

NC COASTAL RESOURCES COMMISSION (CRC)

June 16, 2021

Beaufort Hotel, Beaufort

Present CRC Members

Renee Cahoon, Chair
Larry Baldwin, Vice-Chair
Robin Smith, Second Vice-Chair
Neal Andrew
Craig Bromby
Bob Emory
Doug Medlin
Phil Norris
Lauren Salter
Alexander “Dick” Tunnell
Angie Wills

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 June 16, 2021, 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 Cooper and High were absent. No conflicts were reported. Based upon this roll call Chair Cahoon declared a quorum.

CHAIR’S COMMENTS

Chair Cahoon commended staff and thanked Commissioners for their patience in working remotely and meeting virtually. Science Panel Chair, Bill Birkemeier, has retired and will no longer serve on the CRC’s Science Panel. She thanked Bill for his long-standing service to the State.

EXECUTIVE SECRETARY’S REPORT

DCM Director Braxton Davis gave the following report:

Thank you for your patience over the past year with our virtual commission meetings. I think we were still able to achieve a great deal over the past 12 months, but virtual will never be as good as in-person interactions, especially for more complicated policy discussions. DCM has had our busiest year on record, with permit receipts this year 30% higher than last year’s. Our regulatory staff continues to do a fantastic job keeping up with the demand for permits, consultations,

complaint investigations, litigation, and enforcement. There is one recent change in operations to highlight. I mentioned at your prior meeting that we've been able to add two critical regulatory positions to DCM. As a result, we've taken another look at our district territories and made some adjustments to make sure we balance workloads. As of June 1, we have returned the territory from Nags Head down to Hatteras Island to the Elizabeth City office, which already covers the rest of Dare County. Yvonne Carver will continue serving as field rep for that territory but will no longer report to the Washington office. The Washington office has now expanded to include the portion of Craven County north of the Neuse River. The Morehead City office continues to cover the southern portion of Craven County along with Carteret and Onslow Counties, and Wilmington is covering Brunswick, New Hanover, and Pender Counties.

Beach nourishment projects have wrapped up for the season. Oak Island is still finishing up their dune plantings after extensive agency coordination that allowed them to continue with dredging and beach fill through May 22 and demobilization through May 26. Emerald Isle successfully finished their project and dune planting, completing a 3-year comprehensive repair of their hurricane damage at Bogue Banks in accordance with their master plan. Following coordination with other resource agencies, a short extension was granted for demobilization. North Topsail Beach also ended their dune repair truck haul project, although they were not able to complete the full project area this season. After agency coordination, they too were granted a 3-week extension to be able to repair some remaining hot spots. Several beach projects are being planned for next year, including Ocean Isle Beach's terminal groin, and potential nourishment projects at Oak Island, Holden Beach, Figure 8, Duck, Kill Devil Hills, Southern Shores, Kitty Hawk, Nags Head, Buxton, and Avon.

POLICY & PLANNING

The Division received two land use plan certification requests and three land use plan amendment requests in May and June. The Towns of North Topsail Beach and Holden Beach submitted plans, and the cities of Southport, Washington and Havelock submitted plan amendments for certification. In all cases, the Division found 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 body of the local government provided opportunity for the public to provide written comment following local adoption of the plan. For these reasons, these requests for certification of land use plan actions were granted. DCM's Resilient Coastal Communities Program continues to move forward. Recently, DCM partnered with NCORR, Sea Grant and TNC on a pre-proposal to the NFWF National Coastal Resilience Fund to expand the RCCP, and we were invited to submit a final proposal. We will be submitting a proposal for \$550,000 to be matched by state funds. If this proposal is successful, we will be able to fund 10 more communities through the RCCP. DCM is also tracking House Bill 500, the Disaster Relief and Mitigation Act of 2021, which includes significant funding for disaster relief and long-term resilience, including recurring funding and permanent staff positions for DCM's RCCP.

Coastal Reserve

The Reserve held a virtual Coastal Explorations teacher workshop in May. Educators learned about estuaries and the Reserve program through classroom activities they can use with their students and groups. This year, participants took a virtual visit to the Masonboro Island Reserve.

Also, to increase the knowledge of living shoreline construction practices among marine contractors, engineers, environmental consultants, and regulators, the Reserve, North Carolina Coastal Federation, and North Carolina Sea Grant are partnering to offer a new training course. This course focuses on living shoreline design for typical structures in residential settings along North Carolina's estuarine shorelines. The training combines three online classroom sessions with on-the-ground field training. The online classroom sessions were held in May and the field trips will be held later this week. The Division and partners continue to work on the Beaufort Inlet Dredging Monitoring Project to improve understanding of potential impacts of summertime dredging. Through an agreement with the Corps, a three-year monitoring effort is underway among federal and state partners, including researchers from the Reserve, East Carolina University, and NC State University who are examining water quality, fish migration, and key commercial and recreational fish and shellfish utilization in and around Beaufort Inlet before, during, and immediately following the dredging event which is underway now. NOAA released the funding opportunity for the second cohort of the Margaret Davidson Graduate Fellowship last week. This program offers graduate students admitted to or enrolled in a Master's or Ph.D. program the opportunity to conduct research within a National Estuarine Research Reserve. We plan to host one fellow in 2022 to conduct research on a key management question within one of our four National Estuarine Research Reserve sites. The Reserve will be hosting informational sessions about the fellowship soon, and details will be available on the Reserve's website. The Reserve's current Davidson Fellow, Marae Lindquist, a PhD student at UNCW, is studying the impacts of sea level rise on wintering populations of marsh sparrows at multiple reserve sites.

Staffing News

At DCM, we are happy to introduce our newest DCM Field Representative, Curt Weychert. Curt formerly was an Assistant Major Permit Coordinator and has taken the new field representative position in the Morehead City office. He will be working in the southern portion of Onslow County. That leaves the Major Permits section with a vacancy. That position has been posted and we will be conducting interviews at the end of this month.

MINUTES

Larry Baldwin made a motion to approve the minutes of the April 28 Coastal Resources Commission meeting. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Emory, Medlin, Norris, Salter, Smith, Tunnell, Wills).

VARIANCES

Town of Topsail Beach (CRC-VR 21-02)

Robb Mairs, Christine Goebel, Esq./Steve Coggins, Esq.

Robb Mairs reviewed the site. Christine Goebel represented staff and Steve Coggins is present to represent Petitioner. Ms. Goebel stated Petitioner is the Town of Topsail Beach, which owns three oceanfront lots developed with handicapped accessible beach access sites. Since 2019, the Town has installed beach mats from the access ramps toward the ocean in the summer months for wheelchair access to the dry sand beach. In April of 2021, the Town filed a CAMA Minor Permit application seeking authorization in order to continue to place the beach mats each May through September. On May 4, 2021, DCM denied Petitioner's CAMA Minor Permit application

as the proposed development does not comply with 15A NCAC 7H .0306(a)(2) and 15A NCAC 7H .0308(c)(5) which require the beach mats to be placed landward of the static vegetation line, landward of the 60' oceanfront setback, and landward of a line 6' seaward of the waterward toe of the frontal dune. Petitioner now seeks a variance to continue placing the beach mats as proposed in its permit application. Ms. Goebel reviewed the stipulated facts of this variance request and stated Staff and Petitioner agree on all four statutory criteria which must be met in order to grant the variance. Mr. Coggins reiterated that Staff and Petitioner agree on all four criteria.

Bob Emory made a motion that Petitioner has shown that strict application of the development rules, standards or orders issued by the Commission cause the Petitioner an unnecessary hardship. Larry Baldwin seconded the motion. The motion passed unanimously (Tunnell, Wills, Medlin, Andrew, Baldwin, Cahoon, Smith, Bromby, Norris, Emory, Salter).

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

Lauren Salter made a motion that Petitioner has shown that any hardships were not a result of actions taken by Petitioner. Doug Medlin seconded the motion. The motion passed unanimously (Tunnell, Wills, Medlin, Andrew, Baldwin, Cahoon, Smith, Bromby, Norris, Emory, Salter).

Phil Norris made a motion that Petitioner has shown that the variance will be consistent with 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 (Tunnell, Wills, Medlin, Andrew, Baldwin, Cahoon, Smith, Bromby, Norris, Emory, Salter).

This variance request was granted.

INLET HAZARD AREAS

Undeveloped Areas, Federal and State Lands (CRC 21-16)

Ken Richardson

Ken Richardson stated at the March CRC meeting, staff presented the fiscal analysis for the proposed Inlet Hazard AEC rule amendments. This AEC boundary was defined using the Science Panel's 2010 Inlet Hazard Area methodology and boundary proposal. At the end of the discussion the Commission directed staff to come back for more discussion about the Cape Fear and Beaufort Inlets that had been excluded from the Science Panel's report because these two inlet areas are within the new State Ports Inlet Management AEC. Other inlet areas on public lands (the US Marine Corps base at Camp Lejeune, Hammocks Beach State Park, and National Seashore) were also not included in the Science Panel's report since there is very low, if any, potential for future development on public lands. All inlets, whether they're natural or man-made, can and do influence adjacent land areas. For those locations not included, they would

revert to Ocean Erodible Area (OEA) shorelines and be subject to existing OEA standards and IHA standards under 7H .0310 would no longer apply.

For additional clarity, Staff proposed amended draft rule language in 15A NCAC 07H.0304 as follows: “At inlets where no Inlet Hazard Area is designated, the Ocean Erodible Area shall extend to the Estuarine Shoreline AEC as defined in 15A NCAC 07H .0209 and determined by the Division based on features such as the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.” This clarification would be consistent with CAMA and existing CRC rules:

- **N.C. Gen. Stat. § 113A-115.1(a)(2)** defines "ocean shoreline" to include an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines. This is within the context of limitations on erosion control structures in CAMA.
- **15A NCAC 07H. 0310** Use Standards for Inlet Hazard Areas...essentially, the types of development currently allowed under 07H.0309 along the estuarine shoreline will still be allowed...regardless of whether it is in or out of an IHA.
- **15A NCAC 07H . 1201:** A General Permit under this Section shall allow the construction of new piers and docking facilities (including pile supported or floating) in the estuarine and public trust waters AECs and construction of new piers and docks within coastal wetlands AECs according to the authority provided in Subchapter 07J .1100 and according to the Rules in this Section. This permit shall not apply to oceanfront shorelines.

Staff requested the Commission approve the amendment clarifying that areas not designated as an IHA would default to an OEA, and/or open discussions for any additional amendments the Commission wishes to consider. The proposed language would not require any changes to the OSBM-approved fiscal analysis, so the Commission can elect to send the use standards and fiscal analysis to a public hearing in the each of the affected counties.

Robin Smith asked about areas that move into the IHA, or fall out of the designated IHA, based on inlet movement. Ken commented that these areas will be captured with boundary updates scheduled for every five years. Mike Lopazanski stated the area fluctuates as the inlet moves and the CRC’s jurisdiction will move with it and graduated setbacks will apply to any structures that are proposed in these public areas.

Neal Andrew made a motion to approve the amendments to 15A NCAC 7H .0304 for public hearing. Bob Emory seconded the motion. The motion passed unanimously (Tunnell, Wills, Medlin, Andrew, Baldwin, Cahoon, Smith, Bromby, Norris, Emory, Salter).

Larry Baldwin made a motion to approve the fiscal analysis for 15A NCAC 7H .0304, 7H .0306, 7H .0308, 7H .0309, and 7H .0310 for public hearing. Phil Norris seconded the motion. The motion passed unanimously (Tunnell, Wills, Medlin, Andrew, Baldwin, Cahoon, Smith, Bromby, Norris, Emory, Salter).

AQUACULTURE

Floating Structures policy and Shellfish Leases (CRC 21-17)

Ana Zivanovic-Nenadovic, NC Coastal Federation

Mike Lopazanski, DCM

Ana Zivanovic-Nenadovic stated The General Assembly has declared that it is the policy of the State to encourage the development of private, commercial shellfish cultivation in ways that are compatible with other public uses of marine and estuarine resources such as navigation, fishing, and recreation. N.C. Shellfish Mariculture Strategic Plan recommends growing the industry to \$100 million in market value by 2030, \$30 million in farm-gate value. The NC General Assembly passed Shellfish legislation in 2019 implementing several of the Plan's recommendations. The Coastal Federation supports sustainable growth of the mariculture industry and has led the Strategic Plan's stakeholder process, developed a feasibility study to look at logistical needs (such as access to growing waters, the high cost of coastal properties, prime work areas, balancing traditional uses, and refrigeration and storage of shellfish), worked on the first logistical incubator of its kind, developed a low-interest loan program. Activities on floating structures include oyster grading, gear maintenance, cleaning of cages and gear; pressure washing, harvesting which requires shading of the oysters, selecting market sized oysters, cleaning and bagging for market, and tagging which is required by state law. As a practical matter, these activities cannot be done on land. And, the only alternative is to work on the water. Shellfish growers are using moveable floating structures with a minimum size of 25-30 feet by 15-20 feet to hold graders, power washers, and provide a large work area. Growers say the benefits of these floating structures include more humane working conditions with protections from the elements, greater efficiency, product shading (a public health issue), and the ability to dry gear which prevents cage fouling. Other states' policies include the minimization of visual impacts by height limitations of one story maximum and at least 20 ft from water line, colors that blend into the surroundings of flat, non-reflective browns, blues, greens, and grays, size limitations, duration of leases, cooperative use, and sanitation guidelines that allows for the disposal of grey water. Virginia has a well-documented stakeholder process.

Mike Lopazanski stated that in 1982 there was a floating home community proposed in New Hanover County. The CRC discussed estuarine bottom ownership, public trust rights, concerns about health and safety, such as sewage disposal, as well as non-water dependent uses in public trust areas, and the limitation on authorities to regulate at local/state level. The CRC developed a Floating Structure Policy which focused on public trust rights and water quality after originally considering a total ban. After stakeholder input the CRC allowed these structures within permitted marinas. *See 15A NCAC 7M .0600* (includes references to residential or commercial purposes, definitions for boats and floating structures, and when a boat is considered a floating structure, and requirements for on-shore sewage treatment). Due to policy inconsistencies, the Commission asked the General Assembly for an amendment to CAMA. In 1993, the legislature incorporated the floating structure definition in CAMA, included the definition of a boat, and made floating structures a regulated activity.

The Marine Fisheries Commission is currently undertaking rulemaking to address some of the concerns that DCM staff had identified when reviewing applications for shellfish leases. 15A NCAC 03O .0201 modifies the setback requirement for shellfish leases from a developed shoreline. Currently, shellfish leases must be 100 feet from a developed shoreline, but to help alleviate user conflict with riparian owners, the amendment extends that to 250 feet from a developed shoreline or a water-dependent shore-based structure. The amendments also propose a 250-foot setback requirement between any new shellfish leases and existing shellfish leases. Lastly, the proposed amendments add cumulative language, implementing the MFC's authority to limit the number of acres in an area that may be granted as shellfish leases as set forth in G.S. 113-201. 15A NCAC 03O .0202 incorporates two amendments to further reduce user conflicts. The rule modifies marking requirements for shellfish leases and franchises to limit the allowable

number of corners for defining the leased area to eight and simplify the shape of the signs. Also, proposed changes require the shellfish lease applicant be responsible for ensuring the sign that the applicant is currently required to attach to each corner stake with details about the shellfish lease remain in place until the application process is completed. This rule also proposes an amendment to modify training requirements for shellfish lease applicants to include information about user conflicts and the public trust. 15A NCAC 03O .0204 follows suit on the proposed rule language for shellfish lease stakes and adds new requirements for the size and markings of stakes for public safety. The rule amendments propose that corner stakes must be between three and 12 inches in diameter and extend at least four feet above the mean high-water mark. Finally, this rule amendment also proposes that each corner stake have yellow light reflective tape or devices and each water column shellfish lease have additional caution signage on each corner stake to improve navigation and visibility. The proposed effective date of these amendments is June 2022.

The CRC is continuing with its rulemaking to allow floating upwellers for shellfish aquaculture in permitted marinas and private residential docks subject to standard platform limitations. These amendments will become effective in November.

Virginia Marine Resources Commission is reluctant to issue any floating structures permits unless all adjacent property owners have no objections. In Virginia, there has been only one floating structure/oyster plex applied for and permitted to date. A bond is required. This structure is no longer in use and the state has been burdened with removing the structure. Virginia is currently trying to create a Shellfish Division/Agency that is not housed within Fisheries or Coastal programs. Local Governments support these activities. 14 of the CAMA Counties currently have floating structure polices, however they primarily focus on floating homes. Nine use the CRC's definition of floating structure.

DCM struggles with how to apply existing rules to floating structures and address public trust uses (navigation, fishing, recreation), riparian property issues, resource impacts from shading, permanent moorings, aesthetics, and balancing competing interests. DCM needs guidance from the CRC on how to balance the needs of this expanding industry with protection of coastal resources and use of public coastal waters. Does the Commission wish to allow these floating structures on shellfish leases?

Commissioners Andrew, Norris, and Baldwin spoke in favor of assisting shellfish growers. Commissioners Emory and Salter commented on the difficulty of drafting rule amendments and look forward to seeing the draft.

Jacob Boyd, Division of Marine Fisheries, commented that the MFC has approved all amendments before them to address floating structures. Riparian property notification will be treated as an internal policy instead of putting that requirement into rule for now. Riparian owners can comment during the comment period and at the required public hearing for shellfish leases. All applications for shellfish leases are reviewed by DMF staff and the DMF Director. Contracts for leases with proposed floating structures will need to have DCM approval for development and Shellfish Sanitation approval for grey water disposal prior to signing.

Chris Matteo, NC Shellfish Growers Association, stated shellfish growers need this option to expand their businesses with waterfront property being hard to find or too expensive to acquire. Floating structures are critical to the success of shellfish growers and our ability to grow this industry.

The Commission directed staff to come back with draft rule language to review at the September meeting. Robin Smith asked that a comparison be made between an exemption approach related to notice of adjacent owners versus riparian notice in the General Permit process. Commissioner Smith also asked that CAMA be reviewed to see if there are additional references to floating structures in addition to the definition of floating structure.

PUBLIC INPUT AND COMMENT

Chair Cahoon reminded the Commission of a written comment submitted by Leyton Bedsole, New Hanover County Shore Protection Coordinator regarding usage of parking fees collected at public access sites.

David Moye spoke regarding floating structures and cautioned the Commission regarding the usurpation of public trust for commercial gain.

Tim Evans commended Division staff for their work and knowledge in assisting the Town of Holden Beach. Mr. Evans spoke against the methodology used for the Inlet Hazard Areas specific to the Town of Holden Beach and the five-year review.

CRC RULEMAKING

Amendments to 15A NCAC 7J .0405 – Permit Modification (CRC 21-18)

Jonathan Howell

This rule governs Major and Minor permits. Following the June meeting, staff made minor edits based on feedback from the Commission and to update the fee schedule related to DWR fee split requirements. Mr. Howell reviewed the updated rule amendments.

Phil Norris made a motion to approve amendments to 15A NCAC 7J .0405 for public hearing. Doug Medlin seconded the motion. The motion passed unanimously (Tunnell, Wills, Medlin, Andrew, Baldwin, Cahoon, Smith, Bromby, Norris, Emory, Salter).

CAMA Land Use Plans – Future Land Use Map (CRC 21-19)

Mike Lopazanski

Mike Lopazanski stated as part of a federally approved coastal management program, North Carolina participates in comprehensive resource management program that addresses growth and development issues in the coastal areas. Federal coastal management programs are voluntary, developed by individual states, are supported by federal funding, and incorporate coastal planning. When it came to developing a program for North Carolina, the question was how to develop such a program that addressed both state and national concerns in an area that had a tradition of local government autonomy and strong private property rights. The State Legislature originally proposed that professional staff would make both regulatory and planning decisions, however in order to address initial opposition, a compromise was reached wherein a state/local

partnership was seen as essential in achieving resource protection and economic development. The program would emphasize local government control, utilize a citizen commission for policy decisions and actively involve the people most affected in the development of the regulatory program. Prior to the adoption of CAMA, most of the rural counties and small towns in eastern NC had no comprehensive plans or regulations. Many local governments were opposed to planning as regulation of private property was unpopular. Land use planning was seen as a key component of the NC Coastal Program. While a regulatory program could be effective in protecting important coastal resources, local planning was seen as the best way to address long-term and general development issues at the local level. A program was created that was intended to maintain that level of local control in partnership with the state. In the development of land use plans, the Coastal Resources Commission adopted standards for procedures, public participation requirements, analyses, and the minimum issues to be addressed. Local governments would develop the policies to address those minimum issues, as well as those dealing with the character of the community and traditional land use concerns. The initial CAMA land use planning guidelines/rules were adopted in 1974 with the first plans certified in 1975. The CAMA land use planning rules have undergone several revisions, with the first being in 1978 to increase the focus on local policies. The Commission has adopted other major rewrites such as in 1989 to address the land classification system. In 1995, the Governor's Coastal Futures Committee made major recommendations for changes in the plans addressing regional issues, public participation, and implementation. In 2000 there was a complete overhaul of the planning guidelines during a two-year planning moratorium that resulted in a complete overhaul of the rules. Again, an emphasis was on the effectiveness of the local plans.

While the NC Administrative Procedures Act strives to simplify rule language, it often results in the loss of context for which many rules are written. In an earlier version of the rules, it stated that land use planning lies at the center of local government involvement, giving local leaders the opportunity to guide the development of their community, and for developing a common vision for the future that balances the economic development and resource protection necessary for a healthy coast. Land Use Plan policies include written policies, visual representations such as the Future Land Use Maps, guide local decision making on ordinances, and include both regulatory and non-regulatory policies. Enforceable policies are that are definitive and use regulatory wording. These policies are used for CAMA permit review to ensure consistency with the Plan and any policies that exceed CRC standards are identified within the Plan. There have been policy issues with some plans that have "squishy" wording such as the use of "may" or "should". There are also difficulties with policies that address non-CRC related issues such as building heights or 404 Wetlands. These issues have led to misinterpretation and CAMA permit denials based on inconsistencies with the Plan.

Future Land Use Maps have had similar challenges as to whether these Maps are regulatory in nature or simply guidance. The following examples were used to demonstrate these policy issues:

Water Quality Policy 36:

"To improve water quality, mitigate storm hazards, and protect resources providing important biological function, no new development or filling should be allowed within upland wetlands. Site specific delineations of wetlands are needed due to the dynamic nature of wetland systems."

This policy is more stringent than state and federal regulations.

When this policy presents a threat to health, safety and welfare of the community, the Town may make an exception so long as it adheres to all other policies of the Land Use Plan. In this case, mitigation measures should be required as described in Water Quality Policy 37.

The following activities should be allowed in upland wetlands: hiking, walking, bird watching, stormwater interventions and educational/research activities. Impacts from the construction and maintenance of public boardwalks and pathways are allowable in accordance with CAMA regulations.”

The DCM Planner reached out to town for clarification on the policy given the use of “should” rather than “shall” in WQ Policy 36. “Should” was defined within the Land Use Plan to read:

“Should”: An officially adopted course or method of action intended to be followed to implement the community Goals. Though not as mandatory as “shall”, it is still an obligatory course of action unless clear reasons can be identified that an exception is warranted. Town staff and elected and appointed boards are involved at all levels from planning to implementation to maintenance.

This Land Use Plan Amendment was triggered by the permit application review which is not ideal. The proposed density in the permit application exceeded the density outlined in the FLUM Designation. This would have resulted in a permit denial. The town chose to amend the parcels within the FLUM designation from High Density to Mixed Use and made text amendments to the Mixed-Use Designation. This permit is on hold pending this amendment certification.

15A NCAC 7B.0802 (c) provides an option for local governments to choose the procedure for review of CAMA permits for consistency with the land use plan. Local governments shall have the option to exercise their enforcement responsibility by choosing from the following: Local Administration where the local government reviews CAMA permits for consistency with the land use plan; Joint Administration where the local government identifies policies, including the future land use map, and implementation actions that will be used by the Division for CAMA permit consistency review; or Division Administration where DCM reviews CAMA permits for consistency with the land use plan policies, including the future land use map, and implementation actions.

Staff proposes to amend the 7B planning rules to require local governments to identify which policies are to be used for consistency with CAMA. This will allow DCM staff to know which policies are enforceable when reviewing permits.

Bob Emory made a motion to direct staff to draft amendments to the 7B Land Use Planning Guidelines for CRC review. Neal Andrew seconded the motion. The motion passed unanimously (Tunnell, Wills, Medlin, Andrew, Baldwin, Cahoon, Smith, Bromby, Norris, Emory, Salter).

Rules Review Commission Objection 15A NCAC 7J .0400 and 7K .0207

Mike Lopazanski

Mike Lopazanski stated DCM has been moving through the process for the Periodic Review of Existing Rules. The CRC has approved the rules for readoption and they have been sent to the NC Rules Review Commission for approval and final readoption. However, some rules that the CRC is actively working are being held up because they have not been readopted as part of the periodic review process. RRC has objected to rules that the CRC has amended but that were initially noticed as being readopted. Staff proposes the rules be readopted without changes and then the Commission can submit new rule amendments to RRC.

RULE IMPLEMENTATION

Structural Boat Covers (CRC 21-21)

Rod Adkins, Touchless Covers/Kelly Spivey

Rod Adkins, East Regional Sales Manager for Touchless Covers, stated the touchless cover was invented in 1998. This product is manufactured to provide 360-degree protection for boats. This product has been used in Florida for two decades. This is a tool that assists with the physical challenges of traditional boat covers. The cover comes within six inches from the boat sides. This product has withstood hurricanes and high winds. (product material samples provided to Commission)

Kelly Spivey stated the Division has issued permits for touchless covers. The Division differentiates between boat covers and boat houses. Boat covers are attached to the vessel, are made of fabric material, and do not exceed the dimensions of the boat. These covers only shade what is shaded by the boat. A boathouse provides continuous coverage of public trust area even when the boat is not within the slip causing continuous shading impacts. Regulatory staff always refer to the definition of development to determine if a permit is required for a specific activity. The definition of development is found in the Coastal Area Management Act (GS 113A-103(5)). Staff has historically considered the attachment of structural framing to support a roof material over a slip or lift as the construction of a boathouse therefore the retractable cover and other type products have been permitted as boathouses using conditions and standards set forth by the CRC. There are two locations within the CRC's rules that reference a boathouse: CAMA General Permit Specific Conditions 15A NCAC 07H .1205(l) and General Use Standards 15A NCAC 07H .0208(b)(6)(D). Both reference that the boathouse can have sides that extend no further than one-half the height of the walls and covering only the top half of the walls. The Division has defined the half distance as measured from the top wall plate/ header or the banding timber around the pilings to the Normal Water Level or Normal High Water. The boathouse walls can extend at least one half that distance. Currently DCM allows screen material to be used to enclose a covered platform. DCM staff requests that the Coastal Resources Commission clarify the following questions: 1. Do structural/ retractable boat covers qualify as "boathouses" under both 15A NCAC 07H .1205(l) and 15A NCAC 07H .0208 b(6)(D)? and 2 Is ½ wall height measured from the top wall plate of header down to the normal water level or normal high water; and are screen sides used within boathouses and for structural boat covers subject to the ½ wall height?

Braxton Davis stated that for lots with less than seventy-five feet of shoreline, a variance would be needed to install a touchless cover as boathouses are not permissible on these small lots.

Larry Baldwin made a motion for staff to bring back draft rule language to include the clarifications requested to include allowing screening on lots with less than seventy-five feet of shoreline. The motion passed unanimously (Tunnell, Wills, Medlin, Andrew, Baldwin, Cahoon, Smith, Bromby, Norris, Emory, Salter).

ACTION ITEMS

Consideration of Fiscal Analysis 15A NCAC 7H .0306 and 7K .0208 – Elevating Structures (CRC 21-14)

Daniel Govoni

Daniel Govoni stated this fiscal analysis was prepared based upon amendments to allow elevated structures within the Ocean Hazard AEC and Coastal Shoreline AEC. Within the Ocean Hazard Area, the elevation of a structure, even in the same footprint, is considered development and requires a permit and states that elevating existing structures in the Ocean Hazard Area shall be prohibited where any portion of the structure is seaward of the first line of stable and natural vegetation. For coastal shorelines, the amendment states that elevation of structures within the same footprint in the Coastal Shorelines AEC is exempt from permitting. Amendments will have no impacts to property owners in the Coastal Shorelines AEC as these amendments codify existing practice. There will be modest cost impacts on private property owners through the requirement of a CAMA Minor Permit (\$100) for the elevation of structures within the Ocean Hazard AEC. It is estimated that there are about five requests per year for a total impact of \$500 per year. The impact of a prohibition on elevating structures seaward of the vegetation line is speculative, but DCM estimates that one property per year may be affected based on activity over the past five years. This fiscal analysis has been approved by OSMB and staff is seeking approval of the fiscal analysis for public hearing.

Larry Baldwin made a motion to approve the fiscal analysis for 15A NCAC 7H .0306 and 7K .0208 for public hearing. Bob Emory seconded the motion. The motion passed unanimously (Wills, Medlin, Andrew, Baldwin, Cahoon, Smith, Bromby, Norris, Emory, Salter)(Tunnell absent for vote).

Consideration of Fiscal Analysis 15A NCAC 7M .0303 and .0310 Shorefront Access Policies (CRC 21-22)

Mike Lopazanski

Mike Lopazanski stated the Commission began working on these amendments at the September meeting. In the current rules there is a provision for disposition of property acquired with grant funds and the State should be reimbursed proportional to market value. This conflicts with CAMA as it requires transfer of title to the State. Amendments are proposed along with an amendment to CAMA for consistency. If the local government elects to sell an access site, then the local government shall reimburse the State an amount that is the greater of either the amount of Program grant funds provided to purchase the property or an amount equal to the same proportion of the current market value of the property as the proportion of the original purchase price of the property funded with Program grant funds. The CRC has made an allowance for fees to be used for maintenance of the site, but a requirement has been added that annual accounting be made publicly available. The fiscal analysis indicates that the public reporting requirement is not expected to create additional costs. Non-compliance of reporting will result in a temporary loss of funding. Grant eligibility is restored when back in compliance. There will be no impacts

to DOT environmental permitting as NCDOT may be a partner on a project but are not eligible for funding. Funding for the program continues to be dependent upon appropriations and DCM expects the funding level to remain consistent. Most of the amendments are administrative and do not significantly impact how funds are distributed.

CRC rules have allowed local governments to collect parking fees at sites funded by the Access Program for the past 20 years, provided that the fees are used exclusively for the operation and maintenance of access facilities. The allowable uses of fee revenues were expanded in 2007 to include the acquisition or development of new access facilities. Also in 2007, a provision was added to require biannual reporting on the use of fees to the Division. DCM does not have accounting/auditing resources to track revenue/expenses. The decision to charge fee is local issue and not all access sites are State funded. Access Program rules have allowed for parking fees since approximately 1998. The Commission has discussed whether parking fees could be used for beach nourishment and has concluded that the fees should be used solely for operation and maintenance of current access sites or for the development of new access sites.

Bob Emory made a motion to approve the fiscal analysis for 15A NCAC 7M .0303 and .0310 for public hearing. Neal Andrew seconded the motion. The motion passed unanimously. (Wills, Medlin, Andrew, Baldwin, Cahoon, Smith, Bromby, Norris, Emory, Salter)(Tunnell absent for vote).

LEGAL UPDATES

Update on Litigation of Interest to the Commission (CRC 21-23)

Mary Lucasse, CRC Counsel, reviewed all active and pending litigation of interest to the CRC.

OLD/NEW BUSINESS

Larry Baldwin updated the Commission on the Coastal Habitat Protection Plan's (CHPP) broad goals. A workgroup within the CHPP has been meeting for specific goals. Later this year the CRC will be asked to review and approve the new five-year plan.

Chair Cahoon asked about any updates available on the Inland Waters Boundaries. Braxton Davis commented that there are no updates currently available, but the CRC will be advised when an update is available.

Mary Lucasse requested that the November Coastal Resources Commission be moved to November 9–10 as she will be out of the country. If the meeting agenda allows for a one-day meeting, then the Commission will meet on November 9. The Commission agreed by consensus.

Robin Smith agreed to draft a memo on issues relating to interpretation of the current grant access program, State Statute, local laws on beach access, access funding and parking fees, and grant agreement limitations for fee usage in grant contracts for the Commission's consideration.

Robin Smith made a motion that at its September meeting, the Commission have a policy discussion on whether to adopt a formal interpretation of current public beach and coastal waterfront access rules and the use of parking fees. Craig Bromby seconded the motion.

The motion passed unanimously (Wills, Medlin, Andrew, Baldwin, Cahoon, Smith, Bromby, Norris, Emory, Salter)(Tunnell absent for vote).

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

Braxton Davis, Executive Secretary

Angela Willis, Recording Secretary