fisheries resource specialists, and 1 federal consistency coordinator. DCM has field offices in Morehead City, Elizabeth City, Washington and Wilmington.

You are likely to be in an AEC if the activity is in or on navigable waters within the 20 CAMA counties, is on the marsh, is within 75 feet of the normal water line or normal high water line along an estuarine shoreline, near the ocean beach, near an inlet, or near a public water supply. There are four broad categories of AECs: the estuarine and ocean system, ocean hazard, public water supply and natural and cultural resource areas. The estuarine and ocean system category include coastal wetlands (marshes subject to tidal flooding), estuarine waters (bays, rivers, sounds), public trust areas (waters and lands from mean high water seaward to State jurisdiction), estuarine shorelines (75 feet landward of normal high water or normal water level and 575 feet landward of normal high water or normal water level adjacent to outstanding resource waters), and the public trust shoreline (30 feet landward of normal high water or normal water level). The ocean hazard category includes the ocean erodible area (between the mean low water line and a point landward of the first line of stable natural vegetation equal to sixty times the erosion rate plus the 100-year storm recession), the high hazard flood area (V-zone), inlet hazard area, and unvegetated beach (no stable vegetation present). The public water supply category includes small surface supply watersheds (Kill Devil Hill and Nags Head) and a public water supply well field (Toomers Creek Watershed). The natural and cultural resource areas include areas that sustain remnant species, complex natural areas, unique geologic formations (Jockey's Ridge), significant archeological resources (Permuda Island) and significant historic architectural resources.

A CAMA permit or authorization is required for development proposed within AECs. The three types of permits are major permits, general permits, and minor permits. The two exemption types are statutory (NCGS 113A-105(b) and (c)) and regulatory (15A NCAC 07K). Major permit applications are reviewed by 9 state and 4 federal agencies. These are issued by the Morehead City office and account for about 6% of all CAMA permits. General permits are issued by DCM field staff and are streamlined/expedited major permits for routine development. The Division currently offers 17 general permits. General permits account for about 65% of all CAMA permits. Minor permits are issued by local governments for high ground development. Minor permits account for about 29% of all CAMA permits. Eighty-five percent of all major and general permits are issued by the Division within seven days of receipt of a completed application. There is a federal consistency review for any project within or affecting the coastal area that is proposed by a federal agency, requires a federal permit, or uses federal funds. The Division coordinates state-agency reviews of the project and then issues a state position on whether the activity is consistent with CAMA.

Major Permits

Doug Huggett

Doug Huggett, Major Permits/Federal Consistency Manager, stated the rules of the CRC incorporate both the State Dredge and Fill Law and the Coastal Area Management Act. The State Dredge and Fill Law was enacted in the late 1960's and requires that an individual obtain a permit from the State before excavating or filling in estuarine waters, tidelands, or coastal wetlands. CAMA established a cooperative program of the coastal area management between local and state governments. In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, aesthetic, cultural and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible. CAMA requires that water resources be managed to preserve and enhance water quality and to provide optimum utilization of water resources and land resources. The Commission is charged with guiding growth and development and minimizing damage to the natural environment. The intent is not to stop development but rather to ensure the compatibility of development with the continued productivity and value of certain critical land and water areas. Applications for permits, except special emergency permit applications, are circulated by DCM to all state agencies and, at the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project for comment. Upon receipt of an application the Secretary provides public notice of the proposed development to any interested state agency. Major permit applications are coordinated with the appropriate state and federal resource agencies so that each reviewing agency can make an independent analysis of the application and submit recommendations and comments to the DCM. Each reviewing agency may request additional information if such information is deemed necessary for a thorough and complete review of the application. DCM is not just a coordinator of the permit review process; we are also a commenting agency. CRC rules require that all comments received during the review process be considered before DCM makes a final decision on a major permit.

Before issuing a permit DCM must make a determination that the project will not be detrimental to the public trust rights and the biological and physical functions of the estuary. We have to be sure that projects won't block or impair existing navigation channels, increase shoreline erosion, deposit spoils below normal high water, violate water quality standards or cause degradation of shellfish waters. Projects shall have a minimum adverse impact upon the productivity and biologic integrity of coastal marshland, shellfish beds, beds of submerged aquatic vegetation, spawning and nursery areas, important nesting and wintering sites for waterfowl and wildlife, and important natural erosion barriers. Development shall not violate water or air quality standards and shall not cause major or irreversible damage to valuable documented archeological or historic resources. We must make the determination that the development's timing is proper to have a minimum adverse affect on life cycles of estuarine and ocean resources and that the development shall not impede navigation or access to public trust areas or estuarine waters. Navigation channels and canals may be allowed if the loss of coastal wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands. Maintenance excavation may take place as long as excavated material can be removed and placed in an approved disposal area without significantly impacting adjacent nursery areas and beds of submerged aquatic vegetation. Marinas shall not be located within areas that will result in the closure of shellfish waters. No development shall be allowed in any AEC which would result in a violation of any other rule or regulation of the State of North Carolina or the local government in which the development takes place. When the economy was booming we received over 200 permit applications per year for several years. When the

economy started to go down we stabilized and received 160-170 new permit actions per year. When the economy was up the complexity of the projects was high and our review times were too long. In the last couple of years we have implemented some major changes to our review process to improve processing time. We will continue to improve this. There are benefits to the umbrella permit process. This process was set up to incorporate other permits into the CAMA process. If an applicant submits an application for a CAMA Major permit that application suffices as an application for other state and federal permits. It can serve as a state application for a state Water Quality Certification and buffer authorizations, a federal wetlands permit from the Army Corps of Engineers, it will initiate the process for stormwater permits, erosion and sedimentation control permits, and State submerged lands easements. This is a cost savings for the applicant and DCM coordinates with the other agencies on the applicant's behalf. If this process did not take place the applicant would suffer significantly if they tried to coordinate with each of these agencies individually. DCM has a cooperative agreement with DWR where we collect one permit application processing fee for both agencies. This fee is less than what they would pay if they paid the fee separately. The application review process also involves coordination with the local government where the project takes place to ensure the project meets local zoning requirements.

Braxton Davis stated that because CAMA has set up this umbrella permitting process with reviews from other agencies for projects on the coast, it was recognized in the 2011 General Assembly that the CAMA permit process should exempt projects from a SEPA review. While we can do more to reduce the processing times, sometimes the longer time frame is a result of us negotiating a complicated project with multiple reviews.

Frank Gorham requested staff send out a survey to the last two years of Major Permit applicants to see what we could do to improve the process. The results should go to the CRC and not DCM so there won't be a fear of backlash. Doug Huggett stated we are in the process of implementing this already. Braxton Davis stated a draft survey is already done and is being reviewed by the Department.

Conflicts of Interest

Mary Lucasse

Mary Lucasse, CRC Counsel, stated that our conflict of interest analysis is governed by the NC General Statutes and the Governor's Executive Order. The statute that addresses conflicts is NCGS 138A-2. The purpose behind the Ethics Act is to ensure that elected and appointed state agency officials exercise their authority honestly and fairly, free from improprieties, threats, coercions, and undue influence. The Ethics Act applies whether the Commission is doing quasi-judicial work, (for example a variance) or exercising quasi-legislative authority such a rulemaking, resolutions and policy. The Constitutional due process requires that each of you act as an impartial decision maker. It is easy to understand what type of situation poses an actual conflict. This can include when an individual member of the Commission has a direct or substantial financial interest. It is more difficult to understand what types of things can pose an appearance of or a potential conflict of interest. At this point it becomes very important to disclose potential or apparent conflicts. You have all gone through the process of reading your letters from the State Ethics Commission. That creates an understanding within the Commission of each member's potential conflicts. The Chairman has a special responsibility under the Ethics Act and he is entitled and encouraged to raise potential conflicts as often as he thinks is necessary. We have these discussions, not to point fingers, but to help each other find the way to be the best and most impartial decision makers that we can be. What is important to remember is that each member gets to make the decision about

whether he or she has an actual or potential conflict. Members may bring up the question of whether another member has a potential conflict, but that final decision on whether there is a conflict is made by the member. There are two specific conflict provisions in the Statute. Recusal should happen to the extent necessary to protect the public interest from any proceeding in which a member has an actual conflict or in which the member's impartiality might reasonably be questioned because of a familial relationship, a personal relationship, or a financial relationship. So who is a participant in a proceeding? A participant can be an owner of a company, shareholder, partner, a member or manager of an LLC, an employee, agent, officer, director of a business or an organization or group that is involved in the matter. It could also be an organization or group that has some specific, unique or substantial interest in the proceeding. A personal relationship includes when a commissioner serves in a leadership or policy making position with that other entity. As we work through that there is another provision which is the safe harbor provision. This provision provides that a covered person may participate if his or her only interest or the reasonably foreseeable benefit is no greater than that which could reasonably be foreseen to affect all members of that profession, occupation or general class. For example, if you are an attorney and you do real estate closings and serve on the Real Estate Commission and benefit to an extent no greater than any other real estate attorney then you can participate in the decision without recusal. Each of you has certain expertise which may well have been the reason the appointing authorities appointed you to this Commission. The safe harbor provision may be applicable in situations where you may initially appear to have a benefit but if that is no greater than that which could reasonably be foreseen to affect all members of a general class, occupation or profession. If you aren't sure about conflicts then you can ask me or ask the Chairman. We can also request an opinion from the Ethics Commission. Once you have been recused from a proceeding, you should not change your mind. If there is an actual conflict then you should recuse yourself. If you do not know, the result may be that the Commission's decision be invalidated by the courts. The result of appropriate use of recusal operates to preserve the public trust in the work that we are doing.

Compliance and Enforcement

Roy Brownlow

Roy Brownlow, Compliance and Enforcement Coordinator, stated the overall mission and purpose of CAMA permits are to protect the environment and public trust rights and to protect the economy of the North Carolina coast. An issued permit is of no use unless you have someone to enforce the permit. A person is in violation when they undertake development within an AEC without a valid permit or if any of the permitted work does not comply with an issued permit. DCM does routine inspections. We have pre-permit site visits and go on site before a permit is issued. Once a permit is issued then we do a follow-up monitoring on the site to be sure the work complies with the permit criteria. We also go on site if a complaint is filed in the office. Aerial monitoring is done through an agreement with DMF Marine Patrol. We also get self audits and self reports as well as incidental discoveries. Some of the enforcement tools are provided by the CRC and the General Statutes. A notice of violation is based on the new tiered enforcement policy. We may issue a stop work order (cease and desist order). We can request the impacted resources be restored and that the property be brought back to predevelopment conditions as much as is practical. We issue civil penalties based on the degree of impact on the resources. We also have the option of seeking injunctive relief from the courts to order restoration of the impacted resources, although this enforcement proceeding is not used very often. The primary objective of DCM is resource recovery through restoration or mitigation of the damaged environment. The second objective is the protection of adjoining riparian property owner rights including rights of access.

In 1985, the CRC approved a tiered enforcement policy for minor violations. In 1989, the DCM Director provided the authority to district managers to issue proposed civil penalty assessments. This is unique within DENR and has been very effective. In 2006, the CRC was given statutory authority to increase the penalties for CAMA violations. Prior to that, many times it was cheaper to commit a violation without getting a permit then it was to get a permit. In 2007, designated staff for enhanced monitoring and compliance was provided in the Coastal Habitat Protection Plan. We picked up four compliance officers to provide compliance assistance and be proactive in detection of violations. The Regulatory Reform Act of 2001 brought in provisions that mandated that the regulatory agencies within DENR adopt a three level tiered enforcement policy. Each tier progresses in accordance with the degree of harm or significance of the violation. This new policy was drafted and provided to the Environmental Review Commission on October 1, 2011. It was effective February 1, 2012. NCGS 113A-126(d)(4) directs the CRC to consider the degree and extent of harm, duration and gravity, effect on water quality and resources or public trust use, cost of rectifying the damage, amount saved by non-compliance, willful and intentional, prior record of the violator, and the cost to the State for the enforcement. Tier 1 includes issuance of an informal notice and a letter of concern or warning letter. Tier 2 is the most common enforcement action where we issue a Notice of Violation and a civil penalty. Tier 3 includes issuing a Notice of Continuing Violation, a civil penalty and an injunction if necessary. Tier 1 minor violations are violations where the offense has to be permissible, must be still in progress, and there are no previous CAMA violations. Tier 1 major development violations would have been permissible under a General permit, the work is still in progress, there are no previous CAMA violations, and does not involve dredge and fill activity in estuarine or public trust waters or coastal wetlands. Tier 2 minor development violations are a permissible offense, the work has been completed, and there are no previous CAMA violations. Tier 2 major development violations would have been permissible under a General or Major permit, the work is completed, there have been no previous CAMA violations, and the work does not involve dredge and fill activity in estuarine or public trust waters or coastal wetlands. Tier 2 also includes work that was not permissible development but the resources are recoverable and restored to pre-development condition. Tier 3 violations are minor and major violations that are willful and intentional, continuing minor and major violations due to failure or refusal to restore or bring development into compliance, unauthorized dredge and fill activity within estuarine and/or public trust waters or coastal wetlands, or previous CAMA violations. This is a violation of such a degree, gravity, or duration that significant environmental harm has been documented.

CAMA Variance Procedures

Mary Lucasse

Mary Lucasse explained the variance process. NCGS 113A -120.1 sets forth the variance process. In addition, the Commission has adopted rules relating to variances; specifically 15A NCAC 07J .0701, .0702, and .0703. Before the CRC holds a hearing on a variance, several things have already happened. For example, the petitioner will have already asked for a permit and been denied. If the permit requested would violate the CRC's rules, then DCM is required to deny the permit. DCM may issue a permit with conditions and the applicant may ask the CRC for a variance from one or more of the permit conditions. In order to begin the variance process the applicant has to submit a complete variance petition. A complete application includes the name and location of the proposed development, the permit decision, and a copy of the deed to the property. The applicant must also stipulate that the development is inconsistent with the rule at issue, provide proof that notice was sent to the adjacent landowners, seek variances from the local government if required before submitting a request for a CAMA variance, submit written reasons and arguments about why the

applicant meets the variance criteria, and a draft set of proposed stipulated facts. DCM staff and the petitioner must agree on the stipulated facts that will be presented to the CRC. The CRC makes its decisions on stipulated facts and does not do any fact finding on its own. The CRC has the option to ask for additional facts. If the petitioner and DCM cannot agree on the facts then the request goes to the Office of Administrative Hearings to determine the facts. The CRC will always hear from an attorney representing the DCM staff and from the petitioner. Sometimes the staff will agree that a variance should be issued and sometimes staff will oppose the variance request. After the CRC has reviewed the information provided, the CRC holds a quasi-judicial hearing during one of its regular meetings. In the material provided to the CRC will be photos of the site, the stipulated facts, and oral arguments. The CRC then has the opportunity to ask questions. It is the petitioner's burden to show that the four variance criteria have been met. The Commission must affirmatively find each of the four factors. It is my recommendation that the Commission should vote on each of the factors individually. The CRC has the option of remanding the request back to DCM staff and petitioner and ask for more facts, you can send the request to the Office of Administrative Hearings for a contested case hearing, you can grant the variance with or without conditions, or you can deny the variance request. The CRC is required to make its decision at the hearing or in no case later than the next meeting. Once you have made a decision, CRC counsel will put the decision into writing within 30 days and send it to all parties. If the petitioner does not like the CRC's decision then he or she may appeal to the Superior Court in the county where they live. Upon appeal, the Superior Court may remand the decision back to the CRC for further action or the Superior Court may affirm the CRC's decision. A further appeal of the Superior Court's decision may be made to the NC Court of Appeals.

CAMA Land Use Plans – CRC Rule

John Thayer

John Thayer, Land Use Planning and Public Access Manager, stated that CAMA is a cooperative state and local program, especially in regards to planning. The Act states that the state government shall act primarily in a supportive standard-setting and review capacity, except where local governments do not elect to exercise their initiative. Enforcement shall be a concurrent state-local responsibility. Only counties are required to have land use plans. Local governments that do not have a land use plan are folded into the county plan. The Act states that the General Assembly had found an immediate and pressing need to establish a comprehensive plan for the protection, preservation, orderly development and management of the coastal area of North Carolina. The State does not have a plan. Originally when the Act was being developed there was a concept of a coastal plan; however the net result was that instead the state would rely on the local governments' land use plans which would be used as part of the coastal program. When the state issues permits it uses the local plan as part of the review process to ensure consistency. The Act requires that county land use plans consist of statements of objectives, policies, and standards to be followed in public and private use of land within the county, which shall be supplemented by maps showing the appropriate location of particular types of land or water use in particular areas. The plan shall give special attention to the protection and appropriate development of areas of environmental concern. No land use plan can become effective until it has been approved by the CRC. The CRC shall afford interested persons an opportunity to present objections and comments regarding the plan and shall review and consider each county land use plan in light of such objections and comments. No permit can be issued for development which is inconsistent with the approved land use plan for the county in which it is proposed. No local ordinance or other local regulations shall be adopted which, within the area of environmental concern, is inconsistent with the land use plan of the county or city in which it is effective. Any existing local ordinances and regulations within areas of environmental

concern shall be reviewed in light of the applicable local land use plan and modified as may be necessary to make them consistent.

The appropriate DCM district planner provides a report to the CRC and highlights any unique characteristics of the plan, identifies any land use conflicts with adjacent planning jurisdictions or other state or federal agencies, identify inaccuracies or inconsistencies of items in the plan and recommends certification, conditional certification or non-certification. The public has an opportunity to comment, object, or provide statements of support. The CRC is required to certify that the land use plan is consistent with the current federally approved North Carolina Coastal Management Program, the rules of the CRC, does not violate state or federal law, and contains policies that address each management topic (public access, land use compatibility, infrastructure capacity, water quality, hazards, local area concerns). If a plan is not certified, the CRC shall within 30 days inform the local government as to how the plan might be changed so certification can be granted. The CRC does not have the authority to prescribe local policy. Clearly the CRC can have a great deal of influence, but if you don't like a local policy you cannot deny based on that alone. Until the plan is certified, the pre-existing certified land use plan shall remain in effect. The CRC can conditionally certify a land use plan. If a plan is conditionally certified, the CRC shall within 30 days provide the local government with the conditions that shall be met for certification. When the local government complies with all conditions for the conditionally certified plan, as determined by the Executive Secretary of the CRC, plan certification is automatic with no further action needed by the CRC. Land use plan amendments can be certified by the Executive Secretary if the amendments are minor. If the Executive Secretary certifies the amendment, the amendment shall become final upon certification of the Executive Secretary and is not subject to further CRC review. If the Executive Secretary denies certification of the amendment, the local government shall submit its amendment for review by the CRC in accordance with the regular plan certification process. Within 90 days of a land use plan certification, the local government shall provide one copy of the amendment to each jurisdiction with which it shares a common boundary and with the regional planning entity.

Press and Media Interactions

Michele Walker

Michele Walker, Public Information Officer, stated a large part of my job involves working with news media, writing press releases, talking with reporters, interviews, and spokesperson for the Division and occasionally the Department. One thing I am not is a spokesperson for the Commission. I leave that up to you. Some of you have dealt with reporters. As members of the Commission the press is very interested in you, your actions and your opinions. A lot of the things you talk about are controversial. Depending on the topics on the agenda we frequently have television reporters at the CRC meetings. As private citizens you are free to talk to the media any time that you like. Please let me know if you have done an interview so I can be on the lookout for the story. Do not ignore reporters. They will not go away. If you are uncomfortable talking to them just call me and we can talk about it so we can figure out how I can help. There are occasions when you shouldn't comment. Do not talk about cases that are in active litigation. You do not want to talk about variances that the CRC hasn't heard. If there is an issue that you have a conflict with then do not talk to the press about that issue. The best thing would be for me to find someone else for the press to talk to about the topic. The best advice I can give you is to be prepared, be honest, and think before you speak. The media is a way to get your message out to the public.

Amendments, Reviews and APA Requirements (CRC 13-32)
Tancred Miller

Tancred Miller, Strategic Planning Manager, stated NCGS 150B is the North Carolina Administrative Procedures Act. This Act contains all of the requirements the CRC must follow for the adoption, amendment and repeal of rules. All of the CRC's rulemaking is done under the authority of CAMA and the Dredge and Fill law. There are three categories of rules; temporary, emergency and permanent. Most of the CRC's rules are permanent. Temporary rulemaking is typically done due to an unforeseen threat or a legislative requirement. Temporary rules have a 30 day comment period, require a public hearing and are effective for up to 270 days unless a replacement rule is submitted to the Rules Review Commission. Emergency rules are for things that are dire emergencies and against the public interest to go through the public hearing process. For permanent rules the CRC determines a need for rulemaking. The staff drafts the proposed new rule or amendment with stakeholder participation. The CRC reviews and approves the proposed text for public hearing. Staff prepares a fiscal note and secures DENR approval and OSBM certification. The CRC then approves the fiscal note for public hearing. Staff submits the proposed language and fiscal note to the North Carolina Register for publication. Comments are accepted on the rule language and fiscal note for a minimum of sixty days and at least one public hearing. If a rule change affects an AEC then the CRC is required to hold a public hearing in each county that is affected by the rule change. Staff presents the comments to the CRC along with any recommended changes. The CRC reviews the comments received and can make changes, if substantial changes are made then we must republish in the Register. The CRC can then adopt the rule and staff submits the rule to the Rules Review Commission (RRC) for approval. During the RRC staff review they can recommend technical changes or recommend objection to the rule. DCM staff will address the RRC staff comments. Rules Review can approve the rule and it becomes effective on the first day of the next month unless ten letters are received requesting legislative review. RRC can also object to the rule and the CRC must satisfy their objection or else the rulemaking action dies. Staff prepares a fiscal note for every rule. The notes address impacts to state and local budgets and any impacts to NCDOT. If the fiscal impact is below a million dollars over a 12 month period then it is a routine fiscal analysis. If it is above a million dollar impact then a more extensive analysis is required.

We have two rule reviews that we are legislatively required to do. The CRC and all other regulatory agencies must do an annual review of its rules as well as a periodic review (10 year cycle). Executive Order 70, signed by Governor Perdue, mandated the annual review to do away with rules that are considered unduly burdensome or outdated. During last year's legislative session there was a change in the APA that replaced that Executive Order but requires the same type of annual review. The periodic reviews came out of this year's legislative session in House Bill 74. After DCM did its review of the rules we came up with six immediate actions that we wanted to take and the CRC agreed to move forward. There are three rules that will be on this meeting's agenda. One change was achieved through legislation this year and the other two are still undergoing review. We will come back to the CRC in 2014 with the results of this year's review and recommendations for change. Prior to this year, rules that were adopted or amended as permanent did not expire. Now most of the CRC's rules have to be reviewed on a ten year basis and if they aren't then they will expire. Subchapter 7B is scheduled to be reviewed in 2015 and the rest of the rules must be classified by 2018 as either unnecessary, necessary with public interest, or necessary without substantial public interest. The CRC has 300 rules in the Administrative Code and this will require staff time and CRC meeting time.

Interpretation of Variance Criteria
Mary Lucasse

Mary Lucasse stated there are four factors that must be found when deciding on a variance request. The first factor is whether there is an unnecessary hardship. We all know what a hardship is, but what does it mean to be unnecessary? The attorneys for the Commission have taken the position that in order to give meaning to this section you have to find something that is different from the second factor, whether the hardship is a result of a condition that is peculiar to the property. You have to see if there is anything that is specific to that property. The third factor is whether the owner did anything to cause the hardship. In terms of substantial justice, the CRC in the past has looked at items such as lot placement or existing docks on surrounding properties. The Commission will have to weigh each of these factors as you look at the stipulated facts for each variance request.

Braxton Davis stated that the Commission can also add conditions on a variance request. Once conditions have been set then they are pretty much set in stone.

CRC Internal Operating Procedures – Review and Adoption (CRC 13-33)
Mary Lucasse

You were provided the Internal Operating Procedures in your packet of information. There is a red-lined edition so you can see the changes that have been made. Revisions to the Internal Operating Procedures are based on changes discussed at the last meeting as well as suggestions by counsel and DCM staff.

Bill Naumann made a motion to approve the CRC's Internal Operating Procedures. Renee Cahoon seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

It was unclear which Commissioners had signed an Oath of Office from their appointing authority. All Commissioners were sworn in by Greg Lewis, Chair of Carteret County Board of Commissioners on December 11, 2013 at 4:00 p.m.

Cape Fear River AEC Feasibility Study Report (CRC 13-34)
Mike Lopazanski

Mike Lopazanski stated that staff presented the draft report at the last meeting. The CRC approved the draft to be sent out for a 30 day public comment period. The comment period ends Saturday, December 7th. For the benefit of our new Commissioners, I will run through how we got to this point. House Bill 819 became Session Law 2012-202 and amended some coastal management policies and directed the Division and Commission to take on several studies. One of the studies was the Cape Fear River AEC Feasibility Study. The Commission was charged to look at the unique coastal features of the Cape Fear River Inlet area and work with stakeholders, the Town of Caswell Beach and Village of Bald Head Island, to identify regulatory concerns associated with the management of development within this area. The CRC is also to determine if a new AEC is necessary to address these concerns and any unique coastal features of the Cape Fear Inlet. If the CRC agrees it is a necessary action then we would need to eliminate any overlapping AECs and

apply appropriate development standards that would apply specifically to the Cape Fear River Inlet AEC. The report on this feasibility study is due to the Governor and Legislature by the end of the month. We worked with the Town of Caswell Beach and Village of Bald Head Island to hold a number of public meetings. The towns asserted that the Cape Fear River navigation channel is the primary factor in beach erosion and they are looking to require the Army Corps of Engineers to dredge the channel every two years and place the sand on the adjacent beaches. There was a feeling from the towns that the existing erosion control strategies available to them were limited, that their permit reviews were too slow, and were reactive as opposed to proactive. They proposed a number of strategies for dealing with this and these strategies would have the Cape Fear River AEC replace the existing AECs in this area (Ocean Erodible Area and Inlet Hazard AEC). The proposals would also allow for the use of engineered erosion control measures, expanded use of sandbags, and reduced setbacks in certain situations where mitigative actions were planned. It also called for expedited authorizations to address the erosion issues that are being faced by the Towns. The draft report has been released for public comment and we received four comments on the draft report. The comments came from the Village of Bald Head Island, NC Coastal Federation, Duke Energy and the US Army Corps of Engineers. These comments were provided to the CRC. The Village stated that the draft report was the culmination of a lot of hard work on the part of DCM staff as well as the municipalities involved and said that the current regulations are inadequate to address the environmental challenges of the Cape Fear River entrance and to protect private property rights. The Village also stated that they continue to bear the financial costs associated with the erosion issue and that the Cape Fear River AEC report warrants the CRC to move forward in directing the Division to develop strategies for the creation of a more efficient regulatory framework. NC Coastal Federation commented that the dredging of the Wilmington Harbor navigation channel causes shoreline erosion particularly to the beaches of Bald Head Island and they support the mandatory sand management plan to compel the US Army Corps of Engineers to abide by the plan. The Coastal Federation does not support special exemptions to expedite emergency permits for the bypassing of the normal variances processes. The Federation also objects to beach erosion determinations being made by contract engineers as well as the grandfathering of structures from setback requirements and relaxing of imminently threatened structure requirements. Duke Energy comments were primarily focused on the Brunswick Nuclear Plant's pumping station located on Caswell Beach Road. They were interested in how a new AEC might affect the dredge spoil pond located just north of the station and along the discharge canal and have asked to be kept apprised of developments as the AEC is considered. The Corps' comments included 2,000 pages of supporting documents. The Corps does not concur with the findings and recommendations contained in the draft report and find them inconsistent with engineering studies previously completed by the district. The Wilmington district also objects to any law, regulation or decision that requires them to dredge in a defined schedule for the purposes of placing sand on adjacent beaches with a proposed AEC. They also object to any proposal that attempts to dictate which beach would receive sand on any given year, where it would be placed and in what quantity. The Corps also disputes that the navigation project and maintenance dredging is the cause of the erosion as it is not supported by the historical evidence and states that the sand management plan is a disposal plan rather than a mitigation or beach nourishment plan.

Earlier this week Chairman Gorham sent his proposal for handling the Cape Fear River AEC to the Commission. Braxton Davis stated that to be in compliance with HB819 we have to have a finding of the Commission and attached to the report to be delivered to the General Assembly, DENR Secretary and the Governor. Chairman Gorham stated that there is no question that the Cape Fear River Inlet presents a unique set of challenges. I am concerned about the precedent of establishing a separate AEC. Some of the recommendations made by this study are invaluable and can be used

at other inlets. He proposed that we take this work as a base case and explore the possibility of having an inlet management program where all 12 developed inlets would be able to utilize a set of tools/remedies/approaches. We can go through the process of coming up with simplistic ways that could help all inlets. We already have several ongoing studies and have been directed by the legislature to look at all of our regulatory issues. We could roll all of this into one inlet management program. We will have regional hearings in areas with inlets (Hatteras Village, Morehead City, Wrightsville Beach, and Ocean Isle). We will seek towns, communities, and stakeholder comments and suggestions to find things that would be helpful with inlets. Then we will have one recommendation and will have looked at all inlets. One criticism I heard about this recommendation is to have another study and kill all the work that has been done on this one. All the regional hearings will be done by April 30. We will have a summary of these meetings and preliminary recommendations to the full CRC by the May CRC meeting. The CRC will send a preliminary legislative report to the legislature and the Governor by June 30 outlining the preliminary findings. We will require that a final draft of findings and recommendations submitted to the CRC by the July CRC meeting and the CRC can vote on whether to move forward with the recommendations and submit them through the rulemaking process by September 30, 2014. By December 31 we could submit our findings to the legislature and the Governor.

Renee Cahoon made a motion to approve and forward the December 9, 2013 draft Cape Fear River AEC Feasibility Study Report and adopt the schedule and study for the Inlet Management Program. Bill Naumann seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

The meeting was opened for public comment on this issue.

Andy Sayre, Mayor of Bald Head Island, stated I appreciate the difficulty that has been presented to a new Commission to make a recommendation in a short amount of time; however it is hard for the Village not to feel like we have been thrown backwards. We have spent a lot of time trying to make a point that we are unique and do not fit into a lot of the rules and regulations of DCM. We are supporting of the CRC's actions and will participate in this.

Rudi Rudolph, Carteret County Shoreline Protection Manager, stated I want to alert the CRC that the Corps just issued their dredge material management plan for the next 20 years for the Morehead City Harbor. The public hearing on this is January 15. Most of the Corps' comments about the Cape Fear River AEC were about the dredge material management plan done in 1991. We have met with DCM staff about the management plan.

Future Directions

Frank Gorham

Frank Gorham stated the CRC's number one priority is the inlet management program. By the next meeting we owe it to the public to finalize the CRAC process. By the end of January the nominations will have been submitted and a list will be provided to the CRC members. The Executive Committee should review the list and make a recommendation to the full CRC. The CRC can then discuss the recommendations at the February meeting. Priority should be given to institutional expertise and prior participation. We also need to address the Science Panel. There are currently four openings. We need to decide how we want to use the Science Panel and how we will fill the vacancies. DCM will send a list of the existing Science Panel members. Another priority

should focus on the coast's economic impact and value. I would like to put together an economic development sales package explaining the value of the 20 coastal counties. Braxton Davis stated that an outreach document is already in the works that could help encourage economic development along the coast. A subcommittee was formed to work on the economic value report (Dorsey, H. Simmons, Cahoon, Baldwin, Lewis). This subcommittee will report back by the end of January. The Commissioners have been asked to come up with their three top issues to work on. Please submit your top three issues to Braxton and we will come up with a master list and then prioritize the list in February. Finally, our newest Commissioner John Snipes will facilitate a flood/wind insurance information session for the Commission. Commissioner Snipes said he would be glad to bring the information to the CRC. Greg Lewis asked that the Joint Underwriters be included in the discussion.

VARIANCE REQUESTS

NNP IV – Cape Fear River LLC (CRC VR 13-03)

New Hanover County, ¼ width pier rule

Amanda Little

Amanda Little of the Attorney General's Office represented staff and stated petitioner owns property located at 4410 River Road in Wilmington. On April 29, 2013, petitioner applied for a Major Modification to CAMA Major Permit #92-07 to relocate the footprint of the permitted community marina and commercial dry stack launch site into deeper water. On July 15 petitioner's permit was denied because the proposed relocation of the development was inconsistent with the Commission's one-fourth width limitation to pier lengths. Petitioner seeks relief from 15A NCAC 07H .0208 by allowing the increased pier length to one-third of the water body. Ms. Little reviewed the stipulated facts of this variance request. Ms. Little stated no federal or state agency has had an objection to this proposed development and staff and petitioners agree on all four variance criteria which must be met in order to grant the variance request.

Bill Raney, Wessell & Raney, LLP, represented petitioner and stated we agree with the Staff's positions all four variance criteria. Mr. Raney added that there is a site plan included in the materials that is instructive if you have any questions on the affect of navigation. The principle reason for the one-fourth rule is to preserve public rights of use in the bodies of water, but in this case there will not be a negative effect on navigation.

Renee Cahoon made a motion to support Staff's position that strict application of the development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardship. Jamin Simmons seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Bob Emory made a motion to support Staff's position that hardships result from conditions peculiar to the petitioner's property. Lee Wynns seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Bill Naumann made a motion to support Staff's position that hardships do not result from actions taken by the petitioner. J. Simmons seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Renee Cahoon made a motion to support Staff's position that the variance request will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. Bill Naumann seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

This variance request was granted.

**City of Jacksonville (CRC VR 13-06)
Dredging in PNA
Christine Goebel/Jill Weese**

Christine Goebel of the Attorney General's Office represented staff and stated the petitioner owns property in Jacksonville adjacent to the New River. In August 2013 the petitioner, with the assistance from the Wildlife Resources Commission acting as its agent, sought a CAMA Major Permit to construct a public boating access area with associated driveways, parking areas, boat ramps, breakwaters, access piers, boardwalk, and bulkhead and proposed to excavate an access channel from the proposed boat ramp to the main navigation channel of the New River. This area is designated as a Primary Nursery Area (PNA) by the Marine Fisheries Commission and per CRC rule 15A NCAC 07H .0208, navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas. Petitioner's permit was denied on November 8, 2013. Ms. Goebel reviewed the stipulated facts of the variance request and stated staff and petitioner agree on all four variance criteria which must be met in order to grant the variance request. Ms. Goebel added that all parties worked together on some mitigation opportunities and the City agreed to a condition on the variance to install an educational kiosk on the site informing and educating the boating public about the value of Primary Nursery Areas and the potential for impacts to PNAs from boating. The City, in cooperation with the WRC, DCM and DMF, will also explore alternative stabilization measures at the location of the small boat ramp once it is removed. The WRC has also agreed to install channel markers to clearly designate the navigation channel which should help minimize adverse impacts to the PNA bottom at this site.

John Carter, City of Jacksonville Attorney, represented the petitioner. He stated, we have three governmental units coming together to work for the common good of the public. The current facility is undersized and does not meet the needs for the City of Jacksonville. The City has agreed to stipulated fact number 24 in an effort to work with the staff. We request the CRC grant the variance.

Bill Naumann made a motion to support Staff's position that strict application of the development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardship. Larry Baldwin seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Bob Emory made a motion to support Staff's position that hardships result from conditions peculiar to the petitioner's property. Lee Wynns seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Larry Baldwin made a motion to support Staff's position that hardships do not result from actions taken by the petitioner. Lee Wynns seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Renee Cahoon made a motion to support Staff's position that the variance request will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. The permit should include the condition noted in Stipulated Fact 24. Bill Naumann seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

This variance request was granted.

PUBLIC INPUT AND COMMENT

No public comments were received.

CRC RULE DEVELOPMENT

**Fiscal Analysis for 15A 7H NCAAC .0302 Technical Standards for Beach Fill Projects (CRC 13-35)
Matt Slagel**

Matt Slagel stated this rule is also known as the sediment criteria rule and the goal is to ensure that sediment that is placed on the beach during a beach nourishment project is compatible with the existing beach. The weight percent of silt (fine material) must be within five percentage points of the native beach. For the sand sized material there are no restrictions. Granular and gravel material must also be within five percent of the native beach. For calcium carbonate (shell material) it must be within 15 percent. Thirteen samples are required on the recipient beach from the dune toward the ocean. Sediment grain size analysis must be done from those samples. Beach profiles are also required to determine volumes. At least five beach profiles are required and spacing cannot exceed 5,000 feet. If fill material is coming from an adjacent inlet then the recipient beach sediment characterization is not required. The rule requires swath bathymetry from borrow areas. Sidescan sonar is also required to determine the hardness of the sediment. The rule also requires geophysical subsurface seismic data which looks below the seafloor and vibracores are required that drills into the seafloor and then grain size analysis can be done on the sediment.

The changes are a balance between minimizing the risks of placing incompatible sediment onto the beach while ensuring that the rules are not overly burdensome or expensive for permit applicants. We solicited input on the implementation of the rule from coastal engineers, geologists, and local beach project managers in the state. This rule has been in effect since 2006. At the July 2013 CRC meeting, the CRC approved four changes for public hearing. The first change was a clarification that swath sonar refers to multi-beam or similar technologies and that seafloor imaging without an elevation component actually refers to sidescan sonar or similar technologies. The second change is the minimum number of vibracores within a borrow site should be reduced from ten to five. For smaller borrow sites, this change would require half of the vibracores. For large sites, it would maintain the required spacing. Vibracores cost an average of \$2,713 per core based on average costs from contractors. Under the proposed change there would be a significant cost savings for smaller

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borrow sites. The third proposed change changes the granular fraction for sediment slightly coarser than sand would be increased to native plus ten percent. The gravel material and the very fine sediment would be kept at native plus five. This will provide applicants the flexibility to use sediment that is close to the native composition. The fourth change addresses the rule where it says that sediment excavation depth within a maintained navigation channel shall not exceed the permitted dredge depth of the channel. We believe this is redundant and has led to confusion. Any CAMA Major Permit or Corps Permit would involve the review of proposed dredging depths and would indicate the depth that could occur.

Given several assumptions and the average cost of each vibracore sample in a year when there is one federally and one non-federally sponsored projects the federal government would save \$17,634, the state would save \$18,313 and the local government would save \$18,313. In a year when there are two non-federally sponsored projects the state government and local government would split a \$54,260 savings. If the Commission approves this fiscal analysis it can be sent to public hearing and would have a proposed effective date of June 1. 2014.

Bob Emory made a motion to approve the fiscal analysis for 15A NCAC 07H .0312 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

**Fiscal Analysis for 15A NCAC 7H .1300 – Maintain, Repair and Construct Boat Ramps (CRC 13-36)
Tancred Miller**

Tancred Miller stated this fiscal analysis is for boat ramps. This rule change was approved by the CRC in July. The changes allow an applicant to apply for a single permit for three related structures (non-commercial boat ramp, an access pier and a protective groin) that currently require three permits. There is a cost savings to the applicant. Over the past five years there have been 110 projects that have come in for two of the three structures. If one permit had been required then it would have saved them \$22,000 or about \$4,400 per year. Over that same time there have been three projects that did all three structures and it would have saved \$240 per year. There will be a minimal decrease in permit fees for the Division, but we think that will be offset by the decreased staff time for site visits.

Bob Emory made a motion to approve the fiscal analysis for 15A NCAC 07H .1300 for public hearing. Bill Naumann seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

**Fiscal Analysis for 15A NCAC 7H .1200 –
GP for Construction of Piers and Docking Facilities (CRC 13-37)
Mike Lopazanski**

Mike Lopazanski stated this General Permit allows for the docking space for up to two boats or up to four boats for a shared pier. We allow eight square feet per linear foot of shoreline to address shading impacts, with a maximum square footage of 400 square feet for any individual component. Over the years we have seen an increased use of personal watercraft being stored on floating platforms or on the dock. When this happens we count stored boats in the slip count. This has resulted in the applicant having to apply for a Major Permit. Under the General Conditions section

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of these rules we have created an exception for the storage of boats on platforms. In the Specific Conditions we clarified that the docking space limit excludes boats stored on platforms.

The fiscal analysis reflects that this change will affect about 20 permits per year and will save permit applicants a \$50 permit fee. There will also be a time savings in applying for a General Permit instead of a Major Permit for both the applicant and the staff and reviewing agencies.

Harry Simmons made a motion to approve the fiscal analysis for 15A NCAC 07H .1200 for public hearing. Jamin Simmons seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

**Public Comments on 15A NCAC 7H .0304 –
Inlet Hazard Areas and Unvegetated Beach Designations (CRC 13-38)
Mike Lopazanski**

Mike Lopazanski stated the comment period for this amendment ends today so there is no action necessary by the Commission. One change is the removal of the Unvegetated Beach designation. The CRC has the ability to establish an unvegetated beach where there is no stable natural vegetation on a permanent or temporary basis. This can also be done for areas that are suddenly unvegetated as a result of a hurricane or major storm. This gives DCM the ability to establish a measurement line on the oceanfront from which we measure the setback. In 2004 the CRC designated the oceanfront areas in front of Hatteras Village as an Unvegetated Beach. The vegetation was destroyed by a storm on September 18, 2003. In the past couple of years the vegetation has exhibited recovery. The natural vegetation line is less restrictive than the measurement line. We held a public hearing on November 12 at Hatteras Village and received one comment that was supportive of the action.

The second amendment in 7H .0304 deals with an update from the Science Panel on inlet hazard areas. In 2006 the CRC asked the Science Panel to look at areas that are subject to the dynamic influence of ocean inlets. The report was completed in May 2010. The report had recommendations to address the 12 developed inlets as well as some of the undeveloped inlets. There was also reference to two inlets that had closed. While the Commission spent a lot of time discussing the proposed inlet hazard areas there was a separate action to remove the inlet hazard designation from Mad Inlet. 7H .0310 deals with the use standards in ocean hazard areas. Inlet hazard designations do not preclude development, but they affect the density of development and maximum structure sizes. Immediately to the west of Sunset Beach there are 126 properties that are within the inlet hazard designated area. Less than 10 of these properties are developed and it includes the Bird Island component of the Coastal Reserve system. The inlet closed in 1997 and that is what prompted the Science Panel's recommendation to remove the designation and their belief that it will not reopen. One of their reasons is the Little River Inlet jetties in South Carolina has caused an accretion of sand in that area and made that inlet more efficient in terms of the water transfer as opposed to what had been going through Mad Inlet. By removing the inlet hazard designation it would remove the density restrictions for the properties in that area. It will also remove the size restrictions and there will be a benefit to any large, previously un-subdivided properties and would give a greater development potential. We held a public hearing on November 6 in Sunset Beach and had about 50 people in attendance. Nine people spoke against removing the inlet hazard designation and two spoke in favor. The comments questioned the scientific basis of the decision, asserted that the inlet would reopen, concerns about impacts on insurance, concerns

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about turtles and wildlife in the area, concerns about impacts of a terminal groin in Ocean Isle, and concerns about changing the character of Sunset Beach. The comments in favor cited the years of accretion in the area and the stability that has been granted to the area because of the construction of the Little River Inlet jetties in South Carolina. To date we have received 35 written comments against the action. The Town of Sunset Beach has also passed a resolution opposing the removal of the designation.

Spencer Rogers stated you have to go back to what the inlet hazard area is intended to do. It is one component of the ocean hazard area. That system is to focus the CRC's concerns, regulatory efforts and property owner understanding to the hazard. There are risks along the entire ocean hazard area of inlet breaches and is not unique to any place including Bird Island. There have been a couple of attempts over the years to try and identify potential inlet locations, but none of them have proven to be reliable in identifying potential risk. One of the issues the Science Panel brought up when this started was we need to have a better way to define potential inlets. What we decided was it was more important to identify the present inlet hazard areas than to spend time working on potential inlets for the future. Mad Inlet's fate was doomed by the construction of the Intracoastal Waterway in the 1930's, the construction of the Little River Inlet jetties, and major changes at Tubbs Inlet.

Chairman Gorham asked Staff to get a statement from the Science Panel about the removal of the Inlet Hazard designation from Mad Inlet for the CRC to review at the February meeting.

LAND USE PLANS

Town of Swansboro Future Land Use Plan Map Amendment (CRC 13-39)

Maureen Meehan

Maureen Meehan, Morehead City District Planner, stated the Town of Swansboro requested an amendment to their Future Land Use Map. The subject property is currently classified as both high-density residential and commercial. This amendment will change the residential portion to commercial and classify the whole parcel as commercial. The subject property is located on Highway 24. The Swansboro Board of Commissioners unanimously adopted the amendment at a duly advertised hearing and there were no comments received. Staff finds that the amendment meets the 7B guidelines, and there are no conflicts with state or federal law. Staff recommends certification of this amendment.

Harry Simmons made a motion to certify the Town of Swansboro Future Land Use Plan Map amendment. Larry Baldwin seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Town of Nags Head Land Use Plan Amendment (CRC 13-40)

Charlan Owens

Charlan Owens, Elizabeth City District Planner, stated the Town of Nags Head has requested a background policy and implementation text amendment to address septic systems and sandbags on the oceanfront beach. The Town opposes the permitting, construction or placement of septic systems or sandbags on the beach. The Town held duly advertised public hearings on the amendments and unanimously adopted the amendment. The public was provided an opportunity to submit written comments and no comments were received. Staff recommends certification based

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on the determination that the Town has met the substantive requirements outlined in the 2002 Land use Plan guidelines and there are no conflicts evident with either state or federal law.

H. Simmons made a motion to certify the Town of Nags Head Land Use Plan amendment. Bill Naumann seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Gorham, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Mike Lopazanski stated the Towns of Duck, Kitty Hawk, and Southport Land Use Plan Implementation Status reports were included in your meeting materials. The rules require that these are submitted every two years. There is no action required by the Commission.

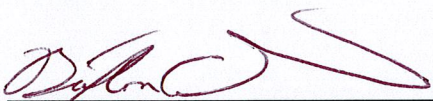
OLD/NEW BUSINESS

Chairman Gorham stated that after discussion with fellow commissioners I would like to see members of the CRC make it possible for kids who live in the coastal area but have not been to the ocean the chance to experience a fishing trip. Fifty percent of the people in New Hanover County have never seen the ocean and this is a startling fact. The CRC discussed the idea and came up with the following ideas: Commissioners could support this project in their individual capacity, Commissioners could work with the existing Take a Kid Fishing Foundation or directly with individual boat captains to schedule an event around a CRC meeting, DCM staff could plan an information item at a future meeting to provide the Commission with more information about the existing DCM Reserve program that works closely with schools and teachers to introduce kids to the natural resources of the coastal area. Braxton introduced Lori Davis, DCM Reserve Education Coordinator.

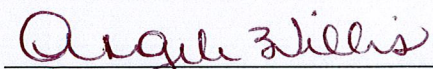
Renee Cahoon thanked the staff that will no longer be with the Division by the next meeting. She complimented them on a job well done and thanked them for their service to the Division and the Commission. Chairman Gorham stated he thought it would be appropriate on the part of the CRC to send a letter to the Secretary thanking DCM staff for their help during the transition and let the Secretary know we are pleased with the staff's effort. Harry Simmons and Bob Emory reported that they will not be in attendance at the February meeting.

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary