

NC COASTAL RESOURCES COMMISSION (CRC)

June 8, 2022

WebEx Video Conference

Present CRC Members

Renee Cahoon, Chair
Larry Baldwin, Vice-Chair
Neal Andrew
Craig Bromby
Trace Cooper
Bob Emory
Robert High
Sheila Holman
Phil Norris
Lauren Salter

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

Meeting virtually, Renee Cahoon called the meeting to order at 1:00 p.m. on June 8, 2022, reminding the Commissioners of the need to state any conflicts due to Executive Order Number 34 and the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of a conflict of interest or potential conflict with respect to matters to come before the Commission. The Chair requested that if any member knows of a conflict of interest or a potential conflict of interest, they so state when the roll is called. No conflicts were reported. Commissioners Medlin, Tunnell, and Wills were absent. Based upon this roll call Chair Cahoon declared a quorum.

CHAIR'S COMMENTS

Chair Cahoon advised the Commission that Trace Cooper has asked the Governor's Office to not reappoint him to the CRC when his term expires at the end of the month. She thanked Commissioner Cooper for his service and thanked him for his willingness to continue to serve until a replacement has been named.

MINUTES

Sheila Holman made a motion to approve the minutes of the April 28, 2022, Coastal Resources Commission. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Holman, Norris, Salter).

EXECUTIVE SECRETARY'S REPORT

DCM Director Braxton Davis gave the following report:

I'd like to introduce you all to Bill Lane, Deputy Secretary for Policy & Legal Affairs with the NC Department of Environmental Quality and my new boss. His responsibilities include strategic policy initiatives and oversight of the Divisions of Coastal Management and Marine Fisheries as well as legal matters for the agency. Bill is the first point of contact in litigation, including all contested cases and lawsuits involving the

Department. He supervises the rulemaking coordination process and provides advice on new policy initiatives, legislation, contracts, conflicts of interest, and dispute resolution. Bill joined DEQ as general counsel in February 2017. Before that, he worked for Kilpatrick, Townsend, and Stockton in Raleigh, where he represented many business and governmental clients on issues related to energy, air quality, waste management, and water quality. He earned a bachelor's degree in chemical engineering from the University of Notre Dame, a master's degree in civil and environmental engineering from the University of Texas at Austin, and a law degree from the University of North Carolina at Chapel Hill.

Since we do not have any new rulemaking on today's agenda, we wanted to highlight a few items that we will be working on for September. First, we will be moving forward with the proposed extension to General Permit expiration dates, including a renewal option where substantial work has begun. Second, we will be working on a draft general permit for beach mats that will allow additional flexibility for local governments. Third, we'd like to clarify a minimum amount of time before planted vegetation can be determined to be the First Line of Stable and Natural Vegetation for determining oceanfront setbacks. I think we have a pretty good process for making that determination, but since we do get challenges on this from time to time, it would be good to clarify in the rule that planted vegetation really shouldn't be considered stable and natural until at least the second growing season. Finally, many of you may have seen or heard about the houses that have recently collapsed in Rodanthe within Cape Hatteras National Seashore. This is a terrible and foreseeable outcome that we really want to work to avoid in the future. Bill Lane and I and others have been working on this, we are in close communication with Dave Halleck with the National Park Service, and in September we plan to provide you with more information on potential long-term and short-term solutions to avoid these kinds of impacts in the future, anywhere along our coast.

On the regulatory side of DCM, permitting is still hovering around historically high numbers, but overall, our permit fees have dropped off about 10% compared with the same time last year, so we may be seeing a little bit of a slowdown, but it's too early to tell. As far as Major permits, I'll just highlight three renourishment events that will be taking place on the Outer Banks this summer: one at Kill Devil Hills; Kitty Hawk, Southern Shores and Duck; one at Avon/Buxton; and one at south Nags Head. Weeks Marine is contracting the northern beach project, and Great Lakes Dock and Dredge will be constructing the Avon/Buxton and Nags Head projects. Buxton will take place after Avon, which are part of the same contract, and then Great Lakes will move up to the south Nags Head project.

For the Policy and Planning section, I'll start with an update on our Public Beach and Coastal Waterfront Access program, which received 16 applications from 14 communities requesting \$4.4M in grant funding this year. The Division has \$1.8M available and will be notifying selected local governments to submit a final application later this month. Final applications are due in August and recipients will be notified in September. Work in the Resilient Coastal Communities Program's 26 communities continues to go well. DCM staff has received almost all of the final deliverables for Phases 1 and 2 of the RCCP. Deliverables for each community include a "Resilience Strategy," which includes a risk and vulnerability assessment, a portfolio of prioritized projects, and corresponding GIS data. Staff are in the process of reviewing these documents and generating closeout paperwork with contractors. The application period for Phase 3 projects closed on June 3rd. Staff received 20 applications representing 22 communities (Topsail Beach, N. Topsail Beach, and Surf City submitted a joint application). Phase 3 of the RCCP will fund the engineering and design work for projects that lead communities to shovel-ready status. Staff are beginning to review applications and anticipate notifying communities by the end of this month. Staff are also planning to send a survey to the participating communities and contractors requesting feedback on the first round of the program.

Finally, in staffing news, I am pleased to announce that Heather Styron has accepted the position of District Manager in Morehead City, effective Monday, May 31, 2022. Heather has been with DCM as a Field Representative since 2007, and previously worked with Carteret County Environmental Health. She has been an

outstanding representative of our agency and we all look forward to working with Heather in her new role. We recently completed interviews for a new Coastal Resilience coordinator position and a time-limited coastal resilience support position established by the NC General Assembly. We should be ready to announce those positions soon.

Chair Cahoon welcomed Bill Lane and thanked him for his participation in today's meeting. Bill Lane stated the work of the Commission is important and I look forward to working with the Division and Commission.

Neal Andrew asked about a DEQ survey of private marinas regarding dredging and disposal placement needs. Braxton responded this study is being conducted by the Division of Water Resources. Kevin Hart, DWR, can be contacted with any additional questions. Chair Cahoon asked that the Commission be updated on this issue.

VARIANCES

Palm Cove (CRC-VR-22-04), Sunset Beach, Oversize Sandbags

Brendan Brock, Christine Goebel, Esq./Rodd Roessler, Esq.

Brendan Brock gave an overview of the site. Christine Goebel, representing staff, stated petitioner is Palm Cove HOA and its owners which own a 10-lot subdivision and common area property. Five of the ten lots are developed with homes and there is an access road built in 2005 bisecting the ten lots. The property is located at the east end of the Town of Sunset Beach and erosion has taken place along the northern shoreline of the project area. In 2020, a 6'x20' sandbag structure approximately 1000' linear feet long was permitted and developed along this shoreline. In September 2021, Petitioner applied for a CAMA Major Permit to add sandbags to the existing structure having a maximum width of twenty-five feet and additional six feet in height to a new height of twelve feet above mean high water (MHW). On December 14, 2021, DCM denied Petitioner's application as the proposed supersized sandbag structure was larger than a 6'x20' structure prescribed in 15A NCAC 07H .0308(a)(2)(L). Petitioner is seeking a variance to allow the proposed sandbag structure to be authorized. Ms. Goebel reviewed the stipulated facts of this variance request and stated staff and petitioner agree on all four statutory criteria which must be met in order to grant the variance. Ms. Goebel also advised the Commission that an addendum to CRC-VR-22-04 was provided to the Commission prior to the meeting with edited proposed conditions based on conversations with petitioner's counsel.

Todd Roessler, representing petitioner, stated petitioners agree with staff on the four criteria, however, only agree to one of the two conditions being proposed by staff. Petitioners ask that if the variance request is granted for the Commission to consider not conditioning the permit to require that sandbags that are above grade and exceed the maximum structure size limitations, as required in 15A NCAC 7H .0308, be removed within six months of a long-term solution to address shoreline erosion in the project area.

Larry Baldwin made a motion to support petitioner's position on the first variance criteria. No second.

Bob Emory made a motion to support staff's position that petitioner has shown that strict application of the applicable development rules, standards, or orders issued by the Commission cause the petition an unnecessary hardship. Neal Andrew seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Holman, Norris, Salter).

Larry Baldwin made a motion to support petitioner's position that hardships result from conditions peculiar to the petitioner's property. Craig Bromby seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Holman, Norris, Salter).

Bob Emory made a motion to support staff's position that petitioner has shown that any hardships do not result from actions taken by the petitioner. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Holman, Norris, Salter).

Larry Baldwin made a motion to support petitioner's position that the variance 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. Commissioner Baldwin added condition #2 as proposed by staff. Craig Bromby seconded the motion. The motion failed with four votes in favor (Baldwin, Bromby, High, Norris) and six opposed (Cahoon, Andrew, Cooper, Emory, Holman, Salter).

Bob Emory made a motion to support staff's position that the variance 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. Commissioner Emory added that the permit should be conditioned on both conditions proposed by staff. Sheila Holman seconded the motion. The motion passed with eight votes in favor (Cahoon, Andrew, Baldwin, Cooper, Emory, High, Holman, Norris) and two opposed (Bromby, Salter).

This variance request was granted with two conditions.

ACTION ITEMS

Consideration of Adoption of Amendments to 15A NCAC 07H .1805 – Specific Conditions – Beach Bulldozing (CRC 22-14)

Chair Cahoon stated the Commission approved these amendments at the April CRC meeting and there are no new changes to the language. This rule was caught up in the Periodic Review process which resulted in a discrepancy between what was posted in the NC Register and NC Administrative Code. This is a housekeeping item to re-adopt the already approved amendments to file for RRC review.

Trace Cooper made a motion to approve amendments to 15A NCAC 07H .1805. Sheila Holman seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Holman, Norris, Salter).

LEGAL UPDATES

Update on Litigation of Interest to the Commission (CRC 22-13)

Mary Lucasse, CRC Counsel, reviewed all active and pending litigation of interest to the CRC. Ms. Lucasse addressed a question posed by Commissioner Emory at the last meeting regarding variance positions and final orders. Ms. Lucasse stated that when the Commission adopts staff and petitioner's positions on a variance criterion, the Final Agency Decision reflects the overlap of agreement between the two positions. Commissioner Emory stated his concern was with a challenge to a Commission decision if petitioner's position is adopted and it is poorly written or does not reference the rules appropriately.

OLD/NEW BUSINESS

Inland Waters Boundary Update

Bill Lane stated the 20 rules, split between Marine Fisheries Commission with nine rules and Wildlife Resources Commission with 11 rules, in the concurrent jurisdiction where inland waters meet coastal waters. These rules are being submitted without change as part of the required Periodic Review process. The MFC is scheduled to approve the readoption on June 23 and the EMC is scheduled to approve the readoption on June 28. The rules will then go to the Rules Review Commission for review and consideration of approval in August.

The next meeting of the CRC is scheduled for September 14-15 in Wilmington.

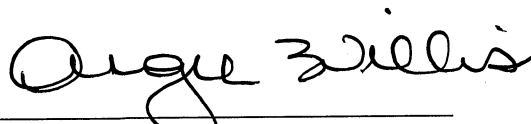
Neal Andrew made a motion to adjourn. Seconded by Phil Norris. This motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Holman, Norris, Salter).

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary