

NC COASTAL RESOURCES COMMISSION (CRC)

August 27-28, 2024

Beaufort Hotel, Beaufort

Present CRC Members

Renee Cahoon, Chair
Neal Andrew, Vice-chair
Larry Baldwin
D.R. Bryan (absent 8/27/24)
Bob Emory
Jordan Hennessy
Robert High (absent 8/27/24)
Sheila Holman, 2nd Vice-chair
Steve King
Lauren Salter
Steve Shuttleworth
Earl Smith
James “Robbie” Yates

Present CRAC Members

Bobby Outten, Chair	David Kellam
Kyle Breuer	Kathleen Riely
Daniel Brinn	Spencer Rogers
Sandy Cross	Debbie Smith
Ryan Davenport	John Spruill
John Farrell	Dave Weaver
Webb Fuller	John Windley
David Hewett	

Present from the Office of the Attorney General

Mary Lucasse

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

Christine Goebel

CALL TO ORDER/ROLL CALL

CRC Chair Renee Cahoon called the meeting to order at 3:00 p.m. on August 27, 2024, 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 state when the roll is called. Chair Cahoon stated she would recuse herself from the Dare County Tourism Board variance request. No additional conflicts were reported. Based upon this roll call Chair Cahoon declared a quorum.

CHAIR'S COMMENTS

Chair Cahoon thanked the Commission for their participation in the special meeting held on August 6. She recognized DEQ Assistant Secretary, Bill Lane, and thanked him for attending the meeting. She also reminded the Commission of their responsibility to complete ethics education training. The Commission meeting dates for 2025 have been circulated for the CRC's review.

Proposed CRC Dates for 2025 are as follows: February 26-27; April 30-May 1; June 11-12; August 27-28; and November 19-20. Please let Angela know of any conflicts.

Chair Cahoon stated CRAC appointments are expiring. DCM staff will notify coastal counties to solicit nominations. If you are currently serving on the Advisory Council and are interested in continuing to serve, please advise the Division. This will be discussed at the November meeting and appointments will be made at the February 2025 CRC meeting.

MINUTES

Neal Andrew made a motion to approve the minutes of the April 24-25, 2024, Coastal Resources Commission meeting. Larry Baldwin seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Emory, Hennessy, Holman, King, Slater, Shuttleworth, Smith)(Bryan, High, Yates absent for vote).

Neal Andrew made a motion to approve the minutes of the August 6, 2024, Special Meeting of the Coastal Resources Commission. Larry Baldwin seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Emory, Hennessy, Holman, King, Salter, Shuttleworth, Smith)(Bryan, High, Yates absent for vote).

CRAC REPORT

CRAC Chair Bobby Outten stated the CRAC was provided with a Science Panel Update. The erosion rates and Inlet Hazard Area boundaries will be updated in 2025. The CRAC also continued discussions about thin layer placement and the benefits of this application to adapt to sea level rise and erosion. Spencer Rogers provided a presentation on temporary structures on the beach prior to storms that help with wind and wave action. Under the current rules, this is a cumbersome process. The CRAC asked staff to look at this and provide recommendations to streamline this process for CRAC consideration. An update was also provided on Buxton Beach clean-up efforts of the remnants of an old military base. The Coast Guard has been asked to clean up this area where there are building foundations in the surf zone. The CRAC has also asked staff to provide feedback on the use of artificial turf inside setbacks.

EXECUTIVE SECRETARY'S REPORT

DCM Director Tancred Miller gave the following report:

In your February and April meetings we covered some of the history and accomplishments of 50 years of CAMA. Since there was not enough time on this agenda for a full session covering another core component of the program, this division update will be a little more in-depth than

usual, as I'd like to paint a fuller picture of some of the fantastic work that the Division does on a routine basis.

Legislative

Starting with a recap of this year's legislative session, four provisions affecting CAMA and the CRC's rules were included in this session's Regulatory Reform bill, SL 2024-45 (H385 then S607). Two of the provisions direct the commission to do rulemaking and are on your agenda for tomorrow, and two are amendments to CAMA that do not require rulemaking.

1. The first provision directs the CRC to amend 15A NCAC 07J .0210 so that replacement of docks and piers will be considered repair and not require CAMA permits if they meet certain conditions: they must be currently conforming, cannot be more than 6' wide, cannot be adjacent to a federal navigation channel, and cannot have more than 800 square feet of platform area.
2. The second provision directs the CRC to amend its rules to allow the creation of a measurement line in a community that has received a permit to construct a terminal groin and is pursuing a dune building project that will cover up their existing first line of stable and natural vegetation. This will require amendments to 7H .0304 and .0305.
3. The first CAMA amendment creates an exclusion for aquaculture (as that term is defined in GS 106-758) from the definition of development, including floating structures used primarily for aquaculture and associated with an active shellfish lease or franchise. It also excludes from the definition of development the use of any land for purposes related to aquaculture and aquaculture facilities, if associated with an active shellfish lease or franchise.
4. The second CAMA amendment authorizes the Commission to permit the replacement of Bald Head Island's sand tube groin field with rock structures, including a reconfiguration of the groin field within the existing footprint and cumulative length of the permitted sand tubes. It also increases the number of permissible terminal groins from six to seven and authorizes the CRC to permit a terminal groin at the intersection of Frying Pan Shoals and the Atlantic Ocean.

The rule changes and CAMA amendments all include the condition that NOAA has to approve the changes before they become effective. The bill also directed us to submit these proposed changes to NOAA by August 1st for their review and approval, which we have done. NOAA's decision on whether to approve the changes is due by September 13, 2024.

Hurricane Season

With Hurricane Beryl we saw rapid intensification from a tropical storm to a strong Category 4 when it made landfall just north of Grenada on the tiny Caribbean islands of Carriacou and Petite Martinique, where up to 95% of homes were rendered uninhabitable. The storm tracked northwest leaving a trail of damage on other islands before making US landfall in Texas bringing flooding and widespread power outages. Impacts on NC were minimal. Tropical storm Debby

brought moderate to major flooding and erosion to NC, and several tornadoes including in Brunswick and Pender counties. Its heaviest rainfall total was in the southeastern part of the state. Sadly, there were three fatalities in NC that were attributed on Debby. Our most recent storm, Ernesto, brought us dangerous surf, rip currents, and erosion, even though the storm was hundreds of miles away from our coast. The storm was blamed for three drowning deaths, two in SC and one in NC. It also contributed to the loss of another house in Rodanthe, with video of the collapse appearing in the news and on social media. We are in the traditional peak of the hurricane season and the forecast is still for above-average activity, so we are not letting this recent spell of nice weather lull us into complacency.

Threatened Oceanfront Structures

Yesterday we released a joint report between DEQ and the National Park Service on the work and findings of an interagency work group on Threatened Oceanfront Structures. The work group held three meetings last year to explore potential legal and financial mechanisms that might help to get threatened structures removed or relocated prior to collapse. The report is on our website, and you should have received the link to it yesterday. The group did not find a silver bullet but identified 11 ideas for further exploration.

Policy & Planning

The Public Beach and Coastal Waterfront Access Grant Program typically awards about \$1 million per year in grants to local governments for projects to improve pedestrian access to the state's beaches and waterways, with funding the N.C. Parks and Recreation Trust Fund. Local governments can use these grants to construct low-cost public access facilities, including parking areas, restrooms, dune crossovers and piers, or acquire land for access sites. This year the Division had extra funding for the program and received 17 final applications totaling about \$3M. We are finalizing awards and applicants will be notified within the next couple weeks whether their project was selected for funding. The City of New Bern recently completed an extension to their marsh walk at Lawson's Creek Park. This project extends the existing marsh walk by 400 ft and provides water and fishing access to the Trent River. We certified land use plans for the Towns of Bath, Manteo, Plymouth, and Southern Shores, and amendments for the Towns of Morehead City and Windsor, and for Currituck County. DCM is applying to the U.S. Fish and Wildlife Service for funding to begin administering the Boating Infrastructure Grant Program, which provides grant funding to develop public boating infrastructure for transient vessels (vessels at least 26 ft that pass through a place of stay up to 15 days). Since 2002 the BIGP was administered by the NC Division of Marine Fisheries, but DMF last year made the decision to no longer administer the program. Since we currently administer the Clean Vessel Act Program that provides financial assistance to marinas and other boat-docking facilities for the installation and renovation of pumpout and dump stations, and the Public Beach and Coastal Waterfront Grant Program that provides grants to local governments for projects to improve access to the state's beaches and waterways, we believe that this grant program compliments DCM's programs and will help DCM meet our goal of providing public access to the state's beaches and waterways.

Last month we submitted three Letters of Intent to NOAA's Habitat Protection and Restoration national competition. This program's focus is on funding conservation and restoration projects that increase resilience to climate change and other coastal hazards.

1. Topsail Beach South End – DCM and the Coastal Land Trust requested \$1,500,000 to assist with the South Topsail Beach Partnership project which targets the fee title acquisition and long-term conservation of a 147.5-acre property, the South Topsail Beach Tract, in Pender County. The Coastal Land Trust is under contract to purchase the property and will turn it over to DCM for permanent conservation.
2. Newport River Watershed Preserve Restoration Project - The NC Coastal Federation is requesting \$3.8M to complete wetland restoration design and construction on 1,490 acres in Newport, Carteret County. The project will allow for salt marsh adaptation to sea-level rise while rejuvenating the natural hydrology of wetlands and forest floodplains, thus improving water quality and mitigating flooding.
3. Holly Shelter Gameland Peatland Hydrology Restoration – The Nature Conservancy is requesting \$3.9M to complete hydrologic restoration of over 17,000 acres of drained pocosin peatland habitat at Holly Shelter Gameland in Pender County. This shovel ready project represents one of the largest, single-owner coastal wetland restoration efforts in NC.

NOAA will invite projects to submit final applications in November.

Resilience

The application period for Phases 3 and 4 of the Resilient Coastal Communities Program (engineering, design & construction) closed on May 31st. We received 27 applications for a total grant request amount of \$7.4M. We awarded 20 grants for a total of about \$6.2 million. \$4.3 million went to 15 projects in Phase 3, such as living shoreline design to reduce erosion along public shorelines, updating development ordinances to align with resilience strategies, and comprehensive stormwater action plans with detailed drainage studies and easement acquisitions. \$1.9 million was awarded to complete 5 projects in Phase 4, such as bioswales to store and filter stormwater runoff and ocean overwash, low-impact development demonstration sites with educational components for the public, road shoulder stabilization with natural vegetation, and improving flood-prone roadways with permeable pavers and bioretention basins. Contracting is underway and work is expected to begin this fall. For phases 1 and 2 (risk & vulnerability assessments and project portfolios) we received final deliverables for 12 communities: Burgaw, Holly Ridge, Ocean Isle Beach, Ahoskie, Aulander, Plymouth, Washington Park, Creswell, Washington County, Elizabeth City, Pasquotank County, and Edenton. These communities identified and prioritized over 60 resilience projects through this planning process. Having these deliverables helps provide communities with clarity of purpose, attract funding, and provide a more direct path to project implementation. We also submitted a full proposal to the National Fish & Wildlife Foundation's National Coastal Resilience Fund for \$2M to conduct a third round of Phases 1 and 2 of the RCCP integrating resilience-related policies, goals, and objectives into communities CAMA Land Use Plans. We will hear the funding decision in November.

Coastal Reserve

Reserve summer camps were another success this year. Rising first through tenth graders learned about estuaries and experienced estuarine habitats and plants and animals through hands-on experiences at the Rachel Carson Reserve and in the laboratory to increase understanding and appreciation of coastal resources. Favorite activities include the reserve field trip and squid dissection. Camps are conducted in partnership with the NC Maritime Museum in Beaufort.

The Coastal Training Program taught facilitation and grant writing skills to over 100 college students and decision-makers since May. The program will host a living shorelines workshop for Cape Fear Realtors & Brunswick County Association of Realtors on September 19 in partnership with regulatory staff.

Construction of a living shoreline on the east end of Carrot Island at the Rachel Carson Reserve in Carteret County was completed in June. A partnership project with Carteret County, Moffatt & Nichol, and the Coastal Reserve, the approximately 1200 ft of living shoreline will restore habitat and stabilize the eroding shoreline using a combination of wave attenuation devices supplied by Natrx, oyster catcher structures supplied by Sandbar Oyster Company, and salt marsh plantings. Funding for the shoreline project was provided by the National Fish and Wildlife Foundation, NC Land and Water Fund, and the Department of Environmental Quality. The project addresses a high priority in the Rachel Carson Reserve Habitat Resilience Plan, and we are monitoring the performance over time, including how it responds to storm events.

Throughout the summer and fall, Reserve staff, interns, and partners monitor the nearly 9-mile stretch of beach at Masonboro Island Reserve for nesting shorebirds and sea turtles. Masonboro Island had 32 nesting pairs of American oystercatchers this season which is estimated to be approx. 10% of the state's American oystercatchers. Parents and chicks are banded to identify them in the field and learn more about their movements (green band seen in photo). Sea turtle monitoring is still ongoing and nest numbers are up to 37 Loggerhead and 2 Green sea turtle nests.

We had a fantastic group of interns working with the reserve this summer in Manteo, Beaufort, and Wilmington. The students worked on a range of stewardship and education projects including monitoring wildlife use of the Carrot Island living shoreline, counting live and dead oysters in the field and in drone photos and comparing accuracy of counts, leading student summer camp activities, developing interpretive signage, and monitoring fish, turtle, and shorebird populations. These invaluable experiences give the students hands-on experience in research, education and stewardship fields and help inform their future career paths. Thank you to Friends of the Reserve, the N.C. Internship Program, and UNCW for their support and partnership for the internships.

Regional News

In some news from the Wilmington district, the USS North Carolina Battleship Living with Water Improvement Project is progressing. The original Permit was issued to the NC Dept. of Natural and Cultural Resources in September of 2023 and monthly monitoring meetings are held onsite. The project's focus is flood resiliency and stormwater mitigation. Development

authorized under the permit includes innovative stormwater management, elevating existing impervious surfaces, creation of a tidal creek with 1.3 acres of wetlands, and installation of a living shoreline.

Staff News

I'm happy to report that Elizabeth City is now fully staffed as Robert Manning joined the Elizabeth City office on July 29 as a field representative, filling a vacancy that we've had for almost a year. Robert graduated from East Carolina University with a bachelor's degree in Applied Geography & Coastal Marine Studies. Previously he worked as a technician at the Division of Marine Fisheries, Washington office. We are very happy and excited to have him join us, as well as having the office fully staffed again. Congratulations go out to Daniel Govoni who has been promoted to Policy & Planning Section Chief. He's a great fit for this important role for the division and we're grateful that he has accepted the challenge.

Kerryanne Litzenberg joined the reserve research team this summer and is working on research and monitoring projects at the reserve sites and supporting GIS needs for the program. She recently completed her master's degree in marine biology at the College of Charleston and will sit in our Beaufort office. Wayne Hall, formerly field rep in the Morehead City office, has moved into an Asst. Major Permits Coordinator role, working alongside Gregg Bodnar and Cameron Luck. Jonathan Lucas, another former field rep in Morehead City, is transitioning from a field representative to the Conservation Coordinator position, replacing Tina Martin who moved on to a position with the Corps of Engineers this summer. Losing 2 of her 4 field reps within a few weeks of each other has been quite a challenge for District Manager Heather Styron, but she continues to do a great job with hiring and training talented new staff for DCM. On that note, Heather has hired Barbara Lynch who started last Monday as a field representative in the MHC office. Barb has a solid background having worked as an LPO and Zoning officer for the Town of Morehead City for the past 7 years. Patrick Amico, Wilmington Office field rep covering eastern portions of Brunswick County, assisted with building a section of the St. James "Living Shoreline" at Waterway Park in Brunswick County along with UNCW Professors and a team of graduate and undergraduate students. Bryan Hall, Wilmington Office field rep covering southern New Hanover County, welcomed a baby boy, Body James Hall on May 21, 2024.

Congratulations to Bryan and his growing family. Daisha Williams- Admin Staff for the Wilmington Office hit her six-month mark with DCM and continues to demonstrate her value to the office. In a final bit of staff news, all of DCM is still in denial, but Mike Lopazanski might be down to his last two meetings of a long and stellar career with DCM. He has put his time in and will be leaving a huge legacy for North Carolina's coast. Madam Chair maybe at some point we can entice him to join the Advisory Council so we don't lose over three decades of his institutional knowledge.

THIRD PARTY HEARING REQUEST SUBCOMMITTEE

Subcommittee Update (CRC 24-14)

Bob Emory

Bob Emory stated the Subcommittee consisted of Commissioners Baldwin, Holman, Smith, and me with the assistance of DCM staff and Christy Goebel and Mary Lucasse. The process allows a third party to appeal a permit decision if the Commission finds that the permitting decision was contrary to a Statute or Rule, they are directly affected by the decision, and show that the request

is not frivolous. The permit appeal request must be made within 20 days of issuance. The Commission then has 30 days to either grant or deny the appeal request. The third party process serves as a gatekeeping process to eliminate challenges that are outside the CRC's jurisdiction, such as property disputes. The subcommittee considered keeping the status quo with the Chair reviewing requests or setting up a third party subcommittee within the CRC to review the requests. Given the number of requests and considering the 30-day turn around for a response, it would be difficult to coordinate calendars of the subcommittee members and provide the required notice of a meeting of an internal subcommittee. Therefore, the subcommittee recommends that the Commission keep the status quo and allow the Chair to review the third party hearing requests and work with CRC Counsel to draft a final agency decision. The subcommittee also reviewed the current form for submitting a third party hearing request. Amendments have been made to the form to make it more user-friendly and provide additional guidance to those wishing to file an appeal.

Bob Emory made a motion to accept the subcommittee's recommendation and approve the amendments to the form as presented. Sheila Holman seconded the motion. The motion passed with 10 votes in favor (Yates, Salter, Smith, Emory, Andrew, Cahoon, Hennessy, Holman, King, Shuttleworth) and one opposed (Baldwin) (High, Yates absent for vote).

CAMA PERMITTING

Application Processing and Agency Review (CRC 24-13)

Gregg Bodnar

Gregg Bodnar stated a Major Permit is needed for any development requiring an authorization in any form from another state or federal agency. Public notice is required and provided through newspaper publication. A General Permit is an expedited Major Permit that applies to small-scale, routine development where environmental impacts and onsite review are minimal. These are issued by DCM staff typically within 10 days and may require a buffer authorization from the Division of Water Resources. General and specific conditions have been pre-approved by commenting agencies and projects do not require agency review unless water depths are marginal. Adjacent riparian property notification is required, but public notice is not. Minor permits are any permits other than a Major Permit. These are issued by Local Permit Officers or Division staff and are required to be issued within 25 days of receipt of a complete application. Minor permits only pertain to work above the normal high or normal water level and cannot impact wetlands. Dredge and Fill permits are issued for the excavation or filling of any estuarine waters, tidelands, marshlands, or state-owned lakes. Permits are issued by DCM staff and applications must be circulated among all state agencies and appropriate federal agencies. This permit type is issued under a Major Permit or General Permit if it meets the pre-approved criteria. All permits are issued under the Coastal Area Management Act (CAMA), but not all permits are Dredge and Fill. The ultimate goal of the application is a final decision and both CAMA and Dredge and Fill provide criteria for that decision. Dredge and Fill states the Division may deny a permit upon finding that there will be a significant adverse effect of the proposed dredging or filling on the use of the water by the public, on the value and enjoyment of the property of any riparian owners, on public health, safety, and welfare, on the conservation of public and private waters supplies, or on wildlife, fresh water, or estuarine or marine fisheries. Permits that are granted may be conditioned. CAMA states the Division shall deny a permit application upon making any of the 10 findings listed in NCGS 113A-120(a). In the absence of

such findings, the permit shall be issued and may be conditioned. CAMA further states the Division may deny a permit application upon making any of the 4 findings found in NCGS 113A-120(b1). In order to make these findings, the Division has been delegated the authority under NCGS 113A-124(a)(1) to conduct investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to make a balanced judgment concerning the issuance of permits. Through this investigation, DCM circulates the application to state, federal agencies, and local governments who have expertise in area detailed in NCGS 113A-120(a) and 113A-120(b1).

CAMA authorizes DCM to manage and balance development with the resource by being the clearing house for federal and state agencies. The Division of Water Resources provides the State's 401 water quality permit, the Corps of Engineers provides the federal permit, and DEMLR's Sedimentation and Erosion Control and Stormwater sections use the CAMA application as notification of proposed development. This reduces the need for an applicant to duplicate effort of the state and federal sides. If the umbrella process were not in place, an applicant would be required to submit applications to DCM, DWR, and USACE separately and processing times would be longer than the typical CAMA review time and require the applicant to coordinate with these agencies separately. Separate coordination could result in multiple versions of the design, opening the potential for non-compliance issues. It would be the responsibility of the applicant to make sure the project was consistent throughout all permit processes at the time of construction. DCM can circulate to other agencies with expertise not captured under these agencies. In one case, an objecting party had concerns with a property that was historically used as a boat maintenance yard and the potential for hazardous substances. DCM obtained previous soil testing surveys and coordinated with the Division of Waste Management for additional testing for lead and other substances. DCM has also coordinated in the past with the Department of Commerce and the Underground Storage Tank section of DEQ. The average agency staff available to review projects is two people. There are about 40-50 applications in review at any given time. The US Army Corps of Engineers provides the federal determination under the Clean Water Act (Section 404) and Rivers and Harbors Act (Section 10). The federal permit is reviewed through NEPA compliance with an Environmental Impact Statement and Environmental Assessments for large-scale projects like beach nourishment that are processed under the Individual Permit. Endangered Species Act and Essential Fish Habitat compliance are determinations made during the course of the federal review and may require supporting documentation from the applicant. Cultural Resource compliance is the State review and potentially the Tribal Historical Preservation Office. The State 401 water quality compliance is authorized under the Clean Water Act through DWQ, and the state review of the Commission's rules are authorized under the federal Coastal Zone Management Act. The federal review for projects within North Carolina has a few permit pathways dependent on the scope and scale and impacts and mitigation requirements. The USACE has several pathways to review if certain thresholds are met or under the Programmatic General Permit known as the "291". The 291 allows the state's permit application and public notice to fulfill the requirements of the federal application. The 291 process allows DCM to be the lead agency and reduces the need for the applicant to apply and coordinate a separate application. Depending on the impacts, the USACE may require mitigation, wetland delineations, or other required documents. Once the application has been circulated to the agencies, the Corps then begins the federal review, makes a pathway determination, and circulates the application to the federal agencies. The Corps allows

30 days for comments/recommendations after the federal circulation and the Corps can extend the review period.

The CAMA permit application process begins when an applicant contacts the Division. A Division field representative is the original point of contact for the applicant. The field representative may suggest a scoping meeting take place to provide the applicant with some initial feedback on the proposed project from the resource agencies. If a scoping meeting is requested, the applicant will be asked to contact the Department of Environmental Assistance and Customer Service (DEACS) to set up the meeting. Once an application is submitted, the field representative will review the application for completeness with the District Manager. Depending on the materials provided, the field representative may request additional information and identify errors in the application, workplans, or attached documentation. Once the application is accepted as complete, the permit processing time starts, and a field investigation report is created that provides a summary of the existing conditions, proposed development, and habitat impacts. The application is circulated to the review agencies and comments are requested to be returned within three weeks of the circulation. At the time of circulation, the application is forwarded to the Major Permit section within DCM. In accordance with NCGS 113-229 and 113A-122(c), the Division has 75 days to issue a permit unless additional time is necessary to complete the review. Up to an additional 75 days may be allowed. The technical review of the permit application by the resource agencies then begins. Technical review is the most time-consuming part of the process. As comments are returned, the Major Permit staff evaluates them. These comments can range from “No Comment”, a clarification request, avoidance and minimization, or an objection. Depending on the severity of the comments, major permit staff may contact the applicant or the resource agency. This coordination may result in immediate changes to the application, the overriding of an agency comment by the Division or additional meetings. Typical requests for more information or avoidance and minimization include the following: submerged aquatic vegetation surveys; realignment of bulkheads or reconfiguration of a docking facility to reduce habitat impacts; revisions to meet a rule or statute; navigation concerns; reduction in dredge template to avoid habitat impacts; and flushing models for upland basins. Agency and applicant holds typically occur in the technical review stage and suspends the statutory clock, allowing additional time for the applicant and agencies to discuss the project. Without the use of holds, it is possible that approved permits would include more conditions, or that more applications would be denied. The Division prefers to use voluntary applicant holds. The final determination of any permit application can follow either an approval or a denial with justification. Both types of final determinations include rule or statute citations. Permits typically have conditions and notes. Conditions are enforceable and have associated citations by rule or statute. Notes are not enforceable and are present to notify the applicant of things like the need to acquire additional authorizations, other agency authorization numbers, or best management practices that could reduce impacts. DCM gathers comments from agencies with expertise in several areas in an effort to achieve an outcome of no significant adverse impacts to the environmental resources. Agencies can review applications to address concerns to wildlife species and habitat, fisheries concern about species and habitat, impacts to coastal wetlands, SAV, and primary nursery areas, and ensuring compliance with water quality standards. This coordination can inform DCM staff resulting in permit conditions. Between January 2022 and March 2024, DCM issued 324 permits with the average processing time of 122 days. 48 permits were placed on hold and the average processing time minus the hold was 105 days. Typically,

DCM can issue a final decision within days of receiving all comments. The average hold time was 111 days and is skewed due to a number of projects that were on hold for more than 200 days. Longer holds generally indicate more complex projects that require an unusual level of review and coordination. The extreme difference in hold times can be influenced by either an agency or an applicant delaying a response to a hold request, or complex coordination requests such as flushing models, mitigation, environmental impact statements, or Department-level coordination. The median hold time was 62 days, and better represents the middle point of the hold time range. Projects are taken off hold when the required information is available and not when coordination is complete. In the case of applicant holds, the applicant determines when the project is taken off hold. Processing times have fallen with 2024 processing times through March averaging 97 days. Though time consuming, the CAMA process is a more efficient and simplified permitting process compared to submitting multiple permit applications to multiple agencies, each with a separate permit fee. In addition, conditions that require post permit issuance coordination such as moratorium relief or monitoring, can be coordinated by DCM if they are present on the CAMA or Dredge and Fill permit which gives the applicant a singular point of contact for questions, concerns, enforcement, and compliance. If a permit is issued without authorizations from DWR or the Corps, then the coordination provided by DCM is completed and the applicant would coordinate with those agencies moving forward. If either the DWR certification or the USACE permit review resulted in a revision to the proposal that was not captured on the CAMA/D&F permit, then the applicant would need to request a permit modification to the CAMA/D&F permit to account for these changes, further delaying construction. DCM conducts quarterly meetings through the Coastal Habitat Protection Program (CHPP) that involves all review agencies and focuses on individual project discussion, emerging trends, habitat concerns, recent legislation, and permit processing issues. These meetings are vital to DCM to communicate concerns associated with permit application processing. DCM is continually working with our review agencies to identify and implement efficiencies. In 2001, the DCM and DWR permit reviews were separate and required an applicant to apply to both agencies. Under the direction of Governor Hunt, a MOA was developed with DWR that created the application fee split and allowed the CAMA/D&F application to be accepted by DWR. Currently, DCM is working with DWR to implement the DWR buffer authorization form for projects within the e-Permit system, reducing review time.

Commissioner Andrew stated that while the umbrella permitting process works and is better than the alternative, there is still room for improvement. Many comments have been received from environmental consultants and engineers on this process and the time it takes to gather comments from other agencies which costs time and money, particularly if the comments require changes late in the permitting process. Chair Cahoon directed staff to add a follow-up discussion to the February 2025 CRC meeting to allow Commissioner Andrew time to review the comments he has received. Commissioner Hennessy asked that the MOA with the Corps of Engineers be shared with the CRC to review the 291 process.

PUBLIC INPUT AND COMMENT

Debbie Smith, Mayor Ocean Isle Beach, commented in support of the CRC's action on a measurement line for dune building.

VARIANCES

South Water Street, LLC (CRC-VR-24-02), Wilmington, Urban Waterfront Kelsey Beachman, Christine Goebel, Esq., Edson Munekata

Kelsey Beachman gave an overview of the site. Christy Goebel represented staff and stated Edson Munekata is present and will represent the LLC. Ms. Goebel reviewed the stipulated facts in the variance petition and stated that Petitioner seeks a variance from the Commission's rules at 7H .0209 to enclose the canopy porch with the vinyl wall panels. Ms. Goebel stated Staff and Petitioner disagree on all four statutory criteria which must be met in order to grant the variance. Mr. Munekata, reviewed the stipulated facts which he contends supports the granting of the variance request.

Larry Baldwin made a motion to support Petitioner's position that strict application of the applicable development rules, standards, or orders issued by the Commission cause the Petitioner an unnecessary hardship. Jordan Hennessy seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth).

Larry Baldwin made a motion support Petitioner's position that hardships result from conditions peculiar to the petitioner's property. Jordan Hennessy seconded the motion. The motion passed with ten votes in favor (Yates, Smith, High, Baldwin, Andrew, Cahoon, Hennessy, King, Bryan, Shuttleworth) and three opposed (Salter, Emory, Holman).

Larry Baldwin made a motion to support Petitioner's position that hardships do not result from actions taken by the Petitioner. Jordan Hennessy seconded the motion. The motion passed with nine votes in favor (Yates, Smith, High, Baldwin, Andrew, Hennessy, King, Bryan, Shuttleworth) and four opposed (Salter, Emory, Cahoon, Holman).

Larry Baldwin made a motion to support Petitioner's position that the variance request will be consistent with the spirit, purpose, and intent of the rules, standards, or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. Jordan Hennessy seconded the motion. The motion passed with 12 votes in favor (Yates, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth) and one opposed (Salter).

This variance request was granted. After discussion, Chair Cahoon requested that Staff look at the urban waterfront rules to allow for non-permanent enclosures on the waterfront.

Erick Westerholm (CRC-VR-24-04), Pender County, 30' CAMA Buffer Jason Dail, Christine Goebel, Esq., Erick Westerholm

Jason Dail gave an overview of the site. Christy Goebel represented staff and stated Erick Westerholm is present and will represent himself in this variance request. Ms. Goebel reviewed the stipulated facts and stated that Petitioner seeks a variance to allow a portion of the driveway in the 30' buffer as shown on the site plans. Ms. Goebel stated that staff and petitioner agree on all four variance criteria which must be met in order to grant the variance. Erick Westerholm reviewed the stipulated facts which he contends supports that granting of the variance request.

Neal Andrew made a motion that strict application of the applicable development rules, standards, or orders issued by the Commission will cause the Petitioner an unnecessary hardship. Sheila Holman seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth).

Neal Andrew made a motion that hardships result from conditions peculiar to the petitioner's property. Sheila Holman seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth).

Neal Andrew made a motion that hardships do not result from actions taken by the petitioner. Sheila Holman seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth).

Neal Andrew made a motion that the variance request will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. Sheila Holman seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth).

This variance request was granted.

**Dorazio Properties (CRC-VR 24-05), Pender County, Oceanfront Setback
Jason Dail, Christine Goebel, Esq., Tony Dorazio, Pro-se**

Jason Dail gave an overview of the site. Christy Goebel represented staff and stated Anthony Dorazio is present and will represent himself. Ms. Goebel reviewed the stipulated facts of the variance request and stated Staff and Petitioner disagree on all four variance criteria which must be met in order to grant the variance. Tony Dorazio, Petitioner, reviewed the stipulated facts which he contends supports the granting of the variance.

Bob Emory made a motion to support Staff's position that strict application of the applicable development rules, standards, or orders issued by the Commission do not cause the petitioner an unnecessary hardship. Sheila Holman seconded the motion. The motion passed with ten votes in favor (Yates, Salter, Smith, Emory, High, Andrew, Cahoon, Holman, Bryan, Shuttleworth) and three opposed (Baldwin, Hennessy, King).

Bob Emory made a motion to support Staff's position that hardships do not result from conditions peculiar to Petitioner's property. Sheila Holman seconded the motion. The motion passed with nine votes in favor (Yates, Smith, Emory, High, Andrew, Cahoon, Holman, Bryan, Shuttleworth) and four opposed (Baldwin, Hennessy, King, Shuttleworth).

Bob Emory made a motion to support Staff's position that hardships result from actions taken by the Petitioner. Sheila Holman seconded the motion. The motion passed with ten

votes in favor (Yates, Salter, Smith, Emory, High, Andrew, Cahoon, Holman, Bryan, Shuttleworth) and three opposed (Baldwin, Hennessy, King).

Bob Emory made a motion to support Staff's position that the variance request will not be consistent with the spirit, purpose, and intent of the rules, standards, or orders issued by the Commission; will not secure the public safety and welfare; and preserve substantial justice. Sheila Holman seconded the motion. The motion passed with ten votes in favor (Yates, Salter, Smith, Emory, High, Andrew, Cahoon, Holman, Bryan, Shuttleworth) and three opposed (Baldwin, Hennessy, King).

This variance request was denied.

Dare County Tourism Board (CRC-VR-24-06), Nags Head, Structures over Coastal Wetlands)

Yvonne Carver, Christine Goebel, Esq., Bob Hornick, Esq.

Renee Cahoon recused herself from discussion and voting on this agenda item.

Sheila Holman made a motion to allow recusal from Chair Cahoon. Lauren Salter seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth).

Yvonne Carver provided an overview of the site. Christine Goebel represented staff and stated Bob Hornick is present and will represent Petitioner. Ms. Goebel reviewed the stipulated facts of this variance request and stated Staff and Petitioners agree on three of the four criteria which must be met in order to grant the variance. Bob Hornick of The Brough Law Firm represented Petitioners and reviewed the stipulated facts which he contends supports the granting of the variance.

Jordan Hennessy made a motion that strict application of the applicable development rules, standards, or orders issued by the Commission cause the Petitioner an unnecessary hardship. Sheila Holman seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Hennessy, Holman, King, Bryan, Shuttleworth).

Jordan Hennessy made a motion to support Petitioner's position that hardships result from conditions peculiar to the Petitioner's property. Steve King seconded the motion. The motion passed with eleven votes in favor (Yates, Salter, Smith, High, Baldwin, Andrew, Hennessy, Holman, King, Bryan, Shuttleworth) and one opposed (Emory).

Jordan Hennessy made a motion that hardships do not result from actions taken by the Petitioner. Sheila Holman seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Hennessy, Holman, King, Bryan, Shuttleworth).

Jordan Hennessy made a motion that the variance requested by the Petitioner will be consistent with the spirit, purpose, and intent of the rules, standards, or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice.

Sheila Holman seconded the motion. (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Hennessy, Holman, King, Bryan, Shuttleworth).

This variance request was granted.

RULEMAKING

15A NCAC 07H .2300 General Permit for Replacement of Existing Bridges and Culverts (CRC 24-08)

Cathy Brittingham

Cathy Brittingham stated the .2300 General Permit allows for issuance of CAMA permits for replacement of existing bridges and culverts. This General Permit became effective in 1996. Although the applicant is almost always NCDOT, GP .2300 may be used by private property owners and local governments. Projects range in size from simple culvert replacements to large bridge replacement projects. During the required periodic review of existing rules process, rule language in Section 7H .2302(c) regarding the time that the permit is in effect after issuance changed. Under the same process, the Rules Review Commission (RRC) returned the entirety of Section 7H .2305 on October 5, 2023, due to its objection to the language “significantly affect the quality of the human and natural environment”. Revisions to 7H .2302 and 7H .2305 has been made to address these issues.

Larry Baldwin made a motion to approve amendments to 15A NCAC 07H .2302 and .2305 to send out for public hearing. Sheila Holman seconded the motion. The motion passed unanimously. (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth).

15A NCAC 07J .0210 Replacement of Existing Structures (CRC 24-09)

Daniel Govoni

Daniel Govoni stated 7J .0210 concerns the replacement of structures damaged or destroyed by natural elements, fire, or normal deterioration which is considered development and requires a CAMA permit. Repair of these structures is not considered development and does not require a CAMA permit. Criteria is provided to determine whether the proposed work is repair or replacement. In the case of water dependent structures, such as docks, piers, or platforms, it is considered replacement rather than repair if more than 50 percent of the framing and structural components are replaced. The proposed amendments to 7J .0210 also incorporate the requirements in Session Law 2024-45.

Robbie Yates made a motion to approve the amendments to 7J .0210 to send out for public hearing. Steve King seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth).

15A NCAC 07H .0304 and .0305 Measurement Line for Dune Building (CRC 24-10)

Heather Coats

Heather Coats stated Session Law 2024-45 authorizes the establishment of a measurement line for dune building projects conducted pursuant to permitted terminal groin construction. The Law directs the CRC to create permanent rules that establish a measurement line as defined in 7H

.0305 representing the location of the first line of stable and natural vegetation impacted by the dune building and beach planting project. The measurement line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo dune building and beach planting and is applicable for a period of no less than two years from the completion of the dune building and beach planting. The Law also requires that DEQ prepare and submit the proposed changes for approval by NOAA. The Law becomes effective on the later of either September 1, 2024, or the first day of the month that is 60 days after the Secretary of DEQ certifies to the Reviser of Statutes that NOAA has approved the changes made to the CRC's rules. DCM is proposing temporary rulemaking which would enable the changes to become effective on November 13 and simultaneously begin the permanent rulemaking process which would replace the temporary rules on May 1, 2025.

Neal Andrew made a motion to approve the amendments to 15A NCAC 7H .0304 and .0305 as temporary rules. Sheila Holman seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth).

Earl Smith made a motion to approve the amendments to 15A NCAC 7H .0304 and .0305 to send out for public hearing as required by the APA for permanent rulemaking. Steve Shuttleworth seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth).

ACTION ITEMS

Periodic Review 15A NCAC 07B CAMA Land Use Planning (CRC 24-11)

Rachel Love-Adrick

Rachel Love-Adrick stated in 2013, the General Assembly enacted Session Law 2013-413 established a process for the periodic review and expiration of existing rules to the Administrative Procedures Act. This statute requires agencies to review all of its rules every ten years using a schedule established by the Rules Review Commission (RRC). If an agency does not conduct the review, its rules will expire and be removed from the Administrative Code, unless the rule is required to implement or conform to federal law. Prior to 2013, rules did not expire. The periodic review process begins by agencies reviewing their existing rules and classifying them as necessary or unnecessary. Unnecessary rules are those that the agency determines to be obsolete, redundant, or otherwise not needed. These classifications are then posted on the Office of Administrative Hearings and DEQ's websites. Public comments are accepted for a period of at least 60 days and agencies are required to review the comments and prepare a response. Once the comment period ends, the agency makes a final determination on each rule and submits the final report to the RRC. The RRC reviews the final report to determine if it agrees with the agency's classifications. The RRC may change a classification of a rule from unnecessary to necessary but does not have the authority to declare a rule is unnecessary. The report then goes to the Joint Legislative Procedure Oversight Committee (APOC) for consultation. The final determination on an agency's rules becomes effective when the APOC approves the report or on the 61st day after having received the report. Rules designated as necessary must be readopted as if they are new rules using the permanent rulemaking procedures. If the rules are not readopted, they are removed from the Administrative Code. Rules

designated as unnecessary are removed from the Code. The majority of the CRC's rules are due for review by April and August 2026. However the rules associated with the Land Use Planning Program found in 15A NCAC 07B are due for review by the June 2025 RRC meeting. Saff has reviewed the land use planning rules and recommend that the seven rules be classified as necessary. If the CRC approves the initial classification report at this meeting, the report will be posted on the OAH and DEQ websites for public comment. This will initiate the required 60-day comment period that will end on November 7. Following that comment period, the Division will bring the final classification report back to the CRC for review and approval. The final report will be filed with OAH before the May 20 deadline and will be reviewed at the June 2025 RRC meeting.

Sheila Holman made a motion to approve the initial classification report. Steve King seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth).

Consideration of Approval of Fiscal Analysis 15A NCAC 07H .0314 Installation and Maintenance of Wheat Straw Bales for Sand Fencing (CRC 24-15)

Heather Coats

Heather Coats stated at the April CRC meeting, the Commission approved rule language to allow greater flexibility to local governments, large oceanfront HOAs, and state and federal agencies wanting to protect the frontal dune with wheat straw bales. The rule language limits wheat straw bales to sections measuring no more than ten feet in length, two feet in width, and three feet in height with a minimum spacing of seven feet between sections of dune building materials and other siting conditions similar to the exemption for sand fencing. The amendments requires removal of ties or binding to reduce the potential for adverse impacts, review by USFWS and NCWRC to evaluate proposals for adverse impacts and repair or removal if the bales are damaged, non-functioning, or become non-compliant. The fiscal analysis found that no significant economic impacts are expected, and it may benefit local governments and large oceanfront HOAs by providing an alternative to sand fencing. The cost to install straw bales depends on the proposed height and dimensions. There are no anticipated direct impacts to private property owners, NCDOT, or DCM. Since the impacts to wildlife resources is unknown, straw bale use will be limited at this time.

Neal Andrew made a motion to approve the fiscal analysis for 15A NCAC 07H .0314 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously (Yates, Salter, Smith, Emory, High, Baldwin, Andrew, Cahoon, Hennessy, Holman, King, Bryan, Shuttleworth).

LEGAL UPDATES

Mary Lucasse stated on August 6, the Court of Appeals issued an opinion regarding quorum and emergency and special meetings. The Court found that under the facts of the case before it to count for quorum Commissioners must be present in the room and not attending remotely. The focus of that case was an emergency meeting of County Commissioners. The question for the CRC is whether it should make changes to its practice based on this opinion? Commission counsel made some suggestions and indicated she was discussing the issue with colleagues who represent other commission. Jordan Hennessy asked if the UNC School of Government had been

consulted on this issue. Ms. Lucasse stated that she had not consulted the SOG but would follow up.

OLD/NEW BUSINESS

The next scheduled Commission meeting is November 13-14 in Ocean Isle Beach.

With no further business, the CRC adjourned.

Respectfully submitted,

Tancred Miller, Executive Secretary

Angela Willis, Recording Secretary