

**NC COASTAL RESOURCES COMMISSION (CRC)**

**June 15, 2023**

**Riverfront Convention Center, New Bern**

**Present CRC Members**

Larry Baldwin  
D.R. Bryan  
Bob Emory  
Robert High  
Doug Medlin  
Phil Norris  
Lauren Salter  
W. Earl Smith

**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**

In the absence of CRC Chair Renee Cahoon, commissioner Bob Emory served as acting chair and called the meeting to order at 10:00 a.m. on June 15, 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. Commissioner Emory 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. Commissioners Renee Cahoon, Neal Andrew, Sheila Holman, Dick Tunnell, and Angie Wills were absent. No conflicts were reported. Based upon this roll call Commissioner Emory declared a quorum, recognized DEQ Deputy Secretary Bill Lane, and thanked him for attending.

**MINUTES**

**Phil Norris made a motion to approve the minutes of the April 26, 2023, Coastal Resources Commission meeting. Larry Baldwin seconded the motion. The motion passed unanimously (Baldwin, Bryan, Emory, High, Medlin, Norris, Salter, Smith).**

**EXECUTIVE SECRETARY'S REPORT**

DCM Director Braxton Davis gave the following report:

This is a relatively abbreviated summer commission meeting due to travel and scheduling conflicts, so we did not have a CRAC meeting yesterday. We will be working with the CRAC chair to reconvene during the August meeting.

On the regulatory side of DCM, overall, permitting numbers remain historically high, but not quite as high as last year. We are seeing about a 12% decline in fees in comparison with the prior fiscal year, which ends June 30. A couple of quick highlights, starting with the recently completed beach nourishment project in Dare County. The Town of Duck's nourishment project was completed on May 8, and included a small volume of sand at the northern end of Southern Shores to account for a prior shortage of sand placement in their template. The total volume placed on the beach for the Towns of Duck, Southern Shores, Kitty Hawk and Kill Devil Hills totaled just over 2.8 million cubic yards over the past year. Farther south, Lockwood Folly Inlet is currently being dredged under one of the shallow draft inlet dredging permits issued back in 2016. Severe shoaling in the inlet had restricted safe navigation and the USCG had to pull the buoys. After moratorium relief coordination with state and federal agencies, dredging on the ocean bar channel began on May 20 and will be completed by the end of the month to restore safe navigation in the inlet. This dredging is being undertaken using the recent special purpose dredge, the Miss Katie.

On the Policy & Planning front, the pre-applications for Public Beach and Coastal Waterfront Access grants were due on April 28, and the Division has approximately \$3 million in funding available. We received applications from 11 communities totaling \$3.2M million in requests. Staff reviewed the applications and invited 10 communities to submit final applications, which are due August 28. As always, additional information is available on our website or through either of our district planners, Rachel Love-Adrick and Mike Christenbury. The Division has received project deliverables for the 2022-23 Planning and Management Grants that were prioritized for beach, shoreline, and water management projects; specifically, Beach Management Plans in accordance with 15A NCAC 07J.1200, and local ordinances covering estuarine and navigable waters. Wrightsville Beach, Oak Island and Surf City completed draft Beach Management Plans, while Dare County completed the Rodanthe Beach Nourishment Feasibility Report. Carteret County completed an Additional Sand Search study for the Bogue Banks Beach Master Plan, and Nags Head completed a Beach Nourishment S1 Borrow Area Analysis. The draft Oak Island Beach Management Plan is on your agenda today and the other plans will be on a future agenda.

One update from our federal consistency program: you may be aware that the State Ports Authority recently conducted a feasibility study on the potential for significant navigation improvements for Wilmington Harbor. The study was intended to identify and evaluate alternatives to increase transportation efficiencies for the current and future fleet of container vessels operating at the Port. The Port Authority's preferred option is to deepen the Federal Navigation Channel to -47ft, from a minimum clearance of -42ft, and widen the channel to provide for passage of Panamax class ships following the expansion of the Panama Canal. The Army Corps of Engineers' Civil Works program has reviewed the study and determined that the Port Authority's plan is technically feasible, however, that the study lacked certain information and requires an Environmental Impact Statement. Congress conditionally authorized the proposal for construction, contingent upon an economic analysis and the EIS. The Corps initiated the EIS process and held an initial public scoping meeting this past Tuesday. The draft EIS is expected in 2025 and a Final EIS and Record of Decision in 2026. DCM staff will stay involved throughout the process and we will keep you posted as this progresses.

The Science Panel's Scope of Work, which you all approved at your last meeting for the 5-year re-evaluation of IHA methods, boundaries, and beachfront erosion rates, has been delivered to the Panel and will be discussed at their next meeting. Ken Richardson is already working on initial data and alternatives analysis, and we are hoping to bring the panel together for a first meeting in the late summer or early fall. As always, Science Panel meetings will be open to the public and advertised in advance. We are also working with Panel Chair Laura Moore to present their sea level rise update at your August or November meeting, and hope to complement her presentation with talks from other researchers on impacts to our coast.

### **Coastal Reserve**

The Coastal Reserve is seeking applications from citizens and community organizations for its local advisory committees. Citizens and community organizations with knowledge and experience of relevant topical areas and an interest in serving as a local advisory committee member are encouraged to apply. Applications are due June 30, and more information is available on the Reserve's website. Appointments to the committees are made by the DEQ Secretary and newly appointed members will begin their terms in 2024. On June 2, the Coastal Reserve hosted DEQ Secretary Biser, Currituck County Manager Ike McRee, NOAA liaison Stephanie Robinson, and other local, non-profit, and academic partners to celebrate the grand re-opening of the recently refurbished Currituck Banks Reserve boardwalk. The boardwalk was rededicated in memory of Erin Crowell, daughter of Bill (APNEP director) and Denise Crowell. After remarks by state, local, and federal representatives and a ribbon cutting, participants enjoyed an interpretive walk on the refurbished ADA-compliant boardwalk and explored the maritime forest trail. The boardwalk refurbishment was funded by a CAMA Public Access Grant, which also served as match for federal funds that will provide interpretive signage along the boardwalk and other national site infrastructure improvements. The event provided an excellent opportunity to highlight the work of DCM staff and DEQ Facilities staff in enhancing public access at the site, as well as sharing information about the reserve itself. This event marked the kickoff of a NC Coastal Reserve Road Trip, in which events and site visits will be held over the next several years to increase awareness about the reserve sites and programs. Finally, earlier this week in Beaufort, local teachers participated in the Coastal Reserve's Teachers On The Estuary (TOTE) Program. The workshop included a field trip to the Rachel Carson Reserve to give teachers the opportunity to explore North Carolina's coastal habitats, presentations from researchers to learn more about the science happening at the reserve, and activities for teachers to use in their classrooms. TOTE is a teacher education program implemented at all 30 reserves in the National Estuarine Research Reserve System.

In staffing news, we have filled a vacant field representative position with the hiring of Jessica Thomas in the Washington Regional Office. Jessica has an Associates degree from Northwest Florida State College and a Bachelors degree in Biology from the University of West Florida. She has regulatory work experience from her previous employment with the Florida Department of Environmental Protection as an Environmental Specialist and was most recently employed by the North Carolina Department of Agriculture and Consumer Services. We have also filled an administrative assistant position in the Elizabeth City office that was vacated when Ella Godfrey retired earlier this year. This position was filled by Lisa Doecker who just started. She has 18 years of experience working for the State with both the Museum of the Albemarle as well as with NC Department of Natural and Cultural Resources at the Dismal Swamp State Park. One other

significant change within DCM has occurred since your last meeting. Tina Martin, a field rep in our Morehead City District, will be moving from the regulatory side of the Division to the Resilient Coastal Communities Program as DCM's new Conservation Coordinator. In this role Tina will be working with partners to update our land conservation and restoration priorities, and to seek funding through federal and state grant opportunities such as the Bipartisan Infrastructure Law and the Inflation Reduction Act. Tina starts her new duties on June 26th and will continue to work out of our Morehead City Office. We are excited for Tina to start in her new role, which is similar to a position she previously held in Florida.

### **VARIANCES**

#### **Wetmore (CRC-VR-23-02), Bald Head Island, oceanfront setback**

##### **Tara MacPherson, Christine Goebel, Esq., Louis Wetmore (Pro-se)**

Tara MacPherson gave an overview of the site. Christine Goebel represented staff and stated Petitioner, Louis Wetmore, is present and will represent himself. Petitioner owns property at 230 South Bald Head Wynd in the Village of Bald Island. The petitioner proposed adding a new double tiered deck next to his existing oceanfront deck. The proposed site of the development is waterward of the pre-project vegetation line. The Village does not have a Commission approved Static Line Exception or Beach Management Plan; therefore, the pre-project vegetation line is the applicable line from which to measure oceanfront erosion setbacks. Petitioner's Minor Permit application was denied by the Local Permit Officer as the proposed development does not comply with the applicable setback and the 7H .0309 exceptions do not apply waterward of the pre-project vegetation line. Ms. Goebel reviewed the stipulated facts of this variance request and stated Staff disagrees with Petitioner on three of the four statutory criteria which must be met in order to grant the variance. Mr. Wetmore reviewed the stipulated facts which he contends supports the granting of the variance.

**Larry Baldwin made a motion that the Commission hold that Petitioner has shown that strict application of the applicable development rules, standards, or orders issued by the Commission cause the Petitioner an unnecessary hardship. Phil Norris seconded the motion. The motion passed unanimously (Baldwin, Bryan, Emory, High, Medlin, Norris, Salter, Smith).**

**Phil Norris made a motion that the Commission hold that Petitioner has shown that hardships result from conditions peculiar to the property. Robert High seconded the motion. The motion passed unanimously (Baldwin, Bryan, Emory, High, Medlin, Norris, Salter, Smith).**

**Larry Baldwin made a motion that the Commission hold that Petitioner has shown that hardships do not result from his actions. Doug Medlin seconded the motion. The motion passed unanimously (Baldwin, Bryan, Emory, High, Medlin, Norris, Salter, Smith).**

**Doug Medlin made a motion that the Commission hold that Petitioner has shown that the variance 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 preserve substantial justice. Additionally, the variance should include a condition to limit Petitioner's decking to a total of 500 square feet. Larry Baldwin seconded the motion.**

**Lauren Salter added a friendly amendment to the motion that any new development be located a minimum of 90 feet landward from the vegetation line. Commissioners Medlin and Baldwin agreed to the amendment. The motion passed unanimously (Baldwin, Bryan, Emory, High, Medlin, Norris, Salter, Smith).**

This variance request was granted.

### **BEACH MANAGEMENT**

#### **Consideration of Town of Oak Island Beach Management Plan (CRC 23-16)**

##### **Sam Morrison, Moffatt & Nichol/Ken Richardson, DCM**

David Kelly, Oak Island Town Manager, thanked the Commission for allowing the Town to present the Town of Oak Island's Beach Management Plan. Sam Morrison of Moffatt & Nichol stated this presentation will display the Town's commitment to a long-term beach management program and to display the Town's planned sand sources. The Town of Oak Island desires to develop a comprehensive long-term beach maintenance program that will set the Town up for success. The Town has engaged and funded Moffatt & Nichol for the last three years to develop a beach nourishment 50-year master plan. This master plan is the basis for the 30-year plan that is being presented today. The master plan will provide increased protection for life, safety, and infrastructure during storm events. It will also increase overall Town resilience against background erosion and storm events which allows for quicker recovery for the Town by minimizing damage. In addition, it will increase the overall health of the beach to attract tourism to the community and restore some of the protections the Development Line provided oceanfront property owners prior to August 1, 2022. Since 2014, the Town has been collecting annual monitoring data and modeled the results to provide a level necessary for a level of protection that would protect during a 10-year storm event. In 2020-21 and 2021-22 there were two projects within the town to build up the dune system. Based on background and storm erosion, we will conduct an advance fill project in 2024-25. The Town has already secured funds for this project. The maintenance events, that will occur on a six-year interval, will need future funding which has been identified as annual revenues from the accommodations fund and the sand tax. If either of these two sources fall short, then the Town is committed to transferring the difference from the general fund. DCM provided a letter which showed concerns over borrow sources. The Town has conducted extensive investigations over the past five years. The Town is committed to continue to research compatible, permissible, and economical borrow sources for the management of the Oak Island beaches. The Management Plan is intended to be a living document and will be updated every five years to include new information or changes to existing information that is pertinent to the long-term maintenance plan. The Division's main concern was Frying Pan Shoals, but that is not the only borrow area that was submitted with the Plan. There were five additional sites identified as potential borrow area sources. In addition to the sites submitted with the plan, other potential sources are being explored that may be included in future updates to the Beach Management Plan. Recently, the Town has also signed a letter of intent to enter into an agreement for a three-year feasibility study to investigate the prospect of the Town becoming a federal project. The BOEM investigation area cleared tracklines for sand investigation in the Outer Continental Shelf of Long Bay. There were promising initial results at some locations and the Town is currently further investigating targeted areas. Should the CRC adopt the Beach Management Plan today it would create a timeline where the 2024-25 planned berm project would place the advance fill in front of the 10-year LOP dune projects that were

completed in 2020-2022. The Management Plan would be up for renewal in 2028 with any changes to borrow sources, updated financial information, and sand needs. In 2030-31, the first planned maintenance event to maintain the 10-year LOP. In 2033, the Plan would be up for renewal the second time which allows for further updates. DCM clearly states in its memo to the Commission that it believes the Town's Beach Management Plan adequately demonstrates a long-term commitment to beach nourishment. The Plan covers the needs of the first two projects and likely the third without the use of Frying Pan Shoals. The Town wishes to continue to work with the agencies to permit the use of Frying Pan Shoals as a viable beach nourishment sand source even if it is supplemental to other sand sources and not the primary source for the Beach Management Plan. The Town has shown its understanding that the Beach Management Plan is a living document and continues to look for other viable sand sources. Regardless of the outcome of the BOEM investigation, it will not affect the Town's ability to complete the first two to three projects during which time the opportunity to update the Beach Management Plan with new sand sources will be available. The Town acknowledges the State's concerns regarding our potential sand sources. There is sand available for the Town's next planned projects and the Town is committed to continuing to work with the State and Federal agencies for future project needs.

Elizabeth White, Mayor of Oak Island, added that the Town has demonstrated it has the resources to complete the next projects. We have the Town Council's and residents' support for the Beach Plan. If the CRC denies or delays its decision, then we may lose the local level of commitment to this Plan.

Ken Richardson stated the Division has reviewed the Plan and it contains all of the required elements, but there is concern about the Town's proposal to use Frying Pan Shoals. While discussions continue on potential borrow sites, the Commission may want to delay a decision on approval of the Plan. Heather Coats stated in past requests to use Frying Pan Shoals as a potential borrow site, the National Marine Fisheries Service and the NC Division of Marine Fisheries both expressed concerns about the use of this site. The Cape Shoals are designated as essential fish habitat and a habitat area of concern. These are highly valuable ecosystem habitats for shrimp and coastal migratory fish and there is not enough data to adequately assess the potential impacts of dredging. BOEM is working on a study of an additional offshore borrow site and data collection is scheduled to begin this summer and conclude in 2025.

Commissioners Baldwin and Norris spoke in favor of approving the Town's Plan as they have identified sand sources, demonstrated dedicated funding, and have the community support necessary for a successful Beach Plan. Braxton Davis echoed the Division's support for the Plan and noted that the information provided today was helpful. If the Commission is comfortable with the proposed borrow sites and the Plan is approved then it will be reviewed again in five years. Mike Lopazanski added that with the approval of this Plan, setbacks will be determined, and permits will be written based on the vegetation line. If there are shortfalls with sand sources, there will be development within areas that may not have protection. Doug Medlin stated as a former Mayor, the Town has provided a Plan as outlined by the CRC and the Commission should support the efforts of the Town to help encourage their citizens' continued support for funding this Plan.

**Phil Norris made a motion to approve the Town of Oak Island’s Beach Management Plan. Larry Baldwin seconded the motion. The motion passed unanimously (Smith, Bryan, Norris, Baldwin, Emory, Salter, Medlin, High).**

**PUBLIC INPUT AND COMMENT**

Logan Lewis, Beaufort Citizens Alliance, spoke in favor of the proposed AEC designation for Gibbs Creek.

Jud Kenworthy, Beaufort Citizens Alliance, spoke in favor of the proposed AEC designation for Gibbs Creek.

Mariko Polk, Coastal Processes Specialist for NC Sea Grant, introduced herself and expressed an interest in collaborating with DCM staff. She is at UNCW Center for Marine Science. In her position, she serves as a resource for coastal processes and hazards including hurricanes, sea level rise, and climate change.

Beth Clifford, coastal property owner and real estate developer, spoke against the proposed AEC designation for Gibbs Creek.

**AEC NOMINATION**

**15A NCAC 7H .0500 – Gibbs Creek AEC Nomination – Preliminary Evaluation (CRC 23-17) Rachel Love-Adrick**

Rachel Love Adrick stated she will present the preliminary report for the Gibbs Creek Watershed Area of Environmental Concern (AEC) nomination. Before doing so, she reviewed the AEC nomination process which has five steps: the preliminary evaluation which is being presented today; CRC endorsement of the evaluation; a detailed review; a public hearing; and formal designation. After receiving a nomination, the Division of Coastal Management notified the landowners, local governments, and the Coastal Resources Commission and Advisory Council members in whose jurisdiction the site is located of a meeting to discuss the proposed nomination which took place on May 8, 2023 (within 60 days after receipt of the nomination). The Division then conducted a preliminary site evaluation to consider various protection methods and to determine if AEC designation is appropriate. Following presentation of the preliminary report to the CRC, if the AEC nomination receives the CRC’s endorsement today, staff will then conduct a detailed review of the proposed site. This report will include the development of a management plan or site specific use standards for consideration. If formal designation of the site as an AEC is approved by the CRC and the management plan or use standards are approved, a public hearing will be conducted, and notice of the hearing will be published and distributed in accordance with the requirements of NCGS 113A-115 and 150B-21.2. The rules will then go through the rulemaking process.

On March 13, 2023, the Beaufort Citizens Alliance nominated a site within the Town of Beaufort to be considered for designation as a Coastal Complex Natural Area of Environmental Concern within the broader category of Fragile Natural and Cultural Resource Areas of Environmental Concern in accordance with procedures set forth in 15A NCAC 07H .0500. The site is located in Carteret County and within the Town of Beaufort’s extraterritorial jurisdiction. The site is two miles northwest of the Town of Beaufort along Gibbs Creek and is part of the Outlet North River

HUC 12 Subwatershed. The nominated area is made up of four privately owned parcels. The properties were historically used as farmland and have been cleared for farming and logging. The properties have been and continue to be used by several commercial businesses and residences. The parcels are zoned R-20 Residential Single-Family District under the Town of Beaufort Zoning Map and Land Development Ordinance. The Town of Beaufort's Core Land Use Plan, certified by the CRC on January 27, 2007, classifies the site as Low Density Residential. The AEC nomination has not been on the Town's Planning Board or Board of Commissioner's agendas and is neither supported nor opposed by either Board. There is a mix of residential and commercial development surrounding the properties. The nomination states that there are several natural resources on the site. Wetlands onsite include 404 and coastal wetlands. The public trust waters within Gibbs Creek are classified as SA, market shellfishing tidal salt waters, and HQW, High Quality Waters, by the Division of Water Resources. Gibbs Creek is not designated as a primary or secondary fish nursery by the Division of Marine Fisheries. At the time of nomination, the Creek was classified as conditionally approved open for the harvesting of shellfish by the Division of Marine Fisheries. The creek and the lower part of the river have been temporarily closed on average 11 times per year for an average of 69 days per year. The natural resources in the nominated area are currently managed under various state and federal regulatory programs.

The waters and intertidal salt marshes of Gibbs Creek and its navigable tributaries are designated as Estuarine, Public Trust Waters, and Coastal Wetland AEC by the CRC. Any development occurring in or over these waters or wetlands must be permitted and comply with CAMA and CRC rules. These rules generally restrict development to water dependent uses to conserve the important features and functions of the estuarine waters and coastal wetlands. The shoreline areas along Gibbs Creek and its tributaries are designated as Estuarine Shoreline AECs and any development within 75-feet of the normal high water level or normal water level must be permitted and comply with CAMA use standards for the Coastal Shorelines AEC. These rules include a buffer requirement that all new, non-water dependent development shall be located at least a distance of 30-feet landward of the normal high water level or normal water level. Limitation of impervious surfaces within the 75-foot zone and additional restrictions on development within 30-feet of the shoreline are intended to limit the impact of land-based activities on the quality and productivity of estuarine waters. Waters in the area classified as High Quality Waters are provided additional protection through state water quality antidegradation rules. The freshwater wetlands are subject to permitting requirements of Section 404 of the federal Clean Water Act and a state 401 water quality certification from the Division of Water Resources must be obtained before any filling or other alterations to freshwater wetlands can occur. Both programs allow for limited filling of wetlands based on purpose and need typically in conjunction with mitigation requirements as determined by the Corps of Engineers.

In North Carolina, all state status species whether endangered, threatened, or special concern are given protection under the State Endangered Species Act. Species with federal status are protected under the Federal Endangered Species Act of 1973. The Petitioners have proposed expanded development buffers as part of their AEC nomination. They requested a 575-foot buffer from normal high water as provided for designated Outstanding Resource Waters pursuant to 07H .0209(a)(1). However, the waters of Gibbs Creek are not designated as ORW



by the Environmental Management Commission. Petitioners also request application of a 100-foot of undisturbed vegetative setbacks from intermittent and or perennial streams under a Division of Water Resources rule adopted by the Environmental Management Commission (15A NCAC 02H 1019(6)(b)). Petitioners have also requested 100-feet of undisturbed vegetative setbacks from 404 wetlands pursuant to NCGS 113A-113(b)(1). These 404 wetlands are managed by the US Army Corps of Engineers on the federal level and the Division of Water Resources at the state level. Both programs allow for limited filling of wetlands based on purpose and need, typically in conjunction with mitigation requirements.

Staff does not recommend CRC endorsement of this AEC nomination. The nomination does not include the entire watershed area that drains into Gibbs Creek. The boundary of the AEC focuses solely on four parcels initially proposed for development of a single family residential subdivision. While the Town stated it neither supported nor opposed the AEC nomination, these properties have been classified as Low Density Residential on their Land Use Plan's Future Land Use Map since January 26, 2007. The properties have not remained essentially unchanged by human activity as required in the nomination process. The properties were historically used as farmland and have been cleared for farming and logging over the years. Additionally, the properties have been and continue to be used by several commercial businesses and residences that may have resulted in impacts to the area. While the proposed AEC contains many of the natural resources that make tidal creek systems some of our State's most vulnerable wildlife habitat, the characteristics at this site are common to tidal creek systems found throughout Carteret County and coastal North Carolina. In this context, the designation of a single tidal creek system or watershed as an AEC with unique development standards would be precedent setting for all similar tidal creek systems along the coast.

During the public meeting, the Petitioner indicated that while Gibbs Creek has not been designated as Outstanding Resource Waters by the EMC through the Division of Water Resources, the Creek deserves such recognition and subsequent CRC protections because Petitioner believes the Creek meets the statutory and regulatory definitions and criteria. The CRC and DCM do not have the authority or expertise to consider requests to reclassify waters that are officially designated under the federal Clean Water Act. For Gibbs Creek to be reclassified, the Petitioner would need to submit a separate petition to the EMC. The procedures for assignment of water quality standards can be found in 15A NCAC 02B .0100.

**Larry Baldwin made a motion to deny the AEC nomination for Gibbs Creek. DR Bryan seconded the motion. The motion passed unanimously (Smith, Bryan, Norris, Baldwin, Emory, Salter, Medlin, High).**

### **ACTION ITEMS**

#### **Consideration of Approval of Exception for Lots Platted Post-1979, 7H .0309 fiscal analysis (CRC 23-18) Ken Richardson**

Ken Richardson stated that amendments to Ocean Hazard Area Exception rules in 07H.0309 address the issue of not having an alternative to build a smaller structure of equal to or less than 2,000 square feet within the current required setback when a lot was platted after June 1, 1979. This became an issue following the repeal of 07H.0104 last August, which served as an option for lots created after June 1, 1979. The key differences between the two rules were that .0309 applied

to lots created before June 1, 1979, only requires a 60 feet setback regardless of the erosion rate setback, and no greater than 2,000 square feet with a footprint no greater than 1,000 square feet. While .0104 applied to lots created after June 1, 1979, it also limited size to 2,000 square feet, but allowed the option to use the setback in place at the time the lot was created. Amendments to 15A NCAC 07H .0309 remove the June 1, 1979, condition, and allows this exception to be applied to all lots regardless of when it was created, or what the erosion rate setback is and removes the 1,000 square foot footprint condition. Essentially, these amendments morph 07H.0104 and 07H.0309 into one exception.

Based on a recent evaluation of current setbacks measured from 2022 & 2021 vegetation lines, 74 vacant lots were identified that would likely not meet the current setback requirement but could potentially meet the minimum setback of 60 feet from the vegetation line. These lots are dispersed within four of the eight oceanfront counties: Brunswick (30), Currituck (11), Dare (10), and Onslow (23). No distinctions were made between ownership, or plat dates primarily since attaining plat dates by means of online county tax office data was not possible. Although property owner intentions cannot be predicted or quantified, it can be anticipated that there would be a cost-benefit associated with the ability to construct a smaller home up to 2,000 square feet should owners choose to do so. With the ability to construct, private property owners who choose to build could expect higher resell potential, or revenues generated from vacation rentals and local governments would benefit from the added property taxes collected. Using an example of a market search from last month, the average cost of an oceanfront home that is 2,000 square feet or less, listed for approximately \$1.1 million; while the range varied significantly from \$620,000 to \$2 million. The average asking price of a vacant oceanfront lot at the same time was \$577, 000; while the range varied greatly here too \$30,000 to \$1.9 million. Based purely on this scenario, a lot with a structure up to 2,000 square feet was approximately \$570,000 more compared to vacant lots. With the average tax rate applied of 0.6024, the addition of a structure on all 74 lots would result in an estimated total annual tax revenue between \$400-500,000.

These rule amendments would not change how public infrastructure projects are permitted, so there would be no fiscal impacts associated with these projects. Local government and private property owner impacts cannot be accurately quantified, but it is anticipated to likely have the potential to result in a fiscal impact associated with property development. Should all 74 lots be developed, a CAMA Minor Permit costing \$100 would result in \$7,400 dispersed depending on whether it is LPO or DCM Staff issued. Rule amendments will not result in a quantifiable substantial cost-benefit. Staff is asking the Commission to consider approval of the fiscal analysis associated with amendments to 15A NCAC 07H.0309 on the condition that it is approved by the Office of State Budget & Management (OSBM) without any substantial changes.

**Larry Baldwin made a motion to conditionally approve the fiscal analysis for 15A NCAC 07H .0309 based on OSBM approval. Doug Medlin seconded the motion. The motion passed unanimously (Smith, Bryan, Norris, Baldwin, Emory, Salter, Medlin, High).**

**Consideration of Approval of Proposed Permit Fee Increase Fiscal Analysis (CRC 23-19)  
Mike Lopazanski**

Mike Lopazanski stated the graduated fee schedule was introduced in 1989. There were permit fee increases in 2000 and 2006, but no fees have been increased since that time. Based on the

decline in state appropriations for the regulatory program and federal appropriations not keeping pace with inflation, there is a need to increase fees. Staff time has been increased for permit actions as coastal development and re-development has increased in complexity. There have been additional appeals filed which also require additional staff time. With the Commission's latest actions to increase the General Permit timeframes there will be a loss to the Division of about \$43,000 per year. Additionally, inflation has increased operational costs.

This fee increase will include 12 General Permits, permit renewals, modifications, transfers, and DCM-issued Minor Permits. Local governments were surveyed to check their interest in increasing Minor Permit fees. But there was mixed interest. Therefore, only the permits issued by the Division will be increased. Based on permit numbers from 2022, this fee increase will provide for a revenue to the Division of \$384,000 per year with a majority of this coming from General Permits. If the Commission approves this fiscal analysis, it will be reviewed by the Joint Legislative Commission on Governmental Operations and the NC Board of Transportation for comments and recommendations. Staff requests a conditional approval of the fiscal analysis for public hearing pending approval from the State Office of Budget and Management.

**Phil Norris made a motion to conditionally approve the fiscal analysis for permit fee increase amendments pending no significant changes by OSBM. Doug Medlin seconded the motion. The motion passed unanimously (Smith, Bryan, Norris, Baldwin, Emory, Salter, Medlin, High).**

### **LEGAL UPDATES**

#### **Update on Litigation of Interest to the Commission (CRC 23-20)**

Mary Lucasse updated the CRC on active litigation and any actions since memo CRC 23-20. Ms. Lucasse stated that the Rules Review Commission has received 10 objection letters regarding the FLUPSY regulations the CRC recently approved. A DCM response will be provided for the RRC to provide to the General Assembly. Ms. Lucasse reminded Commissioners that six Commissioner's terms expire at the end of June. Current Commissioners should continue to serve until new appointments are made. If you do not wish to continue to serve, please communicate that so everyone can stay informed and thank you for your service.

Braxton Davis stated the objection letters received for 7H .0208 and 7M .0603 regulating floating structures hold up these amendments. A CAMA permit is still required for any floating structure. The amendments provide clarification on siting floating upwellers and allowing them within private docking facilities. Notices of violation will be sent if floating structures are found without a permit.

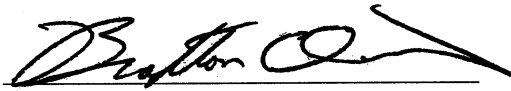
### **OLD/NEW BUSINESS**

Bob Emory stated the CHPP Steering Committee met to review the updated action plans and progress against the objectives in the Plan. Larry Baldwin stated this action plan includes addressing marine debris. This will help address abandoned boats and proper removal.

The next meeting of the Coastal Resources Commission is scheduled for August 23-24 in Wilmington.

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary