

**NC COASTAL RESOURCES COMMISSION (CRC)**

**July 30-31, 2014**

**NOAA/NCNERR Auditorium**

**Beaufort, NC**

**Present CRC Members**

Frank Gorham, Chair

Renee Cahoon, Vice-Chair

Neal Andrew

Larry Baldwin

Suzanne Dorsey

Greg Lewis

Jamin Simmons

Harry Simmons

John Snipes

**Present CRAC Members**

Jordan Hughes

Bill Morrison

Bobby Outten

Greg Rudolph

Debbie Smith

Ray Sturza

Dave Weaver

**Present Attorney General's Office Members**

Christine Goebel

Mary Lucasse

**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. Bob Emory and Marc Hairston were absent. The Chairman stated Bill Raney, attorney representing Petitioners in variance requests today, is a personal friend and also represents Figure Eight HOA but they have not discussed any of the items on the agenda. Neal Andrew stated he had a potential conflict with the CXA-10 Corporation variance request. Larry Baldwin stated he has a conflict with the CXA-10 Corporation variance request. Based upon this roll call Chairman Gorham declared a quorum.

**CHAIRMAN'S COMMENTS**

Chairman Gorham recognized the CRAC members present and thanked them for helping the CRC and the State of North Carolina.

## **VARIANCE REQUESTS**

### **CXA-10 Corporation (CRC-VR 14-05), New Hanover County, ¼ width rule Christine Goebel and Robb Mairs**

*\*\*Commissioners Baldwin and Andrew recused themselves from discussion and voting on this variance request.*

Christine Goebel of the Attorney General's Office represented Staff in the variance request filed by CXA-10 Corporation and stated that Bill Raney is present and will represent the Petitioners. Robb Mairs, DCM field representative, gave an overview of the property.

Ms. Goebel stated the CRC heard this variance request at the last meeting, and remanded it back to get a new survey. Ms. Goebel reviewed the stipulated facts of this variance request and stated additional stipulated facts have been agreed to since the new survey was completed. Petitioner seeks relief from 7H .0208 and would accept a condition terminating the pier extension at the negative five feet mean low water contour as it is shown on the 2014 survey. If the pier were only extended to the negative five foot contour then the pier would extend 49% across the back channel. Staff and Petitioner agree on one of the four statutory criteria which must be met in order to grant the variance request. Staff does not agree with Petitioner that strict application of the development rules cause the Petitioner an unnecessary hardship. The reduction from the six foot contour to the five foot contour does not significantly reduce the overall length and size of the pier proposed. Staff contends that any hardship is a result of actions taken by the Petitioner. Staff's position also remains that this variance request does not meet the spirit, purpose and intent of the CRC's quarter-width and rate to deep water rules. While this proposal is some improvement over the six foot depth contour, Staff continues to have concerns that public safety and welfare will be impacted by the large amount of public trust area taken up by this large structure. Staff also does not believe that substantial justice will be preserved by the granting of a variance that goes 49% across the waterbody.

Bill Raney of Wessell & Raney stated the new water depth survey was completed and there isn't much difference between what was reported in 2010 and what is reported in the June 2014 survey. Petitioner believes the hardship is the inability to effectively utilize a large, valuable marina facility that was built in good faith. There was either a gross error in the earlier survey of water depth or there was an incredible amount of siltation in a period of about five years that created the current conditions. We do agree with the Staff's position that this property is peculiar. The hardships do not result from actions taken by the Petitioner. The Staff indicates that the Petitioner bought this property knowing the problems. The General Assembly in 2013, passed legislation that adopted the same four standards for variance for local governments and specifically included language that said the act of purchasing property with knowledge that circumstances exist that may justify granting the variance shall not be regarded as a self-created hardship. It is our contention that simply buying the property knowing that there may be a problem is not a self-created hardship. The hardship is a result of the shallow water depth. Petitioner contends that this variance request is consistent with the spirit, purpose and intent of the Statute. Staff would have you believe that the amount of area that is occupied by the structure is one of the purposes of this rule. Petitioner contends that the purpose is to preserve navigation, fishing and other public trust rights. We are asking the CRC to approve the variance request as originally proposed, but if that is not acceptable then we would accept the condition of the five foot contour limitation.

**Frank Gorham made a motion to support Staff's position that strict application of the applicable development rules, standards or orders issued by the Commission does not cause the Petitioner an unnecessary hardship. Harry Simmons seconded the motion. The motion passed with five votes in favor (Dorsey, Cahoon, Lewis, J. Simmons, Snipes) and two opposed (Gorham, H. Simmons).**

**Frank Gorham made a motion to support Staff's position that hardships result from conditions peculiar to the petitioner's property. Suzanne Dorsey seconded the motion. The motion passed with five votes in favor (Dorsey, Cahoon, Lewis, J. Simmons, Snipes) and two opposed (Gorham, H. Simmons).**

**Frank Gorham made a motion to support Staff's position that hardships result from actions taken by the Petitioner. Suzanne Dorsey seconded the motion. The motion passed with five votes in favor (Dorsey, Cahoon, Lewis, J. Simmons, Snipes) and two opposed (Gorham, H. Simmons).**

**Frank Gorham made a motion to support Staff's position that the variance request will not be consistent with the spirit, purpose or intent of the rules, standards or orders issued by the CRC, will not secure the public safety and welfare; and will not preserve substantial justice. The motion passed with four votes in favor (Dorsey, Lewis, J. Simmons, Snipes) and three opposed (H. Simmons, Gorham, Cahoon).**

This variance request was denied.

## **LAND USE PLANNING**

### **Regulatory Reform & Review/Expiration of Existing Rules (CRC 14-18)**

#### **Mike Lopazanski**

Mike Lopazanski stated the CRC, as well as all State agencies, has been legislatively mandated to review all current rules. All rules are governed by the Administrative Procedures Act (APA). In 2013, the General Assembly passed a new provision in the APA which requires the review and/or expiration of existing rules. Prior to 2013, rules did not expire. All rules must now be reviewed every ten years. Any rules that are unnecessary will expire. Any rules that are deemed necessary with substantive public interest must be readopted. Rules that are deemed necessary but without substantive public interest do not need to be readopted and will not expire. Most of the CRC's rules will need to be reviewed by the end of 2018. The 7B guidelines will be reviewed first. Once we have categorized our rules, the Office of Administrative Hearings (OAH) will post this report on their website for a 60-day public comment period. At the close of this comment period we have to respond to any objections received on any rule. The final report will include the comments received and our response to them. The Rules Review Commission (RRC) will review our report and comments. RRC can either agree or disagree with the CRC's determination. Following the RRC's assessment, the report goes to the Joint Legislative Administrative Procedures Oversight Committee. The final determination on the rules will become effective following this review. The 7B Guidelines have to go through the process by December 2015.

### **Overview of CAMA Land Use Planning Program (CRC 14-24)**

#### **Charlan Owens**

Charlan Owens stated this presentation will provide a general overview of North Carolina's Coastal Land Use Planning program. In 1974, the N.C. General Assembly passed the Coastal Area Management Act (CAMA). CAMA established a cooperative program of coastal area management

between local and state governments. Under CAMA each of the 20 coastal counties is required to develop and adopt a land use plan. Municipalities within the 20 coastal counties are not required to have a land use plan; however they may be delegated planning authority if they are currently enforcing a zoning ordinance, subdivision regulations and the State Building Code. Otherwise, they are considered to be part of the County's land use plan. The state's coastal program employs a two tiered approach to managing the coastal resources. Critical resource areas designated as areas of environmental concern comprise the first tier. DCM regulates activities in those areas through CAMA permits. CAMA permits are required to be consistent with an approved local CAMA land use plan. The second tier consists of the non-AEC areas. These areas are managed through a coordinated effort with other state laws, local land use plans and the requirement for state agency actions to be consistent with the local land use plan. CAMA local land use plans require approval of the CRC to become effective. Plans are reviewed for consistency with the CRC's planning guidelines and the requirements of CAMA. The CRC also has the authority to prepare and adopt a county land use plan if a county chooses not to exercise its planning initiative. The CAMA jurisdiction covers 14,000 square miles which are made up of 118 local governments. Prior to the adoption of CAMA, most rural counties and small towns had no comprehensive plans. Many local governments were opposed to planning as the regulation of private property was unpopular. Land use planning was seen as a key component of N.C.'s coastal program. In the development of land use planning rules, the CRC adopted standards and procedures, public participation requirements, analyses and minimum issues to be addressed. Local governments were responsible for developing the policies to address the minimum issues as well as those dealing with community character and traditional land use concerns. The initial planning rules came into effect in 1975 and were amended in the 1990s. The current planning rules came into effect in 2002. To date, there are approximately 60 locally adopted and state certified land use plans in the coastal area. These plans are periodically amended or updated as necessary by the local governments. Up until the early 2000s the planning program focused on providing grant funds for planning and management projects. After 2002, all grant monies were allocated to assist local governments in completing the land use plans. The grant monies for land use plans and management projects have not been available since that time. The CRC's land use planning rules are commonly referred to as the 7B and 7L rules. 7L rules address land use plan requirements for communities that received grant funds to prepare a land use plan. 7L rules also outline DCM technical assistance. DCM provides opportunities to educate the local officials about land use planning rules, provide maps and data to assist with the development of plans, review plans for technical accuracy and consistency with CRC requirements, and provide notice to the CRC and other state/federal agencies that the plans are available for review and comment. 7B rules provide the general direction for plan development. Elements of the plan include the identification of community concern and aspirations, an analysis of existing and emerging conditions, a plan for the future and identification of the tools that will be used to manage development locally. Land use plans are required to address land use plan management topics. 7B also addresses the public hearing requirements for local adoption and the process for amendments to the plan. The CRC's primary role in land use planning is the certification of land use plans and plan amendments as outlined in 7B. The CRC certifies plans and amendments that are consistent with the CRC rules, do not violate state or federal law, contain policies that address each land use plan management topic, and are found by the local government to be internally consistent. In addition to certification of a land use plan, the CRC can also take a non-certification or conditional certification action. Under non-certification the local government is notified within 30 days as to how the plan may be changed so that certification can be granted. Under the conditional certification, the Executive Secretary determines compliance within 30 days. The CRC also reviews minor amendments. The CRC may prepare and adopt a county land use plan if a county chooses not to prepare and adopt a plan that meets the plan requirements. Land use plans are required to address

land use plan management topics to ensure that they support the goals of CAMA, meet the CRC's expectations for the land use planning process, and give the CRC a substantive basis for review and certification of the plans. Incorporating the management topics into the local land use plans ensures that the state's coastal management goals are factored into the local decision making in both the critical resource areas and the non-AEC jurisdictional areas of the coast.

### **CAMA Land Use Planning Workshop Summary (CRC 14-25)**

#### **Mike Christenbury**

Mike Christenbury stated the Division held two regional workshops. The first was held in Wilmington in October 2013 and the second was in Plymouth for the northern coastal areas in May 2014. We had approximately 120 people participate from local governments and other stakeholder interest groups. DCM held these workshops in partnership with the Business Alliance for a Sound Economy (BASE), the Albemarle-Pamlico National Estuary Partnership (APNEP), and the North Carolina Coastal Federation (NCCF). The purpose of the workshops was to seek input from local elected officials as well as local staff regarding the 7B CAMA land use planning guidelines, to discuss opportunities for greater technical assistance as well as streamline plan reviews and to reduce local planning burdens, to improve local government coordination, and to discuss a new direction for the planning program. We gave an overview and history of the land use planning program and then discussed how plans are used at the state level. We also talked about technical outreach that the Division is considering. Attendees were then able to participate in a panel discussion including a question and answer session. Participants were then split into break out groups for more facilitated discussion and were able to present recommendations from their group. Feedback included the need for more technical assistance, a need for updated data and mapping, the need for more training opportunities and an updated DCM technical manual. We also heard a strong need to streamline the process. We heard that plans in our current rules are too analysis driven in some cases. There is also a desire from local governments that DCM funding for land use planning grants be restored. Overall the general theme was a desire that the planning program continue and the recognition of the value of keeping land use plans up to date.

### **Recommendations/Future Directions**

#### **Braxton Davis**

Braxton Davis stated I had directed staff to do some outreach, pull together a review of past permit decisions, and do an analysis of the types of plans that we had approved. Many states have a comprehensive planning act of some kind and North Carolina does not. CAMA was the first state-level comprehensive planning requirement. The local governments have evolved significantly. The initial requirements of the Statute have been achieved and there is no specific requirement for updates. The planning grants are no longer available so where do we go from here? Rather than being seen as an unfunded mandate, I am interested in what it would take for communities to want to line up at the door to work with DCM on coastal issues. What kind of technical assistance or targeted assistance can we provide so we are doing a meaningful exercise that communities want to be involved with? I have provided six recommendations for each Commissioner's consideration. The first is the review of the 7B rules. We need to have a lot more flexibility for plan contents. 7B is very prescriptive and there are things in there that are redundant. During the review of 7B we can loosen this up to where communities can target their planning activities around something they are interested in working on. The second is to clarify that updating land use plans is voluntary. The third proposal for consideration is the state's role in enforcement of local policies for their area. There was an interest in continuing the planning process. There may be a statutory change needed. This could be a more voluntary process and give communities the opportunity to "opt out" if they do not want us to review their plan as part of the permit review process. The fourth proposal would

be to streamline the plan approval, amendment and update process by the CRC delegating the review and approval of local plans to DCM staff. Staff could establish a reduced, fixed time frame for plan reviews and decisions similar to those established for CAMA permits. The fifth proposal would be to integrate land use planning with other local requirements. This would assist local governments with some of the overlapping requirements at the local level. The final proposal for consideration would be to improve the DCM technical manual. The existing manual was designed to assist communities in meeting the requirements of 7B and 7L. This manual should be shortened, streamlined and revised to be more user-friendly and to focus on coastal issues that communities face.

Chairman Gorham directed the CRAC to go back to their local communities and ask if the land use plans are a benefit.

#### **Town of Leland Land Use Plan Certification (CRC 14-21)**

##### **Mike Christenbury**

Mike Christenbury stated the Town of Leland is requesting a certification of the Leland CAMA land use plan. The Town is located in northeastern Brunswick County to the west of downtown Wilmington. The land use plan covers only the areas included within Leland's municipal boundaries. The Town organized two major public participation processes including public meetings at the outset of the development of the LUP and a community workshop. The Town held a duly advertised public hearing and voted by Resolution to adopt the land use plan. DCM staff has reviewed the LUP and has determined that the Town has met the substantive requirements in the 7B land use plan guidelines and that there are no conflicts with either state or federal law or the Coastal Management program. Staff recommends certification.

**Larry Baldwin made a motion to certify the Town of Leland's Land Use Plan. Greg Lewis seconded the motion. The motion passed unanimously (Baldwin, Dorsey, Andrew, H. Simmons, Cahoon, Gorham, Lewis, J. Simmons, Snipes).**

#### **Onslow County Land Use Plan Amendment (CRC 14-22)**

##### **Mike Christenbury**

Mike Christenbury stated Onslow County is seeking certification of an amendment to the Onslow County Comprehensive Land Use Plan. That Plan was previously certified on January 13, 2010. The County amended the LUP to improve clarity and internal consistency within the Plan and to reflect changes in Onslow County's zoning ordinance as well as to illustrate changes in the boundaries in the County's planning jurisdiction on the Future Land Use Map. Onslow County held a duly advertised public hearing and voted unanimously by Resolution to adopt the Land Use Plan amendments. DCM staff has reviewed the amendments and has determined that the County has met the substantive requirements in the 7B land use plan guidelines and that there are no conflicts with state or federal law or the Coastal Management program. Staff recommends certification of the amendments. Tim Richards, Planner with the Onslow County Planning and Development Department, is present on behalf of Onslow County.

Chairman Gorham asked Mr. Richards about the amendment process. Mr. Richards replied that the process is fairly painless. The amendments are mostly correcting some internal inconsistencies, updating it with regards to zoning ordinance changes. It was also a minimal cost to the County. The DCM staff review of the amendments is valuable. I don't know if the CRC taking its time to review the amendment adds value or not, but it is appreciated.

**Renee Cahoon made a motion to certify the Onslow County Land Use Plan amendment. Harry Simmons seconded the motion. The motion passed unanimously (Baldwin, Dorsey, Andrew, H. Simmons, Cahoon, Gorham, Lewis, J. Simmons, Snipes).**

### **MINUTES**

**Larry Baldwin made a motion to approve the minutes of the May 2014 Coastal Resources Commission meeting. Harry Simmons seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Dorsey, Lewis, J. Simmons, H. Simmons, Snipes).**

### **EXECUTIVE SECRETARY'S REPORT**

Braxton Davis, DCM Director, gave the following report:

You should have before you the DCM update report that covers the Division's recent permitting, enforcement, rule development, planning and Coastal Reserve activities that is provided at each meeting. Hopefully you will get a chance to scan through this to see some of our status and trends from the last fiscal year, which ended June 30, to get a feel for ongoing projects and activities across the Division. Overall, our permit numbers were down in comparison with the prior year. We believe this is partly due to the winter weather conditions we experienced this year and because we were still issuing Hurricane Sandy emergency permits in early 2013. Our average issuance time over the most recent period held steady for CAMA Major Permits, but we are still well below historical averages after a number of procedural changes we have implemented over the past few years.

DCM's policy and planning section has been busy in carrying out your inlet management study, including the development of a draft report for the Commission that outlines what we learned from the series of public meetings across the coast, the expert panel from February's meeting, the public comments we have received along the way and additional analysis by staff. We look forward to discussing your priorities for rule changes or other measures that can improve inlet management in North Carolina during this meeting. Our policy staff are also continuing work on a pilot study focused on the Bogue Banks Master Beach Nourishment Plan and working through ongoing rule changes. I am happy to announce that three of the four rule changes that were intended to reduce regulatory burdens that were identified last year will go into effect August 1. There is one more on this meeting's agenda and we will also ask you to consider a new proposal to eliminate the High Hazard Flood Area of Environmental Concern beachfront jurisdiction, which I believe is redundant with other federal, state, and local regulatory programs and is unnecessarily costing time, energy, and money for citizens as well as state and local staff that are implementing the AEC. Planning staff have been busy administering the Public Beach and Coastal Waterfront Access grant program and summarizing the results from the regional workshops to conduct the comprehensive review of the CAMA land use planning program. Tancred Miller will be heading up our five year strategic planning effort, which we commonly refer to as our 309 Assessment and Strategy. This makes us eligible for program enhancement grants from our federal partner, NOAA. Also this year, the Coastal Reserve program will begin its five year Management Plan update for the four sites that make up the North Carolina National Estuarine Research Reserve. We will keep you posted as that process develops.

A number of Commissioner's appointments expired on June 30. Commissioners serve a four year term and the initial terms were staggered. Commissioners with terms expiring this year include Commissioners Lewis, Andrew, Cahoon, Wynns, Emory, Snipes, and Hairston. Appointees are asked to serve until reappointed or a new appointment is made. The Governor's office is hoping to

have new appointments or reappointments announced soon. We are planning for the next Commission meeting to be held in Wilmington on October 22-23.

### **CHAIRMAN'S COMMENTS**

Chairman Gorham stated there are currently 11 Science Panel members and 4 vacancies. I have decided, with the support of the Executive Committee, not to make any Science Panel appointments until after the Sea Level Rise Study. We have a qualified Panel and have a technical peer review group that will look at the Report. I have been asked to reconsider this decision by various groups, but I am sticking with the decision.

### **LEGISLATIVE UPDATE**

Braxton Davis stated there was a compromise budget released last night. The votes needed to approve it will take place over the next few days. DCM does not have any targeted changes to the budget, but there will be a two percent across the board cut to state agency budgets. We have had a series of these cuts and this will be more of a hold that may depend on revenues. We have identified our ability to do this. The budget has some other provisions relevant to CAMA and the CRC. The first is the provision that originally allocated 15 million dollars to acquire federal land surrounding Oregon Inlet to manage existing and future transportation corridors on the Outer Banks and create a State Park at Oregon Inlet. The next was a Coastal Beach and Waterfront Access Fund in the budget to store funds that formerly came from PARTF based on real estate transfer fees. It is now a recurring appropriation. Also in the budget is a provision that would allow the Governor after the declaration of a state of emergency to waive state environmental review requirements for the repair or replacement of bridges and roads along Highway 12.

The Senate passed a Regulatory Reform Bill (S734) that included CAMA provisions. The House made significant changes and stripped out all of the environmental provisions in the Bill. The House created its own substitute Bill called Amend Environmental Laws (H761). This passed the Senate Rules Committee but has not been acted on by full Senate. This Bill has a provision to repeal existing inlet hazard areas in areas that are the former location of an inlet that has been closed for at least 15 years where the location no longer includes the current location of the inlet or the location includes an inlet providing access to a State Port via a channel maintained by the Corps of Engineers. There is another piece that changes the contested case rules. It removes the automatic stay on a permit that has already been issued during the review by the Chairman in third party appeals. DCM has recommended changing the timeframe for the Chair to make a decision to 20 days.

### **CRAC REPORT**

Debbie Smith, CRAC Chair, recognized CRAC members present. The CRAC reviewed and adopted the by-laws of the CRAC. The CRAC had received several comments on the inlet management study. Comments included support for changing the terminology from inlet hazard to inlet management to inherently acknowledge that although there may be issues associated with development near inlets; these issues can be managed and are not always necessarily a hazard. Comments also addressed reconsidering the standard for what constitutes an imminently threatened structure as the present 20 feet is sometimes a remedial measure and a modification to that might give greater success in protection of structures. Stockpiling dredge material for placement in the littoral drift makes more sense when disposal is the most economical fashion and may be beneficial to stockpile even fine dredge material for emergency use. There was support for the Chairman's proposed language for use in State Dredge and Fill Act requirements. There was support for using



separate management plans and techniques for each of the State's inlets since clearly one size does not fit all. There was a request for consideration to be given to being able to sandbag vacant lots when they were located between two imminently threatened structures to give a better protection line until a long-term solution could be found. The CRC asked us to look at considering the skills needed on the CRAC. The CRAC identified the need for a coastal business person and an economist.

Chairman Gorham stated that he would like the CRC to consider Jett Ferebee for appointment to the CRAC. I have talked about this with the Executive Committee. Jett is a coastal business person. Frank Jennings and Debbie Smith spoke in favor of Mr. Ferebee's nomination.

**Renee Cahoon made a motion to appoint Jett Ferebee to the Coastal Resources Advisory Council. Harry Simmons seconded the motion. The motion passed unanimously (Baldwin, Dorsey, Andrew, H. Simmons, Cahoon, Gorham, Lewis, J. Simmons, Snipes).**

### **SCIENCE PANEL**

#### **Initial Science Panel Meeting – IHAs & Sea Level Rise Study**

Dr. Margery Overton, Science Panel Chair, stated the Chairman charged the Science Panel with getting started on the Sea Level Rise Report with guidelines that the Commission is well aware of. We recently had our first meeting and will provide a report by the end of December so it is available for review. There is a legislative deadline of March 31, 2015. We will have a minimum of one meeting per month and intend to work during the meetings as a committee of the whole. Much of the fall will be devoted to the Sea Level Rise Report. During the first meeting we spent time discussing procedurally what the request was and the limitations and differences from the first report. Then we started looking at the data. There is an explicit mandate for us to spend considerable time with data that is North Carolina based. We brought up the NOAA tide gauges in North Carolina and I would recommend that the CRC keep up with the data and reports that we are looking at so you can see what we are looking at as we go. We are interested in the difference in the trend between the Duck gauge and the Wilmington gauge. The best that we can discern at this point is that it has to do with subsidence in the northeast. That is not as clearly documented because of the quality and the kind of data you need for that. We all need to be aware of the quality of the data. The Duck gauge is nearly continuous for 30 years. We have a couple of gauges in North Carolina where data was collected, then there was a gap and then data was collected again and trend over time is recorded. We are looking at both the spatial location of the gauges and the temporal data that is available as well as the analysis that goes into determining what the rate is. Our next meeting is scheduled for the end of August.

#### **Science Panel Nominations & Study Process (CRC 14-19)**

##### **Tancred Miller**

Tancred Miller stated that Greg "Rudi" Rudolph was the only new member appointed to the Science Panel and no other new members will be appointed until the Sea Level Rise Study is complete. The process will be accelerated by about three months from what H819 required. The initial draft from the Panel will be to the CRC by the end of 2014. That draft then goes to the technical peer review team of Drs. Houston and Dean. Their comments will be sent to the Science Panel and the Science Panel will comment. The final report will be before the CRC by the end of March 2015. All of these documents and reviews will be released to the public and will be available on DCM's website. There will be a public hearing at the first CRC meeting following the March deadline as well as an extended public review and comment period. The final report will include an economic analysis and is due to the Legislature by March 1, 2016. All parties have reviewed this process and have all

agreed to the timeline. The Science Panel met last week and the next meeting is August 28 in New Bern. Science Panel meetings are open to the public and comments are accepted at the meetings. We are grateful to Science Panel for what they do for the CRC, DCM and the State.

### **CRC RULE DEVELOPMENT**

#### **Adopt 15A NCAC 7H .2600 General Permit for Mitigation & In Lieu Fee Projects**

##### **Mike Lopazanski**

Mike Lopazanski stated this General Permit was created to facilitate projects completed by the EEP and the Wetland and Restoration Program. These projects generally require a lot of upfront agency coordination. Because of this level of involvement by CAMA staff we were comfortable enough to create a General Permit. Over the last few years the EPA has changed the guidance on compensatory mitigation banks and in lieu fee projects and now all projects need to go through this extensive agency coordination. Due to our staff involvement we are making amendments to allow all mitigation banking and in lieu fee projects eligible for the General Permit. We are extending the permit from six months to one year to address seasonal planting issues and we have deleted a list of eligible activities to open it up to foster new ideas and techniques. The public hearing for this amendment was held at the May CRC meeting and no comments have been received.

**Harry Simmons made a motion to adopt amendments to 15A NCAC 7H .2601, 7H.2602, 7H .2604 and 7H .2605. Larry Baldwin seconded the motion. The motion passed unanimously (Baldwin, Dorsey, Andrew, H. Simmons, Cahoon, Gorham, Lewis, J. Simmons, Snipes).**

#### **Repeal of the High Hazard Flood AEC 15A NCAC 7H .0304(2) (CRC 14-20)**

##### **Mike Lopazanski**

Mike Lopazanski stated this AEC is connected to the oceanfront. The High Hazard Flood Area AEC is the area subject to high velocity waves and is identified on the FEMA FIRM Map as V-Zones. The High Hazard Flood AEC was not one of the original AECs established by the Commission in 1979. When they looked at implementation of the AEC there was a need identified to provide some consistency in construction standards on the oceanfront. The Commission wanted the construction standards consistent with the National Flood Insurance Program. The High Hazard Flood AEC requires compliance with the North Carolina Building Code, the Coastal Floodplain Construction Standards, the Local Flood Damage Prevention Ordinances, and it requires that structures be supported on pilings. The intention of this was to provide stability to the structure during major storm events where there could be massive fluctuations in ground elevations and to prevent building collapse. After the hurricanes of the 1990s, FEMA redid the V-Zones and updated the FIRM maps. There was a fairly large expansion of the V-Zones. The expansion of the V-Zones resulted in an expansion of the CRC's permitting jurisdiction because the High Hazard Flood AEC is defined as the V-Zones on the FIRM maps. The NC Building Code has standards related to coastal high hazard flood areas and references the CRC's Ocean Hazard Areas regarding construction and setbacks within these areas and also references the Army Corps' Floodplain Areas. The Building Code also has standards for piling supported structures including piling composition, dimensions, and minimum penetration depths. All structures that are built in the V-Zone need to comply with the Building Code and the local Flood Prevention Ordinances. Recognizing the expansion of the V-Zones, the CRC created an exception for single family residences. The exemption states that no CAMA permit would be required if the proposed development is not located in the Ocean Erodible Area (the area where structures are subject to setbacks based on the vegetation line), the residence is constructed on pilings and complies with the NC Building Code as well as the local Flood Damage Prevention Ordinances, and the proposed development does not

require any other state or federal authorizations. The exemption letter costs \$50. These are generally handled by the Local Permit Officers. In considering repeal of this AEC, note the CRC rules already refer to the Building Code, the Flood Insurance Program and local ordinances. This is a case where the rest of the world has caught up to what the CRC has been requiring for the last 35-40 years. If the High Hazard Flood AEC is removed, approximately 15,000 properties will be removed from this jurisdiction. Because of the extensive nature of the V-Zones there will still be properties subject to CAMA jurisdiction because they are on the estuarine shoreline. Removing the High Hazard Flood AEC will not have an effect on the Ocean Erodible Area, the Inlet Hazard Area or setbacks. It will also not affect the CRS credits that communities currently get under the NFIP. Currently, during construction in the Ocean Hazard Area, CRC rules require the property owner to sign an AEC Hazard Notice. If the High Hazard Flood AEC is repealed, this requirement would be eliminated.

**Jamin Simmons made a motion to send 15A NCAC 7H .0304 to public hearing. John Snipes seconded the motion. The motion passed unanimously (Baldwin, Dorsey, Andrew, H. Simmons, Cahoon, Gorham, Lewis, J. Simmons, Snipes).**

### **2016-2020 Coastal Program Assessment and Strategy**

#### **Tancred Miller**

Tancred Miller stated the 309 Program is a very important part of the Coastal Program and is essential in the way that we are able to work and serve the Commission. The 309 Program is one of the sections of the Federal Coastal Zone Management Act (CZMA). The CZMA was passed by Congress in 1972 and is a federal umbrella legislation that authorizes all of the coastal states and Great Lakes states to have coastal programs. CZMA provides funding through various mechanisms to the states. Section 309 is the Coastal Zone Enhancement Grant Section. The 309 Section is voluntary and encourages states to look at ways to improve their coastal program. To be eligible, the state must have a NOAA approved five-year assessment and strategy and it must be aligned with one of nine enhancement objectives that are defined by NOAA. Every five years the state has to perform a self-assessment to identify opportunities to improve the program over the next five years. NOAA provides funding to the states to implement strategies. This is grant funding that is non-matched and awarded on an annual basis in consultation with NOAA. In addition to the 309 funding, there is funding available under the Project of Special Merit funding. NOAA has decided that coastal hazards will be a national priority for the next five years. Funds are awarded to the states under a formula that is relative to the size of the coastal population and the length of the shoreline. North Carolina, because of the length of our shoreline, is eligible for more money. Over the last ten years we have received between \$380,000-\$425,000 per year for the program. This money goes towards staff salaries, travel, supplies, equipment, and contracts. As a part of this assessment process, the CZMA encourages states to talk to stakeholders and find out how the state can work to improve the coastal program. Once the strategy is drafted, the public has an opportunity to review the strategy and offer comments to NOAA. We are now beginning the stakeholder process. By this fall we will draft the assessment and strategy and then in February of 2015 it will be released for public comment. In April we will review the comments and make final revisions to the assessment and strategy and send to NOAA by June 1. The immediate task is identifying the key stakeholders and engaging them to determine what we want to do for the next five years.

Chairman Gorham stated Larry Baldwin will be the CRC representative for the 309 Coastal Program Assessment and Strategy process. Debbie Smith will assist DCM staff in stakeholder outreach if needed.

## **PUBLIC INPUT AND COMMENT**

Bill Price made several observations during the public comment period regarding sea level rise and the Science Panel.

## **INLET MANAGEMENT**

### **Dredging Window Study Overview/Update**

**Ken Willson & Brad Rosov, CB&I**

Ken Willson stated for the last year and a half we have talked informally with an ad hoc group. In North Carolina there is an increase in local communities involved in beach nourishment, some of which stems from the reduction of federal funding. When a community is paying for 100% of a project and has full control of the project, it begins looking at possible cost savings. One way to decrease cost is have a longer window to dredge. We heard from the dredging industry that it is tough to work in North Carolina in the winter season. If dredging could take place in the summer when the sea conditions are more favorable, then the costs would go down. Nags Head is a great example. The bids for the Nags Head project were significantly less. Improvements in technology over the last few decades have shown that a limited or reduced threat to the protected resources is possible.

Environmental windows are those periods of the year when dredging and disposal activities may be carried out because regulators have determined that the adverse impacts associated with dredging and disposal can be reduced below critical thresholds during these periods. There is overarching documentation that defines dredge windows. A technical paper put out by the Corps of Engineers stated that certain environmental windows have been imposed despite the existence of technical information contradicting the stated technical basis for the restrictions. In 2001, the NRC stated that some decisions appear to be based on outdated data and information, others on the authority of the resource agency, and only a few on scientific observations. Economic and project considerations appear to have been given minimal consideration in the majority of the cases reviewed. In 2009, EPA made a statement that environmental windows which are inconsistent or over-restrictive are likely to continue to be recommended until sufficient technical data become available on which to make a rigorous technical evaluation of the actual need for a given window. EPA has stated that they know that the windows are ultra conservative, but they need technical data to back up any change to the windows. Our ad hoc group came together to develop a white paper that would include information comparing the economic impacts between dredging in the winter versus dredging in the summer, to determine the effectiveness of existing conservation measures currently employed for projects, and to assess the potential environmental impact to biological resources. We plan to make this information available to coastal communities. This would open a dialogue with state and federal resource agencies. This could also contribute to the statewide programmatic biological opinion as it relates to dredge windows. We could not find language that says dredging cannot be done in the summer months. NMFS and USFW services have used the available data to set up windows they will recommend when they are asked to comment on specific projects. In the case of the onshore effects of sea turtle nesting, NMFS recommends that these projects not be constructed during the established nesting and hatching season for sea turtles which is May 1 until the middle of November. These are not moratoria, these are recommendations that specific resource agencies make to the permitting agencies. We also have a section on economic analysis. We used existing projects and cost estimates that the Corps had already designed. We used some efficiency curves that the Corps came up with for the Dare County and Kure Beach projects. We use these curves to assess the reduction in costs if we had carte blanche approval for 12 months out of the

year to construct these projects. One of the effects that is evident in the 40% reduction in the initial construction costs for the southern Dare county project is this project is scoped out to be constructed in multiple year cycles. If you could work start to finish without additional mobilization costs then you see these reductions. For maintenance there is a 22% reduction in the periodic renourishment costs. For Kure Beach, there is a 14% reduction in renourishment costs. We looked at all the authorized beach nourishment projects in North Carolina. For all the projects that have a history of active beach nourishment, we looked at their average nourishment interval and came up with an interval of about 4.4 years. For every project you would only be placing sand on the beach every 4.4 years. In looking at the miles of shoreline and the frequencies of renourishment we calculated a percent of the North Carolina shoreline on any given year that might have nourishment going on. For currently managed projects we are only talking about 6% of the NC shoreline that is currently being nourished. Even if all of the projects were allowed to construct in the summer then the effects would only happen on 6% of the state's beaches up to a maximum of about 11.4%.

Brad Rosov stated we have looked at biological data to develop a database to explore what the relative impacts could be to each of the resources. We also tried to look at the conservation measures that could be used to minimize some of the impacts. We identified a list of natural resources that should be included in the analysis. This included the seven threatened and endangered species and also included SAV and an assessment of benthic resources. In looking at the sea turtle data the state has about 20-25 years of sea turtle nesting data collected. We were given access to about five years of this data from eight beaches. Of the five nesting seasons (2009-2013) throughout the eight beaches we came up with 2,023 nests that were laid during that period. Nesting started on May 11 and ramps up during July and August and the last nest was observed on October 7. Then there are hatchings beginning on July 11 and the last was observed on November 15. How do these environmental dredge windows work and are they effective? As interpreted, the environmental dredge window commences on November 16. April 30<sup>th</sup> is the end of the environmental dredge window. These dates correspond almost perfectly with turtle season. If the dredge window was expanded by a month on either side of the window then only 7% of the total nests would be affected. Beach nourishment has impacts.. We did an inventory of conservation measures that are available to protect the various resources. There are a number of measures that could be employed to help with the success of nesting. The ultimate question is whether dredging outside of the environmental windows can occur while maintaining the integrity of the natural resources. If we want to modify the dredge window can we maintain the existing level of integrity for the natural resources? We are hoping this white paper will be a launching pad for dialogue. We have stated to gather the relevant resource data; we have assessed the effectiveness of all available conservation measures, and assessed impacts from previous projects performed outside of the environmental window. This draft will be polished through the ad hoc group and we will do a gap analysis to see what pieces are missing. Once we have a good analysis, then we will figure out the next steps.

### **Inlet Management Study Draft Priorities and Implementation (CRC 14-23)**

#### **Mike Lopazanski**

Mike Lopazanski stated comments from the stakeholder input meetings were summarized at the last meeting and the document in your packet is a further summary of the comments. Staff has also prioritized the comments. Staff has taken the CRC's suggestions and picked out the actionable inlet management related issues. We also looked for opportunities to build on existing initiatives. The Science Panel's inlet hazard area study needs to be completed. We looked at the deep draft or navigation inlet hazard area development, examined beach bulldozing practices, the application and

definition of imminently threatened, alternatives to the static line, the dredging windows and moratoria and monitoring conditions, and beneficial use of dredged material policy. The Science Panel has been working on the inlet hazard area study that was mandated by the legislature. In considering the Cape Fear River AEC work, the CRC rolled the inlet management study into it as well. We have focused on calculating erosion rates in the inlet area since that was one of the directives from the Legislature. We have a tool that can be used to calculate erosion rates in inlet areas. We are likely to see a recommendation from the Science Panel that some sort of management area is needed. The Science Panel will also be able to provide information towards developing a deep draft port or navigation inlet management area. All of the inlets have their own unique attributes. There has been a lot of interest in developing individual management plans. We thought it would be good to initially separate deep draft from shallow draft inlets. The management objectives are different for these two types of inlets. The CRC can begin to develop management objectives for this new type of AEC as well as the development standards that would go along with it. Beach bulldozing was an issue that was recognized as a priority. Beach bulldozing above mean high water is allowed under a General Permit. If you want to bulldoze between mean high water and mean low water then it is possible, but it goes through the Major Permit review process. Beach bulldozing is allowed for protecting vacant lots outside the inlet hazard area. Rebuilding of existing dunes is allowed inside inlet hazard areas, however new dunes are not allowed to be created within the inlet hazard areas. The CRC could begin development of a General Permit to allow beach bulldozing in these areas. However an alternative reference line for measuring setbacks may be needed in these areas. The definition of imminently threatened currently states that the foundation, septic tank, septic system or the road right-of-way is within twenty feet of the erosion scarp, there is a flat beach profile, accelerated erosion in the area, or can be determined at the discretion of the DCM Director. The CRC could amend the definition for some greater distance as well as how it is applied. The CRC should consider the implications for sandbags and their use on the coast. Currently, a local government receives a static line which is the reference line from which setbacks are measured if they undertake a large scale beach fill project. The pre-project vegetation line becomes the static line as the reference point for measuring setbacks. The CRC has also developed a static line exception that allows limited development based on the existing vegetation line as long as the local government demonstrates a commitment to long term beach nourishment. The CRC authorizes the static line exception and reauthorizes it every five years to be sure the local government is maintaining the commitment to beach nourishment. There are two alternatives for CRC consideration. The CRC Chair has proposed the first to eliminate the static line and 300,000 cubic foot rule completely. There would be no new development seaward of the designated development line. The development lines would be established by the local government with DCM/CRC review and the vegetation line would be used for determining the setbacks in the absence of a development line. It would maintain the graduated setbacks and structure size as well as the erosion rate provisions that are currently in the setback rules. New or replaced structures would be sited based on the vegetation line or the development line whichever is farther landward. DCM staff has also developed an alternative where you would use the existing static line exception, repeal the 2,500 square foot limitation on structures and repeal the five year waiting period. The CRC could also amend the large scale beach fill definition to something greater than 300,000 cubic yards. We would retain the local government commitment to the long-term beach fill project, maintain the graduated setbacks, and structure size and erosion rate provisions that are in the oceanfront setback rules. We would also have a development line that is currently in place which restricts development any further seaward than the landward most adjacent neighbor. Dredging windows and moratoria are coordinated with several state and federal agencies. A study is currently taking place and we will have some direction in how to move forward once the Commission considers the work the consultants have completed. Monitoring conditions come under the

jurisdiction of several agencies, however there are projects such as terminal groins that CAMA identifies the monitoring requirements. There is an existing beneficial use of dredge material policy that has been approved by NOAA. This is important when it comes to federal consistency. DCM gets to comment on the activities or federal permits. NOAA approves our policies and rules for use in these cases. When it comes to navigation channels, the existing policy is directed at beach quality sand not being permanently removed from the active nearshore beach or inlet shoal systems. There is a caveat that says “unless no practical alternative exists”. This has been key to NOAA’s approval of these types of policies that there needs to be an “out” available to the federal agency that it will affect. There was an amendment to the Dredge and Fill Law that did not include the caveat and it was not approved by NOAA for federal consistency use. Chairman Gorham has put forward a proposal that would allow beach compatible sand to be placed on adjacent beaches in a manner to minimize shoaling and replicate natural littoral systems to the maximum extent practicable. However we run the risk that this proposal would not be approved by NOAA and the burden would fall primarily on local governments doing their own beach nourishment projects and they would be responsible for placing all the sand on adjacent beaches but not necessarily the projects being done by the Corps. We could take the current policy and define no practical alternative as an option.

In February we had our panel discussion. All of the regional meetings have been completed and a summary of stakeholder input was presented to the CRC at the last meeting. At this meeting we should have the draft findings and recommendations finalized. This would go out for public comment. The next CRC meeting is scheduled for October and we could finalize our study and have that completed for submission to the Governor and the Legislature not long after the December meeting.

After discussion, the Commission directed staff to begin work on static line alternatives, a deep draft inlet AEC, the policy on beneficial use of dredged material, and to provide an update on the dredging window study.

### **OLD/NEW BUSINESS**

Chairman Gorham expressed concerns about emails the Commission is receiving. Some emails are related to quasi-judicial decisions that will be made by the CRC. After discussion, it was determined that if a CRC member receives an email that they are concerned about responding to they should forward it to Angela Willis. The Executive Secretary will provide a summary of comments being received during the Executive Secretary Report.

At the request of some Commissioners, Mary Lucasse stated she would forward final agency decisions on third party hearing requests to the entire CRC.

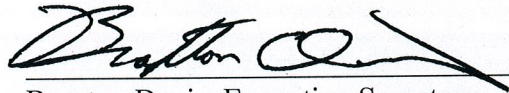
Braxton Davis stated the Coastal Habitat Protection Plan (CHPP) came out of the 1997 Fisheries Reform Act in North Carolina. This Act followed a lot of fish kills and water quality issues that were receiving widespread attention in the 1990s. The law talks about recognizing the significant fisheries resources in North Carolina and their economic, environmental, and cultural importance. It required DENR to coordinate and prepare the Coastal Habitat Protection Plans for critical fisheries habitat. The emphasis of the Act was to address coastal habitat, which is a major part of what will make fisheries successful in the long-term. It was also recognized that coastal habitats were impacted by rules across several commissions. The law requires collaboration across all of these commissions. The law laid out what the plan needed to address and the first plan was completed in 2004 and adopted by MFC, EMC, and the CRC. The most recent update was in 2010. There is a review process established with two representatives from each Commission forming a steering

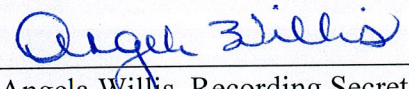


committee. The steering committee has traditionally met quarterly to review progress and updates to the plan and to collaborate on shared coastal issues across the Commissions. The plan has to be updated every five years. The next update is due in 2015. DENR's goal is to continue with a focus on non-regulatory approaches to habitat protection enhancement and to assemble a DENR staff team. Mike Lopazanski is DCM's point of contact for the Department. DENR is asking for the appointment of two CRC members to the CHPP steering committee. Chairman Gorham appointed Larry Baldwin and John Snipes.

With no further business, the CRC adjourned.

Respectfully submitted,

  
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Braxton Davis, Executive Secretary

  
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Angela Willis, Recording Secretary