

NC COASTAL RESOURCES COMMISSION (CRC)

February 27-28, 2019

**The History Place
Morehead City**

Present CRC Members

Renee Cahoon, Chair

Larry Baldwin, Vice-Chair

Robin Smith, Second Vice-Chair

Craig Bromby

Rick Catlin

Trace Cooper

Bob Emory

Robert High

Doug Medlin

Phil Norris

Russell Rhodes (absent 2/28/19)

Lauren Salter

Jamin Simmons

Present CRAC Members

Greg "Rudi" Rudolph, Chair

Spencer Rogers, Vice-Chair

Candy Bohmert

Jett Ferebee

Frank Heath

David Kellam

Ike McRee

Mike Moore

Kris Noble

Dave Weaver

Present from the Office of the Attorney General

Mary L. Lucasse

Present from the Department of Environmental Quality, Office of the General Counsel

Christine A. Goebel

CALL TO ORDER/ROLL CALL

Renee Cahoon called the meeting to order at 1:15 p.m. on February 27, 2019 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. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called. Chair Cahoon stated she knows the attorney representing the Lampley's in their variance request, however does not believe there is a conflict of interest. Doug Medlin stated he will recuse himself from the unvegetated beach designation for the Town of Surf City and the associated measurement line delineation (CRC 19-06). Based upon this roll call Chair Cahoon declared a quorum.

VARIANCES

Lampley (CRC VR-18-05), Perquimans County, 30' buffer

Lynn Mathis/Christy Goebel, Esq. and Charles Evans, Esq.

Lynn Mathis gave an overview of the property. Christy Goebel is present and represents staff. Charles Evans is present and represents Petitioners. Ms. Goebel stated Petitioners own property at 108 Virginia Court in Hertford, NC. The property is located within the Commission's Public Trust Shoreline of the Coastal Shorelines AEC. During a site visit related to CAMA permits for a bulkhead and docking facility in 2017, DCM staff discovered an unauthorized paver patio and fire pit within the Commission's 30' buffer and initiated enforcement proceedings. Petitioners sought a procedural variance to proceed without restoring the site and a variance from the 30' buffer rule to allow the patio and fire pit to remain. Ms. Goebel reviewed the stipulated facts of the variance request and stated Petitioners and staff disagree on all four statutory criteria which must be met to grant the variance.

Charles Evans, represented Petitioners and reviewed the stipulated facts which Petitioner contends supports the granting of the variance request.

Larry Baldwin made a motion to approve a procedural variance to allow the variance to be heard. Jamin Simmons seconded the motion. The motion passed unanimously (Catlin, High, Rhodes, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter, Medlin).

Robin Smith made a motion that Petitioners have not shown that strict application of the applicable development rules, standards, or orders issued by the Commission will cause the Petitioner an unnecessary hardship. Bob Emory seconded the motion. The motion passed with eleven votes in favor (Catlin, High, Bromby, Cooper, Smith, Cahoon, Emory, Norris, Simmons, Salter, Medlin) and two opposed (Rhodes, Baldwin).

Bob Emory made a motion that Petitioners have not shown that hardships result from conditions peculiar to the Petitioner's property. Trace Cooper seconded the motion. The motion passed with eleven votes in favor (High, Rhodes, Bromby, Cooper, Smith, Cahoon, Emory, Norris, Simmons, Slater, Medlin) and two opposed (Catlin, Baldwin).

Craig Bromby made a motion supporting staff's position that Petitioners' hardships result from actions taken by the Petitioners. Bob Emory seconded the motion. The motion passed with twelve votes in favor (Catlin, High, Rhodes, Bromby, Cooper, Baldwin, Cahoon, Emory, Norris, Simmons, Salter, Medlin) and one opposed (Smith).

Bob Emory made a motion that Petitioners have not shown the variance requested 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. Lauren Salter seconded the motion. The motion passed with nine votes in favor (Rhodes, Cooper, Smith, Cahoon, Emory, Norris, Simmons, Salter, Medlin) and four opposed (Catlin, High, Bromby, Baldwin).

This variance request was denied.

Hatch (CRC VR 19-01), Town of Duck, oceanfront setback

Ron Renaldi/Christy Goebel, Esq. and Pro se

Ron Renaldi gave an overview of the site. Christy Goebel was present and represented staff. Mr. and Mrs. Hatch were present and represented themselves on the variance request. Ms. Goebel stated Petitioners own property at 131 Buffell Head Road in Duck. The property is located within the Commission's Ocean Hazard Area AEC. This area of Duck is subject to the static line following a large-scale beach nourishment project in 2017. In January, Petitioners applied for a CAMA Minor Permit to replace all of the existing decking on their house within the same footprint, including approximately 700 square feet of decking waterward of the 60-foot setback from the static line. The Town of Duck's LPO denied the permit application as the proposed replacement deck does not meet the applicable 60' setback from the static line and does not meet the setback exception under 15A NCAC 7H .0309. Petitioners are requesting relief from the oceanfront setback rules so they can replace the existing structurally attached decking waterward of the setback as proposed.

Mrs. Hatch reviewed the stipulated facts which Petitioners content support the granting of the variance request.

After discussion, the Commission, by consensus, deferred consideration of this request until the next meeting to allow Petitioners to determine whether they could qualify for an exemption under 15A NCAC 07K .0103.

COMMISSION & INTERAGENCY MATTERS

Coastal Habitat Protection Plan (CHPP)

Jimmy Johnson, DEQ

Jimmy Johnson stated North Carolina is the only state in the nation that has a habitat plan for coastal habitats as it pertains to fisheries. This plan was part of the Fisheries Reform Act of 1997. The first plan was completed in 2004 by the Environmental Management Commission (EMC), Marine Fisheries Commission (MFC) and the Coastal Resources Commission (CRC). The statute specifies what is to be included in the plan and states that the plan should be reviewed and updated on a five-year cycle. The goal is the long-term enhancement of coastal fisheries by addressing habitat and water quality needs of fishery species. The CHPP is a resource document and guide and is organized to aid DEQ divisions and commission in the management of fish habitat and water quality. The CHPP is organized in to three main sections: habitats; threats; and recommendations. Implementation plans are developed by division staff and the CHPP Steering Committee. The CRC has two members on the CHPP Steering Committee and they serve as the liaison to share information on ongoing implementation actions. There are six habitats identified in the CHPP and the Plan addresses declining fish stocks, oyster disease and increasing shellfish harvest closures. The Plan was written with four specific goals in mind. Each of these goals has specific recommendations for the agencies to work towards. Some recommendations fall primarily on one agency or Commission while others involve multiple agencies. Some of the recommendations that most directly relate to the CRC are to ensure compliance with permits and rules. The DMF Marine Patrol is being cross-trained to look for CRC/CAMA violations. The CRC is also involved with the improvement of the management and estuarine and public trust shorelines and shallow water habitats by revising shoreline stabilization rules. The key focus areas from 2016 were oyster restoration, living shorelines, sedimentation, and developing metrics

for trends. Oyster restoration can be large scale as when DCM creates oyster sanctuaries, or on a smaller scale as when living shorelines are constructed to control erosion. Both help with water quality and filtering pollution. Fishermen have been voicing an increasing concern about water quality. There have been large algal blooms in the Chowan and Cape Fear Rivers with toxic blue-green algae repeatedly occurring. The blue crab mortality is associated with hypoxic events and pesticide runoff. Hurricane Florence had a severe impact on oysters in the Pamlico Sound and fish in the coastal river systems. The updated CHPP was adopted in the first half of 2016 and the 2018-2020 implementation plan was presented and approved by the three commissions. Many of the actions in the implementation plan call for collaborative research and outreach to the public.

Science Panel Overview and Membership (CRC 19-01)

Mike Lopazanski

Mike Lopazanski stated beginning with Hurricane Fran in 1996, the state experienced five federally declared disasters. In 1997, governor Hunt formed a Disaster Recovery Task Force to assist in the state's recovery efforts. Included in their recommendations were the Commission's hazard mitigation rule particularly focusing on the Ocean Hazard AEC and the methodology for calculating erosion rates and the application to setback requirements. The Commission began addressing the recommendations by reviewing the Ocean Hazard Area AEC. DCM assembled a panel discussion and the panelists recommended re-examining the erosion rates, setbacks, and the methodologies used in these evaluations. They also recommended establishing a Barrier Island Erosion Task Force that could have regular involvement with the CRC. The Commission discussed the need to further incorporate science into their decision making. It was believed that a Science Advisory Task Force could fulfill this need in an ongoing fashion with direction from the Commission. In establishing a Science Advisory Task Force, the Commission wanted scientists that were actively involved in coastal research, understood the coastal program and the rules of the Commission. They also saw the need for a specific charge to provide guidance as to the type of information the CRC was seeking. This was the manner in which the Commission believed they could bridge the gap between science and policy. The advisory panel was officially named the CRC's Science Panel on Coastal Hazards. The original members were assembled by DCM staff in consultation with the Commission. This Panel was comprised of coastal geologists and engineers. Over the years, the Science Panel has developed recommendations that have been incorporated into the CRC's rules and policies as well as influence the methodologies utilized by the Division to address coastal hazards. The Commission continues to look to the Science Panel for recommendations and technical guidance on a number of projects and issues. In 2013, The CRC updated and revised the charge to the Panel. Currently, all the seats on the Panel are technically open since each member has served for longer than four years. DCM has asked the current members if they are still interested in serving. DCM will solicit nominations and the CRC Executive Committee will review and make recommendations to the full Commission. The CRC Chair could name all members by the July 2019 CRC meeting.

Inland Waters Boundary and CRC Jurisdictional Areas

Gordon Myers, Exec. Director NC Wildlife Resources Commission

Gordon Myers stated the General Statutes establish definitions for inland and joint coastal fishing waters. In accordance with the Statute, the WRC and MFC have joint responsibility to agree on the dividing line between inland and coastal fishing waters as well as any designations

for joint fishing waters. These rules are currently under review as part of the Periodic Review of all existing rules, mandated by the General Assembly. There are currently waters that are designated as inland or coastal that do not align with the statutory definition. It is likely that some of these boundaries will change. Inland fishing waters are defined as all inland waters, except private ponds, and all waters connecting with or tributary to coastal sounds or the ocean extending inland or upstream from the dividing line between coastal fishing waters and inland fishing waters. The CRC's rules, as related to the establishment of estuarine shoreline as well as public trust shorelines, by reference utilize inland and coastal fishing waters. If these boundaries change, there is the potential that regulations could see a significant shift.

LEGAL UPDATES

Discussion of "Unnecessary Hardship" in Variance Criteria (CRC 19-02)

Mary Lucasse

Mary Lucasse stated a variance allows a landowner to use or build on land in a way prohibited by strict application of a zoning ordinance if certain conditions are met. It provides a means for a landowner to seek relief when the hardship imposed on an individual parcel of land outweighs the public benefit sought by the regulation and is out of proportion to the hardship shared in common with other property owners who also benefit from the restrictions. The ability to issue a variance has been described as a "safety valve" which waives strict application of the zoning ordinance without sacrificing its spirit and purposes. The purpose of the variance process is to provide flexibility and to prevent practical difficulties and unnecessary hardships resulting from strict interpretations of zoning ordinances. The best practice is to avoid rezoning by variance. Variances should only be granted in exceptional cases. If similar variance requests relating to a particular rule are often granted, then the best practice is to consider revising the rule. Zoning ordinances limit what property owners can do with their property within zoning districts. These restrictions are compensated for by similar restrictions on neighboring property. Such hardship, consistent with the hardship imposed on all other pieces of property in the district does not support the granting a variance. To be considered an unnecessary hardship, a hardship must be different in kind from those generally affecting properties in the same district. CAMA provisions impose some degree of hardship on all property within the twenty coastal counties. Restrictions are imposed for the purpose of protecting life and property. As long as the hardship is imposed on all similarly situated properties then it would not provide grounds for a variance. Each variance request is considered on a case-by-case basis on the evidence presented. An unnecessary hardship occurs if the restriction when applied to the property is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership. Such interference with property ownership can result from restrictions that prevent a property owner from making a reasonable use of the property consistent with the uses made of similarly situated property. A variance can only be granted when the petitioner has established all four of the variance criteria and it is the petitioner's burden to provide evidence and argument that support the granting of the variance. Pecuniary loss is a factor to be taken into consideration and should not be ignored. But financial loss alone is not enough to show an unnecessary hardship. In cases where strict application of the rules does not accomplish the policy objectives and goals, or does little to accomplish them, the resulting hardship may be unnecessary. The concept of unnecessary hardship contemplates that the strict application of CAMA would impose an unequal burden on the property and prevent reasonable use of the property. By listing other specific concepts in the second, third, and fourth factors in the statute, the legislature alerted the

Commission to additional factors which if not found would result in the conclusion that the hardship caused by strict application is necessary.

Consideration of Request: Delete the Riggings' Variance Reporting Condition (CRC 19-03)
Mary Lucasse

In December 2018, the Riggings Homeowners Association submitted its third annual report update as required under the terms of the variance issued by the Commission in 2015. In that update, the Riggings HOA requested that the Commission revise the variance and remove the annual reporting requirement given the NC General Assembly's revisions to N.C. General Statute 113A-114(c1).

Larry Baldwin made a motion to revise the 2015 CRC decision by removing the annual reporting requirement. Rick Catlin seconded the motion. The motion passed unanimously (Catlin, High, Rhodes, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter, Medlin).

Update on Litigation of Interest to the Commission (CRC 19-11)

Mary Lucasse

Mary Lucasse reviewed all active cases of interest to the CRC.

CHAIR COMMENTS

Chair Cahoon presented Steve Benton, Science Panel member, with a certificate of service and thanked him for his contributions to the State. Chair Cahoon also presented Frank Jennings, DCM District Manager, with a certificate of service and thanked him for his personal touch in dealing with the citizens of the Elizabeth City District.

MINUTES

Bob Emory made a motion to approve the minutes of the November 2018 Coastal Resources Commission meeting. Doug Medlin seconded the motion. The motion passed unanimously (Cahoon, Baldwin, Bromby, Catlin, Cooper, Emory, High, Medlin, Norris, Rhodes, Salter, Simmons, Smith).

EXECUTIVE SECRETARY'S REPORT

The Division of Coastal Management is off to a busy, but good, start to 2019. On the regulatory side, during the final six months of 2018, permit numbers were very close to the final six months of 2017. Seventy-Two Major Permit decisions were made, which was within one of the number from the last six months of 2017. The average processing time for Major Permit decisions was 74 days, which is also on par with the same measure from 2017, which was 73 days. 1,260 General Permits have been issued during last six months of 2018. This number represents a significant increase relative to the 857 General Permits issued in the last six months of 2017. This increase is mainly due to recovery efforts following Hurricane Florence. To date, staff have issued approximately 500 Emergency General Permits, with the highest number in the MHC district followed by Wilmington. Notable permit actions since your last meeting in late November include: The issuance of a CAMA Major Permit to the Town of Sunset Beach authorizing the dredging of portions of Mary and Turtle's Creeks; the issuance of a CAMA Major Permit to the Town of Sunset Beach authorizing the construction of a living shoreline

project adjacent to a Town park; the issuance of a CAMA Major Permit to Brunswick County for the construction of the Brunswick Waterway Park near the Town of Holden Beach; and the issuance of a CAMA Major Permit to the Town of Beaufort for improvements to a community boat ramp facility.

OCS Update

Next I wanted to provide an update on offshore energy issues. On November 30, 2018, NOAA-NMFS issued five Incidental Harassment Authorizations (IHAs) to 5 G&G companies who have proposed extensive and overlapping seismic surveys in the mid and south Atlantic region. On December 11, 2019, two lawsuits were filed against NOAA challenging the IHAs, including one group of national non-governmental organizations (represented by the Southern Environmental Law Center) and one group of South Carolina municipalities and the NC Coastal Federation (represented by the SC Environmental Law Project). The basis of their challenges included violations of the Marine Mammal Protection Act, the Endangered Species Act, the Administrative Procedures Act, and the Outer Continental Shelf Lands Act. These two cases were filed in Federal District Court in Charleston and were consolidated. North Carolina, through Attorney General Josh Stein, joined a group of most of the other Atlantic States successfully filed a motion to intervene in the consolidated cases. BOEM has not yet issued its permits for this seismic testing, but these could be issued at any time. The 2019-2024 National OCS Oil and Gas Leasing Proposed Program and Draft PEIS is anticipated to be released soon with a 90-day comment period. It is not yet known if NC will continue to be part of the Proposed Program. If it is, proposed lease areas could be identified this summer/fall with possible lease sales to follow as soon as the fall/winter.

FEDERAL BUDGET

The House and Senate approved, and the President signed, a spending bill this month that allocates \$75.5M for state coastal management programs under the federal CZMA. This is a \$500,000 increase over FY18 levels. At this time last year, and again this year, the President's budget zeroed out the funding for state coastal programs. NC's congressional delegation has been supportive of the national coastal management program and we continue to appreciate their support.

POLICY & PLANNING

Resiliency Efforts

The Division has been involved in resiliency efforts at several levels. The Division's vision for coastal climate resiliency is the State of North Carolina working to adapt to extreme events and long-term risks. DCM is working to increase adaptive capacity at the state and local levels, to ensure that all coastal communities attain a minimum level of planning, preparedness, risk assessment, and recovery capability. Tancred Miller has been leading our resiliency efforts, along with Christian Kamrath. DCM is also participating in state-level recovery and resiliency efforts, representing DEQ on the Climate Interagency Council created under Governor Cooper's Executive Order 80, and bringing coastal issues and solutions to the Council in the preparation of the State Climate Risk Assessment and Resiliency Plan.

Planning and Management Grants

DCM has awarded a total of \$75,000 in grants to four coastal local governments for local planning and management projects that will help them prepare for hurricanes, storms and growth through the CAMA Planning and Management Grant Program for the current 2018-19 fiscal year. The Division has utilized a portion of its federal funding from NOAA to support local land-use planning and management projects in the state's 20 coastal counties for the past three years. As in previous years, these grants support projects that are expected to further local implementation of the CRC's management goals and planning objectives for the natural hazards management topic [See 15A NCAC 07B.0702(d)(2)(D)(i) and (ii)] and/or to address local issues specific to storm recovery. Projects funded include:

- Beaufort County received \$20,000 to address shoreline erosion along Wright's Creek.
- Duck received \$20,000 to assess the vulnerability of town structures and transportation systems to coastal hazards and sea level rise.
- Hyde County received \$15,000 for engineering projects related to the Swan Quarter flood control design project.
- Nags Head received \$20,000 for stormwater modeling that will be incorporated into the town's stormwater capital improvement plan.

Land Use Plans

The Division received three land use plan certification requests and one land use plan amendment requests under the recent delegation of authority from Commission. Pender County (Jan 3, 2019), and the Towns of Shallotte (Dec 5, 2018) and Sunset Beach (Jan 3, 2019) submitted LUPs for certification and the Town of Beaufort (Jan 10, 2019) submitted a land use plan amendment for certification since our last meeting. The Division found in all cases that:

- The plans met the substantive requirements outlined within your 7B Land Use Planning Requirements;
- There are no conflicts evident with either state or federal law or the State's Coastal Management Program; and
- The elected bodies of the Towns provided opportunity for the public to provide written comment following local adoption of the plan (as required by N.C.G.S. § 113A-110 and 15A NCAC 7B .0802 and .0803)
- For these reasons, the Pender County, Towns of Beaufort, Shallotte and Sunset Beach requests for certification of their land use plans were granted.

Public Access Grants Program

The Division's Planning Staff have completed the 2018 Public Beach and Coastal Waterfront Access Program grant process and the Governor's Office has announced awards of more than \$1.1 million to 13 local governments to improve public access to coastal beaches and waters for the 2018-19 fiscal year. The awards range from \$16,000 - \$187,000 and include projects such as boardwalks, public restrooms, kayak launches, urban waterfront revitalization and land acquisition. DCM has also notified local governments in the 20-county coastal area that grant funding is available for Public Beach and Coastal Waterfront Access projects for the upcoming 2019-20 fiscal year. Local governments are invited to apply for funding for projects that are anticipated to begin after November 2019 and to be completed in eighteen (18) months. DCM estimates that approximately \$1 million dollars will be available for public beach and coastal waterfront access projects in FY 2019-20. Pre-applications are due by April 22, 2019.

Coastal Reserves

The Reserve is working with the N.C. Coastal Federation, N.C. Sea Grant, and Onslow County Department of Solid Waste to develop and implement the NC Marine Debris Assessment Plan. Stakeholders are meeting today to provide input on the plan and to join workgroups to implement Action Plan strategies including preventing and removing consumer debris, fishing gear, abandoned/derelict vessels, and research needs. Coastal Training Program workshops focused on Living Shorelines reached over 80 real estate professionals, property owners, homeowner associations, marine contractors, engineers, landscape architects, planners, floodplain managers, and other professionals at 2 workshops held in Wanchese last week. Similar workshops will be held for the Brunswick Co. Association of Realtors March 25-26. The workshops focus on the benefits of using living shorelines for erosion control, permitting, and best practices for use of marsh plants and oyster shell in erosion control. Teacher and educator workshops will be held in Beaufort on April 2-3 and in Wilmington on May 14. Participants will receive content aligned with state and national education standards to support incorporation of estuary & watershed topics into classroom teaching. Teacher renewal credits and Environmental Education Certification credits are available for these workshops. Registration is required. Registration for Summer Science School, in partnership with the NC Maritime Museum in Beaufort, is open. Reserve education staff will lead programs for students in Preschool to 10th grade from June to August. Researchers from the Reserve and NC State just published a new study that integrated ecosystem services into models to improve oyster reef restoration by identifying areas that will maximize water filtration. The next edition of the Reserve's Tidal Flat newsletter is coming soon.

Staffing News

Brooks Surgan, field representative out of the Division's Wilmington office, left the Division earlier this year to move with his family out of state. We are in the process of posting his vacancy. We are pleased to announce two new additions to the DCM family. Buckridge Reserve Site Manager Woody Webster and his wife Katie welcomed son Peter in December. Kevin Hart, field representative in the Division's Washington office, and his wife Stephanie have a new baby boy, Liam, who was born January 17, 2019. Finally, Frank Jennings, District Manager in Elizabeth City, will be retiring at the end of March.

CRAC REPORT

Rudi Rudolph stated the Advisory Council held officer elections. I was re-appointed as Chair and Spencer Rogers remained Vice-chair. David Moye, former DCM employee and CRAC member, has expressed an interest in being re-appointed to the CRAC. The Council is supportive of this and requests the CRC to consider reappointment. Ken Richardson reviewed the Inlet Hazard Area rule amendments and Christian Kamrath provided a presentation on the new web portal for coastal resilience and adaptation.

COASTAL RESILIENCE INITIATIVES

Division of Coastal Management Resilience Initiatives

Tancred Miller & Christian Kamrath

Tancred Miller stated coastal resilience has been a priority to the Division for several years. Adaptation in coastal communities is the active management of resources or process in response to a long-term stressor or shock. Adaptation is doing business with the best information

available, knowing that the information will change in the future. Making decisions in this uncertain environment has always happened however, the challenge moving forward involves adapting to conditions that are changing at faster rates. Resilience is how well a community and the systems that it depends on can prepare for, withstand, and recover from short and long-term environmental changes. DCM has long supported communities with information sharing and network collaboration, directing technical assistance, and financial assistance through coastal resilience grants. DCM has recently completed a resilience evaluation and needs assessment for four North Carolina communities. The pilot project reports and story map are featured on the new website and efforts are ongoing in these communities. Governor Cooper signed Executive Order 80, Climate Risk Assessment and Resiliency Plan, in October. By March 1, 2020, the final plan must be delivered to the Governor for how the state as a whole will identify and address resiliency issues.

Christian Kamrath stated DCM will provide data, tools and resources to local governments as well as a road map that will guide communities through how and when to use the resources. We got a head start on EO 80 with a new website. This site is geared primarily to local government staff. There are six main categories on the website that will provide users with easy navigation to topics of interest. There is a link to the Sea Level Rise Report assessment, both short and long-term forecasts for water levels related to river and coastal flooding and potential impacts at designated stage areas as well as a one-stop-shop for the best hurricane monitoring tools. There are new tools from NOAA related to stormwater planning and adaptation identifying risk tolerance, education graphics, and guidance. The Nature Conservancy's portal integrates flooding hazard data and projections with community asset maps developed through DCM's pilot program. Along with links to the State's Hazard Mitigation offices, there is guidance to enhance the process beyond basic FEMA requirements that includes climate and social vulnerability factors and how to brainstorm ideas for implementation. Along with FEMA guidance and tools for NC Emergency Management, we included DCM's rebuilding FAQs and permitting checklist for local governments to use post-disaster. There are model flood ordinances, low-impact development fact sheets to address water quality issues, and community rating system guidance. Other guidance is provided on social vulnerability indices, best practices for climate adaptation planning, and shoreline management. There is also information on funding and assistance opportunities for coastal resilience. There are challenges moving forward such as coordination across disciplines and jurisdictions, assisting communities who face some of the greatest risks, but have the least capacity to address them, and balancing long-term planning and the uncertainty with short-term economic and political cycles. There are opportunities for leveraging resources and expertise at the regional level, harnessing energy and increasing awareness of the issues that caused recent events, and using recovery dollars to address acute and chronic issues with consideration of future conditions. Two regional resilience workshops for local governments are scheduled for May 2 in Elizabeth City and May 14 in Wilmington. A Coastal Resilience Summit will be held in Havelock on June 11-12th.

National Climate Assessment – Overview

Doug March, NOAA

Doug Marcy stated this will be an overview of the National Climate Assessment which is part of the Climate Change Research Act which is the state of the science for climate change. We are seeing indicators of increases in ocean heating, more water vapor, and an increase in wave

energy and sea level rise. What is driving this is different amounts of heat-trapping gases released into the atmosphere by human activities that produce increases in Earth's temperature. This plot shows temperature observations versus modeled historical trends, and future projected trends based on a lower and higher emissions pathway (also known as RCPs). These climate scenarios show both best and worst case scenarios. The Coastal Effects chapter shows the effects of sea level rise on the coasts nationwide. Coastal environments are already at risk and the social challenges are intensified. As the Southeast region begins to see warmer temperatures, it will have an effect of urban infrastructure, cause an increase in health conditions, natural ecosystems will be transformed, and create an economic risk for rural communities. We will see an increasing flood risk for coastal and low-lying regions. Sea level change is a product of warming oceans. Sea level is not rising the same everywhere. Global sea level rise must consider oceanographic factors, gravity changes due to melting land-based ice, and vertical land movement. Land motion plays a big part. About 40% of local sea level rise is due to vertical land motion. The US Army Corps of Engineers has a sea level rise calculator that can show points and potential effects. We can use these scenarios to help prepare and plan. Critical thresholds are being reached more often. There is an increase in high tide flooding events. There has also been a heavy increase in precipitation events in most parts of the United States in both intensity and frequency. This trend is expected to continue to increase. This alone causes a problem for infrastructure and stormwater services. Then there are hurricanes and tropical cyclones which will be worse due to sea level rise. The economic risks will affect the national economy and not just the coastal areas. Resilience is a state of doing - of making our families and our communities better able to withstand and adapt to whatever is thrown our way. Communities need to focus on climate stressors, identify populations and locations that may be impacted by climate problems, compile a list of potential solutions, analyze costs and benefits, and implement a plan and monitor its progress. Despite the challenges, NOAA has demonstrated strategies to help communities overcome barriers to achieving resilience. There is a compelling need to effectively communicate risk and engage coastal communities.

BEACH AND INLET MANAGEMENT

Town of Wrightsville Beach Static Vegetation Line Exception Reauthorization (CRC 19-04) Ken Richardson

Ken Richardson stated the Town of Wrightsville Beach is required to request reauthorization of the static vegetation line exception initially approved by the CRC in 2009, and reauthorized in 2014. Since the initial authorization, only one Major CAMA development permit has been issued utilizing the exception. The Town has demonstrated a dedicated borrow site, regular maintenance of their beaches through nourishment, and dedicated funding for future maintenance. Staff recommends the Commission renew the static vegetation line exception for the Town of Wrightsville Beach. The next review is set for 2024.

Trace Cooper made a motion to renew the Town of Wrightsville Beach's static vegetation line exception for an additional five-year period. Bob Emory seconded the motion. The motion passed unanimously (Catlin, High, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter, Medlin).

**Inlet Hazard Areas – Consideration of Final Map Approval and Use Standards (CRC 19-05)
Ken Richardson**

Ken Richardson stated Inlet Hazard Areas are areas vulnerable to rapid change due to inlet related processes. NC's barrier islands include natural-hazard areas that are especially vulnerable to erosion, flooding, and other adverse effects of sand, wind and water because of their proximity to dynamic ocean inlets. These areas were initially delineated in 1978 (amended in 1981) using statistical analyses, and giving consideration to geomorphology, geological weaknesses, and human influences such as jetties and channelization. There are currently 19 active inlets in North Carolina, two are deep draft inlets and the other 17 are shallow draft inlets. Staff are proposing to remove six inlet hazard area designations and providing an update on ten inlet hazard areas (each inlet and its associated IHA update was illustrated in the PowerPoint presentation). The proposed Inlet Hazard Area expansion will include 136.1 acres of land not currently in the Ocean Hazard Area, 243 structures not currently in the Ocean Hazard Area, and 13 structures greater than 5,000 square feet not currently in the Ocean Hazard Area. The setback factors in each of these proposed Inlet Hazard Areas have also been calculated and updated by the Science Panel. Staff is proposing amendments to the rules to reference the new Inlet Hazard Area Report and remove the inlet hazard area boundary requirement. Rule 15A 07H.0304(1) references the oceanfront Long-Term Average Annual Erosion Rate report which defines the Ocean Erodible Area and setbacks. This would define the IHAs and setbacks within them. The Science Panel is recommending updating the IHA every 5 years to coincide with the oceanfront erosion rate & Ocean Erodible Area updates. This would include a more detailed analysis of the effect of including dates after construction of the AIWW but prior to 1970; the effect of various running averages in smoothing transect points alongshore; evaluation of more effective ways to establish inlet transects; and continuing evaluation of the effectiveness of IHAs in managing near-inlet development. Staff is seeking the Commission's approval of the Science Panel's proposed Inlet Hazard Area Update report and maps; inlet erosion rates and setback factors; proposed rule amendments to 15A NCAC 07H. 0304 (Ocean Hazard Areas), 15A NCAC 07H. 0306 (General Use Standards for OHA), 15A NCAC 07H. 0309 (Ocean Hazard Exceptions), and 15A NCAC 07H. 0310 (IHA Use Standards); and removing the IHA designation at Little River, Brown's, Bear, Barden, Ocracoke, and Hatteras Inlets.

Larry Baldwin made a motion to remove six inlets from the Inlet Hazard Area designations (Little River, Browns, Bear, Barden, Ocracoke, and Hatteras). Jamin Simmons seconded the motion. The motion passed unanimously (Catlin, High, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter, Medlin).

Bob Emory made a motion to approve the Inlet Hazard Area Report, the proposed inlet erosion rates and setback factors, and rule amendments for public hearing. Phil Norris seconded the motion. The motion passed unanimously (Catlin, High, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter, Medlin).

PUBLIC INPUT AND COMMENT

Renee McCullen, Topsail Island property owner, commented on the proposed Inlet Hazard Area map and the hybrid vegetation line for Topsail Inlet.

Mike Benson, Town of North Topsail Beach, commented on the proposed inlet hazard area for North Topsail Beach.

PUBLIC HEARING

15A NCAC 7J .0409 Civil Penalties

Mike Lopazanski gave an overview of the proposed amendments. No comments were received.

15A NCAC 7H .2700 Marsh Sills General Permit

Daniel Govoni gave an overview of the proposed amendments. No comments were received.

ACTION ITEMS

Consideration of Final Adoption of Temporary Rule 15A NCAC 7H .2700 General Permit for Construction of Riprap Sills for Wetland Enhancement

Daniel Govoni

Daniel Govoni stated staff is requesting the Commission adopt the temporary amendments to 15A NCAC 7H .2700.

Phil Norris made a motion to adopt the temporary amendments to 15A NCAC 7H .2701, .2704, and .2705. Craig Bromby seconded the motion. The motion passed unanimously (Catlin, High, Rhodes, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter, Medlin).

Consideration of Fiscal Analysis Approval of Unvegetated Beach Designation – Surf City & Measurement Line Delineation (CRC 19-06)

Daniel Govoni/Ken Richardson

***Doug Medlin recused himself from discussion and voting on this agenda item.*

These amendments include the designation of an unvegetated beach to areas in Surf City and North Topsail Beach. The fiscal analysis indicates that there will be no fiscal impact as a result of these rule amendments.

Craig Bromby made a motion to approve the fiscal analysis for the unvegetated beach designation for public hearing. Robert High seconded the motion. The motion passed unanimously (Catlin, High, Rhodes, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter).

Larry Baldwin made a motion to approve amendments to 15A NCAC 7H .0304 and 7H .0305 Unvegetated Beach Designation and Measurement Line Delineation. Rick Catlin seconded the motion. The motion passed unanimously (Catlin, High, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter).

Consideration of Fiscal Analysis Approval of Erosion Rates and Final Erosion Rate Report Approval (CRC 19-07)

Ken Richardson

Ken Richardson stated we calculate shoreline change rates to establish oceanfront construction setbacks, define the landward boundary of the Ocean Erodible AEC, and maintain credits for NFIP Community Ratings System. As per Rule 15A NCAC 7H .0304(1)(a), the default setback

factor is two when the shoreline is accreting, or eroding at a rate less than two feet per year. Based on results, 7,579 (86.4%) of existing structures adjacent to the Atlantic shoreline will experience no change in its development setback factor, while 984 (11.2%) oceanfront structures will experience an increase in construction setback factors. Amendments to 7H .0304 include a reference to the updated report. The fiscal analysis, approved by NC Office of State Budget & Management, indicates of the 8,777 oceanfront structures, approximately 89% will have no change (86.4%) or reduced setback factors (2.4%). 984 structures (11%) will see increased setback factors (range 0.5 to 3). There are no impacts to state or local government, NCDOT permitting, and no substantial economic impact. Staff is requesting approval of the North Carolina 2019 Oceanfront Setback Factors and Long-Term Average Annual Erosion Rate Update Study; amendments to Rule 15A NCAC 07H. 0304 to reference the report, and approve fiscal analysis.

Trace Cooper made a motion to approve the fiscal analysis for the final erosion rate report. Robin Smith seconded the motion. The motion passed unanimously (Catlin, High, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter, Medlin).

Phil Norris made a motion to approve amendments to 15A NCAC 7H .0304 for public hearing. Jamin Simmons seconded the motion. The motion passed unanimously (Catlin, High, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter, Medlin).

CRC RULE DEVELOPMENT

NC Shellfish Leasing Program

Jacob Boyd, DMF

Jacob Boyd stated the history of shellfish leasing in North Carolina dates back to 1858 which involved traditional bottom leases only. The first water column lease was issued in 1991. The North Carolina Division of Marine Fisheries administers the shellfish leasing program through the Habitat Enhancement section for the purposes of shellfish cultivation, aquaculture, and mariculture. The minimum standards to acquire a shellfish lease include being a North Carolina resident, finding a site suitable for the culture/harvest of shellfish in commercial quantities, individual lease area is between one half an acre and ten acres, cannot have a cumulative interest in more than 50 acres. There are other permits that are required for various aquaculture activities at no cost including Polluted Area Relay, Seed Oyster Management Area, Mechanical Methods/Harvest, Aquaculture Operations Permit, Introduce, Transfer, or Hold Imported Marine and Estuarine Organisms, and Under the Dock Permit. There are numerous steps for a shellfish lease application. We attempt to educate applicants before the process to help them understand the process. Applications are accepted from March 1 through September 30 of each year and shellfish lease site investigations are conducted from April to October to coincide with the SAV growing season. Some markers or gear may require additional permitting. DCM has determined that FLUPSEYs are exempt from CAMA permitting if they are located within a DMF-approved lease. There are several types of leases. The first is a shellfish bottom lease. Bottom leases can either be used extensively or intensively. The second type of lease is a shellfish water column lease which is entirely intensive. Each lease requires a signed contract which includes fees and production requirements. Production requirements are higher for water column leases. There has been a 3,200% increase in applications from 2011-2018. The benefits from increased interest in

mariculture including ecosystem services, spawning potential, and support for working waterfront communities. Some of the problems associated with the increased interest include spatial planning, vague legal standards, navigation issues, and marking requirements.

Amendments to 15A NCAC 7K Exemptions – Shellfish Leases (CRC 19-08)

Jonathan Howell

Jonathan Howell stated that following work with DMF to look at the existing process, DCM decided it could best contribute to the application process by determining the appropriate proximity to the marsh, looking at the 1/3 width calculations, and providing comments as a review agency. To address public trust concerns, DCM provides the following comments on all shellfish lease applications, “the Division requests conditions stating that no attempt shall be made by the lessee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized lease.” The Division also provides comments to address navigation and safety and concerns regarding the location of this lease. Prior to commenting, DCM reviews past and present aerial photography at the lease location. If it appears the lease may be blocking the minimal deep water access to the cove in which this lease would be positioned, the Division would recommend that the Division of Marine Fisheries confirm the location of the natural channel to ensure this lease does not cut off access to the cove. To ensure there is no hazard to navigation associated with the lease, at a minimum, permanent reflectors or reflective tape shall be attached to any pilings or other markers associated with this lease to make them visible during hours of darkness or inclement weather. Coastal Wetlands are an Area of Environmental Concern as designated by the Coastal Resources Commission and are regulated under 15A NCAC 07H .0205(c). This rule states in part, “it is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands”. To meet this objective, the Division has historically conditioned permits that would have a prop wash effect on coastal wetlands. Therefore, the Division requests a condition for leases requiring a 20’ buffer be maintained between any part of the structures associated with the lease and the adjacent coastal wetlands in order to ensure there is no degradation of the coastal wetland species caused by prop-wash or other activities associated with the working of the leased area. Something new to consider are floating upweller systems. Presently, there is no limit to the number or size. Another topic we discuss frequently is pilings and whether they should be exempt on a lease. DCM defines pilings as larger than 4” in diameter. They can be used in some of the growing methodologies like the Lentz system, but may cause concerns about navigational safety and aesthetics. Also, if they are exempt under your rules, over time there is no limit to the number that can be placed on a lease. This is an example of things that are taking place in our estuarine waters. This is the language of the proposed exemption rule language. With this language, we hope to provide some clarity and define exactly when a permit will be required versus using the application process to detail permit requirements. Notice there is no language in this exemption related to navigation. This is due to coordination between the two agencies and existing statutes of DMF stating a lease cannot block navigation. The proposed lease will be exempt from CAMA permitting as long as no posts are greater than 4” in diameter, floating platforms are limited to floating upweller systems with no storage or staging areas, no wave baffles or other structures for wave attenuation, no docking facilities, slips, or fixed platforms, all gear shall be 20 feet from the waterward edge of any coastal wetland vegetation (cultch already excluded from development), no enclosed or roofed structures, and no shore-based electric, water or other utilities. Before moving forward with rulemaking, DCM will solicit input from shellfish growers on the proposed rule language and bring that input back to the Commission at a future meeting.

Major Permit Renewals (CRC 19-12)

Courtney Spears

Courtney Spears stated currently most major permits are active until December 31st of the third year following issuance. Any permits issued this calendar year will be active until December 31st of 2022. After that period, regardless of whether work has begun, a relatively automatic permit renewal can be issued when DCM receives a letter of request and a \$100 processing fee. The proposed rule change would essentially combine these processes to allow for an initial active period of five years from the date of issuance. Renewals after this period would be allowed, with a request letter and fee of \$100, as long as work has begun and is ongoing. This change would allow the applicant more time to complete the project, reduce staff workload, and make the active permit period more equitable. For example, under the current rule, permits issued in January 2019 and December 2019, would both expire at the end of 2022. This means some permits would be active for 10 months longer than others, just based on what time of year they're issued. The proposed rule change would mean that all permits would be active for a period of 5 years, or 60 months, which would allow all applicants a standard amount of time to complete projects. The proposed rule language would also acknowledge that publicly sponsored, multi-phased beach nourishment project areas designed to be implemented for a longer time period. Some of these projects are designed for a 30 or even 50-year timeframe and are reviewed as such in the permitting process. Given the proposed timeframe, the rule change would allow for an initial active period of ten years, with a proposed renewal period in ten year increments to allow for implementation of long range projects. While it may seem like a long implementation time period, these projects are reviewed for long term implementation and contain data to support the time frame of implementation. During the application process, all agency comments are thoroughly reviewed and the permit is conditioned to allow for reopening of the project if the terms of the permit are not being met. Many of these longer-term permits require monitoring reports, which combined with site visits and compliance checks, allow the Division to have oversight on these projects. Additionally, the State's Dredge and Fill Law allows for up to ten year authorizations, so this change in CRC rule language would be consistent with that Statute. An example of the re-opener clause would be in the Town of North Topsail Beach's nourishment permit. The borrow area they used turned up material that was inconsistent with the sediment criteria and they were required to remediate the issue and the borrow area was removed as an acceptable source of material in their permit. Where substantial work has begun, and is ongoing, as many two-year renewals as necessary would be allowed and up to 10-year renewals for maintenance of previously approved dredging projects. The re-circulation process was meant to be an expedient way to renew projects, but given the complexity of many of these larger projects, it would be unfair to expedite a complicated review over newly submitted major permit reviews. In summary, the proposed rule change would change the initial active period of most permits to 5 years, publicly sponsored nourishment and dredging projects would be active for 10 years, and it would remove the recirculation provision. Staff recommends sending this proposed rule change forward for public hearing. Staff will distribute these proposed changes to review and permit agencies for their comment.

Bob Emory made a motion to approve the rule amendment as presented, with (e) unstricken, for public hearing. Craig Bromby seconded the motion. The motion passed unanimously (Catlin, High, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter, Medlin).

Amendments to 15A NCAC 7H .1900 Temporary Structures General Permit (CRC 19-09)
Kevin Hart

Kevin Hart stated there has been recent increased interest in our estuarine waters. Not only an interest in structures, but also in manipulating the environment. The scale of these proposals range from a few poles to many square acres. Because many of these projects are time sensitive, the Major Permit process does not work. DCM wants to provide flexibility, but also wants accountability and the ability to address public trust and habitat issues. After hearing initial concerns from academia, we thought it would be valuable to meet with others in the research community to hear their concerns. Following a series of meetings in 2017, we also met with other state and federal regulatory and resource agencies in February 2019. We were interested in typical project size, duration, materials, and responsibility for derelict or abandoned gear. After discussion, DCM determined that modification to the existing temporary structure General Permit (7H .1900) would be the best fit. Amendments to the current General Permit would include identifying a responsible party, adding riparian notification, increasing the time frame up to 12 months, adding conditions to protect public trust, and reducing overall size to 100 square meters. Minor modifications will also be made to the language for consistency with other General Permits. DCM is requesting the CRC begin rulemaking process to modify NCAC 07H.1900 to include language and specific conditions related to research.

Robin Smith recommended the wording be changed to read, “permit will expire by date specified in the General Permit not to exceed one year.”

Larry Baldwin made a motion to approve amendments to 15A NCAC 07H .1900 with the requested change for public hearing. Craig Bromby seconded the motion. The motion passed unanimously (Catlin, High, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter, Medlin).

OLD/NEW BUSINESS

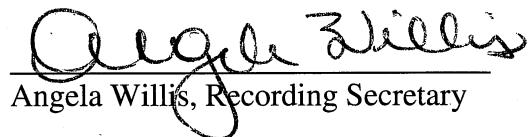
Bob Emory made a motion to appoint David Moyer to the Coastal Resources Advisory Council. Phil Norris seconded the motion. The motion passed unanimously (Catlin, High, Bromby, Cooper, Smith, Baldwin, Cahoon, Emory, Norris, Simmons, Salter, Medlin).

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary