

NC COASTAL RESOURCES COMMISSION (CRC)

April 28, 2022

Dare County Government Complex, Manteo

Present CRC Members

Renee Cahoon, Chair
Larry Baldwin, Vice-Chair
Neal Andrew
Craig Bromby
Trace Cooper
Bob Emory
Robert High
Sheila Holman
Doug Medlin
Phil Norris
Lauren Salter
Alexander "Dick" Tunnell
Angie Wills

Present CRAC Members

Spencer Rogers, Vice-Chair
Candy Bohmert
Daniel Brinn
Ike McRee
David Moye
Bobby Outten
Dave Weaver

Present from the Office of the Attorney General

Mary Crawley

Present from the Department of Environmental Quality, Office of the General Counsel

Alyssa Wright

CALL TO ORDER/ROLL CALL

Renee Cahoon called the meeting to order at 9:00 a.m. on April 28, 2022, reminding the Commissioners of the need to state any conflicts due to Executive Order Number 34 and 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 a conflict of interest or potential conflict with respect to matters to come before the Commission. The Chair requested that if any member knows of a conflict of interest or a potential conflict of interest, they so state when the roll is called. Trace Cooper advised the Commission that he would recuse himself from the Beach Management Plan rule amendments action item as it is a potential conflict. Based upon this roll call Chair Cahoon declared a quorum.

CHAIR'S COMMENTS

Chair Cahoon thanked the Dare County Government Complex for hosting this meeting. Assistant Attorney General Mary Crawley is sitting in for Mary Lucasse as Counsel to the Commission. Assistant General Counsel Alyssa Wright is representing staff on the variance request. The Commission has received resolutions from the Carteret County Board of Commissioners and Carteret County Beach Commission supporting a timeframe extension for General Permits. A second resolution was received from the Carteret County Beach Commission opposing permanent structures within shellfish leases in Bogue Sound. Chair Cahoon also asked that we invite a Wildlife Resources Commission member to speak to the CRC regarding the inland waters boundary update.

MINUTES

Neal Andrew made a motion to approve the minutes of the February 10, 2022, Coastal Resources Commission meeting. Bob Emory seconded the motion. The motion passed unanimously (Andrew, Baldwin, Bromby, Cahoon, Cooper, Emory, High, Holman, Medlin, Norris, Salter, Tunnell, Wills).

EXECUTIVE SECRETARY'S REPORT

DCM Director Braxton Davis gave the following report:

DEQ Deputy Secretary Bill Lane sends his regrets that he is unable to attend today's meeting. The Divisions of Coastal Management and Marine Fisheries now report to Bill. I am saddened to share that Sterling Baker, NCDOT Division 1 Engineer, passed away on April 20th. Some of you may have known and worked with Sterling, in fact he recently attended your meeting in Pivers Island as part of the variance for the sandbag structure on Ocracoke Island. Sterling was a long time State employee and a close personal and professional friend of DCM. We ask that you please keep his family and Division 1 staff in your thoughts and prayers. As an update on DOT projects: last week, DCM received a Notice of Scoping as part of the State Environmental Policy Act review process for a potential multi-use terminal to support automotive and offshore wind energy industries on Radio Island at the Port of Morehead City. The environmental analysis will focus on approximately 154 acres of Radio Island and approximately 31 acres of the Newport River. DCM will submit scoping comments to the DEQ Environmental Review Coordinator by the due date of May 11, 2022. Another project that has been in the news frequently is the dredging of Hatteras Inlet. Since January of this year, DCM staff have reviewed and approved multiple requests from the NCDOT Ferry Division and Dare County under two existing active CAMA major permits for maintenance dredging within Hatteras Inlet. Impaired navigation due to shoaling in the channels of Hatteras Inlet has been a long-standing problem. Through the federal consistency program, DCM staff also issued a conditional consistency concurrence on February 14th to the U.S. Army Corps of Engineers for its proposed Hatteras Ferry Channel Realignment and Maintenance project. The Corps' proposal is to dredge the horseshoe route between Hatteras and Ocracoke Islands and the Channel connecting to the Hatteras Inlet Gorge. This horseshoe route follows naturally occurring deep water; however, it contains 3-4 "hot spot" areas where shoaling is frequent. The Corps proposal is to dredge the horseshoe route with a contracted pipeline dredge every 3-5 years and with a government dredge as needed 3-4 times per year. DCM attended an Environmental Permits Review Pre-Construction Meeting on April 7th for the northern segment of the US 17 Hampstead Bypass in Pender County. The US 17

Hampstead Bypass project involves construction of a four-lane divided roadway from South of NC 210 to a point North of SR 1563 (Sloop Point Road) in Pender County, a distance of approximately 6.9 miles. The project will improve traffic flow and safety within the region. The N.C. Department of Transportation (NCDOT) awarded a \$185 million contract for the project earlier this year.

On the oceanfront: The Town of Ocean Isle Beach completed construction of their terminal groin and the associated federal Coastal Storm Risk Management project. Holden Beach finished a dredging and beach fill project and is currently demobilizing, raking, and tilling the project area. The Town of Oak Island has also completed their beach fill placement and is demobilizing and tilling the nourished areas. The Town of North Topsail Beach is working on a truck haul beach nourishment project in the southern part of the town and is also proposing a modification for additional dune construction at the Onslow County access area. The Carolina Beach sand placement project has been completed and the Corps has requested an extension to allow completion of the Kure Beach project. In February, DCM issued a modification to an existing major permit for Carteret County to allow the placement of dredged material from Taylors Creek on to the public access beach at Radio Island, and that is still underway. Looking ahead, Dare County projects are planned for this summer with Avon/Buxton and the northern Dare County beaches scheduled to start in June and the Town of Nags Head's project expected to start in mid-July.

On the offshore energy front, the federal Bureau of Ocean Energy Management (BOEM) proposed issuing up to three commercial wind energy leases and approving site assessment activities in the Wilmington East Wind Energy Area (WEA), approximately 15 nautical miles offshore North Carolina. Site characterization activities will involve meteorological buoys, and vessel and aerial surveys of benthic habitats, avian resources, and marine fauna. The lease, by itself, will not authorize the construction of a wind energy project. On January 12, 2022, DCM received BOEM's Federal Consistency Determination to determine whether the proposed activities are consistent to the maximum extent practicable with the enforceable policies of the North Carolina and South Carolina Coastal Management Programs. On March 17, 2022, DCM found the proposal consistent, with a condition that the Site Assessment Plan be submitted to DCM and a meeting held with DCM, DMF, WRC, and the Lessee prior to BOEM's final approval of the Site Assessment Plan. This coordination will allow the precise activity locations and timing to be reviewed and discussed to avoid, minimize, and mitigate possible impacts or conflicts with fisheries, marine mammals, sea turtles, and other sensitive resources. This coordination will also allow for the State to review the Lessee's mitigation measures to protect the North Atlantic right whale and allow the State to recommend additional mitigation measures if appropriate. BOEM has recently announced that it will hold a lease auction on May 11, 2022, for two areas within the Wilmington WEA that are located approximately 20 nautical miles from NC.

Land Use Plan Certifications

DCM certified one land use plan update on March 16, 2022, since your last meeting for the Town of Nags Head. Please let us know if you have a question about this process, or the plans themselves.

Access Grants

The Public Beach and Coastal Waterfront Access program, now in its 40th year, has accepting pre-applications for the upcoming 2022-2023 fiscal year. The Division has received 16 applications from 14 communities requesting \$4.4M in funding. You will recall that recent actions by the General Assembly have restored the funding source of the Parks and Recreation Trust Fund to a portion of the deed transfer tax rather than annual appropriations. DCM has received about \$1.2 million from PARTF and will have about \$1.8M for local governments to improve public access to coastal beaches and waters. Local govts selected for funding will be notified to submit final applications by August with final recipients notified in September.

Resilient Coastal Communities Program

Work in the Resilient Coastal Communities Program's 26 communities continues to go well. Phases 1 and 2 of the Resilient Coastal Communities Program are wrapping up. Staff received final deliverables from Leland, Navassa, Sunset Beach, Bertie County, Hertford, Hertford County, Vandemere, and Windsor. Staff are in the process of reviewing those deliverables and expects to receive the remaining deliverables by the end of May. The Phase 3 application has been posted on the program website, and the deadline is June 3rd. Phase 3 of the program will fund the engineering and design of a prioritized project identified during Phase 2. Staff hosted an informational webinar on April 25th to review the application process and provide time for questions. We anticipate notifying awarded communities by the end of June and beginning the contracting process in July. Phase 3 is anticipated to wrap up by January 2023. Staff will be presenting on the program at The North Carolina Association of Floodplain Managers Conference in Atlantic Beach on May 3rd, where a handful of the RCCP communities will also be sharing their experience participating in Phases 1 and 2 of the program. We've also just received word that the National Fish and Wildlife Foundation has approved an additional grant award of \$545,860 to DCM to expand on Resilient Coastal Communities Program.

Coastal Reserve

The Terrapin Tally, a partnership with the Reserve and Wildlife Resources Commission, is now underway. This citizen science project helps address questions about the population status and condition of the diamondback terrapin within the state through kayak-based surveys at specified times and prescribed routes. Paddling routes will occur at 11 locations including: Cape Lookout, Rachel Carson Reserve, Calico Creek, Hammocks Beach State Park, Lea Hutaff Island, Masonboro Island Reserve, Carolina Beach State Park, Fort Fisher State Recreation Area, Zeke's Island Reserve, Bald Head Island, and Bird Island Reserve. Virtual training sessions were held April 7 and 9 and data collection sessions will be held April 28-May 1, May 4-7, and May 13-15. Earth Day related clean-ups took place at the Rachel Carson Reserve last week. The Reserve and Town of Beaufort partnered on a community cleanup of the Beaufort waterfront and shoreline of the Rachel Carson Reserve on Saturday, April 23rd. At least 15 Division of Marine Fisheries employees will use Community Service Leave to conduct a clean-up of the Rachel Carson Reserve on April 26. DMF employees have partnered with the Reserve on an annual clean-up for the past several years, resulting in thousands of pounds of debris removed.

Staff News

Katharine Elks has been recruited by the US Army Corps from our Wilmington District Office. Her last day with DCM is on May 6th. She will begin working with the Army Corps Wilmington

Regulatory Office starting May 9th. Katharine will be missed and we hope to work with her in the future in her new role. In addition, Brandon Puckett, Reserve Research Coordinator, started a new job this week with NOAA's National Centers for Coastal Ocean Science at the NOAA Beaufort Lab, focused on coastal resilience and restoration-related research. We thank Brandon for his outstanding work on a range of significant coastal management topics during his tenure with the Division and look forward to continuing to collaborate with him in his new role. Ryan Davenport, a long-time field representative in our Morehead City office, was also recruited away from DCM by Carteret County. Ryan has taken Rudi Rudolph's place as the County Shore Protection Manager, so we are already working with him on a number of fronts in his new role. Elizabeth Colhoun Pinnix started work with the Division this week as the Coastal Reserve's new Southern Sites Manager. Elizabeth has a Master's degree in Marine Biology from Nova Southeastern University in Florida and a Bachelor of Science degree in Oceanography/Biology from UNCW. Elizabeth has worked as a temporary employee with the Reserve in the role of Stewardship and Education Specialist since 2017, and we are excited for her to join DCM in this new capacity. We announced at your last meeting the retirement of Roy Brownlow as the Morehead City District Manager. Jonathan Howell is serving in the interim, but we have begun the hiring process and hope to have that position filled soon. Lastly, we have also posted a new Coastal Resilience coordinator position and time-limited coastal resilience support position, and plan to begin interviews shortly.

CRAC REPORT

Spencer Rogers, co-Vice Chair, stated the CRAC received an update on the regulatory status of three proposed wind energy projects within the wind energy areas and pending leases. We also heard a presentation on "Project Sentinel" developed by the University of Florida which is a pre-storm deployment of instruments prior to hurricanes. Eight sites have been identified and submitted for North Carolina to participate.

Chair Cahoon stated a solicitation of nominations to the Advisory Council was sent to all local governments and current members were asked to express their interest in being reappointed. Nominations are due to the Division by April 30.

VARIANCES

Town of Kure Beach (CRC VR 22-02), Kure Beach, Beach Mats Bryan Hall, Alyssa Wright, Esq./ Jim Eldridge, Esq.

Aly Wright stated the Petitioner is the Town of Kure Beach, a municipality in New Hanover County which owns three structural accessways at the beach access points located at 99, 110, and 140 Atlantic Avenue. Petitioner is seeking to use one beach accessibility mat at the end of one of the three structural accessways. On February 9, DCM received the Town's application for a CAMA Minor Development Permit for the proposed installation of the beach mat. On March 8, DCM denied the Town's application for the proposed development due to its inconsistency with 15A NCAC 07H .0306 and .0308. The Town is seeking relief from these rules which prohibit development seaward of the development line and require that structural accessways be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune. Ms. Wright reviewed the stipulated facts of the request and stated the Division and Town agree on all four statutory criteria which must be met to grant the variance. Staff recommends the

Commission consider conditioning any variance granted to include six conditions: the location of the mat should be limited to Beach Access 110 and 140; should be configured in an “L” shape instead of a “T” shape proposed by the Town; not require a May-September use restriction, allow the placement of the mat withing thirty feet of the first line of stable and natural vegetation; require the Town to remove the beach mat in the event of a storm event and/or severe weather conditions or should the mat come within twenty feet of mean high water; and to begin and continue to work directly with the US Fish and Wildlife Service to ensure compliance with the federal Endangered Species Act.

Jim Eldridge, Kure Beach Town Attorney, represented the Town and stated the Town agrees with DCM staff on the four criteria and is amenable to all the conditions proposed by staff.

Larry Baldwin made a motion that petitioner has shown that an unnecessary hardship would result from strict application of the development rules, standards or orders issued by the Commission. Phil Norris seconded the motion. The motion passed unanimously (Holman, Norris, Tunnell, High, Medlin, Andrew, Baldwin, Cahoon, Emory, Salter, Cooper, Bromby, Wills).

Trace Cooper made a motion that petitioner has shown that hardships result from conditions peculiar to the petitioner’s property. Doug Medlin seconded the motion. The motion passed unanimously (Holman, Norris, Tunnell, High, Medlin, Andrew, Baldwin, Cahoon, Emory, Salter, Cooper, Bromby, Wills).

Larry Baldwin made a motion that petitioner has shown that hardships do not result from actions taken by the petitioner. Sheila Holman seconded the motion. The motion passed unanimously (Holman, Norris, Tunnell, High, Medlin, Andrew, Baldwin, Cahoon, Emory, Salter, Cooper, Bromby, Wills).

Bob Emory made a motion that petitioner has shown that the request will be consistent with the spirit, purpose and intent of the Commission’s rules, standards, or orders; will secure the public safety and welfare; and will preserve substantial justice. Any permit issued to the Town should include the six conditions recommended by staff. Angie Wills seconded the motion. The motion passed unanimously (Holman, Norris, Tunnell, High, Medlin, Andrew, Baldwin, Cahoon, Emory, Salter, Cooper, Bromby, Wills).

This variance request was granted with conditions.

ACTION ITEMS

Comments/Consideration of Approval of Amendments to 15A NCAC 07H .0304 - .0306, .0308 - .0310, 07J .1201 - .1206, Repeal 07J .1301 - .1303 - Beach Management Plans (CRC 22-12) Mike Lopazanski

***Trace Cooper recused himself from discussion and voting on this item.*

Mike Lopazanski stated the Commission has been working on these amendments for the past two years in order to provide regulatory relief when a community has a CRC approved beach management plan. These amendments will retain state oversight in areas where beach nourishment projects are completed, reflect increased regulatory flexibility for construction

setbacks where beach communities demonstrate a local commitment to maintaining beach nourishment projects, prevent beach nourishment projects from becoming a stimulus for new development in unsuitable areas and minimize seaward encroachment of new or expanded structures. A public hearing was held on February 10. One comment was received from Figure 8 Island's HOA which stated that its primary objection is that ocean hazard setback issues relevant to property development are being conflated with beach management practices and that local governments are burdened by these amendments. In addition to the regulatory issues that staff encounter in communities that have both a development line and static line exception, the Commission also noted that the development line rules do not require a long-term commitment to the maintenance of beach nourishment and that the development line can allow significant seaward encroachment of new developments including the expansion of existing structures. When the Commission began considering implementation of graduated setbacks in 2009, there was recognition that beach nourishment was becoming a common, and if maintained, successful approach to managing beach erosion. However, there was concern on the part of the Commission that beach nourishment created an artificial situation that could lead to seaward encroachment of structures that would put lives and property at risk. The provision of the static line exception was adopted to provide relief from the static vegetation line, ensure long-term commitment to maintenance through a five-year CRC review, and limit seaward encroachment through the landward-most adjacent neighbor provision. The proposed beach management plan rules do not prohibit local governments from implementing more restrictive lines of construction on the oceanfront. The rules acknowledge the long-term success of continued beach nourishment project maintenance and provides regulatory relief by allowing oceanfront setbacks to be measured from the existing vegetation line rather than by the more restrictive pre-project vegetation line. The comments from Figure 8 Island HOA also state that prior to 2015, local governments expressed concerns with the difficulties and costs associated with the static line exception rules and the development line rules were adopted to address those concerns. However, staff points out that 23 oceanfront communities currently have static vegetation lines and once Surf City's project is finalized that number will be 24 communities, or more than 86% of all oceanfront communities. The proposed beach management plan rules will allow these communities to utilize the static line exception provisions until they expire, at which point they will be eligible to petition the CRC for an approved beach management plan. DCM has reviewed available documentation and determined that the majority of the remaining 15 oceanfront communities either already have a beach and/or inlet management plan or have the information needed that can be used to create a plan with minimal effort and cost. Lastly, the Figure 8 Island HOA stated that despite limiting the options for local jurisdictions, the new Beach Management Plan Amendments still have gaps. For example, that the proposed rule requires evidence of funding sources in approving a beach management plan but does not account for non-governmental community associations. The funding sources listed are all tax-based funding sources. These rules and process still allow for a community association to seek a beach management plan, but the rules do not explain how funding sources must be identified when a local government is not involved. In response, DCM Staff stated that the beach management plan rules do not limit or require specific types of funding that can be used to support beach nourishment projects and their maintenance. The proposed rule amendments expand on the examples of financial resources that may be identified and discussed in a beach management plan. A question was also raised regarding the Commission's ability to approve an exception for a particular segment of any beach or inlet within a beach community. DCM has discussed this

with Commission Counsel and believes that this is an available option under the proposed language. For example, a community may manage one ocean inlet with a terminal groin project while the other inlet receives a one-time beach placement project with no long-term maintenance plan. In such a case, the Commission could limit the exception to allow for the use of a post-project vegetation line on a specific shoreline segment protected by the groin. Lastly, questions were raised regarding the trigger for establishing a pre-project vegetation line. DCM continues to be open to redefining this trigger and does not intend to create any disincentive for beneficial use projects where beach compatible sand dredged from adjacent waterways can be placed on adjacent beaches. In the past, DCM has presented the existing rationale for the 300,000 cubic yard trigger, but this could be revisited at the Commission's request. Staff recommends approval of the proposed beach management plan rules.

Neal Andrew and Renee Cahoon indicated they heard the concerns raised by Figure 8 HOA. Bob Emory stated these amendments are the result of everything we have learned so far. These rules have been tweaked and revised several times since 2009 and this is the best approach. Phil Norris commented that these amendments may not address every community's issues, but it will address most.

Bob Emory made a motion to approve the amendments to the beach management plans as presented. Sheila Holman seconded the motion. The motion passed with eleven votes in favor (Holman, Norris, Tunnell, High, Medlin, Andrew, Cahoon, Emory, Slater, Bromby, Wills) and one opposed (Baldwin).

Consideration of Approval of Amendments to 15A NCAC 07M .0302, .0307, .0310, Repeal 07M .0301, .0303, .0306, .0308 - Shoreline Access Policies

Rachel Love-Adrick

Rachel Love-Adrick stated the planning staff has undertaken a comprehensive review of the beach and coastal waterfront access grant program. Amendments were necessary to clarify implementation aspects, reorganization within the rules, local government requirements, and project selections. The public comment period was January 3 through March 4, 2022. A public hearing was held on February 10 and no comments were received. Staff recommends approval of the shoreline access policy amendments.

Sheila Holman made a motion to approve amendments to the shoreline access policies as presented. Neal Andrew seconded the motion. The motion passed unanimously (Holman, Norris, Tunnell, High, Medlin, Andrew, Baldwin, Cahoon, Emory, Salter, Cooper, Bromby, Wills).

Consideration of Approval of Amendments to 15A NCAC 07H .0208, .1201 – Structural Boat Covers

Mike Lopazanski

Mike Lopazanski stated amendments clarify that structural boat covers will be allowed under the general permit for boat houses. Fabric boat covers will be allowed on smaller lots with square footage limitations. No comments were received during the public comment period.

Phil Norris made a motion to approve the amendments for structural boat covers as presented. Dick Tunnell seconded the motion. The motion passed unanimously (Holman, Norris, Tunnell, High, Medlin, Andrew, Baldwin, Cahoon, Emory, Salter, Cooper, Bromby, Wills).

Consideration of Approval of Amendments to 15A NCAC 07J .0403, .0404 – Development Period Extension

Mike Lopazanski

Mike Lopazanski stated amendments will lengthen the initial permit expiration of most major permits to five years with the exception of publicly sponsored multi-phased beach nourishment projects which will be 10 years. A public hearing was held on February 10 and no comments were received during the comment period.

Larry Baldwin made a motion to approve the development period extension as proposed. Doug Medlin seconded the motion. The motion passed unanimously (Holman, Norris, Tunnell, High, Medlin, Andrew, Baldwin, Cahoon, Emory, Salter, Cooper, Bromby, Wills).

Consideration of Approval of Amendments to 15A NCAC 07H .0308, .1801, .1805 – General Permit for Beach Bulldozing

Ken Richardson

Ken Richardson stated these amendments serve to address current property owner's inability to request a beach bulldozing permit if needed inside of an inlet hazard area. Public hearing was held on February 10 and no comments were received.

Trace Cooper made a motion to approve the General Permit for beach bulldozing amendments as presented. Neal Andrew seconded the motion. The motion passed unanimously (Holman, Norris, Tunnell, High, Medlin, Andrew, Baldwin, Cahoon, Emory, Salter, Cooper, Bromby, Wills).

Consideration of Approval of Amendments to 15A NCAC 07H .0306 and 07K .0208 – Elevation of Structures

Mike Lopazanski

Mike Lopazanski stated these amendments clarify when a CAMA permit is needed for the elevation of structures and limitation on elevating structures seaward of the vegetation line. A public hearing was held on February 10 and no comments were received during the comment period.

Sheila Holman made a motion to approve amendments to the elevation of structures as presented. Bob Emory seconded the motion. The motion passed unanimously (Holman, Norris, Tunnell, High, Medlin, Andrew, Baldwin, Cahoon, Emory, Salter, Cooper, Bromby, Wills).

Land Use Planning

Proposed Changes to CAMA Land Use Planning Program Consistency Determinations (CRC 22-09) Rachel Love-Adrick

Rachel Love-Adrick stated over the course of the past several meetings, staff has presented proposed amendments to Subchapter 7B regarding the application of enforceable policies within local Land Use Plans. These amendments have included requiring local governments to clarify which of their land use plan policies exceed the Commission's coastal development rules and which policies the local government want the Division to enforce during permit reviews. In this case, the term "exceeding" refers to a policy that is more stringent than a Commission development standard or for an activity for which the Commission has no standard and is within the Commission's jurisdiction. Staff is now proposing additional rule language that would transfer the review of Major Permit applications for consistency with local Land Use Plans to the local governments. Many of the local Land Use Plans lack clear enforceable policies, often because the local government relies on the protections provided through CAMA and CRC rules as well as their local ordinances. This results in staff having to ask local governments for clarification on the intent of these policies. There are three Division staff planners that review Major Permits for consistency with 65 land use plans covering 20 counties and 94 municipalities. Since 2018, DCM staff have reviewed a total of 605 Major Permit applications. No CAMA permit can be issued which is inconsistent with the approved local CAMA Land Use Plan. In these cases, the only options are for the applicant to amend the project or the local government to amend the land use plan. Occasionally there are proposed projects that are found to be inconsistent with the land use plan, however this is rare. Of the 605 Major Permit applications reviewed over the past four years, there have only been seven that were found inconsistent with a land use plan. Review times depend on the breadth and scope of the project. Larger or more complex projects take anywhere from three to eight hours, while Major Modifications or smaller routine projects typically take less than an hour to review. The previously proposed rule amendments to 7B .0702(d)(1) requiring local governments to clearly identify enforceable policies in the plan will significantly reduce these review times. Under the previously proposed rule amendment in 7B .0702(e)(4) local governments were able to clarify that they do not intend for any policies in the Land Use Plan to be more restrictive than CAMA or CRC standards. Local government staff will likely be more efficient in reviews of their own plans based on their familiarity with the subject matter, policies, and local circumstances. Staff would like the Commission's thoughts and approval for this direction.

Director Davis stated this is a shift from practice in having the local government review their own Land Use Plans for consistency with any Major Permits in their jurisdiction. Sheila Holman asked how the local governments feel about this change. Braxton stated that, based on earlier regional workshop, there may be a mixed response and that staff intended to circulate these amendments for their review and comments. Phil Norris stated that some communities do not have staff to undertake this review. What will happen if the review is done at the local level and after permit issue, it is determined that it is inconsistent with the land use plan? Chair Cahoon stated she agrees with requiring local governments to identify enforceable policies and clarifying the definition of "exceeding," however is uncertain about transferring the review of CAMA Major Permits to local governments. Robert High stated local government staff are already over worked and adding another task may be too much for some communities. There is also concern that if the review is transferred to local governments for review, will the permit be reviewed, and

will it be done in a timely manner? Robert High also stated that DCM staff can be more objective when reviewing projects that are within a local area. Doug Medlin stated that staff in his town are not up to date on CAMA rules and local governments should only be able to issue a recommendation to the Division on whether a permit is consistent with the land use plan. Chair Cahoon stated the Commission is comfortable with moving forward with the recommended amendments regarding the clarification on the identification of exceeding and enforceable policies but look forward to reviewing the comments received from local governments on their thoughts about transferring the review of CAMA Major Permits to local governments.

PERMITTING PROCESS

Extension of General Permit Timeframe (CRC 22-10)

Jonathan Howell

Jonathan Howell stated at the February CRC meeting a marine contractor voiced his concerns about the current timeframe for General Permits before permit expiration which is 120 days. Due to several factors associated with Covid and supply chain issues, the Division has seen an increase in the number of permittees requesting a permit renewal. Staff contacted local governments to determine the time local building permits are active and discovered that most permits from local governments expire after 180 days of permit issuance. Increasing the General Permit time period to be consistent with local permits would provide adequate additional time for applicants and contractors to complete projects. The Commission also received a resolution from Carteret County supporting this proposal. The CRC has 17 General Permits, but these amendments would only affect 10 of them.

David Moye, CRAC member and former DCM employee, stated this issue is not new. The contractors would like additional time so they can stack permits. Contractors used to be able to obtain permits without the property owners' knowledge. Now the property owner is required to designate an authorized agent to apply for and pick up permits if the property owner isn't going to pick up the permit. If you move forward to a longer timeframe, such as a year, keep in mind that some activities which can be undertaken with the General Permit may need additional DCM staff review, such as bulkhead alignments.

Robert High asked if six months was enough time. If a permit was good for a year, the additional staff review could be handled through an onsite meeting prior to construction. Jonathan responded that it would be difficult to track the number of permits issued and their expiration if it was drawn out to a year. Six months is adequate time to complete a project if a contractor and materials have been secured. Neal Andrew spoke in favor of a timeframe longer than six months. He further stated that he could support 180 days with the option of a construction schedule that allows for additional time if necessary. Larry Baldwin agreed that 180 days to complete a project does not seem long enough. Chair Cahoon asked staff to come back with additional language that would allow for an extension after an initial 180-day period.

Trace Cooper made a motion to approve the amendments to allow for an extension of the General Permit timeframe from 120 days to 180 days. Larry Baldwin seconded the motion. The motion passed unanimously (Holman, Norris, Tunnell, High, Medlin, Andrew, Baldwin, Cahoon, Emory, Salter, Cooper, Bromby, Wills).

PUBLIC INPUT AND COMMENT

Ivy Hayes, resident of Kitty Hawk, commented on the importance of inland waterways, natural shorelines, and marshes. She requested that all coastal development should defer to Division of Coastal Management and not leave it up to the towns to preserve the resources.

ESTUARINE SHORELINE MANAGEMENT

Overview of CRC Estuarine Shoreline Rules and Stabilization (CRC 22-08)

Mike Lopazanski

Mike Lopazanski provided an overview of the Estuarine Shoreline AEC. Estuarine Shorelines are managed as part of an interrelated group of AECs under the broader category of the Estuarine and Ocean System. These AECs include Estuarine Waters, Coastal Wetlands, Public Trust Areas, Coastal Shorelines, and Public Trust Shorelines. Coastal Shorelines and Public Trust Shorelines are delineated by the Inland Waters Boundary as defined by the Division of Marine Fisheries and the Wildlife Resources Commission. Property owners have options for shoreline stabilization that include bulkheads, riprap or sheetpile groins perpendicular to the shore, sheetpile breakwaters, marsh toe riprap revetments, marsh sills, and vegetative planting. The CRC began a comprehensive review of the Estuarine Shoreline AEC in 1998. That review resulted in the Coastal Shoreline AEC that is now the 30-foot buffer provisions in 7H .0209. A subcommittee continued discussions related to shoreline stabilization and developed a set of principles to guide discussion and future rule development related to shoreline stabilization. These principles include the need to match shoreline stabilization techniques to site conditions and erosion forces present, ensure the preservation of land and water resources, and to recognize public trust and private property rights. Citing the need for additional research on the effects of stabilization methods on estuarine shorelines, the CRC convened an Estuarine Shoreline Biological and Physical Processes Work Group to develop science-based recommendations based upon the concepts and principles identified by the Stabilization Subcommittee. The Work Group finalized their report in 2006, recommending specific stabilization standards for the estuarine shoreline. The Work Group developed a hierarchy of stabilization methods based on shoreline type aimed at maintaining ecological functions. Marsh sills were the most recommended stabilization method across shoreline types. Since that time, DCM has focused its efforts on marsh sills and implemented the Division's Living Shoreline Initiative. The most frequently employed shoreline stabilization methods along the coast are bulkheads followed by rip rap which can be permitted through either the Major or General Permit processes. Bulkheads need to be sited at the location of high water and be constructed landward of coastal wetlands and backfill is allowed. When replaced, bulkheads may be located an average of two feet not to exceed five feet waterward of the existing alignment. Riprap structures are allowed a maximum of ten feet waterward of normal high water but need to be landward of wetlands if wetlands are present. Riprap revetments are also allowed for wetlands protection. In these cases, the structure is allowed immediately waterward of the wetland escarpment at any point along its alignment. Riprap revetments shall not exceed six inches above the adjacent wetland substrate. The Division has made strides in promoting living shorelines, partnering with resource agencies and non-profits to finalize the General Permit for Marsh Sills. Like permits for other hardened stabilization methods, this permit focuses on the location of the structure relative to high water or existing wetlands. For the General Permit, these structures can be sited no more than 30 feet from high water or five feet from existing wetlands, whichever is greater. The primary difference between marsh sills and other hardened stabilization methods is that they maintain the water and

land interface through the incorporation of gaps in the structure and by limiting its height to 12 inches above normal high water, normal water level, or above the height of the adjacent wetlands. Decisions for which stabilization method is utilized are left to property owners. DCM staff do not advocate one strategy over another. However, staff has been working to promote the utilization of living shoreline methods through outreach and education.

Overview of Virginia Estuarine Shoreline Rules and Stabilization
Rachael Peabody, Virginia Marine Resources Commission (VMRC)

Rachael Peabody stated the VMRC's focus is on tidal waters and is made up of three primary divisions: Marine Fisheries; Marine Habitat; and Shellfish Management. Our Commission consists of eight members and the Chairman all appointed by the Governor and by Code must consist of one commercial fisherman, one sport fisherman, and an environmental interest. The role of the Commission is to promulgate regulations and guidelines and decide on protected wetlands, submerged lands, and aquaculture permit applications. Most of what I will present on is within our Habitat Management Division. We manage all submerged lands out to three miles. We have eight permit writers for the entire State. We regulate the proprietary ownership of all submerged lands as well as managing tidal wetlands. The goal of our tidal wetland program is to preserve and prevent the despoliation and destruction of wetlands while accommodating necessary economic development in a manner consistent with wetlands preservation. Localities may voluntarily manage this resource through the local wetlands board process. When an application is received to impact tidal wetlands, the locality has a citizen-based wetlands board which regulates their own community. Our role is to help them administrate and have oversight of their decisions. There are approximately 9,000 miles of tidal shores within the State. We also manage the coastal primary sand dunes and beach. The Commission is charged with preserving and protecting coastal primary sand dunes and beaches and prevent despoliation and destruction. A new fast track permitting program has been established that encourages using sand dredged material for beach nourishment, living shorelines, and wetland creation. The Code of Virginia directs that the beaches of the Commonwealth shall be given priority consideration as sites for the disposal of that portion of dredged material determined to be suitable for beach nourishment. Our jurisdiction is from mean low water to the back side of the primary dune. One thing that Virginia has, that other states do not, is our close relationship with the Virginia Institute of Marine Science (VIMS). By Code they are the scientific arm of the VMRC for marine science. We do not hire outside scientists; we utilize VIMS for all research and advisory services. There are four dedicated full-time scientists that advise permit writers on the scientific evaluation of projects. VIMS provides advisory reports on projects and these reports are heavily weighted during permit reviews and public hearings. Virginia has one application for any development that impacts resources within our jurisdiction which is then circulated to the local wetlands board, DEQ, and the Corps of Engineers. Then each reviewing authority initiates its independent public interest review and processes the application for a permit decision. Permits are generally issued between 45 and 60 days. Typical erosion control structures are similar to those used in North Carolina. In 2021 Virginia permitted just over 50,000 linear feet of living shoreline, which includes marsh toe sills. Generally, bulkhead and riprap applications are replacements rather than new structures. Virginia also has a no net loss policy which requires the compensation of all permitted tidal wetland losses. For any one square foot of vegetated wetlands that is lost as a result of a project must be compensated or mitigated. New tidal wetland guidelines recognize an equal ecological value in vegetated and non-vegetated wetlands. In July 2011, Virginia went

down the path of building a regulatory structure which requires living shorelines. The goal is to provide connectivity from the water body to the shore. This assists us in fulfilling EPA requirements for water quality, provides additional fishery and nursery habitat, and is part of the resilience strategy. Virginia has created two expedited living shoreline permits, one for soft living shorelines and the other for living shorelines with toe revetments. Both of these permits are issued within 21 days of application. 2020 legislation, Senate Bill 776, established living shorelines as the preferred method of shoreline stabilization. Living shorelines are now the default approach unless the best available science indicates that the site is not suitable for such methods. This legislation ensures the protection of shorelines and sensitive coastal habitats from sea level rise and coastal hazards. Rock revetments are the next preferred alternative if a living shoreline is not suitable based on the best available science. There have been some barriers to the implementation of the new living shorelines law. The cost of installation, contractor availability, design and permitting expertise, and homeowner comfort with this design concept. Many property owners still have a preference for a lawn that leads to a hardened structure. We provide incentives to property owners including cost share programs, expedited permitting, and regaining eroded property. In an effort to incorporate sea level rise into our permitting all projects should be designed to mitigate coastal hazards over the useful life of the project. The useful life of a project is defined as the average amount of time in years that a project is estimated to function when installed properly and maintained. All projects should ensure that the stabilizing objectives address the most erosive conditions predictable at the site and project reviews shall include the 10-year storm event water levels as calculated by NOAA and FEMA.

LEGAL UPDATES

Update on Litigation of Interest to the Commission (CRC 21-32)

Mary Crawley, serving as CRC Counsel for this meeting, reviewed all active and pending litigation of interest to the CRC.

OLD/NEW BUSINESS

Larry Baldwin asked if conditions could be listed to allow beach mats under a General Permit authorization rather than through the variance process. Commissioner Holman commented that a consultation should be had with US Fish and Wildlife prior to considering approval of beach mat placement. Commissioner Cooper stated that regional access sites would be a good place for beach mats to be used under a General Permit. Chair Cahoon directed staff to come back to the Commission with a proposal for allowing beach mats through the General Permit process rather than through the variance process.

Bob Emory requested guidance from CRC Counsel on the variance criteria. When staff and petitioner agree on criteria, but one position is better than the other, is it appropriate to choose between staff and petitioner's position? Is it defensible in court if we adopt petitioner's position and it isn't well written? Mary Crawley stated she would pass this question along to Mary Lucasse to follow up on at a future meeting.

Renee Cahoon stated the CHPP Steering Committee kickoff meeting will take place in New Bern on May 9th at 1:30 p.m. She thanked Commissioners Baldwin and Emory for serving on the CHPP as CRC representatives.

Braxton Davis stated during the periodic review process for the Marine Fisheries and Wildlife Resources Commissions, amendments were proposed that would change the inland waters boundary. However, the latest information is that both Commission's plan to readopt their rules without changes. They will then move forward with rulemaking to change the boundary. A more comprehensive update will be provided at a future meeting by Deputy Secretary Bill Lane.

The next meeting of the CRC is scheduled for June 8-9.

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary

AMW (electronically)

Angela Willis, Recording Secretary