

**NC COASTAL RESOURCES COMMISSION (CRC)**

**April 26, 2023**

**Dare County Government Center, Manteo**

**Present CRC Members**

Renee Cahoon, Chair  
Neal Andrew  
Larry Baldwin  
D.R. Bryan  
Robert High  
Sheila Holman  
Doug Medlin  
Phil Norris  
W. Earl Smith  
Alexander "Dick" Tunnell  
Angie Wills

**Present CRAC Members**

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

**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**

Renee Cahoon called the meeting to order at 9:00 a.m. on April 26, 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 so state when the roll is

called. Commissioners Emory and Salter were absent. No conflicts were reported. Based upon this roll call Chair Cahoon declared a quorum. The Chair thanked County Manager Bobby Outten and his staff for hosting this meeting at the Government Center. The Chair also recognized DEQ Deputy Secretary Bill Lane and thanked him for attending.

### **MINUTES**

**Phil Norris made a motion to approve the minutes of the February 23, 2023, Coastal Resources Commission meeting. Neal Andrew seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bryan, High, Holman, Medlin, Norris, Smith, Tunnell, Wills).**

### **EXECUTIVE SECRETARY'S REPORT**

DCM Director Braxton Davis gave the following report:

It is great to see you all and to be back in Manteo and the Outer Banks. Since your last meeting, we've had a busy spring schedule with a number of events, including an all-staff meeting in Beaufort, which was the first in-person meeting of all DCM staff since the pandemic began, and our annual meetings with NOAA and other coastal states in Washington DC. We've also held meetings of the State-level Interagency Work Group on Threatened Oceanfront Structures, and I'm continuing to chair a national-level work group on coastal erosion through the Coastal States Organization in Washington DC. Recent and upcoming meetings of both groups have focused on the role of insurance in addressing imminently threatened structures, with a focus on the Upton Jones Amendment to the NFIP, which originated here with Walter Jones Sr. back in the mid-1980s. Those two policy initiatives are closely aligned, and I will keep you posted on the findings and recommendations as we hope to wrap up meetings later this year.

On the regulatory side of DCM, I wanted to highlight a CAMA Major Permit issued to the Town of Duck in April to raise NC-12 within the town limits, construct a sidewalk with stormwater infiltration system, rehabilitate and extend an existing revetement, and construct a living shoreline with coastal wetland plantings. This project will assist in maintaining the long-term resilience of Hwy. 12 in this area, which has been experiencing erosion and flooding for many years. A Major permit was also issued to NC Parks and Recreation to enhance and expand an existing oyster sill at Jockeys Ridge State Park which has degraded over time. The living shoreline is composed of rip rap and was designed to protect and enhance existing coastal wetlands and estuarine beach along the Roanoke Sound. Also, NCDOT has made additional progress removing remnant sandbags that are no longer needed to protect NC Highway 12 at Mirlo Beach within the Pea Island National Wildlife Refuge. DOT is coordinating closely with DCM, the Refuge and the NPS staff to ensure the remnant sandbags are being removed as quickly as possible while avoiding negative impacts to the beach, dunes, and sensitive habitats of shorebirds and nesting sea turtles. On April 14, DCM issued a one-time conditional federal consistency concurrence to the Corps of Engineers for their proposed Coastal Storm Risk Management Emergency Repair beach nourishment project at Wrightsville Beach. In our concurrence letter, we noted that the Corps has successfully utilized sand from within Masonboro Inlet since 1965 during congressionally authorized beach renourishment and

navigation dredging projects at Wrightsville Beach. However, a 2021 legal interpretation by the U.S. Department of Interior Office concluded that removal of sand from within a Coastal Barrier Resources Unit could not be used for sand placement projects outside of the same unit. As a result, the Corps proposed to use a new offshore borrow area where surveys have identified the potential for thousands of tires that are remnants from historical artificial reefs that were deployed in the area by the DMF in the 1970s and 1980s. DCM circulated the proposal to state agencies, New Hanover County, Town of Wrightsville Beach and published a public notice. State agencies and the county all expressed concerns about the potential for introduction of noncompatible material. Ultimately, DCM found the proposal conditionally consistent with the State's coastal program, but strongly encouraged the Corps to work with Congress and the U.S. Department of Interior to find a solution to the current policy impasse over sand resources within Coastal Barrier Resource Units. The State's concurrence was limited to this one event, and special conditions included more intensive monitoring during sand placement and additional reporting requirements.

On the Policy and Planning side, the Division certified the Town of Kure Beach's CAMA Comprehensive Land Use Plan on March 31, and several other land use plans are currently under review by staff. The Division also received its first application for approval of a Beach Management Plan under the new rules that went into effect in August of last year (in 7J.1200). The Town of Oak Island submitted its request this week, and it is the first request for the Town since they did not previously have a Static Line Exception. The Division will review the request to ensure that all the required elements are present. If the request is complete, at the next Commission meeting the Town will provide a summary presentation of the plan and the Division will provide a recommendation to grant or deny the approval request. If the Commission approves the Plan, property owners within the Town's jurisdiction will be eligible for several regulatory relief measures related to oceanfront setbacks. DCM recently released a comprehensive land use planning technical guide entitled "Comprehensive Land Use Planning in Coastal North Carolina - Guidance for Local Governments." This online resource provides guidance to local governments for the development of land use plans that comply with the CAMA and CRC land use planning requirements. The guide was developed in partnership with the University of North Carolina-Wilmington's Dr. Mark T. Imperial and Dr. Kirsten Kinzer and is available on the Division's website. At your last meeting I mentioned that the pre-application period for Public Beach and Coastal Waterfront Access grants opens on April 28. Local governments have just a couple more days to submit a pre-application. This year the Division has approximately \$3 million in funding available. As always, additional information is available on our website or through either of our district planners, Rachel Love-Adrick and Mike Christenbury. It remains a busy time for the Resilient Coastal Communities Program (RCCP), and you will be hearing from Mackenzie Todd later today. I will just say that interest in the program remains strong and I'm very proud of the assistance we've been able to provide to local governments through the RCCP. I'm also happy to announce that DCM recently received \$250K in capacity building funds from NOAA that will allow us to hire new time-limited staff to work on conservation and restoration projects. In the Policy and Planning section, one new staff member will lead our work to update the Coastal and Estuarine Land Conservation Program, or CELCP, which was last updated in 2013. In the Reserve program, a new time-limited position will conduct habitat resilience planning and project implementation at the National Estuarine

Research Reserve sites. The funding comes from a portion of NOAA's allocation under the Bipartisan Infrastructure Law, also known as IIJA, and we will use the added capacity to apply for competitive grants for coastal conservation and restoration projects. This work will rely on strong partnerships with other state agencies, non-governmental organizations, and local governments. Last year, under an initial round of Bipartisan Infrastructure Law funding, DCM partnered with the Wildlife Resources Commission and the Coastal Land Trust to apply to acquire 400 acres along the Bay River in Pamlico County. The proposal was awarded the requested \$500K which will be combined with other grant funding to complete the purchase. The property will be added to the State's Public Game Lands system.

In our Coastal Reserve program, staff will hold meetings for 6 of its local advisory committees in May. Additionally, community members are needed to serve on local advisory committees for each of the Coastal Reserve's ten sites and an application period will be held in June. More information about the upcoming meetings and application period will be available on the Reserve's website. The Coastal Reserve's Training Program hosted three workshops for real estate professionals this April on living shorelines and low impact development for water quality protection. The workshops were held in partnership with the Brunswick County Association of Realtors and Cape Fear Realtors. At these workshops, real estate professionals receive 4 elective continuing education credits. The Living Shorelines workshop includes a permitting presentation by regulatory staff. Workshop evaluations are consistently positive and since 2020, the training program has hosted 11 real estate professional workshops reaching over 700 people. Looking towards the future, the training program is considering developing a similar program for licensed building contractors, as they now need continuing education credits as well. The Coastal Reserve and NC Wildlife Resources Commission are gearing up for the 9<sup>th</sup> annual Terrapin Tally to help better understand the overall population status and condition of the diamondback terrapin within the state. This citizen science project takes a snapshot of the diamondback terrapin population numbers in a given area by conducting kayak surveys at specified times and prescribed routes. Terrapin Tally paddling routes are available at 11 locations including: Cape Lookout National Seashore, Rachel Carson Reserve, Calico Creek, Hammocks Beach State Park, Lea Hutaff Island, Masonboro Island Reserve, Carolina Beach State Park, Fort Fisher State Recreation Area, Zeke's Island Reserve, Bald Head Island, and Bird Island Reserve. Data collection will occur during established windows during May and June. Spring student field trips to the Rachel Carson Reserve and Masonboro Island Reserve are starting back up and summer camps at the Rachel Carson Reserve will start in June in partnership with the NC Maritime Museum.

Finally, in response to discussions at last meeting concerning how we better keep the public informed of commission meetings and ongoing policy development, DCM has refreshed the Interested Parties List to provide another option for the public to receive email notifications of DCM meetings, updates, and announcements. Our website has also been updated to make public information and education opportunities more visible. Opportunities to join the DCM Interested Parties List, find Public Notices, DCM grant opportunities and to quickly find our news releases are all front and center on DCM's main landing page on the website. Also, DCM's LPO coordinator will continue to send meeting information, updates, and announcements with a special focus on local issues and minor permitting to LPO's and local governments. I'll note that we've had nearly 100 new subscribers in the past week on the Interested Parties list serve. In staffing news, I'm happy to say that we don't have any new hires or recent departures to report. I

did want to quickly acknowledge that tomorrow is Administrative Professionals Day - and as you know from working with Angela, and maybe you've met some of our other administrative staff in our district offices, DCM is fortunate to have outstanding administrative professionals. They hold everything together and provide support on all fronts, and we're very proud to work with each of them.

### **CRAC REPORT**

CRAC Chair Bobby Outten stated the CRAC meeting was well attended with robust discussion on several topics. Mike Lopazanski gave an overview of proposed amendments to the rules addressing septic tanks and their components along the oceanfront shoreline. The CRAC recommends approval to the Commission on these amendments. Ken Richardson discussed the Inlet Hazard Area update and advised the Council that staff will recommend the Commission halt the current rulemaking process based on the 2019 maps and send a new Charge to the Science Panel to begin the process of reviewing current data to create new Inlet Hazard Area boundaries. The CRAC had one concern regarding the proposed use standards within the IHAs. The CRAC was concerned about dune building being prohibited within IHAs. For some communities this is the only mechanism for defense and the CRAC would recommend the CRC move forward with Staff's recommendation but consider allowing dune work within the IHAs to mitigate risk. Lastly, DCM Counsel Christy Goebel, gave a presentation on the NC Real Estate Commission's current rulemaking on Disclosure Statements. The CRAC recommends the CRC send a letter to the NC Real Estate Commission to request the addition of erosion rate information and previous permitting actions be added to the Disclosure Statements for properties in flood zones.

**Sheila Holman made a motion to send a letter to the NC Real Estate Commission requesting the additional disclosure of erosion rate, previous permitting actions, and any erosion control measures at the property and their expirations. Neal Andrew seconded the motion. The motion passed unanimously (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, High, Tunnell, Bryan, Holman).**

**Neal Andrew offered an amendment to the previous motion to have the letter from the CRC drafted by CRC counsel and approved by CRC by May 15<sup>th</sup>. Phil Norris seconded the motion. Commissioner Holman approved the amendment. The motion passed unanimously (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, High, Tunnell, Bryan, Holman).**

**Phil Norris offered an additional amendment to include the language from the Texas Disclosure for Flood Hazard Areas and Flood Insurance Requirement in the letter to the NC Real Estate Commission. Sheila Holman approved the amendment and seconded the motion. The motion passed unanimously (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, High, Tunnell, Bryan, Holman).**

## **AEC NOMINATION**

### **15A NCAC 7H .0500 – AEC Nomination Procedures (CRC 23-07)**

#### **Rachel Love-Adrick**

Rachel Love Adrick stated the Division has received a nomination for an area within the Town of Beaufort. The last time an AEC nomination was submitted was in 1994 for a site in Brunswick County. Previous nominations have included Buxton Woods at Cape Hatteras and Bird Island in Sunset Beach. Today I will outline the process of the nomination process. The Commission designates Areas of Environmental Concern (AEC) and adopts rules and policies for coastal development within those areas. AECs include the Estuarine and Ocean System, Ocean Hazard Areas, Public Water Supplies, and Natural and Coastal Resource Areas. Unique to the Natural and Cultural Resources AEC are that they may be nominated by any citizens, interest groups, local governments, or state and federal agencies person or group for the Coastal Resources Commission's consideration. Natural and Cultural Resources Areas AECs are defined as areas containing environmental, natural, or cultural resources of more than local significance in which uncontrolled or incompatible development could result in major or irreversible damage to the natural systems or cultural resources, scientific, educational, or associative values or aesthetic qualities. This definition is codified in 15A NCAC 07H .0501. The nomination process has five steps. After receiving a nomination, the Division of Coastal Management will notify the landowners, local governments, and the Coastal Resources Commission and Coastal Resources Advisory Council members in whose jurisdiction the site is located of the proposed nomination and meet to discuss the proposed nomination within 60-days after receipt of the nomination. The Division will then conduct a preliminary site evaluation in which various protection methods will be examined to determine if AEC designation is appropriate. Staff is currently in this step of the process. A meeting has been set for May 8, 2023, from 9:00 a.m. to 11:00 a.m. at the Morehead City Train Depot. The property owners, Town of Beaufort, CRC and CRAC members from Carteret County have been invited. The meeting is open to the public but is not a public hearing. Following that meeting, the preliminary report will be presented to the CRC at the first CRC meeting following completion of the report. The CRC will determine whether to endorse the evaluations and proceed with more detailed analysis of the site. The CRC can expect the preliminary report on the June Commission agenda. If the AEC nomination receives the CRC's endorsement, DCM will conduct a detailed review of the proposed site. This report will include the development of a management plan, if applicable, or site-specific use standards and will be presented to the CRC for their consideration. If the CRC decides to consider formal designation of the site as an AEC and adopts the management plan or use standards developed, 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 NCGS 150B-21.2. After consideration of all comments, the Commission will make its final decision and if the site is designated as an AEC, the CRC will adopt a management strategy or use standards if applicable to the AEC. This management strategy or use standards would then follow the permanent rulemaking process.

## **BEACH MANAGEMENT**

### **Science Panel Scope of Work – Oceanfront Erosion Rate Method & Inlet Hazard Areas (CRC 23-08) Ken Richardson**

Ken Richardson stated after considering public comments and consultation with CRC Chair Cahoon and Dr. Moore, Science Panel Chair, staff will be asking the Commission to consider a

temporary delay on adopting the Inlet Hazard Area (IHA) boundaries and rule amendments referencing the most recent study. Over the course of time, much of the public feedback the Commission has received has been addressed. However, for those who have not followed the process from the beginning, or those who are learning about IHAs for the first time, or who have been given misinformation or misleading information, Staff can understand why concerns are expressed and why they want to know more. That does not mean that the inlet hazard area wheel requires re-inventing each time to address new or recycled concerns. The current IHAs and rules began in 1978 with a need for an update starting in 1989. However, it wasn't until the early 2000's that the groundwork actually began. The Science Panel's early work to define methods began around 2006 and used Geographic Information Systems and USGS's Digital Shoreline Analysis System to consider topography, underlying geology, shorelines, vegetation lines, beach width and influences of nourishment, engineering practices and inlet geomorphology process. Many combinations of statistics applied to understanding shoreline change and have been routinely applied and used by professionals and the academia since the 1960's and the tools used in North Carolina's inlet studies are the same as those used by the US Geological Survey since the late 1990's. A significant amount of time has been invested in discussing and analyzing inlet shorelines and areas adjacent to the State's inlets. The current IHA boundaries and rules went into effect in 1979, and then the Science Panel proposed updated IHA boundaries in 2010 and again in 2018. Each time new data was added to the analysis and the methods were evaluated. Although the 2010 and 2018 methods did vary slightly, the foundation of the methods used were based on erosion rates, or shoreline change rates to be more accurate since we're talking about accretion also. Throughout this process there have been many opportunities for the public and local governments to provide input. These opportunities include every Coastal Resources Commission and Advisory Council meeting, 2014 stakeholder meetings, and the many public hearings and workshops thereafter. In early 2020, Covid-19 put the brakes on everything to include moving forward with the current update. When the Science Panel presented its updated IHA boundaries to the Commission in 2018-2019, the Panel also recommended that boundaries be re-evaluated every five years to coincide with the Division of Coastal Management's routine oceanfront erosion rate updates. After careful consultation with Dr. Moore and Chair Cahoon and given the fact that the next update to the oceanfront erosion rates is just around the corner and planned for the 2024-2025 timeframe, Staff agrees that data collected since the 2018 study can be added to the analysis that will also consider recent nourishments, erosion mitigation structures such as terminal groins and sandbags, and give the Science Panel the opportunity to consider methods and criteria. Since the updated studies of oceanfront and inlet shoreline changes would occur simultaneously, DCM staff are recommending that the CRC consider temporarily postponing adoption of the current updated IHA boundaries and issuing a new Charge to the Science Panel on Coastal Hazards. If the Commission adopts this approach, Staff will work with the Science Panel to complete the Charge and provide the Commission updated IHA maps, erosion rates, along with DCM's recommendations for corresponding IHA Use Standards in the summer of 2024.

**Sheila Holman made a motion to draft a new Charge to the CRC's Science Panel on Coastal Hazards and follow DCM Staff's recommendation to pause the current rulemaking process and provide the IHA boundaries and associated Use Standards with the erosion rate update in 2024. Earl Smith seconded the motion. The motion passed unanimously (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, High, Tunnell, Bryan, Holman).**

**Exception for Lots Platted Post-1979: 15A NCAC 7H .0309 (CRC 23-09)**

**Ken Richardson**

Ken Richardson stated given the temporary hold on updating the Inlet Hazard Area boundaries, Staff will be recommending that amendments to Exceptions in Use Standards for Ocean Hazard Areas, 15A NCAC 07H .0309, continue to move forward without the IHA amendments. Staff presented these amendments at the February CRC meeting, and you may recall that currently your rules pertaining to development exceptions within the setback are defined in 7H .0309. You may also recall that before 7H .0104 was repealed last August, this rule also provided an alternative for proposed development that could not meet the current setback. Together, these rules were commonly referred to as “small structure exceptions”. However, there were a few differences between the two rules, which often caused confusion and questions regarding how and if they were accurately applied. The key differences between the two rules were that .0309 applied to lots created before June 1, 1979, only requires a 60-foot setback regardless of the erosion rate setback and be no greater than 2,000 square feet and have a footprint of no greater than 1,000 square feet. Rule .0104 applied to lots created after June 1, 1979, and limited the size to 2,000 square feet, but allowed the option to use the setback in place at the time the lot was created. No additional changes have been made to the proposed amendments Staff presented at the February CRC meeting and Staff is asking the Commission to consider removing the June 1, 1979, condition which would allow this exception to be applied to all lots regardless of when it was created or what the erosion rate is and to remove the 1,000 square foot footprint condition.

**Neal Andrew made a motion to approve amendments to 15A NCAC 07H .0309 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, High, Tunnell, Bryan, Holman).**

**Proposed Amendments to 15A NCAC 7H .0305, .0306 – Septic Tanks Seaward of the Vegetation Line (CRC 23-10) Mike Lopazanski**

Mike Lopazanski stated the Division advises the County of the issuance of a CAMA Minor Permit for relocation of a system on the oceanfront beach. Dave Hallac gave a presentation to the CRC regarding the recent structure collapses on the National Seashore which had environmental impacts and a 15-mile debris field covering the public beaches with hazardous materials. Damaged septic tanks have created a chronic issue along the oceanfront. The Department of Health and Human Services, Environmental Health Division oversees the County’s issuance of permits for septic systems. New or replaced systems are required to be 50-feet from mean high water and are subject to the CAMA oceanfront setback. DEQ policy dictated that replacement of systems were usually considered repair, and therefore exempt from CAMA permitting. For septic relocation, the CRC’s rules prohibit siting systems seaward of the primary structure. Recent replacements of systems occurred without relocating the primary structure. Septic systems in the Rodanthe area have been repeatedly damaged by moderate storms resulting in the discharge of sewage onto beaches and into ocean waters. During the Advisory Council discussion, concerns were raised regarding the limitation on relocating septic tanks utilizing public funds, particularly funds associated with payouts from the National Flood Insurance Program (NFIP). Under the proposed rule language in 15A NCAC 7H .0306, septic tanks, pump tanks or components of a ground absorption system as defined in G.S. 130A-334 relocated with public funds would need to comply with the current oceanfront setback requirements. Advisory Council members were



concerned that this language would discourage the relocation of septic tanks off the public beach if NFIP funds were involved. Staff has since learned from direct communications with the NFIP, that NFIP payouts are not considered public funds. However, so as not to preclude the possibility that state or federal funding may become available for the relocation of septic tanks, Staff has removed reference to septic tanks, pump tanks and ground absorption systems from this section of the proposed rule language. Based on further review and public comments, Staff are also no longer proposing amendments to 7H .0305, Definition and Description of Landforms, referencing the components of a septic system as separate structures for repair/replace determinations. This language is now more appropriately incorporated into 7H .0306(f), maintaining the intent that if either structure cannot be repaired in place, they will be subject to the replacement/relocation provisions of 7H .0306. Proposed amendments still include clarification that new development, including these septic system structures, need to meet the oceanfront setback requirements. Comments were received from the NC Septic Tank Association questioned the CRC authority and jurisdiction regarding the siting of septic tanks. The CRC has always had the authority to provide regulations and permit septic systems on the oceanfront similar to any other oceanfront structure. NCGS 77-20 clearly defines the public trust area as the wet sand area subject to regular flooding and dry sand areas subject to occasional flooding by tides. These areas do not include areas where flooding occurs from hurricanes or tropical storms. The landward extent of the ocean beaches is well established and natural indicators of the landward extend of the ocean beaches include but are not limited to the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line. The repair of systems in place would be allowed, but the relocation or replacement of septic systems would require a CAMA permit. The amendments use DHHS statutory definitions and language supported by DHHS which defines septic systems as septic tanks, pump tanks, and ground absorption components. The amendments also use the statutory definition of ocean beaches. These amendments fall under the CRC's jurisdiction as the systems are located within public trust areas.

**Neal Andrew made a motion to approve amendments to 15A NCAC 07H .0305 and .0306 for public hearing. Angie Wills seconded the motion. The motion passed unanimously (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, High, Tunnell, Bryan, Holman).**

## **PERMITTING**

### **Proposed Permit Fee Increases (CRC 23-11)**

#### **Jonathan Howell**

Jonathan Howell stated that NCGS 113A-119.1 provides the authority for the Commission to establish a graduated fee schedule for the processing of permit applications, renewals, modifications, and transfers. In determining the fee schedule the Commission shall consider administrative and personnel costs incurred by the Department for processing these permit actions and related compliance activities as well as the complexity of the development. The fee to be charged for processing applications is capped at \$400.00. Prior to 1989, most General Permits had no cost. There were also no fees for modifications or transfers. Major Permit fees were \$100 and Minor Permits and renewals were \$25. In 1989, the graduated fee schedule was proposed and adopted by the Commission and fees were increased in 1991. In 2000, fees were doubled, and this was the first time a different fee was charged for private versus commercial development. The increase was attributed to the need to add staff and an increase in permit

workload. Between 2001 and 2006, there was a decline in state appropriations. There was also a reduction in federal appropriations and the Commission increased the fees for General Permits. Since 2006, there has been a 32% decline in state appropriations to the Division's regulatory program and federal appropriations haven't kept pace with inflation. Permit fee increases are needed as coastal development and re-development has increased staff time for each permit action based upon the complexities of the proposals and increased appeals by adjacent property owners. As the General Permit time frames are being increased, the Division will also lose approximately \$43,000 per year. With the increase in operating costs due to inflation and the steady decline in state appropriations the Division is only able to carry the cost of 13 state appropriated staff positions, which is down from the 25 supported by state funds in 2007. The Commission has 12 General Permits that are currently below the statutory maximum of \$400 fee. Staff is requesting the Commission consider an increase in those General Permit fees from \$200 to \$400, as well as renewal fees from \$100 to \$200, minor modification fees from \$100 to \$200, major modification fees from \$250 to \$400, Minor Permits issued by the Division and General Permits from \$100 to \$200, and Major Permit transfers from \$100 to \$400. The Division has reached out to local governments to inquire about their thoughts on permit fee increases for Minor Permits issued by the Local Permitting Program and has received mixed reviews from the Local Permit Officers. Based on permits issued in 2022, if these fee increases are approved the Division would bring in an additional \$277,000 from General Permits, \$26,000 for Major Permits, and \$35,000 in Minor Permit fees to offset some of the operating costs.

**Sheila Holman made a motion to approve the permit fee increases for public hearing. Neal Andrew seconded the motion. The motion passed with ten votes in favor (Wills, Smith, Medlin, Andrew, Cahoon, Norris, High, Tunnell, Bryan, Holman) and one opposed (Baldwin).**

## **COASTAL RESILIENCY**

### **NC Coastal Resiliency Program Update**

#### **Mackenzie Todd**

Mackenzie Todd provided an update on the Resilient Coastal Communities Program (RCCP) administered by the NC Division of Coastal Management. The RRCP program is the culmination of coastal resilience efforts in the State over the last several years. Beginning in 2016, DCM piloted a coastal resilience program called Resilience Evaluation and Needs Assessment. DCM and its partners worked with local governments to map community assets, engage with the public, identify their social and physical vulnerabilities, and explore potential projects to mitigate future impacts from coastal hazards such as flooding, sea level rise, and other extreme weather events. This process led to several positive outcomes including a more localized understanding of the impact of hazards on community assets, increased public engagement in the resilience planning process, and additional data to assist with grant funding. After Hurricane Florence in 2018, DCM developed resources for local governments to address these impacts, including the Coastal Adaptation and Resiliency website and the NC Coastal Community Resiliency Guide. Additionally, Governor Roy Cooper issued Executive Order 80, which called for the 2020 Climate Risk Assessment and Resilience Plan. This plan led to the creation of the Resilient Communities Program, which catalyzed the RCCP. DCM received approximately \$830,000 in funding from the NC General Assembly and \$1.1 million from the National Fish and Wildlife Foundation's Emergency Coastal Resilience Fund to begin developing and implementing the

RCCP. The RCCP is the first of its kind in this State and is modeled after successful programs in other coastal states such as the Massachusetts Municipal Vulnerability Preparedness Program and Storm Smart Coasts Program, Rhode Island's Municipal Resilience Program, and Florida's Resilient Coastlines Program. Critical to the RCCP has been our program partners at the NC Office of Recovery and Resilience, the Nature Conservancy, and NC Sea Grant who have been on our steering committee and alongside this program from the beginning. They offer staff support and guidance and expertise on implementing the program. A handful of our partners also served as ex-officio members on multiple community action teams during the first two phases of the program. They have also been instrumental in helping DCM in the program evaluation process. We have leveraged \$1.35 million in State funds to bring in \$1.6 million in federal funds and another \$550,000 from NFWF. We have also received \$1.15 million and three full-time employee positions from the NC General Assembly. To date, the RCCP has received approximately \$4.6 million in funding to help build capacity and support for our coastal communities. We now have a RCCP dashboard through ESRI created by Rachel Love-Adrick, DCM District Planner which showcases the communities that have participated in the RCCP so far and the amount of money that was awarded during Phases 1, 2, and 3. We are working on a webmap that would allow users to click on a community and see when they participated in the RCCP and how much money was received with a direct link to their final deliverables. This application is live and is updated regularly. At its core, the RCCP is designed to address barriers to coastal resilience at the local level, assist communities with risk and vulnerability assessments and develop portfolios of well-planned and prioritized projects, advance priority projects to shovel-ready status and link communities to funding streams for project implementation. Phase 1 of the program includes developing a community action team, engaging with the public, and performing a risk and vulnerability assessment. Phase 2 of the program involves a community and data-driven process to identify priority actions that can be taken to adapt to shore and long-term hazards. Phase 3 is the engineering, design and permitting of the prioritized projects. Grants will be available for communities who successfully completed Phases 1 and 2 to develop projects that are shovel-ready. Communities may receive credit towards completion of Phases 1 and 2 of the RCCP for previous or ongoing work which aligns with program requirements. During Phase 4, grants will be available for communities who successfully completed Phases 1-3 for implementation of a shovel-ready project. The first step in Phase 1 is to develop an inclusive and diverse Community Action Team whose role is to actively participate in and inform the process and champion the effort for each community. Members may include locality staff, elected officials, resilience experts, planning board members, business community leaders, faith community leaders, Disaster Recovery Coalitions, Protected Land Managers, leaders representing socially vulnerable communities, public health officials, local school board representatives, and college and university representatives. The Action Team sets the vision and goals. Specific, measurable goals will help the community identify steps that can be taken to achieve the vision. We are asking communities to use the triple bottom line approach which goes beyond traditional hazard mitigation and disaster recovery to develop a holistic strategy considering social, environmental, and economic factors. The next step is to review existing local plans and efforts. We want to make sure we are promoting integration throughout the project development process. A lot of existing plans communities currently have should be considered and pulled from to inform project development such as regional and local plans, ordinances, non-regulatory programs, or other local investments and policies. Getting from resilience planning to action requires jointly created ideas, buy-in, and commitment from a diverse group of

stakeholders. Inclusivity in the planning process, particularly by involving vulnerable and historically underrepresented members of the community, is key to account for a diverse range of community perspectives. The Community Action Team will then select critical assets and natural infrastructure to include with the risk and vulnerability assessment. The last step is to conduct the risk and vulnerability assessment which will evaluate risks to a community's vulnerable populations and critical assets from a number of coastal and climate hazards including flooding, storm surge, sea level rise, and other locally relevant hazards. In Phase 2, communities develop a portfolio of resilience projects and actions aimed at reducing exposure and sensitivity to hazards as well as strengthening adaptive capacity of community assets and vulnerable populations. They then consolidate at least five priority projects organized in a project portfolio. The main deliverable for Phases 1 and 2 is called the Resilience Strategy consisting of a combination of the deliverables developed throughout this process including a CAT report, community engagement strategy, the risk and vulnerability assessment and a portfolio of at least five prioritized projects. While this is not meant to be a comprehensive resilience plan, the information in this Resilience Strategy may later be used to develop a comprehensive Resilience Plan or be integrated into existing local plans or ordinances. Having a planning document like this helps to provide clarity of purpose, attract funding, and provide a more direct path to implementation. For the first round of Phases 1 and 2, we received 30 applications representing 32 coastal communities early last year. DCM reviewed the community applications and were scored across several criteria, including their level of risk exposure to vulnerable populations and critical assets, their economic status and need, their internal capacity and momentum with related efforts. Twenty-six communities were selected. We received 20 applications from contractors and 10 were selected to provide technical assistance. Contractor applications were scored based on experience in resilience planning, community engagement, nature-based solutions, and relevant work experience in the NC coastal region. Staff matched the contractors with communities based on community requests, geographic locations, and other relevant factors. Last summer we awarded 20 projects representing 22 communities for a total grant fund amount of \$1.12 million. In funding Phase 3, DCM staff were looking for projects that were expected to increase local resilience and meet the vision and coastal set out in the local RCCP Resilience Strategy completed in Phases 1 and 2. Applications were scored based upon the project producing engineering and design plans for a shovel-ready project, incorporating nature-based components, potential transferability of the project to another coastal area municipality or county, and size and scope of the expected benefits. Projects range from stormwater management, wetland restoration, and flood mitigation. We currently have a total of one million dollars budgeted for Phase 4 construction. We allocated the budget to focus on planning and community engagement and building a portfolio of shovel-ready projects across multiple coastal communities. We feel this is a good place for DCM to focus initially, rather than on funding construction projects. This program positions communities to be ready and competitive when applying for other sources of federal and state funding. DCM staff have attended multiple conferences and meetings to discuss the RCCP. It is important to raise awareness about the program and learn from other coastal states. The RCCP was highlighted recently as a case study on NOAA's digital coast website. The case study details the program, our evaluation process, funding, tools used, and community engagement. Looking ahead to potential future program funding, Governor Cooper's budget allocated \$1.7 million dollars for two time-limited positions to become permanent. House Bill 259 has \$10 million dollars allocated for the RCCP. We are waiting to see what the Senate will propose. In the meantime, we have submitted a pre-proposal for NFWF's National Coastal

Resiliency Fund. We will know if we are invited to submit a full proposal next month. This proposed project will provide support to RCCP communities leading to final design and permitting for at least 20 projects that have been prioritized as the most effective, efficient, and equitable. Support will initially be provided to communities to verify their project selection through in-depth analysis of the alternatives within their project portfolios and could also lead to the identification of a better nature-based solution that had not been considered. Following the initial analysis, communities will move into final design and permitting.

### **ACTION ITEMS**

#### **Consideration of Approval of Fiscal Analysis – General Permit Time Extension and Correction to 15A NCAC 7H .2300 (CRC 23-12) Cameron Luck**

At the February 2022 CRC meeting, a marine contractor provided comments indicating there was insufficient time to complete projects due to the increased volume of demand in development and issues with securing building materials. The Commission tasked DCM to explore alternatives to the current timeline of 120 days. At the June 2022 CRC meeting, DCM staff proposed an additional 60 days for a total of 180 days for a General Permit to remain active. This number was proposed to create consistency with local ordinance building timelines. Staff also identified nine General Permits where this change would apply. The Commission requested that DCM consider additional options that would provide extensions where work is already in progress. At the September 2022 CRC meeting, Staff proposed a substantial development clause similar to what is currently included in the Major Permit process allowing contractors a 180-day extension if substantial development had occurred. The Commission approved these amendments at that meeting. Based on the fiscal analysis completed by DCM staff, there will be fiscal impact on the Division but not a substantial one. DCM will be impacted by the reduction in the number of permit fees which is estimated to be around \$43,500 annually. DEQ has approved the fiscal analysis and it is under review by the Office of State Budget and Management. In addition to extending the expiration timelines of these nine General Permits, an amendment is also being proposed to correct an error that occurred during the legislatively required periodic review. 15A NCAC 07H .2302 was inadvertently changed from a two-year expiration date to 120 days. DCM is requesting approval to correct this error.

**Larry Baldwin made a motion to approve the fiscal analysis for the General Permit time extensions for public hearing and the amendment to address the error in 15A NCAC 07H .2302. Phil Norris seconded the motion. The motion passed unanimously (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, high, Tunnell, Bryan, Holman).**

#### **Comments and Consideration of Adoption of Amendments to 15A NCAC 7H .0308 and 7K .0207 Structural Accessways – Beach Mats (CRC 23-13) Mike Lopazanski**

Mike Lopazanski stated last year the Commission amended the rules that established specific use standards for structural pedestrian accessways that allow for public access to the beach. You will recall that the use standards previously limited these accessways to elevated, pile support structures terminating on the beach near the seaward toe of the frontal dune. Due to numerous local governments expressing interest in using synthetic or wooden roll-out matting as a handicap accessible alternative for beach access, the accessway rules were amended to allow the use of these types of mats for public beach access. The use of these materials was limited to State, federal, or local governments due to concerns expressed by the NC Wildlife Resources

Commission and the US Fish and Wildlife Service about potential adverse impacts on sea turtle habitat resulting from their use waterward of the frontal dune. The CRC has approved three petitions for variances from local governments seeking to install beach mats on the dry sand beach seaward of the frontal or primary dune and vegetation line to enhance handicap accessibility. These variance petitions were granted, and, in each case, efforts were taken to minimize risks to sea turtles including changes in siting, size, and orientation of the proposed structures. Following the Commission's variance and issuance of a CAMA Minor Permit to the Town for installation of beach mats, the Town still assumes some liability for any takes of threatened or endangered species under the Endangered Species Act. Since the amendments went into effect, Staff has had further discussion regarding the use of beach matting for residential applications as an alternative to structural accessways. During storms, dune crossovers, including stairways, can account for a great deal of debris that winds up scattered across beaches and in waterways. Staff believe that if matting conforms to the same general standards that apply to structural accessways (limiting the mats to six feet in width and be no further waterward than six feet from the toe of the dune), public access and wildlife protection goals will be met while reducing debris on the State's beach during storm events. Residential application of matting material would adhere to the same standards previously approved including installation at grade and prohibiting extension onto the public trust beach. Compliance and enforcement are essential components of any regulatory program, and the Division strives to increase its compliance rate through education, inspection, and remediation. In addition to the Division's inspection and enforcement activities, most beach towns have Local Permitting Officers as well as sea turtle programs which traverse the beach on a regular basis. The Division believes that these additional eyes on the oceanfront will be useful in ensuring that any beach mats exceeding the use standards will be reported either to the Division or the Local Permitting Officer for compliance and enforcement. The Division also maintains that while less expensive than a traditional structural accessway, beach mats still represent a sizeable investment for property owners and there will be interest in ensuring that they are removed prior to storm events, leading to less debris on the beaches following these events. In addition to the public comments submitted, the Division has received numerous informal comments of support from the public advocating for the enhanced accessibility this will provide.

**Neal Andrew made a motion to adopt the amendments to 15A NCAC 07H .0308 and 07K .0207. Dick Tunnell seconded the motion. The motion passed unanimously (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, High, Tunnell, Bryan, Holman).**

**Comments and Consideration of Adoption of Amendments to 15A NCAC 7M .0600 Floating Structure Policies and 7H .0208 Piers and Docking Facilities – Floating Upweller Systems (CRC 23-14) Daniel Govoni**

Daniel Govoni stated floating upweller systems (FLUPSY) are used to grow seed shellfish and protect them from predation until they can survive in open water leases. These amendments will require FLUPSYs to be sited at a permitted marina or private docking facility and are subject to the same platform limitations that apply to docking facilities. DCM believes this management strategy can accommodate these structures while limiting public trust impacts. Neither the NC Division of Marine Fisheries nor the NC Marine Fisheries Commission have plans to address floating structures in their current leasing program and DMF agrees this development should require CAMA permitting by DCM. These amendments provide clarification that these platforms

will be included in the square footage calculations for shading impacts, add a definition for FLUPSYs, and clarify that FLUPSYs may be permitted as platforms at private docking facilities or permitted marinas. Comments were received from the NC Shellfish Growers Association, NC Farm Bureau, and from local shellfish growers opposing these amendments. One comment received stated that aquaculture is agriculture and should be exempt from being considered development. However, CRC Counsel Mary Lucasse provided a legal opinion that FLUPSYs are development as defined in CAMA and aquaculture is not included within the CAMA exceptions. Another comment stated FLUPSYs are small in size and have little environmental impact or conflicts with navigation. Since there are no regulations for the US Army Corps of Engineers that would restrict size and location for these floating structures, a CAMA permit is appropriate so size and location can be regulated. The last comment received stated that a streamline permit should be available for FLUPSYs. DCM prefers that initial applications be reviewed through the Major Permit review process to identify any federal or State concerns.

Commissioner Tunnell questioned why aquaculture is not exempt from CAMA permitting and commented the Commission should make every effort to support the industry. Mary Lucasse stated that she prepared an opinion for the Commission's consideration and provided the opinion to negative commentators as well. Neal Andrew stated he is a proponent of mariculture and aquaculture; however, some standards need to be in place to regulate structures. Larry Baldwin stated there is difference between farming or having an agriculture operation on private property and putting structures over the public trust.

**Larry Baldwin made a motion to adopt amendments to 15A NCAC 7M .0600 and 7H .0208. Sheila Holman seconded the motion. The motion passed with ten votes in favor (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, High, Bryan, Holman) and one opposed (Tunnell).**

### **PUBLIC INPUT AND COMMENT**

Donna Creef, Outer Banks Association of Realtors, spoke in favor of the CRC's approach to comment to the Real Estate Commission regarding additional disclosures and would ask the letter include the requirement for flood insurance as a disclosure. Texas has specific language for property located in special flood hazard areas are required to have flood insurance.

Keith Larick, NC Farm Bureau, spoke against the CRC's action regarding FLUPSYs.

Carlos Gomez, coastal engineer, spoke in favor of living shorelines, handicap access, and owner disclosure requirements. Mr. Gomez stated that there are serious dune stabilization issues in the Rodanthe area.

Steve Smith, Topsail Beach Mayor, spoke in favor of the CRC's action to send a letter of support for beach nourishment projects. There is support in the General Assembly for a Bill that would allow the use of sand for projects older than 15 years.

## **LEGAL UPDATES**

### **Report of Rules Review Commission Actions**

#### **Mary Lucasse**

Mary Lucasse stated the CRC had asked why the EMC has withdrawn its lawsuit against the RRC. She stated it was withdrawn without prejudice on a technical issue and the ECM has been in discussion with the RRC regarding possible resolution. If no resolution is reached, the case could be refiled.

### **Update on Litigation of Interest to the Commission (CRC 23-15)**

Mary Lucasse updated the CRC on active litigation and any actions since memo CRC 23-15. Ms. Lucasse stated the Court of Appeals upheld the CRC Chair's decision to deny a third party hearing request filed by Henry Fonvielle. May 23 is the deadline to file a Petition for Discretionary Review in the North Carolina Supreme Court. In OAH, a motion to dismiss was filed in Louis Wetmore's contested case challenging a permit denial. Petitioner filed a voluntary dismissal with prejudice and the case is closed. In Haizlip, the petitioner did not file a Petition for Judicial Review and we have closed the file. A final agency decision was issued yesterday for the Pecan Grove Yacht Club Owners Association, and Petitioner has 30 days to file an appeal to challenge the Chair's decision. A new third party hearing request has been received and May 18 is the deadline to issue the final agency decision.

## **OLD/NEW BUSINESS**

Chair Cahoon stated at the request of Bobby Outten and the NCBIWA, a draft letter supporting the update of the NC Beach and Inlet Management Plan has been provided to Commissioners for their review and approval.

**Neal Andrew made a motion to approve the letter of support to update the NC Beach and Inlet Management Plan (BIMP). Angie Wills seconded the motion. The motion passed unanimously (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, High, Tunnell, Bryan, Holman).**

Chair Cahoon stated there is a request from the CRAC for the CRC to send a letter of support to the Real Estate Commission regarding additional disclosures. The deadline for comments is May 15.

**Neal Andrew made a motion to create a support letter to the Real Estate Commission regarding the additional disclosures. Sheila Holman seconded the motion. The motion passed unanimously (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, High, Tunnell, Bryan, Holman).**

**Phil Norris made a motion to add language to the real estate disclosure letter similar to what Texas states regarding requirements for flood insurance. Sheila Holman seconded the motion. The motion passed unanimously (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, High, Tunnell, Bryan, Holman).**



Neal Andrew stated the CRC should draft a letter of support for DCM's response letter to the US Army Corps of Engineers dated April 14<sup>th</sup> regarding Wrightsville Beach's repair project consistency determination. CRC Counsel is requested to draft this letter of support.

**Neal Andrew made a motion to approve a letter of support for DCM's response regarding the Town of Wrightsville Beach's consistency determination. Sheila Holman seconded the motion. The motion passed unanimously (Wills, Smith, Medlin, Baldwin, Andrew, Cahoon, Norris, High, Tunnell, Bryan, Holman).**

Chair Cahoon stated the next meeting of the Coastal Resources Commission will be June 15, 2023. The meeting will be agenda driven so information will be shared about the location of the meeting at a later date.

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary