

NC COASTAL RESOURCES COMMISSION (CRC)

February 23, 2023

Ocean Isle Beach Town Hall, Ocean Isle

Present CRC Members

Renee Cahoon, Chair
Larry Baldwin, Vice-Chair
Neal Andrew
D.R. Bryan
Bob Emory
Sheila Holman
Phil Norris
Lauren Salter
W. Earl Smith
Angie Wills

Present CRAC Members

Kyle Breuer	Ike McRee
Daniel Brinn	Bobby Outten, Chair
Sandy Cross	Spencer Rogers
Ryan Davenport	David Szerlag
John Farrell	Dave Weaver
David Hewett	John Windley
David Kellam	

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 February 23, 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 High, Medlin, and Tunnell were absent. No conflicts were reported. Based upon this roll call Chair Cahoon declared a quorum. The Chair thanked Mayor Debbie Smith, Daisy Ivey and Justin Whiteside for hosting this meeting at Town Hall and arranging transportation for the field trip to the terminal groin. She also acknowledged the passing of DCM District Planner Charlan Owens.

MINUTES

Larry Baldwin made a motion to approve the minutes of the November 17, 2022 Coastal Resources Commission meeting. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bryan, Emory, Holman, Norris, Salter, Smith, Wills).

EXECUTIVE SECRETARY'S REPORT

DCM Director Braxton Davis gave the following report:

I want to open my comments today by recognizing a major loss to our DCM family. I am not sure how many of you knew Charlan Owens, but as I conveyed in an email to the Commission and Advisory Council in January, Charlan passed away in late December following a brief illness. Charlan was our District Planner in Elizabeth City for almost 19 years. We continue to honor Charlan's memory as a friend and a valued colleague, and for everything she contributed to DCM's mission throughout her many years of dedicated service. We miss her both personally and professionally, and our thoughts and best wishes remain with her family and friends.

With that, I'll begin my updates on DCM activities since your last meeting. On the regulatory side, our new e-permitting system is in full swing for major permits. We are now processing those permits electronically. DCM was the first agency within DEQ to implement the new e-permitting system and Gregg Bodnar has done a fantastic job working with the different local governments, state and federal agencies, as well as our staff, and in leading this important initiative that will improve our process for applicants, be far more efficient, and improve the accessibility of historical permitting records. As you'll hear from Gregg later on, we anticipate beginning the testing phase for CAMA general permits soon. Since your last meeting, NC DOT completed the removal of Hwy 12 and the sandbag structures just north of Mirlo Beach. This was a major undertaking and required coordination between DOT and DCM due to the sheer volume of bags to be removed (approximately 1400 bags) and coordination is ongoing as more bags are uncovered. Another DOT project you may recall us mentioning is the construction of the NC 24 living shoreline project in Swansboro in partnership with the Coastal Federation. The contractor is making substantial progress at the site and the structures should be completed in the next few weeks with the backfill and oyster structures shortly thereafter. In December, we held a workshop for Central and Southern Districts Local Permitting Officers at the UNCW Center For Marine Science. The workshop included formal presentations by Division staff, and regulatory staff with the US Army Corps of Engineers Wilmington District, hands-on training in the field, as well as informal dialogue/discussions with questions and answer sessions. Staff would like to thank UNCW for their partnership as well with helping to facilitate this workshop. I also wanted to provide an update on offshore wind energy proposals. As you may know, North Carolina has four potential offshore wind farms: Kitty Hawk North and Kitty Hawk South, both owned by Avangrid Renewables, and Carolina Long Bay owned by Duke Energy and Total Energies. Kitty Hawk North is ~ 24 nautical miles offshore. Cable routes for this project have not been confirmed, but there are discussions of landing in Virginia. DCM has received a federal consistency determination for the Kitty Hawk North Construction and Operations Plan with a review deadline of April 30, 2023; however, we have entered into a stay agreement until draft Environmental Assessment is published. Kitty Hawk South is located ~27 miles offshore. Its cable route is also not yet confirmed. DCM has received a federal consistency determination for

the Construction and Operations Plan, and the developer and DCM have entered into a stay agreement until the draft EA is published. The current deadline for DCM to conclude that review is July 29, 2025. For Carolina Long Bay, DCM received a federal consistency determination from BOEM for the lease auction and site assessment plan and found the proposal consistent, contingent on a pre-coordination meeting with DCM and DMF before final approval of the Site Assessment Plan. The lease area is ~20 nm offshore. There will eventually be federal consistency determinations submitted to DCM for the construction and operations plans for these projects as well. There was also a recent BOEM call for additional Wind Energy Areas in the Central Atlantic region, with initial focus on an area farther offshore and north of the Kitty Hawk Wind Energy Area. BOEM conducted a public comment period, and this is currently in review.

On the Policy and Planning side of DCM, we recently announced the availability of approximately \$3 million in funding to help local governments improve public access to coastal beaches and waters for the 2023-24 fiscal year. The pre-application period is open; local governments interested in applying for financial assistance must submit a pre-application by 5 p.m. on April 28. Additional information is available on our website or through our district planners. At the November meeting I informed you that additional DCM funding through the Planning & Management grant program was available for local governments, prioritizing support for the development of Beach Management Plans, and plans or ordinances focused on shoreline management and water use planning. The Division has now awarded six grants associated with beach management planning to the Town of Surf City, Carteret County, Dare County, Town of Nags Head, Town of Oak Island, and the Town of Wrightsville Beach. Please let us know if you are interested in more information about those projects. It's been a busy time for the Resilient Coastal Communities Program. DCM received applications from 15 communities for Phases 1 & 2 grants under the RCCP, as well as applications from several organizations who will provide technical assistance to the communities. Phases 1 & 2 work includes critical asset mapping, vulnerability assessments, community engagement, and project identification and prioritization. We will award approximately \$1 million in grants in the coming weeks and hope to have this work begin by May 1st. At the same time, 20 communities are close to completing engineering and design work that the RCCP funded last fall. We are also preparing to issue a request for proposals for Phase 4 construction grants and expect to be able to fund several construction projects featuring natural and nature-based techniques. Finally, we will be preparing an application to the National Fish & Wildlife Foundation (NFWF) over the next two months, with the hope of bringing in additional federal resources to support local government resilience efforts. The Commission's Science Panel on Coastal Hazards will be meeting virtually on Wednesday, March 1 to continue work on sea level rise updates. These are all public meetings and I encourage you to attend. Staff will send out a reminder to the commission with information on how to join.

In our Coastal Reserve program, we are working with a range of partners on recently awarded, externally funded projects. For example, the Reserve is working with Albemarle-Pamlico National Estuary Partnership, The Nature Conservancy, and NC Sea Grant to develop an "Engagement Strategy to support the Scuppernong Regional Water Management Study" with funding from the NOAA Digital Coast Partnership. The Reserve is partnering with other southeastern NERR Sites to evaluate unmanned aerial systems as a tool for mapping intertidal oyster reef characteristics and changes over time. The Reserve is working closely with NC State

University on a NERRS Science Collaborative funded study to better understand how the interaction between extreme storm events, river systems, and coastal processes impact sediment dynamics and the vulnerability of coastal habitats. The Reserve and NC Sea Grant are accepting applications for the 2023 North Carolina Coastal Research Fellowship. Through this program, graduate students based in North Carolina conduct hypothesis-based research within one or more of the 10 Reserve sites. The deadline for applications is March 17 and more information is available on our website. Finally, the Coastal Training Program will deliver workshops on living shorelines and low impact development to realtors this April in partnership with Cape Fear Realtors Association and Brunswick County Association of Realtors. Please let us know if you are interested in more information about these workshops.

Staffing News

In staffing news, we have recently filled a number of positions. In the Morehead City office, we have two new field representatives. Kara Guthrie started in January after serving as a temporary employee with the Division for the year prior. Richard Mahoney will be starting early next month and comes to us from the UNC Institute of Marine Sciences. In the Elizabeth City office, we have hired Martin Mitchell who recently retired from the Virginia Department of Transportation. These new hires leave us with one open field representative position in the Washington office after Shane Staples accepted a position with the Army Corps of Engineers, and we hope to fill that position soon. In the Reserve program, Dr. Justin Ridge will be joining as the new Research Coordinator next week. Justin comes to us from the Duke University Marine Lab where he led the Marine Robotics and Remote Sensing (MaRRS) Lab's coastal mapping research program. Justin has a master's degree in biological oceanography from Florida Institute of Technology and a PhD in marine science from UNC Chapel Hill where his research focused on North Carolina's sounds, examining growth of oyster reefs and their influence on saltmarsh sedimentation and erosion. Also, Jillian Daly joined the Reserve as the new Communications Specialist this week. Jillian is a recent graduate of UNC Chapel Hill with a BS in Environmental Science and a minor in Marine Science. The Reserve is also in the process of hiring a number of intern and seasonal positions in Beaufort and Wilmington. Undergraduate students will be working with us this summer thanks to support from Friends of the Reserve, the NC Internship Program, and NOAA's Education Partnership Program with Minority Serving Institutions. Students will work on stewardship and education projects, including Spanish translation of materials. More information about the available intern and seasonal positions is available on our website.

CRAC REPORT

CRAC Chair Bobby Outten stated the CRAC meeting focused on proposed amendments to the septic tank rules. After review of the rules and listening to staff's responses to comments received, there are two issues the CRAC would like the CRC to consider as they work on these amendments. 7H .0306(f) differentiates between moving septic tanks with private or public funding. The CRAC believes this creates unfairness. The goal is to get the tanks and drain fields off the beach regardless of where the money comes from. The second issue is in 7H .0306(g) there is an eight-year timeframe for removal of structures. Since septic tanks are being defined as structures can they remain in place for eight years like sandbags? We do not believe that is the intent of the CRC. Once the system fails, the structure should be removed. The CRAC asks that the CRC look at these two provisions. During the public comment session, an issue was raised

regarding notice of CRC proposals and actions to the public. For the remainder of the meeting, CRAC member John Farrell presented information on mapping and GIS tools that he has been using to complete his resiliency plans in Sunset Beach which may be useful tools for resiliency planning for our communities. The Real Estate Commission is looking at their disclosure rules and this is an opportunity to require better disclosure rules for oceanfront properties. The CRC could provide comments as these rules are being drafted. Spencer Rogers provided a time lapse of the inlet movement over time prior to our field trip to the terminal groin to provide some background on how the inlet has changed over time. Lastly, Bobby Outen stated that he serves on the NCBIWA board and there is interest in updating the BIMP (Beach and Inlet Management Plan) which is five years old and is not scheduled to be updated for another five years. The CRAC asks the CRC to support an update and promote funding for updating the BIMP.

Braxton Davis stated the Division supports updating the BIMP. Chair Cahoon asked that a letter be drafted on behalf of the CRC endorsing an update of the BIMP.

VARIANCES

Town of Carolina Beach (CRC-VR-22-06), oceanfront setback

Bryan Hall, Christy Goebel, Esq./Noel Fox, Esq.

Bryan Hall gave an overview of the site of the proposed development. Christine Goebel represented staff and stated Petitioner is the Town of Carolina Beach and is represented by Noel Fox. The Town owns much of the dry sand beach in the area of the existing boardwalk and central business district. The Town has received three variances from the Commission, including one each in 2014 and 2015 for two parts of the existing boardwalk and one in 2021 for the use of beach mats which allow wheelchair access along and across the dry sand beach. In September of 2022, the Town filed a CAMAM Minor Permit application with DCM seeking authorization for the development of a two-story bathhouse with accessible stalls and a larger footprint to replace the ground-floor single-story existing bathhouse. On October 4, 2022, DCM denied the Town's CAMA Minor Permit application as the proposed development does not comply with the static line exception rules setback. 15A NCAC 07H .0306(a)(9)(3). The Town is seeking a variance to develop the new bathhouse as proposed in their permit application. The Town is also seeking a waiver from the requirement to receive a local variance prior to filing a variance request with the CRC. Ms. Goebel reviewed the stipulated facts of the variance request and stated staff and Petitioner agree on all four statutory criteria which must be met in order to grant the variance. Noel Fox, representing Petitioners, reviewed the stipulated facts which the Town contends supports the granting of this variance request.

Phil Norris made a motion to waive the local variance criteria. Larry Baldwin seconded the motion. The motion passed unanimously (Bryan, Holman, Wills, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

Phil Norris made a motion 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. Sheila Holman seconded the motion. The motion passed unanimously (Bryan, Holman, Wills, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

Neal Andrew made a motion that Petitioner has shown that hardships result from conditions peculiar to the Petitioner's property. Angie Wills seconded the motion. The motion passed unanimously (Bryan, Holman, Wills, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

Neal Andrew made a motion that Petitioner has shown that hardships do not result from actions taken by the Petitioner. Phil Norris seconded the motion. The motion passed unanimously (Bryan, Holman, Wills, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

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

This variance request was granted.

**Town of Ocean Isle Beach (CRC-VR-23-01), straw bales as sand fencing
Brendan Brock, Christy Goebel, Esq./Brian Edes, Esq.**

Brendan Brock gave an overview of the sites of the proposed development. Christine Goebel represented staff and stated Petitioner is the Town of Ocean Isle Beach and is represented by Brian Edes. The Town owns six road-ends at issue at the east end of the Town which are used as beach access points. Following the Town's groin project, they covered existing sandbags with sand and planted vegetation at these six road-ends. Due to supply chain issues for traditional wooden sand fencing, the Town proposed to use hay and pine straw bales as sand fencing. In accordance with the Commission's rule at 15A NCAC 07H .0311, DCM coordinated with the Wildlife Resources Commission (WRC) and US Fish and Wildlife Service (USFWS) during the CAMA minor permit process. Both agencies raised concerns about the use of hay and pine straw bales as sand fencing. On June 6, 2022, DCM denied the Town's CAMA minor permit application based on those concerns about impacts to nesting sea turtles. The Town now seeks a variance to develop the sand fencing from hay and pine straw as proposed in their permit application. Ms. Goebel reviewed the stipulated facts of this variance request and stated that Staff and Petitioner agree on the third factor that hardships do not result from actions taken by the Petitioner, however, disagree on the remaining three factors. Brian Edes, representing Petitioners, reviewed the stipulated facts which the Town contends support the granting of this variance request. Mr. Edes added the Town agrees to remove the binding from the bales upon installation, post signage to be used to educate the public and indicate that this is a pilot project and submit monthly monitoring reports to the Division of Coastal Management.

Braxton Davis asked if the monitoring results are being provided to DCM, then DCM would provide the results to the WRC and USFWS, but questioned what are the triggers that would require removal?

Commissioner Bob Emory expressed concern that the Town did not meet with either WRC or USFWS. By rule, a consultation with resource agencies is required during permit review. Both

WRC and USFWS voiced concerns regarding the use of the bales as sand fencing and the CRC should not ignore their comments. The Commissioners discussed conditioning the variance to require the Town consult with the agencies and other experts to get information on best practices and requiring monitoring to document effectiveness. Commissioners Phil Norris and Bob Emory clarified that the consultation with WRC and USFWS was nonbinding with respect to monitoring conditions. Chair Renee Cahoon stated this could be a good alternative to traditional sand fencing that can injure visitors. She pointed out that we won't know if it works if we don't allow someone to try it.

Phil Norris made a motion that Petitioner has shown that strict application of the applicable development rules, standards, or orders issued by the Commission cause Petitioner an unnecessary hardship. The permit should be conditioned to require the Town to perform monthly monitoring as proposed by the Town and if any evidence is found to negatively impact sea turtles or protected species, the bales are required to be removed. Prior to issuance of the permit, the Town should consult with the agencies and other experts to hear their concerns and consider any recommendations provided. Neal Andrew seconded the motion. The motion passed unanimously (Bryan, Holman, Wills, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

Phil Norris made a motion that Petitioner has shown that hardships result from conditions peculiar to Petitioner's property. Larry Baldwin seconded the motion. The motion passed unanimously (Bryan, Holman, Wills, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

Larry Baldwin made a motion that Petitioner has shown that hardships do not result from actions taken by the Petitioner. Sheila Holman seconded the motion. The motion passed unanimously (Bryan, Holman, Wills, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

Phil Norris made a motion 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. Angie Wills seconded the motion. The motion passed unanimously (Bryan, Holman, Wills, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

This variance request was granted with conditions.

PUBLIC INPUT AND COMMENT

Prior to the start of the public input and comment session, Braxton Davis advised that if the Commission moves forward with Inlet Hazard Area amendments, today will not be the only opportunity to provide comments. Comments will be accepted during the fiscal analysis drafting, the 60-day comment period, as well as the public hearing. I have read every comment that has been received. Based on comments received regarding the fiscal analysis, the Division is updating the analysis to indicate a substantial economic impact. Several comments received stated that if a property is in an IHA insurance is impacted. I am not aware of any insurance forms that ask about IHA or increase rates based on a property's location within an IHA.

Another comment was received that stated beach nourishment is not allowed in Inlet Hazard Areas and that is not correct.

Justin Whiteside, Town of Ocean Isle Beach, commented regarding the age of the data being used to update the IHA. The data needs to be updated prior to implementation. Mr. Whiteside also commented in opposition to 7H .0308 which does not allow new dunes within the IHA.

Mark Robertson, Ocean Isle Beach Property Owners Association, commented on the Resolution submitted to the CRC opposing the IHA boundary update and the exclusion of the new terminal groin from the data.

Cherry Cheek, Ocean Isle Beach resident, commented in opposition to the IHA boundaries and setback factors within these areas. She stated that the Science Panel should update the boundaries, the public should be included in the process, and individual property owners should be notified.

Steve Johnson, Ocean Isle Beach resident, commented in opposition on the linear regression method used for the IHA boundaries, erosion rates, and setback factors.

Tom Myers, Holden Beach Property Owners Association President, commented on the Town's objection to the new IHA boundaries for Holden Beach. He further stated there is a checkbox on the elevation certificates regarding whether the property is within an Inlet Hazard Area. (Mr. Myers later contacted DCM to correct his public statement, indicating that he misread his elevation certificate and in fact there is no checkbox related to IHAs).

Barry Golob, Oak Island resident, commented in opposition to the new IHA update.

Daisy Ivey, Town of Ocean Isle Beach, commented on the benefits of the terminal groin and encouraged the CRC to continue to study the IHA maps and updates and to address comments prior to moving forward with the adoption of these rules.

Margaret Rudd Bishop, Oak Island Realtor, commented in opposition to the new IHA maps and stated individual property owners should be notified if they will be affected by changes and amendments of the CRC.

Toni Titone, Ocean Isle Beach resident, commented in opposition to the IHA proposals and asked the CRC to hold off on adopting the updates as proposed.

Todd Roessler, Kilpatrick Townsend, thanked DCM for revisiting the fiscal analysis for the IHA update and spoke in opposition to the boundaries of the IHA map updates from 2019 and asked the CRC to increase the size limit within the IHA from 2,000 square feet to 5,000 square feet.

Julie Youngman, Southern Environmental Law Center, commented in favor of the septic tank amendments.

PERIODIC REVIEW OF EXISTING RULES

Neal Andrew made a motion that the Commission go into closed session pursuant to NCGS section 143-318.11(a)(3) to consult with its attorney regarding possible legal options in response to the Rules Review Commission's February 22, 2023, continued objections to the CRC's rules adopted during the periodic review. Sheila Holman seconded the motion. The motion passed unanimously (Bryan, Holman, Wills, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

The Commission returned to open session.

PUBLIC HEARING

Amendments to 15A NCAC 7B State Guidelines for Land Use Planning – Enforceable Policies

Mike Christenbury

Mike Christenbury stated these amendments include increased flexibility for planning content and policy statements and will require local governments to clarify which of its policies exceed CRC rules and which policies the local government wishes to apply to CAMA permit reviews. The fiscal analysis was approved by OSBM and the CRC. There are no anticipated increased expenditures for the local governments. Comments will be accepted until March 20, 2023.

No comments were received.

Amendments to 15A NCAC 7K .0207 & 7H .0308 Structural Accessways – Beach Mats

Mike Lopazanski

Mike Lopazanski stated past approved amendments allowed local, state, and federal governments to use beach mats for public access, specifically to enhance handicap access. Additional amendments allow private property owners to use beach mats for accessways. The mats can be no wider than six feet and the current siting and use standards for accessways will also apply. These amendments also allow government entities to provide public access through the use of beach mats seaward of the vegetation line to enhance handicap access. A consultation with WRC and USFW would allow for the use without a variance from the CRC. The public comment period closes on March 20.

Ronda Kelly, Coast Home NC, spoke in favor of the use of beach mats for private property owners.

Amendments to 15A NCAC 7M .0600 Floating Structures Policies & 7H .0208 Piers and Docking Facilities – Floating Upweller Systems

Daniel Govoni

Daniel Govoni stated these amendments will add floating upweller systems to the floating structure policy and allow them within a permitted marina or private docking facility. Additional amendments consider floating upweller systems as platform and will be subject to platform and square footage calculations to minimize shading impacts. OSBM has approved the fiscal analysis for these amendments.

Keith Larick, North Carolina Farm Bureau Federation, commented in opposition to the amendments proposed regarding floating upweller systems. These systems are solely used for oyster farming, which is agriculture and should be exempt from CAMA permitting. Mr. Larick requested the CRC abandon rulemaking on this subject.

Jay Styron, shellfish grower, commented in opposition to the floating structure policy amendments. In support of the industry, these are one of the things the industry needs to grow. This is just another piece of equipment and DMF regulates equipment through the lease process. Duck blinds are not regulated and only require a permit in three counties, not CAMA permits. If FLUPSYs are a structure, then duck blinds are a structure and there should be equal application under the law.

BEACH MANAGEMENT

Additional Amendments and Fiscal Analysis for 15A NCAC 7H .0309, and .0310 – Inlet Hazard Areas (CRC 23-01)

Ken Richardson

Chair Cahoon stated the Commission has heard the comments from Ocean Isle Beach residents regarding the terminal groin. The groin has not been in long enough for the benefits to be evaluated. Commissioner Smith has asked questions regarding the linear regression methodology. These questions have been given to the Science Panel and the Chair of the Panel will provide an update at the April Commission meeting.

Ken Richardson stated today's discussion are for amendments to 15A NCAC 7H .0306, .0309, and .0310. These rules fall under the Ocean Hazard Area of Environmental Concern. The Ocean Hazard Area is comprised of four AECs: the Ocean Erodible Area are areas along the oceanfront; the Inlet Hazard Area are areas adjacent to inlets; the State Port Inlet Management Area are for the State's two deep draft inlets, the Cape Fear and Beaufort Inlets; and the Unvegetated Beach Areas is the only temporary AEC designated by the CRC when a storm event results in significant loss of vegetation, and a Measurement Line is established to serve as a temporary vegetation line until it recovers. All four AECs have been identified based on unique characteristics and or processes that have a predominate or significant influence of change over time. Statewide, inlets are where we see higher erosion rates due to rapid changes that can and do occur over very short periods of time, which is why IHA development rules have always had size and density limitations. Of these AECs, only the IHA and State Port Inlet Management Areas have a mapped landward boundary. The landward boundaries of the Ocean Erodible Area and Unvegetated Beach are measured from the vegetation line, pre-project vegetation line, or measurement line whichever is applicable. Regardless of the AEC, you can build. None of these AECs are considered no build zones. The ability to build or rebuild comes down to the ability to meet the setbacks, which has served as the foundation of the CRC's oceanfront rules since 1979. At the last two Commission meetings, staff presented additional public concerns with regards to rules specific to grandfathering and application of the small structure exception within the Inlet Hazard Area boundaries. I will be presenting proposed amendments that address those concerns. 15A NCAC 7H .0306 are current rules that include the existing grandfathering provisions. These rules apply to structures built prior to August 11, 2009, before the graduated setbacks went into effect, or all structures within a community that has an approved Beach Management Plan or an

unexpired Static Line Exception. 15A NCAC 7H .0309 is an existing rule that allows for the siting of new construction within the required setback area. The small structure exception is available to property owners whose lot was created before June 1, 1979, and cannot meet the current setback requirement. The key requirements of this rule are that structures be no greater than 2,000 square feet and must meet the minimum setback of 60 feet. Before the Beach Management Rules went into effect in August 2022, this did not apply to IHAs. 15A NCAC 7H .0104 was repealed last August and it offered the ability to site development within the required setback to property owners whose lot was created after June 1, 1979, and could not meet the required setback. Although the conditions are similar to those in 7H .0309, there were differences. These proposed amendments should address concerns with interpretation and application of existing and amended rules. Existing grandfathering rules in 7H .0306 apply to all AECs within the Ocean Hazard Area to include Inlet Hazard Areas. The small structure exception in 7H .0309 applies to all AECs except the Unvegetated Beach Areas, regardless of the erosion rate or when the lot was created. Regardless of the AEC, being able to meet the required setback is the primary condition that must be met in order to build or rebuild. Existing rules that pertain to grandfathering and exceptions to siting development within the setback are available to property owners inside an Inlet Hazard Area as well. New construction in an Inlet Hazard Area is limited to 5,000 square feet. This is an existing rule and does not override grandfathering rules for existing structures up to 10,000 square feet. There is a density limitation of one unit per 15,000 square feet of land area. This is an existing rule and does not require the property owner to have a minimum lot size, but setbacks are required. Since 1979, the erosion rate applied inside the IHAs have been tied to the erosion rate of the adjacent Ocean Erodible Area. For the first time, setbacks will be based on rates calculated for inlet. There are also new boundaries. The current boundaries were established in 1979 and have not been updated. Staff are currently working with the State Office of Budget and Management on the fiscal analysis. Both DCM and OSBM staff recognize that there is the potential for a substantial economic impact. Under the General Statute which governs the fiscal and regulatory impact analysis on rules, an economic impact over one million dollars in a 12-month period is considered substantial. This threshold is triggered whether it is a cost or a benefit. Staff are required to consider two alternatives for the Commission's consideration. Staff is seeking the Commission's guidance on three proposed alternatives: use updated IHA boundaries using inlet erosion rates and setbacks and the proposed amendments; use the updated IHA boundaries, apply the current OEA erosion rate setbacks but keep the current rules; or not use the updated boundaries and stop current rulemaking. Once the Commission advises staff on its preferred alternative, the fiscal analysis can be completed for OSBM review and then will be before the CRC for approval.

Following discussion, the Commission directed staff that alternative No. 1 as proposed, to use the updated maps and proposed amendments, is the preferred alternative for moving forward. By consensus, the Commission also agreed with the two additional alternatives to be used for the fiscal analysis preparation.

Phil Norris stated that during public input session, he heard multiple citizens complain that they were not aware of the Commission's work on this issue. How can we reach more property owners who may be affected by these changes? Ken Richardson stated that any proposed rule changes are published in the NC Register, on the Division's website, through the local newspapers in the affected area, through the Division's daily newsletters, and through press

releases. Anyone can subscribe to the daily newsletters for CRC related information to be delivered to their email inboxes. Ken encouraged local government officials to subscribe to the daily newsletters and push the information out to its citizens. Chair Cahoon added that the Division's PIO should be pushing this information out to local governments and local governments and CRAC members should be sharing the information with their communities. Sheila Holman stated that members of the public that care to be informed about changing regulations or any actions of the Commission should reach out to DCM to self-subscribe to the Division's Interested Parties list and daily news.

Earl Smith made a motion to approve Alternative #1 as the preferred alternative. Neal Andrew seconded the motion. The motion passed unanimously (Bryan, Holman, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

Proposed Amendments to 15A NCAC 07H .0306, .0309, and 7J .0210 – Septic Tanks Seaward of the Vegetation Line (CRC 23-02)

Mike Lopazanski

Mike Lopazanski stated this issue came to the forefront following the collapse of several structures along the National Seashore in the Rodanthe area. These collapses caused environmental impacts including a 15-mile debris field and hazardous materials being deposited along the Seashore. Damaged septic systems are creating a chronic issue. The Department of Health and Human Services, Environmental Health Division oversees the County's issuance of permits for septic tanks. They require that new or replaced systems be 50-feet from mean high water. New systems are subject to CAMA oceanfront setbacks and previous DEQ policy dictated that replacement of these systems is usually considered repair and is exempt from CAMA permitting. For septic relocations, the CRC's rules prohibit siting systems seaward of the primary structure. There have been recent replacements that occurred without relocating the primary structure. The septic systems in the Rodanthe area have been repeatedly damaged by moderate storms resulting in the discharge of sewage onto the beaches and into ocean waters. We have received input from DHHS on the draft rule and are using their suggested language which is focused on the replacement or relocation of structures associated with septic tanks and referencing the definition provided in the NC General Statutes. If a system can be repaired in place, then no CAMA permit will be required. If the structure is to be replaced or relocated, then the system will be subject to the siting criteria based on the public trust areas where the CRC has jurisdiction. If public funds are used to relocate septic systems, they are required to meet the oceanfront setback. If private funds are used, then the septic system is required to be landward of public trust areas or ocean beaches as defined in NC General Statute 77-20. Public trust areas are defined as wet sand areas subject to regular flooding and dry sand area subject to occasional flooding by tides, not to include flooding caused by hurricanes or tropical storms. Natural indicators of the landward extent of the ocean beaches include the first line of stable and natural vegetation, the toe of the frontal dune, and the storm trash line.

Braxton Davis stated based on the comments that the Division has received while working on these amendments as well as the discussion by the CRAC regarding the provision for private versus public funding should be revisited. The goal is to remove failing septic tanks from the public trust beach regardless of the funding source. Staff would request bringing additional amendments back to the Commission in April.

PERMITTING

Electronic Permitting Update

Gregg Bodnar

Gregg Bodnar stated our e-permitting system combines the traditional paper-based application process for Major and General permits with multiple databases including CDAITS, enforcement and compliance and enforcement, public information requests, and complaints. From the portal, the applicant registers, designates an agent if applicable and the application is filled out electronically. The application is broken down into development activities such as bulkheads, piers, living shorelines, etc. This allows staff to provide data on specific development activities based on specific counties or water bodies. From the internal DCM dashboard, staff can access all relevant information associated with a permit file. Review agencies can upload documents, provide comments, and search for projects or comments within the system. Agencies can also download documents from the system for their own databases. All data is saved on the cloud. The rollout began in January 2023 to selected agents and was announced through a press release on January 11. We currently have four major permits in process and seven pending submittals. The use of tablets by field reps is in the testing phase. This will allow field reps to document all the information into the system and issue a General Permit from the field. The application has been streamlined to ask targeted questions concerning the applicant's specific project which means applicants no longer have to fit their project onto static forms. The applicant's past and existing projects are available on the portal which will ease the process of requesting a modification or renewal through the online option. Data within the system is no longer confined to the office in a paper file which allows field reps to enter and access data in the field which will reduce response time. Templates and a streamlined Dynamics system reduces staff efforts by automatic generation of memos, acknowledgement letters, and circulation to agencies which will reduce time for processing and handling applications and will reduce costs associated with paper copies, printing, and postage. The online system also offers an online credit card payment option. The costs to the applicant are \$3.95 per Visa transaction or 2.65% of the transaction for non-Visa cards.

ACTION ITEMS

Consideration of Approval of Fiscal Analysis – 15A NCAC 07H .0305 – Proposed Minimum Growing Season for Planted Vegetation and Oceanfront Setback Determinations (CRC 23-04) Mike Lopazanski

Mike Lopazanski stated the first line of stable and natural vegetation is defined in 15A NCAC 7H .0305. The first line of vegetation is the reference point for measuring oceanfront setbacks and is the boundary between the dry sand beach subject to waves, tides, storms, and the more stable upland area. This line is determined by DCM field reps and Local Permit Officers based on visual observation of plant composition and density. Planted vegetation is considered stable when there are continuous rhizomes, mature plants are observed, additional native species have moved in, and rhizome density is similar to adjacent areas. The Division encourages the planting of vegetation, but some oceanfront property owners attempt to re-establish vegetation for a more favorable oceanfront setback by aggressively watering and fertilizing. DCM staff and LPOs receive repeated calls from property owners requesting multiple determinations. Staff have found that it typically takes 16-18 months before planted vegetation becomes stable and natural. This timeframe has been confirmed by local vegetation specialists. The fiscal analysis indicates that staff and LPOs receive approximately 20-80 requests per year with multiple requests to the same

property. These amendments, to require a minimum time to pass before another determination is available, will provide predictability for property owners and decrease staff and LPO workloads by making multiple trips. Staff are asking for the CRC's approval of the fiscal analysis for public hearing.

Neal Andrew made a motion to approve the fiscal analysis for public hearing. Sheila Holman seconded the motion. The motion passed unanimously (Bryan, Holman, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

LEGAL UPDATES

Update on Litigation of Interest to the Commission (CRC 23-06)

Mary Lucasse updated the CRC on active litigation and any actions since memo CRC 23-06 was distributed. Fonvielle v. CRC COA22-742 is calendared for oral argument at North Carolina Central University Law School in Durham. The Commissioners are welcome to attend the oral argument.

OLD/NEW BUSINESS

Consideration of Resolution from Stakeholder Engagement for Collaborative Coastal Habitat Initiative

Bob Emory stated a copy of the Resolution was provided to you for review. This Resolution will go to all three environmental commissions and the MFC adopted it at their last meeting. In the recent update of the CHPP, there was a goal of more stakeholder engagement. This Resolution calls for the State to use one-time and recurring funding to provide cost-share options to use Best Management Practices. Larry Baldwin stated this Resolution targets smaller projects.

Bob Emory made a motion to adopt the Resolution supporting stakeholder engagement for the Coastal Habitat Protection Plan. Sheila Holman seconded the motion. The motion passed unanimously (Bryan, Holman, Wills, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

Chair Cahoon made the following committee assignments:

Coastal Habitat Protection Plan: Bob Emory, Larry Baldwin

Third Party Hearing Request Review Committee: Sheila Holman, Bob Emory, Larry Baldwin, Angie Wills, Christy Goebel, Mary Lucasse

CRC Executive Committee: Neal Andrew (Vice-Chair), Sheila Holman (2nd Vice-Chair), Phil Norris, Lauren Salter, Renee Cahoon

On the recommendation of the CRC Science Panel Chair, Chair Cahoon nominated Dr. Jim Long, of UNCW, to the CRC's Science Panel on Coastal Hazards.

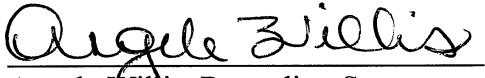
Larry Baldwin made a motion to appoint Dr. Long to the CRC's Science Panel. Bob Emory seconded the motion. The motion passed unanimously (Bryan, Holman, Andrew, Emory, Baldwin, Cahoon, Smith, Salter, Norris).

Chair Cahoon stated other states are looking at innovative ways to mitigate sea level rise and the disappearance of salt marshes. She asked staff to look at new technologies that could be used in North Carolina to combat these losses and bring any recommendations back to the Commission for consideration. Chair Cahoon stated the next scheduled meeting of the CRC will be April 25-26 in Manteo.

With no further business, the CRC adjourned.

Respectfully submitted,


Braxton Davis, Executive Secretary


Angela Willis, Recording Secretary