

NC COASTAL RESOURCES COMMISSION (CRC)

July 17, 2019

NOAA/NCNERR Auditorium

Beaufort, NC

Present CRC Members

Renee Cahoon, Chair
Larry Baldwin, Vice-Chair
Robin Smith, Second Vice-Chair
Rick Catlin
Bob Emory
Robert High
Doug Medlin
Phil Norris
Lauren Salter

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 9:00 a.m. on July 17, 2019, reminding the Commissioners of the need to report any conflicts in accordance with 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. Commissioners Craig Bromby, Trace Cooper, Russell Rhodes, and Jamin Simmons were absent. Commissioners Emory and High stated they were familiar with the Petitioners in the variance request but did not have a conflict of interest. Based upon the roll call, Chair Cahoon declared a quorum.

CHAIR'S COMMENTS

Chair Cahoon thanked the current and former members of the Commission for their service to the State. The Chair also recognized DEQ Assistant Secretary Sheila Holman and thanked her for attending Commission meetings.

MINUTES

Larry Baldwin made a motion to approve the minutes of the April 17-18, 2019 Coastal Resources Commission meeting. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Baldwin, Catlin, Emory, High, Medlin, Norris, Salter, Smith).

EXECUTIVE SECRETARY'S REPORT

DCM Director Braxton Davis gave the following report:

OCS Update

At the last meeting I reported that on March 12, 2019, DCM received a fifth company's federal consistency certification (WesternGeco) related to proposed seismic surveys off the NC coast. This company already has an Incidental Harassment Authorization (IHA) from NOAA; however, its request for a BOEM permit is pending the outcome of ongoing litigation and federal consistency review. On June 11, DCM formally objected to the proposed seismic survey as inconsistent with our state's enforceable coastal policies. DCM's review of WesternGeco's consistency certification included substantial input from outside subject matter experts, North Carolina state agencies and the general public. Based on this review, DCM determined that the proposed seismic surveys would have significant adverse impacts on fish and marine food webs, sensitive fish habitats, commercial and recreational fisheries, and the coastal economy. On July 11, 2019, WesternGeco filed an appeal of the state's objection to US Commerce Secretary Wilbur Ross pursuant to the federal Coastal Zone Management Act. The Secretary can either override or sustain the state's objection. The 2019-2024 National OCS Oil and Gas Leasing Proposed Program and Draft PEIS may be released soon with a 90-day comment period. It is not yet known if NC will continue to be included in the Proposed Program. If it is, proposed lease areas could be identified this fall with possible lease sales to follow.

Regulatory

On the regulatory side, we have several program changes to report. Given ongoing hurricane recovery efforts, increased development activity, contractor backlogs, vacancies and staff turnover among our regulatory positions, as well as local opt-outs of CAMA minor permitting program, the Division has implemented a series of programmatic changes intended to improve efficiencies and redistribute workloads so that they are more sustainable and better reflect current conditions. These changes were made following a comprehensive review of relevant data such as permit workloads by district and changing population dynamics within the coastal zone. Effective July 1, 2019, the Elizabeth City District Office will continue to cover Currituck, Dare (Mainland and from Kill Devil Hills north), Camden, Pasquotank, Perquimans, Chowan, and Gates Counties, and will now also cover Hertford and Bertie Counties. The Washington District Office will continue to cover Tyrrell, Washington, Beaufort, and Hyde Counties, and will now also cover a portion of Dare County (from Nags Head south to Hatteras) as well as Pamlico County. The Morehead City District Office will continue to cover Carteret and Craven Counties, and will now also cover all of Onslow County, and the Wilmington District Office will continue to cover Brunswick, New Hanover, and Pender Counties (including all of Surf City).

During the first six months of 2019, there was a decrease in major permit actions relative to the first six months of 2018 (14 fewer, total of 61). This decrease was likely due to impacts associated with Hurricane Florence recovery, as well as staff turnover in several of the Division's regional offices. The average processing time for major permits (92 days) was longer than the average processing time for the first six months of 2018 (82 days). This increase is also likely due to hurricane recovery and staff turnover, as well as delays in federal permit processing during the Federal Government shutdown at the end of 2018. Within the last six months we have issued 1,410 General Permits (960 regular GP's and 450 emergency GPs), which represent a

significant increase relative to the 857 General Permits that were issued in the first six months of 2018. This increase is likely due to the reconstruction efforts following Hurricane Florence and the enactment of the Emergency General Permit.

CAMA allows for the development of local implementation and enforcement programs for the expeditious processing of permit applications. Projects, such as single-family homes, that do not require Major or General Permits are reviewed under the Minor Permit Program. Local governments review, issue and administer minor permits in accordance with standards adopted by the Commission and under contract with DCM. A county or municipal representative, known as the CAMA local permit officer or LPO, issues the permits. LPOs are trained by DCM to administer Minor Permits for their locality. As the North Carolina economy has improved in recent years, the number of minor permits has also increased. In 2017, approximately 700 minor permits and 650 exemptions were issued by a combination of local governments and the Division (in localities not participating in the program). Due to the ongoing recovery and increased development along the coast, the Minor Permitting and exemption workload has significantly increased. While there are currently 38 local governments participating in the delegated Minor Permitting Program, over the past few years, nine local governments have opted out of the program due to reductions in staff brought on by the difficult economy. This has resulted in direct issuance of minor permits by DCM field reps. Permit applicants in these areas must now contact the DCM District Office and the DCM field representative, instead of the local municipality, to schedule a site visit for a CAMA minor permit. The extra time involved can be frustrating to permit applicants. The following local govts have opted out of the Minor Permit Program: Topsail Beach, Surf City, North Topsail Beach, Belhaven, Pender, Hertford, Bertie, Beaufort, and Hyde Counties. The Division is looking for ways to bring local governments back into the Minor Permit Program through incentives and increased contact and outreach. LPOs currently receive annual training from the Division. We are exploring the idea of a dedicated LPO Coordinator position which will allow the Division to increase and improve its contact with local governments through additional training and workshop opportunities.

Policy & Planning

Over the past two months, DCM, in partnership the NC Coastal Federation, regional councils of government, The Nature Conservancy, NC Sea Grant and others hosted three very successful coastal resilience events. The first two were workshops primarily for local governments, held in Elizabeth City and Wilmington that focused on local impacts of natural hazards and climate change, and explored solutions and got feedback on the types of technical and financial support needed to support local resilience efforts. These workshops are now being used as a model to plan and conduct similar regional workshops in the Piedmont and Mountain areas of the state. A more recent and larger NC Coastal Resilience Summit was held in Havelock on June 11-12, 2019 for nearly 300 attendees representing local, state and federal government officials, leaders of the private sector and non-profit organizations, as well as local advocacy groups and academia. Discussions included an update on climate hazard risks affecting the coast, managing impacts to the coastal economy, natural and working lands, understanding social vulnerability and environmental justice issues. Information from the event will be summarized for inclusion in the State's Climate Risk Assessment and Resiliency Plan, being developed under Governor Cooper's Executive Order 80 ("EO 80"). Building off our new Coastal Adaptation and Resilience website, DCM has been working with partners to develop a Coastal Communities Resilience Guide. This online, interactive guide uses an ArcGIS Story Map format to outline a

framework and process for communities to better understand risks, engage the public on resiliency issues, identify solutions, and create a strategy for integrating resilience into existing planning and management efforts. A draft of the online Guide has been reviewed by a local government advisory group of planners and external subject matter experts and is now under review by DCM staff. Release of the guide is expected in early August. Finally, the Commission has stated in the past that the State needs more gauges to measure sea level rise, so I am happy to report that DCM signed a Memorandum of Agreement with NC Emergency Management at the end of June to upgrade the state's sea level monitoring network. The MOA means a lot for the State's ability to detect and measure long-term water level changes along our coast, particularly within the estuarine environment. Thanks to \$50,000 in NOAA funds that we were able to provide to Emergency Management, we will go from four federally certified tide stations on the coast, to as many as ten. This will help our agencies and coastal communities better understand changes occurring in areas that have not been measured in the past.

Land Use Plans

Since your last meeting, the Division received one land use plan certification request and four land use plan amendment requests under the recent delegation of authority from the Commission. The Town of Swansboro (May 1, 2019) submitted its LUP for certification and the Towns of Beaufort (April 15, 2019), Indian Beach (May 1, 2019), Carolina Beach (May 14, 2019), and Currituck County (July 2, 2019) submitted land use plan amendments for certification. 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 local governments provided opportunity for the public to provide written comment as required by N.C.G.S. § 113A-110 and 15A NCAC 7B .0802 and .0803. Accordingly, DCM granted the requests.

Coastal Reserve

Governor Roy Cooper declared June 19, 2019 as North Carolina Coastal Reserve day in honor of the N.C. Coastal Reserve and National Estuarine Research Reserve's 30th anniversary. Secretary Regan presented the proclamation at a celebration with partners, reserve volunteers, and local advisory committee members at the NC Maritime Museum in Beaufort overlooking the Rachel Carson Reserve. Speakers included Mayor Newton of Beaufort, and NOAA Office for Coastal Management Deputy Director Keelin Kuipers. Coastal Reserve summer programming is also underway, including free public field trips and the Summer Science School programs - details are available on the Reserve's website. NOAA's Office for Coastal Management has published a funding opportunity for the new Margaret A. Davidson Graduate Fellowship. This program will offer graduate students in a Master's or Ph.D. program the opportunity to conduct research within a National Estuarine Research Reserve System. The NC Coastal Reserve & National Estuarine Research Reserve will host one fellow doing within one of our four National sites, which include Currituck Banks, Rachel Carson, Masonboro Island, and Zeke's Island Reserves. Information about the new fellowship program and a link to the funding opportunity is posted on the Reserve's and NOAA's website.

Staff News

We are very pleased to announce that Ron Renaldi has accepted the position of District Manager in our Elizabeth City District. Ron has worked with DCM for over 11 years as a Field Representative, and previously spent four years with the NC Division of Marine Fisheries. We

are excited to have Ron serving in this new role. In May, Brendan Brock began working as the DCM's newest Field Rep in the Wilmington office. He comes to us from the NC Forest Service where he was an Assistant County Ranger for 2 ½ years. He has a Bachelor's degree in wildlife Ecology and been employed with the City of Wilmington's Storm Water Section and the USDA Forest Service in Colorado and New Hampshire. Tanya Pietila, who had recently been working for the Division as an administrative assistant, has moved into the Wilmington Regional Office Permit Support Specialist position vacated by the recent retirement of Shaun Simpson. Tanya has over 18 years of administrative support experience. Jason Brown recently joined Reserve staff as the Northern Sites Manager. He has completed the Master of Geospatial Information Science and Technology program with North Carolina State University and studied natural resource recreation as an undergraduate at Virginia Tech. Jason has prior experience as a state park ranger, most recently at Jockey's Ridge State Park.

Christian Kamrath, who has been our Coastal Resilience Specialist since last September, is leaving us at the end of this month to return to his home state of Florida. Christian has accepted a position as a Resilience Coordinator with Miami-Dade County, where he will be working alongside Monica Gregory, DCM's 2016-2018 Coastal Management Fellow. Christian has done outstanding work for us, including leading our coastal resilience workshops this spring and building our coastal resilience web portal for local governments. While this is a big loss for the Division, we are happy for Christian since he has been employed under "temporary" status, with no guarantee of long-term employment with DCM. We wish him all the best and are currently evaluating whether we will be able to refill the position. Steve Trowell, who was a DCM field representative in the Washington Regional Office, recently left the Division to accept a position with the NC Department of Transportation. Steve had been with the Division since 1998 and has a wealth of knowledge and experience in CAMA permitting and marine fisheries. We wish Steve all the best in his new position. Lynn Mathis, who is a field representative in the Elizabeth City office, is retiring on September 1. Lynn has been with the Division since 1996 and has been an integral part of the Elizabeth City Office. During this time period, she has held several different positions, including the NCDOT field representative and District compliance and enforcement representative. In addition to her time with DCM, Lynn worked approximately seven years with Currituck County where she administered the CAMA LPO program. Lynn has been a great asset to the Division, and we wish her the very best in her retirement. After 24 years with the Division of Coastal Management and over thirty years of state service, Doug Huggett will be retiring on September 1 and joining the private sector at a firm in Morehead City. As many of you already know, Doug has been an invaluable part of our senior management team over the course of his career. He cares deeply about his staff and our program, and he has done an outstanding job with the major permitting program. We all rely on him daily and he will be sorely missed.

VARIANCES

Stallings (CRC-VR-19-06), Pamlico County, Dredging in PNA

Brad Connell, Christine Goebel, Esq., Amy Wang, Esq.

Brad Connell provided an overview of the site. Christy Goebel represented staff. Attorney Amy Wang represented Petitioner. Ms. Goebel stated Petitioner Robert Stallings owns property located at 52 Silverwood Drive in Merritt, Pamlico County. The property is adjacent to Pittman Creek whose waters are designated as a Primary Nursery Area and are classified as SA-High Quality Waters and Nutrient Sensitive Waters which subject the property to the DWR Neuse River Buffer Rules. Petitioner is requesting a variance to develop an upland basin stabilized by a

vinyl bulkhead on his property, dredged to a depth of -3.3' normal water level. The proposed development includes a gravel driveway, a boat ramp, a side-to dock, and an access channel. This design followed a 2017/2018 application which was denied based on objections and concerns from DWR, DMF, and WRC. DMF and WRC had similar objections to the revised design. On March 25th, DCM denied Petitioner's CAMA Major Permit application. Petitioner seeks a variance to allow the new dredging and development proposed in the application. Ms. Goebel reviewed the stipulated facts and stated, Staff and Petitioner do not agree on any of the four statutory criteria, which must be met for the Commission to grant a variance. Following Ms. Goebel's argument, Attorney Amy Wang from Ward & Smith, P.A. discussed the stipulated facts Petitioner contends support the request to grant a variance.

Robin Smith made a motion that Petitioner has not shown that an unnecessary hardship results from strict application of the Commission's rules, standards or orders. Renee Cahoon seconded the motion. The motion passed with eight votes in favor (High, Medlin, Carlin, Emory, Smith, Cahoon, Salter, Norris) and one opposed (Baldwin).

Bob Emory made a motion that Petitioner has not shown that hardships result from conditions peculiar to the property. Lauren Salter seconded the motion. The motion passed with eight votes in favor (High, Medlin, Carlin, Emory, Smith, Cahoon, Salter, Norris) and one opposed (Baldwin).

Robert High made a motion to support Staff's position that hardships result from actions taken by the Petitioner. Doug Medlin seconded the motion. The motion passed with six votes in favor (High, Medlin, Catlin, Smith, Baldwin, Cahoon) and three opposed (Emory, Salter, Norris).

Doug Medlin made a motion to support Staff's position that the granting of this variance request will not be consistent with the spirit, purpose, and intent of the Commission's rules, standards, or orders; will not secure the public safety and welfare; and will not preserve substantial justice.

This variance request was denied.

NCDOT (CRC-VR-19-07), Ocracoke, Sandbags

Jonathan Howell, Christine Goebel, Esq., Mollie Cozart, Esq.

Jonathan Howell provided an overview of the site. Christy Goebel represented staff. Attorney Mollie Cozart represented Petitioner.

Ms. Goebel stated the NCDOT manages the Hatteras Southdock Ferry Terminal facility on the north end of Ocracoke Island in Hyde County. In June 2019, NCDOT submitted a request to DCM for an emergency shoreline stabilization project as a temporary measure until a long-term erosion control response could be implemented. DCM issued an Emergency Major Modification to CAMA Major Permit #224-87 authorizing the installation of an approximately 1,000 linear foot sheet pile bulkhead on the Estuarine Shoreline AEC. Conditioned out of the Permit was NCDOT's proposal to use sandbags larger than permitted by the Commission's rules and to construct a sandbag structure adjacent to the bulkhead but within the Inlet Hazard AEC that was at a partially perpendicular alignment and exceeded the Commission's rules on size limits for sandbag structures. NCDOT now seeks a variance to allow construction of the proposed sandbag

structure. Ms. Goebel reviewed the stipulated facts in the variance request and advised the Commission that Staff and Petitioners agree on all four statutory criteria that must be met in order to grant the variance. Ms. Cozart also spoke to the Commission regarding the four criteria.

Phil Norris made a motion that unnecessary hardships result from strict application of the Commission's rules, standards, or orders. Larry Baldwin seconded the motion. The motion passed unanimously (High, Medlin, Catlin, Emory, Smith, Baldwin, Cahoon, Salter, Norris).

Larry Baldwin made a motion that hardships result from conditions that are peculiar to the property. Doug Medlin seconded the motion. The motion passed unanimously (High, Medlin, Catlin, Emory, Smith, Baldwin, Cahoon, Salter, Norris).

Bob Emory made a motion that hardships do not result from actions taken by the Petitioner. Rick Catlin seconded the motion. The motion passed unanimously (High, Medlin, Catlin, Emory, Smith, Baldwin, Cahoon, Salter, Norris).

Larry Baldwin made a motion that the requested 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 will preserve substantial justice.

This variance request was granted.

Legal Updates

Mary Lucasse, CRC Counsel, updated the Commission on active and pending litigation.

Larry Baldwin made a motion that the Commission go into closed session pursuant to NCGS 143-318.11(a)(3) to consider and give instructions to its attorneys concerning litigation filed in the United States District Court for the Eastern District of North Carolina titled Zito v. Coastal Resources Commission, number 2:19-CV-11-D.

PUBLIC INPUT AND COMMENT

Steve Smith, Topsail Island, commented on the availability of products other than wood for development; the Inlet Hazard Area, concerns with grandfathering rules, and the Town's lack of manpower to issue Minor Permits.

Ana Zivanovic-Nenadovic, NC Coastal Federation, commented in support of the Commission's decision to deny the Zito's variance request and in support of the Commission's defense of this decision in federal court. (Written comments submitted)

PUBLIC HEARING

15A NCAC 07H .0304, 7H .0309, & 7H .0313 – State Ports Inlet Management AEC
Heather Coats reviewed the proposed amendments. No comments were received.

15A NCAC 07H .0309 – Use Standards for Ocean Hazard Areas – Ocean Outfalls
No comments were received.

ACTION ITEMS

Consideration of Fiscal Analysis 15A NCAC 7H .1900 – Temporary Structures General Permit (CRC 19-15)

Kevin Hart

DCM has been in discussions with the scientific research community regarding proposed research projects and the need for CAMA permits. Since there is no General Permit available for the types of development activities typically associated with scientific research, DCM has historically requested the research project applications be processed through the CAMA Major Development Permit process. At its February 2019 meeting, the CRC approved draft language to modify 7H .1900 to provide regulatory flexibility to accommodate scientific research needs. The fiscal benefits of the proposed amendments are benefits to universities and state/federal resource agencies in terms of time and fees. The fiscal analysis has been approved by DEQ and OSBM. Staff requests approval of the fiscal analysis.

Bob Emory made a motion to approve the fiscal analysis for 15A NCAC 07H .1900 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously (High, Medlin, Emory, Smith, Baldwin, Cahoon, Salter, Norris) (Catlin absent for vote).

CRC Science Panel

Science Panel Member Appointments

Mike Lopazanski stated, the Science Panel is made up of engineers, geologists, and a marine biologist. Vacancies have been filled based on recommendations from DCM Staff, the CRC, and CRAC members. The Commission Chair makes appointments to the Science Panel and ad hoc members can be added as the need arises. Members serve four-year terms and the current members terms have expired. The CRC Executive Committee reviewed and discussed five nominations received and the current members who indicated an interest in continuing to serve. Chair Cahoon appointed five new members: Kevin Conner; Laura Moore; Allan Murray; Jesse McNinch; and Martin Posey. The Chair also re-appointed Bill Birkemeier, Bill Cleary, Tom Jarrett, Spencer Rogers, and Greg Rudolph. Bill Birkemeier will chair the Science Panel.

2020 Sea Level Rise Report Update – Science Panel Charge (CRC 19-19)

Tancred Miller

Tancred Miller stated the CRC's Science Panel completed its most recent sea level rise assessment report update in 2015. The legislature has requested updates every five-years. The next update is due in 2020. For the last report, the CRC established a process that included extensive public review and technical peer review by Drs. James Houston and Robert Dean. DCM envisions a similar process and timeline for the 2020 update. The Charge to the CRC Science Panel needs to be updated. The Department suggested that the CRC and the Science Panel revisit the Charge to discuss whether the update should be limited to a 30-year projection. Commissioner Emory stated that the report should not be limited to 30-years. The sea level rise report should be a source document and provide a longer timeframe projection for resilience and infrastructure planning. DCM will draft some language for the Commission to consider at its next meeting.

CRC RULE DEVELOPMENT

Shellfish Leases and Permitting (CRC 19-20)

Jonathan Howell

Through conversations with Division of Marine Fisheries (DMF), it was agreed that DCM could enhance the shellfish leasing process by providing comments on the proximity to marsh, requiring more formalized drawings, and considering the 1/3 width calculation on every proposed lease. As a commenting agency, the Division typically 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. DCM also provides comments specific to navigation. CAMA permits may be required for development (pilings etc.) within lease boundaries. Floating upweller systems (FLUPSY) not located within a lease boundary, within a marina, at private docking facility, and all land-based upwellers within the Coastal Shoreline AEC will require a CAMA permit. Another topic discussed was pilings and whether they should be exempt on a lease. Howell stated that the proposed exemption language for shellfish leases will exempt shellfish leases from CAMA permitting if the following criteria are met: all posts including anchoring and marking posts must be less than four inches in diameter; floating platforms are limited to floating upweller systems with no greater than four-foot walkways; no wave baffles or other structures for the purpose of wave attenuation are proposed; no docking facilities or fixed platforms are proposed; all markers associated with shellfish aquaculture leases are located a minimum of 20 feet waterward of any coastal wetland vegetation that borders the waterbody; no enclosed or roofed structures; and no shore-based electric, water or other utilities are used to service an open water lease. This proposed exemption language is meant to provide some clarity and define exactly when a permit will be required. There is no language within the exemption related to navigation as this issue will be addressed through the coordination between the agencies and existing DMF statues. After discussion of the specifics of the proposed exemption and CRC authorities related to coastal development, the Commission requested staff develop language for a draft General Permit for shellfish leases to be discussed at the next meeting. The Commission also requested that input be sought from resource agencies and stakeholders on the draft GP language.

With no further business, the CRC adjourned.
Respectfully submitted,


Braxton Davis, Executive Secretary


Angela Willis, Recording Secretary