

NC COASTAL RESOURCES COMMISSION (CRC)

Specially Called Meeting

December 13, 2023

Video Conference via Webex

Present CRC Members

Renee Cahoon, Chair

Neal Andrew, Vice-chair

D.R. Bryan

Bob Emory

Jordan Hennessy

Robert High

Sheila Holman, 2nd Vice-chair

Steve King

Lauren Salter

Steve Shuttleworth

Earl Smith

James "Robbie" Yates

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 specially called meeting to order at 9:00 a.m. on December 13, 2023, 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 the conflict or potential conflict when the roll is called. Commissioner Larry Baldwin was absent. Based upon this roll call Chair Cahoon declared a quorum.

ACTION ITEMS

Emergency and Temporary Rule Process

Mary Lucasse

Mary Lucasse reviewed the requirements for emergency and/or temporary rules under the NC Administrative Procedures Act (APA). She also reviewed the timeline for the CRC to considering adopting emergency and/or temporary rules.

Summary of Emergency and Temporary Rules (CRC 23-25)

Mike Lopazanski

Mike Lopazanski reviewed each of the 16 proposed emergency and temporary rules that DCM had determined were necessary for day-to-day operations including the subject of the rule, the RRC objection related to the rule, and any technical corrections proposed by DCM. Specifically, he stated: 15A NCAC 07H .0507 addresses Unique Geologic Formations and contains the Jockey's Ridge AEC. The changes to this rule were to conform to APA requirements. 07H .0508 outline the use standards for fragile coastal natural or cultural resource areas. Amendments to this rule include APA compliance and adding definitions for significant adverse impacts. 07H .0509 address Significant Coastal Archeological Resources and includes the Permuda Island AEC protections. Amendments to this rule include APA compliance changes, updating statutory citations, and addressing coordination with the Department of Cultural Resources. 07I .0702 deals with the Minor Permit Program addressing when the local permitting agency exceeds local authority. The amendments address APA compliance and updates statutory citations. 07J .0203 addresses the preparation of work plats. While there are no new requirements, the amendments clarify how drawings are to be scaled, what information is to be included in site plans, the surveyor and engineer roles in establishing water depths, and that development outside the AEC may proceed provided DCM determines there is no direct impact on AECs. Additional changes include APA compliance issues, updating statutory citations, and changing the title. 07J .0204 is for Application Processing. The APA requires that the information required by the application be in rule. Since DCM has moved to an electronic permit application system, these revisions represent the fields addressed in the electronic permit application. Minor permits still use a paper form, and these revisions represent the information included on the Minor Permit application form. There are also minor APA compliance changes as well as statutory citations. 07J .0206 is for Public Notice Requirements. This revision includes a citation to the statute. 07J .0207 addresses the review of Major Development and Dredge and Fill permit application. Amendments include APA compliance changes and the additions of citations that allow DCM to circulate permits to other agencies for review. In 07J .0208 Permit Conditions, clarifying language was added, APA compliance changes were made, and statutory citations were updated. 07M .0401 Coastal Energy Development – General Policies was amended to satisfy RRC objections including APA compliance changes, updating statutory citations, and adding clarifying language. An additional statement on how policy statements are to be used was also included as CAMA authorizes the CRC to establish “policies, guidelines, and standards” in the administration of the coastal program. Amendments to 07M .0402 mirror 7M .0401 and remove the language referring to areas outside of the CRC's jurisdiction and add the definition for significant adverse impact. In 7M .0403, .0701, and .0704 additional language was added explaining how policy statements are used based on CAMA authorization to the CRC to establish “policies, guidelines, and standards” through rulemaking for the administration of the coastal program. Amendments to 07M .0703 Mitigation Projects add additional language to clarify how the Division has reviewed mitigation projects for approval. 07M .1101 Beneficial Use of Dredged Materials from Navigation Channel Maintenance – General Policies includes amendments to address APA compliance, updating statutory citations, and adding clarifying language. This rule is important to local governments and is used in federal consistency compliance.

Consideration of Adoption of Emergency Rules

Neal Andrew made a motion that for these 16 rules, the Commission find that adherence to the notice and hearing requirements would be contrary to the public interest for the reasons discussed during the meeting. Lauren Salter seconded the motion.

During discussion, Commissioner Hennessy spoke against the motion. Commissioners Bryan and Emory spoke in favor of the motion.

The motion passed with nine votes in favor (Cahoon, Andrew, Bryan, Emory, High, Holman, Salter, Shuttleworth, Smith) and two opposed (Hennessy, Yates)(King abstained).

Neal Andrew made a motion that for these 16 rules, the Commission find that immediate adoption of the rules is required because there is a serious and unforeseen threat to public safety to the coastal management program because the rules have been removed from the Code as discussed during this meeting. Lauren Salter seconded the motion.

Lauren Salter spoke in favor of the motion and stated that the temporary and emergency rulemaking process was suggested as a remedy by RRC counsel in the CRC v. RRC litigation. Commissioner Shuttleworth spoke against the motion and stated that temporary rulemaking would be appropriate, but he did not think that all 16 of these rules should be considered for emergency rulemaking. Commissioner Hennessy spoke against the motion and stated the temporary process allows for public hearings and the public an opportunity to speak to these rules. The Commission should be allowed more time to review and receive comments. Commissioner Salter added that these rules have been through the public comment period during the periodic review process and ultimately the permanent rulemaking process. These are not new rules. The public will again have an opportunity to comment during the temporary and permanent process following this action. Commissioner Emory spoke in favor of the motion and stated these rules were already in the Code and are not new. DCM staff know what constitutes a threat and we should defer to their judgement on which rules move forward as emergency rules.

D.R. Bryan made a motion to stop discussion and vote on the motion on the table. Sheila Holman seconded the motion. The motion passed unanimously (Cahoon, Andrew, Bryan, Emory, Hennessy, High, Holman, King, Salter, Shuttleworth, Smith, Yates).

The motion passed with nine votes in favor (Cahoon, Andrew, Bryan, Emory, High, Holman, King, Salter, Smith) and three opposed (Hennessy, Shuttleworth, Yates).

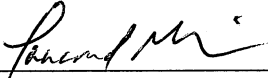
Neal Andrew made a motion to send the temporary rules, which are the same as the emergency rules, out for public comment and notice. Sheila Holman seconded the motion. The motion passed unanimously (Cahoon, Andrew, Bryan, Emory, Hennessy, High, Holman, King, Salter, Shuttleworth, Smith, Yates).

Director Braxton Davis addressed the Commission and stated, as you may have heard, I will be leaving my role with DCM in mid-January and beginning a new phase as executive director of NC Coastal Federation on February 1, 2024. After 12 years in this role, there are so many people

that I'd like to recognize for their commitment to the NC coastal program, but I will save much of that for another time. I would like to say a few words about what I've experienced working at DCM and with the Commission over the years. First, I have always appreciated the professional, collegial relationship between the Commission and DCM staff. I feel great about the coastal program framework that we have in NC, and I've bragged to my colleagues in other coastal states that it works well here because we've developed a level of trust and have open discussions that have benefited from our different perspectives and backgrounds. I think that has been based on a shared understanding that we're all trying to work for the greater good and find the right balance between environmental, social, and economic values, because we all love the NC coast. As you know, staff work hard to provide detailed policy and economic analyses to help you evaluate policy options in their memos and presentations on proposed rules, permit appeals, and variance petitions. After that's done, we respect the Commission's authority to ultimately decide where that balance lies, and then we work to enforce your rules and decisions. We strive to be collaborative and supportive of the Commission's work, and we really appreciate the positive working relationship we've had with you over the years. I know it's not a high-paying job for you, so again, thank you for all of your contributions to this program. Finally, I want to say that I believe the staff of the Division of Coastal Management are second to none. From the time I arrived at DCM, I was impressed with their dedication to public service, and that public service includes customer service. When people call or walk into our offices, staff try to help them with whatever they are dealing with, whether that means clarifying rules and procedures, finding a project design that works within your rules, or finding a way to resolve a conflict with their neighbor. I hear staff doing these things every day in hallways, offices, and reception areas. I think DCM's focus on public service has benefited from having staff that are, simply put, good with people. I've found that they are caring and solution-oriented, and they got into this line of work because they love our coast too. So, I just wanted to say that in my experience, DCM staff are great ambassadors for the Commission's work. I will sincerely miss working with you and the staff in the years ahead, but I know that I'll be seeing you at future meetings and look forward to partnering with the coastal program in my new role at the Coastal Federation.

With no further business, the CRC adjourned.

Respectfully submitted,



Tancred Miller, Executive Secretary



Angela Willis, Recording Secretary