

**NC COASTAL RESOURCES COMMISSION (CRC)**

**November 7-8, 2017**

**Hilton DoubleTree, Atlantic Beach, NC**

**Present CRC Members**

Renee Cahoon, Chair

Neal Andrew, Vice-Chair

Greg Lewis, Second Vice-Chair

Larry Baldwin

Rick Catlin

Denise Gibbs

Robert High

Doug Medlin

Phil Norris

Jamin Simmons

Bill White

**Present CRAC Members**

Greg "Rudi" Rudolph, Chair

Bobby Outten, Co-Vice Chair

Spencer Rogers, Co-Vice Chair

Candy Bohmert

John Brodman

Jett Ferebee

David Kellam

Seth Laughlin

Mike Moore

David Moye

Kris Noble

Kathleen Riely

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 1:00 p.m. on November 7, 2017 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.

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~~Angela Willis called the roll. Russell Rhodes and Marc Hairston were absent. Robert High and Doug Medlin read their Statements of Economic Interest Evaluation letters. Commissioner Medlin stated he would recuse himself from the Drummond variance request. Commissioner Andrew stated that he is a Board Member of Masonboro.org, but does not believe there is a conflict with this agenda. Based upon this roll call Chair Cahoon declared a quorum.~~

**CHAIR COMMENTS**

Chair Cahoon welcomed Commissioners High and Medlin. Chair Cahoon reported that Dr. White did not accept her CRAC appointment after she realized she was not a good fit and her

expertise could be better utilized on another group. Marc Hairston communicated to DCM staff that he is not able to serve on the Commission at this time and was advised that he should forward a letter of resignation to the Senate which had appointed him to the Commission. The 2018 proposed CRC schedule is before each Commissioner for review. A per diem waiver form was provided to each Commissioner, please complete the waiver or fill out the required paperwork to continue receiving the per diem with taxes withheld. The CRC discussed issues with the flood maps at the last meeting and staff will draft a letter to John Dorman from the CRC about flood maps addressing modeling, nor'easters, and historical data. The CRC also heard a presentation on Hatteras Ramps. Staff should bring rule language for the CRC.

### **COMMISSIONER ORIENTATION**

Mary Lucasse, CRC Counsel, stated Angela Willis is the contact for Ethics information. The State Ethics Act recommends that new commissioners read their Statements of Economic Interest evaluations letters for the record to inform other Commissioners of potential conflicts that may exist. The State Ethics Commission requires that each Commissioner attend and complete an ethics education training session and subsequent refresher training every two years. If any commissioner has an ethics concern, talk to CRC counsel before the meeting. The State Ethics Act, requires CRC members recuse themselves from discussion on any matter where an actual conflict exists. A good way to decide if there is a conflict is to consider if the decision involves a member of the Commissioner's family or if there will be a financial impact to the Commissioner. If a member is recused, the Commission's practice has been for that member to leave the table. This ensures that there is no participation in the conversation, there are no facial expressions, or other ways to influence the Commission's decision. Executive Order 34 imposes an additional requirement on Commission members that are appointed by the Governor. This Executive Order repeats several of the statutory requirements as well as the ban on receiving gifts and attendance requirements. The CRC by-laws also have attendance requirements. Counsel explained that Commission member should not speak with parties or staff ex-parte on quasi-judicial matters. In this way, the Commission ensures that its decisions are made based on the facts before the Commission and not on information learned through side conversations. There is also the constitutional due process reason for prohibiting the Commissioners from communicating individually with the parties. By requiring that all communications had handled through the Commission's counsel, the Commission ensures that each side has the same opportunity to present arguments and facts to the Commission, and to respond to what is said by their opponent. State Law requires that all deliberations of the CRC take place in public. The Public Meetings Law requires that the Commission's decisions be made by a quorum of members and that records are kept regarding the Commission's work and that these are available for review. The CRC Internal Operating Procedures were last amended in 2014 and can be updated as needed. If something is not spelled out in the Commission's internal Operating Procedures, the CRC refers to Roberts Rules of Order.

Counsel also explained the variance procedure. CAMA regulations place limits on how a coastal property owner can use his or her property. The variance process is used to permit development that would otherwise not be allowed under CRC rules as long as certain criteria are met. A variance proceeding is a quasi-judicial matter and ex-parte communication is not allowed. If you receive the materials for consideration in a variance proceeding and have a question, please alert CRC counsel. Your attorney will ensure due process is followed by asking both sides to respond

to the question. The variance criteria are spelled out in Statute and the CRC rules. The Petitioner has the burden to show an unnecessary hardship would result from strict application of the CRC's rules, that hardships result from conditions peculiar to the petitioner's property, that hardships do not result from actions taken by the petitioner, and that granting the variance will be consistent with the spirit, purpose and intent of the CRC's rules, will secure the public safety and welfare, and preserve substantial justice. Variance decisions are determined on stipulated facts. Testimony is not received at CRC variance presentations. All arguments should be limited to stipulated facts and exhibits. If the petitioner and staff cannot agree on stipulated facts, a hearing on the matter will be held in the Office of Administrative Hearings and the record of that testimony will be used by the Commission to decide the request. When considering a variance request, there are several possible outcomes. The CRC can remand the request for additional facts, the Commission can grant variance request in its entirety or with conditions. Or the Commission can deny the request for a variance.

### **Division of Coastal Management and NC Coastal Program Overview Regulatory Program/Public Trust Area of Environmental Concern**

Braxton Davis stated the Coastal Area Management Act of 1974 has four major tenets. CAMA balances competing coastal pressures through development permitting and creation of a Coastal Resources Commission. CAMA also addresses coastal growth and related issues through a local/state partnership. It conserves undeveloped land for education and research through the Coastal Reserve Program. Lastly, CAMA enhances public access to beaches and coastal waters through grants to local governments. The mission of the Division of Coastal Management is to protect, conserve and manage North Carolina's coastal resources through an integrated program of planning, permitting, education and research. The Division has offices with regulatory staff in Elizabeth City, Washington, Morehead City, and Wilmington. The Policy and Planning staff work with the Commission on rule development and non-regulatory programs such as the Waterfront Access Grants, Land Use Planning, and Clean Marina Programs. There are ten Coastal Reserve sites which focus on research and education. The Division's appropriations have been reduced by 30% since the 2011 fiscal year. There has been a reduction of 14 full time employees, about a 22% reduction. Permit fees are rebounding as development increases and federal support has remained steady since 2002, but has faced several potential threats. The CRC signed a support letter to the North Carolina delegation to request continued support of the program. CAMA designates areas of environmental concern (AEC) and the Commission writes the rules for these areas. The AECs include the Estuarine and Ocean System, Ocean Hazard Areas, Public Water Supplies, and Natural and Cultural Resource Areas. In the Ocean Hazard Areas there are erosion setbacks based on the size of the structures, a ban on most permanent erosion control structures, and rules governing beach and inlet projects. In the estuarine system there are different rules based on the characteristics of that AEC. Minor Permits are issued mostly by local governments consistent with CRC rules. General permits are streamlined permits issued by DCM staff and cover routine projects. Major Permits are reviewed by nine state and four federal agencies and cover development not eligible for a General Permit. The federal consistency reviews can be a big part of our program since it applies to offshore energy development, operations of the Corps of Engineers, Coast Guard dredging operations, and any federal activity or federal permit that isn't also receiving a state permit.

Doug Huggett reviewed the regulatory program within the Division. A CAMA minor permit is used for development in an AEC that does not require any other state or federal permit. A majority of minor permits are issued by Local Permit Officers. Currently 38 local communities and municipalities participate in the Minor Permit Program. When the economy was strong during 2006-2007, permit numbers were up. Since that time, approximately 800 minor permits are issued per year. The trend for general permits is similar. During the construction boom, there were more than 3,000 general permits issued per year by the 15 field representatives for the twenty coastal counties. The Corps of Engineers in North Carolina has permitting authority for wetland permits as well as navigational permits. In an effort to streamline the process, the State and the Corps came up with General Permit No. 198000291 (GP 291) which sets up a cooperative agreement between the Corps and DCM for processing applications initiated through DCM. A pre-application meeting with a DCM field representative is not required, but is highly recommended. Once the application package and fee are submitted to DCM, the field rep does a site visit with the applicant and reviews the application packet for completeness. The field rep writes a field investigation report which acts as an executive summary for the overall project. This field report along with the application package is sent to state and federal review agencies. Then, the application is turned over to the major permits staff and public notice begins. Comments and objections are accepted from the public and the review agencies. At the end of the comment period, the permit coordinator reviews all comments and recommendations received determines whether the proposed project is consistent with CRC rules. If a permit is denied, the applicant can appeal the permit decision in OAH or request a variance from the CRC. If the permit is issued, a third party may request a hearing to challenge the permit. In addition, the permittee may appeal a permit condition or request a variance to modify or remove a permit condition. Commission rule 15A NCAC7H .0208 dictates that prior to issuing a permit, DCM must find there are no significant adverse impact to coastal wetlands, SAV habitat, shellfish beds, and spawning and nursery areas; the development will not violate water quality standards; will not jeopardize use of the waters for navigation and other trust rights, there are no significant adverse impact to wildlife or fisheries, and the development is timed to avoid impacts on life cycles. The fee for a CAMA major permit includes a fee for a DWR Wetlands Permit, which is a savings to the applicant. SEPA documents are no longer required for projects which receive a CAMA major permit.

Christy Goebel provided training on the legal concept of public trust which varies from state to state. The Public trust in North Carolina is defined by the State's Constitution, NC Statutes, CRC Rules, and case law. In North Carolina, the public trust includes the ability to navigate the waters of the state, swimming, hunting, fishing, and recreating. Public trust areas include the reach of navigable waters and the full breadth of the water body as well as the full depth and breadth of the ocean beaches. ~~The dry sand beach, fish and game are also included in the public trust. DCM~~ regulates the State's Dredge and Fill Act. This is where "estuarine waters" is defined. One of CAMA's goals is to protect common law and statutory public rights in the land and waters of the coastal area. CAMA requires a permit for development be denied if it will jeopardize public rights or interests. The CRC rules protect the waters as well as the shorelines. The management objectives of the AECs require protecting present common law and public rights of access to the lands and waters of the coastal area. In the estuarine waters AEC, CRC rules protect fisheries habitats as well as the public trust right of recreation. In the public trust area AEC section, the rules focus on ocean waters and navigable waters, including upland basins, and the CRC's desire

to protect the navigational, fishing and recreation rights of the public in these public trust areas. The use standards for the AECs protect the fisheries resource and the habitat as well as the traditional public trust rights.

### **ASSISTANT SECRETARY UPDATE**

Sheila Holman, DEQ Asst. Secretary, welcomed the two new members of the Commission. She stated, John Nicholson, DEQ Chief Deputy, is at the Division of Marine Fisheries. A new director should be named shortly. I am taking on GenX in the Cape Fear River.

### **VARIANCES**

#### **Drummond (CRC VR 17-06) Surf City, Oceanfront Setback**

##### **Christine Goebel/Clark Wright**

\*\*Doug Medlin recused himself from this variance request.

Jason Dail, DCM Field Representative, presented an overview of the site. Christine Goebel, DEQ Assistant General Counsel, represented staff and acknowledged Mr. Clark Wright who is present and will represent Petitioners. Ms. Goebel reviewed the stipulated facts of this variance request and stated Petitioners Michael and Mary Drummond own oceanfront property at 1924 South Shore Drive in Surf City. The site is developed with a two-story, six-bedroom home. The location of the 60-foot setback from the current first line of stable and natural vegetation falls at the back of the existing house. Approximately 2/3 of the house is within the setback area. In 2017, Petitioners applied for a CAMA Minor Permit to enclose part of the entry deck area, increasing the total floor area by 37 square feet. Additionally, Petitioners propose to re-work the existing decks and stairways, resulting in a net increase of decking and 753 square feet of decking within the setback. DCM denied Petitioner's permit application as the proposed development does not comply with the ocean erosion setback at 15A NCAC 7H .0306(a)(9) and the decking is in excess of the 500 square feet allowed by 7H .0309(a)(3). Ms. Goebel stated the addition requested by Petitioners is de minimis. However, Staff argues that the request for an increased deck in the setback should be denied because the hardship do not result from conditions peculiar to the property, any hardships are a result of the petitioner's choice of design, and the additional decking on the oceanside of the existing home is not with the spirit of the rules and could negatively impact the public safety and welfare if it becomes storm debris.

Clark Wright, of Davis Hartman Wright, represented Petitioners and stated older decking is being replaced with newer, better-built materials. All work that is being proposed is de minimis and based on the plans are reducing storm debris with a positive net effect of zero or better. Mr. Wright reviewed the stipulated facts which Petitioners contend support the granting of the variance request.

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#### **The following Motions were made regarding the Request for 37 Square foot addition:**

**Greg Lewis made a motion that strict application of the applicable development rules, standards or orders issued by the Commission will cause the petitioner an unnecessary hardship as related to the proposed 37 square foot addition. Jamin Simmons seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

**Greg Lewis made a motion that any hardships associated with the 37 square feet addition result from conditions peculiar to the Petitioner's property. Phil Norris seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

**Greg Lewis made a motion that hardships associated with the 37 square foot addition do not result from actions taken by the Petitioner. Denise Gibbs seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

**Greg Lewis made a motion that the 37 square foot addition is 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. Neal Andrew seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

**The following motions were made regarding the request to expand the oceanside deck:**

**Greg Lewis made a motion that the variance for the proposed decking be denied as strict application of the rules do not cause an unnecessary hardship. Bill White seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

**Greg Lewis made a motion that any hardship resulting from denying the request for the proposed deck was not caused by conditions peculiar to the Property. Bill White seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

**Greg Lewis made a motion that any hardships relating to the increased deck result from actions taken by the petitioner. Neal Andrew seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

**Greg Lewis made a motion that the requested decking is not consistent with the spirit, purpose and intent of the rules, standards, or orders issued by the Commission; will not secure public safety and welfare; and will not preserve substantial justice. Neal Andrew seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

**This variance request was granted in part and denied as to the requested deck addition.**

## **ACTION ITEMS**

### **Adoption of 15A NCAC 7H .2200 Free Standing Moorings – Osprey Poles**

#### **Jonathan Howell**

Jonathan Howell stated the amendments to this General Permit make it consistent with 7H .1200 and allow for one bird nesting pole per property placed within the property owner's riparian corridor and limits the maximum platform size. No public comments were received.

**Neal Andrew made a motion to adopt amendments to 15A NCAC .2201, .2202, .2204, and .2205. Larry Baldwin seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

### **Town of Swansboro Land Use Plan Amendment (CRC 17-24)**

#### **Mike Christenbury**

Mike Christenbury stated the Town of Swansboro is seeking certification of an amendment to the 2009 Swansboro Land Use Plan. The Town held a duly advertised public hearing on August 8, 2017, and voted unanimously by resolution to adopt the amendment. DCM Staff reviewed the amendment and determined that the Town has met the substantive requirements outlined in the 7B Land Use Planning guidelines and there are no conflicts with state or federal law or the State's Coastal Management program. Staff recommends certification of the amendment to the 2009 Town of Swansboro CAMA Land Use Plan.

**Neal Andrew made a motion to certify the amendment to the Town's Land Use Plan. Phil Norris seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

### **Town of Ocean Isle Beach Land Use Plan Certification**

#### **Mike Christenbury**

Mike Christenbury stated the Town began the process to update and create a new land use plan in 2016. After public meetings with citizens, stakeholders and key decision makers, the Town held a duly advertised public hearing on September 12, 2017, and voted unanimously by resolution to adopt the 2017 Land Use Plan. DCM Staff reviewed the plan and determined that the Town has met the substantive requirements outlined in the 7B Land Use Planning guidelines and there are no conflicts with state or federal law or the State's Coastal Management Program. Staff recommends certification of the 2017 Ocean Isle Beach Land Use Plan.

**Phil Norris made a motion to certify the Town of Ocean Isle Beach's Land Use Plan. Bill White seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

### **Legislative Changes Regarding Delegation of LUP Certifications (CRC 17-30)**

#### **Mary Lucasse**

Mary Lucasse provided some history on the initial controversy involving CAMA Land Use Plans. Now that local governments value and understand why these plans are important, approval is pro forma and the CRC has requested a statutory change delegating its authority to review and approve Land Use Plans to the Department. Session Law 2017-209 makes this change. The Legislature allowed the Commission to delegate the power to approve land use plans in

accordance with 113A-110(f) to any qualified employee of the Department and reviewed the draft delegation memo from the CRC to the Director of the Division of Coastal Management.

**Neal Andrew made a motion to delegate the Director of the North Carolina Division of Coastal Management, Department of Environmental Quality, the authority to approve Land Use Plans pursuant to N.C.G.S 113A-110(f). Larry Baldwin seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

### **COASTAL HABITAT**

#### **CHPP Implementation Plans (CRC 17-29)**

##### **Jimmy Johnson**

Jimmy Johnson, DEQ, stated the most recent version of the Coastal Habitat Protection Plan (CHPP) was adopted by the CRC, MFC, and EMC in the first quarter of 2016. This is the third version of document which is required by the Fisheries Reform Act of 1997. The first version was signed by the three Commissions in 2004 and the second revision was completed in 2010. This is a request to approve the Implementation Plan for the next two years. The document contains 26 recommendations and the Implementation Plan contains the actions that put the recommendations into action. The four priorities the CHPP Steering Committee identified were living shorelines, sedimentation, oyster habitat, and metrics (how to measure success).

**Larry Baldwin made a motion to approve the 2018-2020 CHPP Implementation Plan. Neal Andrew seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

During comments on this agenda item, Greg Lewis stated he supports increased funding for the UNC oyster hatchery and has tried to get a pilot program in Carteret County with Marine Fisheries and Carteret Community College's small business center working with oyster growers.

**By consensus, the CRC appointed Greg Lewis as the second CRC member on the CHPP Steering Committee.**

### **LEGAL UPDATE**

Mary Lucasse stated the CRC was not a party in *Nies v. Emerald Isle* but submitted an amicus brief in the public trust case in the NC Supreme Court. Recently the United States Supreme Court denied the Nies petition for review. As a result, the Court of Appeals holding that the public has the right to use the dry sand beach as part of our public trust area stands.

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*Brooks, Jr./HEB Properties v. CRC/DCM* was filed in Guilford County Superior Court seeking judicial review. The petition was dismissed without prejudice.

Another property rights case is *Sunset Beach Taxpayers Association and NC Coastal Federation v. DCM and Sun's Set LLC v. DCM*. In this case, DCM issued a permit and the permit was appealed. The contested cases have been stayed until a decision is reached in the related case filed in Brunswick County Superior Court requesting determination of title issues.



The variance issued to the Riggings Homeowners, Inc. on December 11, 2015, required the HOA Board to submit annual written updates to the Commission on its search for a solution to address the erosion at the Site. The annual update will be discussed at your next meeting.

The CRC Chair received three requests for third-party hearings in October. The record documents in support of these three requests totaled more than 600 pages. Two of these requests were denied and one was granted permission to move forward to the Office of Administrative Hearings.

### **MINUTES**

**Larry Baldwin made a motion to approve the minutes of the July 11-12, 2017 Coastal Resources Commission meeting. Denise Gibbs seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

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

Braxton Davis, DCM Director, gave the following report:

#### **Legislative Update**

Over the last few meetings I've updated you on several bills that DCM has been tracking during the past legislative session.

#### ***S.L. 2017-10 (S131) – An Act to Provide Further Regulatory Relief to the Citizens of NC***

***Section 3.8 Eliminate Outdated Provision of CAMA (113A -109)*** – This action eliminates the provision for the CRC to develop the initial LUP for a County as all CAMA counties have LUPs.

#### ***Section 3.14 CRC Rules on Temporary Erosion Control Structures***

Allows the Commission to adopt an emergency rule for the use of sandbags consistent with the amendments in CRC-16-23. The Commission is directed to adopt temporary and permanent rules to implement this section. A review of proposed amendments is on your agenda.

#### ***Section 3.15 – CRC to Amend Sediment Criteria Rule, Exempt Cape Shoal Systems***

Directs the CRC to exempt from the permitting requirements of the Sediment Criteria rule (15A NCAC 7H .0312) any sediment in the cape shoal systems used as a borrow site and any portion of an oceanfront beach that receives sediment from the cape shoals system. This provision is effective immediately until the Commission completes permanent rule making. You will recall the Commission began the process at the May 2017 meeting that included revisions of the sampling protocol associated the sediment criteria rules. Staff has been soliciting input from stakeholders on draft amendments and will have rule language for you to consider in early 2018.

#### ***Section 3.16 – DCM to Study Long-term Erosion Rates Adjacent to Terminal Groins***

Directs DCM to study the change in erosion rates adjacent to existing and newly constructed terminal groins to determine if current erosion rates should be adjusted to reflect mitigation of shoreline erosion from terminal groin installation. Study is due to Legislature March 1, 2018.

#### ***Section 4.19 – Reporting Frequency on Terminal Groin pilot Projects by the CRC***

Reduces the frequency of reports from once a year to once every five years.

Since the Legislature last adjourned, there are several other bills that have been passed or vetoes overridden:

**SB16 (SL 2017-211)** requires agencies to provide notice of petitions for rulemaking and a statement of the effect of the requested rule change to the Office of Administrative Hearings within three business days of receipt of the petition. The Office of Administrative Hearings shall distribute the information via its mailing list and website within three business days of receipt.

**HB56 (SL 2017-209)** Section 5.(a) Allows the CRC to delegate approval of CAMA land use plans to any qualified employee of the Department. Section 5.(b) removes the CAMA requirement for on-site posting to provide notice of minor permit applications. Section 6. establishes a Coastal Storm Damage Mitigation Fund to be used for costs associated with beach nourishment, artificial dunes, and other projects to mitigate or remediate coastal storm damage to the ocean beaches and dune systems of the State. Any project funded by revenue from the Fund must be cost-shared with non-State dollars on a basis of at least one non-State dollar for every one dollar from the Fund. No money has been appropriated. Section 19.(a) Repeals plastic bag ban in Dare County.

### **Regulatory**

On the regulatory side, we are seeing similar or slightly higher permit activity in 2017 as compared to 2016. Division staff have been actively involved with Department senior staff and other DEQ Divisions on a Department-lead initiative to reinvent permitting. Efforts explored include “e-permitting”, acceptance of credit cards for permit fees, improved web-based access to rules, guidance documents and application forms, as well as better access to real-time permit processing information for individual projects. This effort is still underway. We will report back to you on final improvement ideas and action items.

Notable permit action since your July meeting include the issuance of a permit to the Brunswick Regional Water & Sewer for water infrastructure improvements in Brunswick County, issuance of a permit to the Cape Fear Public Utility Authority for Proposes for the extension of water distribution system and sanitary sewer collection system to serve commercial facilities, and the issuance of a permit to the Town of Manteo authorizing the large-scale maintenance dredging of the Town’s waterfront. On October 9<sup>th</sup> and 10<sup>th</sup>, the Division held a local permit officer training session in Dare County for local governments in the northern portion of the State participating in the LPO program. A similar session for southern LPO programs was conducted earlier this year. DCM, in cooperation with the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers, recently developed a Statewide Programmatic Biological Opinion that should streamline a portion of the permitting process for beach nourishment projects along North Carolina’s oceanfront. This new, programmatic approach to the consideration of threatened and endangered species will make the planning and permitting of many beach projects more straightforward, particularly following the 2014 designation by the U.S. Fish and Wildlife Service of several coastal beaches in North Carolina as “critical habitat areas” for the threatened loggerhead sea turtle under the federal Endangered Species Act. This new approach should cut permitting timelines and reduce costs for routine beach projects. The statewide biological opinion will eliminate the requirement for the preparation of individual, project-specific assessments and case-by-case federal reviews of many sand placement projects in North Carolina and result in reduced permitting timelines and cost savings for locally-sponsored and federal beach nourishment projects, while continuing to ensure protections for threatened and endangered species. The coast-wide biological opinion outlines specific project designs, mitigation measures and monitoring requirements for a typical beach nourishment project.

## **Coastal Reserves**

Coastal Reserve Staff have been active with a number of Program activities - details are on the Reserve's website event calendar. Seasonal temporary staff and interns have helped the Reserve with a variety of projects this summer including public and summer camp education programs, various site management activities, sea turtle and shorebird monitoring, pre-storm marsh sill assessment monitoring, and aerial photo documentation of marsh seaward of bulkheads. Of note the Masonboro Island Reserve sea turtle nesting season had record numbers this year, with 55 nests and over 4,460 hatchlings. Reserve staff and 11 volunteers patrolled the beach to monitor nests 3-5 times a week, contributing more than 500 volunteer hours from mid-May through October. The Coastal Reserve has also received several grants including a Thin Layer Deposition NERRS Science Collaborative Grant to serve as an experimental site for a project testing the effectiveness of thin-layer sediment placement as a climate adaptation strategy. The project tests how small additions of sediment affect the resilience of marshes to sea level rise and develops standardized monitoring protocols as well as siting and permitting guides for this technique. A Seeds to Shoreline NERRS Science Collaborative Transfer Grant to partner on a multi-Reserve project for teachers and students to hydroponic growing techniques for growing saltmarsh cordgrass (*Spartina alterniflora*) in their classrooms and plant for future restoration efforts. The Reserve has also received an additional NERRS Science Collaborative Transfer Grant to facilitate the use of a new tool, known as the Climate Change Vulnerability Assessment Tool for Coastal Habitats (CCVATCH), to assess habitat vulnerability to ecosystem stressors using the knowledge of Reserve staff and local experts. The Reserve hosted a Coastal Explorations Educator Workshop focused on estuaries and provided classroom activities participants can use with their students and groups. A Marine Planning Process Workshop will be held on January 8<sup>th</sup> 2018 in Beaufort to provide marine and coastal resource managers with tools to use effective marine planning techniques. This workshop is a partnership with the Albemarle-Pamlico National Estuary Partnership and Duke University's Nicholas School of the Environment.

## **Periodic Rules Review – Coastal Reserve Rules**

Both the Rules Review Commission (RRC) and the Joint Legislative Administrative Procedures Oversight Committee approved the rules review report for the Coastal Reserve rules 15A NCAC 070. These actions follow input received on the classification of each rule in 070 from the local advisory committees (Spring 2016), N.C. Coastal Resources Commission (July 2016), and a 60-day public comment period (September-November 2016). One supportive comment was received during the public comment period. Staff is working with the Department to establish a timeline and process for readoption of these rules.

## **Policy & Planning**

The Division's Planning Staff have completed the 2017 Public Beach and Coastal Waterfront Access Program grant process and the Governor's Office has announced awards for the 2017-18 fiscal year of more than \$1.6 million to 14 local governments for 15 projects to improve public access to coastal beaches and waters. The awards range from \$13,000 - \$300,000 and include projects such as boardwalks, public restrooms, kayak launches, fishing pier and parking improvements, and repair of the Yaupon Pier in Oak Island. The Division expects to solicit applications for FY 2018 in mid-January. Planning Staff are working with Coastal Reserve Staff to hold Coastal Government Planning for Open Space Workshops. Participants will learn about

the benefits of open space protection and how it can service multiple needs; including recreation opportunities, floodplain management, riparian buffers, military buffers, wildlife habitat, and forestry and farmland protection. Participants will identify contacts that build a framework for open space protection and how other communities approach open space protection. Workshops will be held November 30<sup>th</sup> at the New Hanover County Government Complex in Wilmington, and on December 5<sup>th</sup> at the Vernon James Research & Extension Center in Plymouth.

### **Administrative**

As the Chair mentioned, the Office of State Controller is requiring that boards and commission members who receive a per diem payment have taxes withheld. At your seats are an opt out form for members who do not wish to collect the per diem anymore or want to return the payments they already received, a direct deposit form, the NC-4 NC Tax Withholdings Form, and the W-4 Federal Tax Withholding Form. Please complete and return to Angela.

### **Staffing News**

Michelle Brodeur started as the Reserve's new Communications Specialist in August. Michelle is a marine ecologist who recently completed her PhD at UNC Institute of Marine Sciences. She explored how interactions within oyster reef communities affect oyster reef growth and restoration success in the Rachel Carson Reserve. She brings knowledge of estuarine ecosystems and experience communicating research to broad audiences through formal education, public outreach events, and filmmaking. Finally, I am both happy and sad to report that Ronda Bennett, the Division's office manager in our central office in Morehead City, is retiring at the end of this year. Ronda has been an extremely important part of the Division for 20 years. She has been invaluable in more ways that I can report, and while she will be very sorely missed, we all wish Ronda and her husband Chris all the best as they move forward to this new phase of their lives.

### **CRAC REPORT**

Rudi Rudolph stated the Advisory Council discussed current vacancies. The Council agreed to request local governments submit additional nominations to fill the current vacancies. The CRAC also discussed requests by Nags Head and D.O.T. relating to current regulations that do not allow for expansion of stormwater outfalls. Following beach renourishment, outfalls are on the base of the dune and need to be extended oceanward. Cliff Ogburn, Nags Head Town Manager, and members from NCDOT presented the proposals. The CRAC discussed scenarios new regulations could address that would allow for the extension of these outfalls. The CRAC unanimously recommends the CRC move forward to promulgate new rules to allow for the extension of stormwater outfalls in Nags Head or coastwide.

Braxton Davis stated the CRC rules do not specifically ban the extension of ocean outfalls, but development is not permitted seaward of the first line of stable and natural vegetation on the beachfront unless it meets one of the exceptions. Ocean outfalls are not listed in the exceptions. During the CRAC discussion neither DEMLR nor DWR representatives were present. Chair Cahoon clarified that outfalls in Nags Head belong to D.O.T., not the Town.

Rudi stated that the CRAC asked local governments to identify their top coastal issues. Staff has compiled the list of topics received. The CRAC prioritize some issues for future consideration.

Renee Cahoon stated, Frank Rush and Lee Wynns did not seek reappointment to the CRAC. She proposed the CRC send both a Certificate thanking them for their service.

**Greg Lewis made a motion to reappoint all current CRAC members for a two-year term. Phil Norris seconded the motion. (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

### **CRC RULE DEVELOPMENT**

#### **Review and Amendments to 7H .0308(a)(2) Temporary Erosion Control Structures**

##### **Mike Lopazanski (CRC 17-23)**

Mike Lopazanski stated when the CRC began to develop a ban on oceanfront hardening, allowances were made for temporary measures to protect imminently threatened structures along the oceanfront including beach nourishment, sandbags, and beach bulldozing. The intent of these temporary measures was to protect the structure until the beach could repair itself after a storm event or to allow time for the property owner to relocate the structure. Temporary implied that a time limit was applied to these projects. During the 1990s the Commission received numerous complaints about permanent sandbags sued to address erosion problems. In 1994, DCM conducted an inventory that showed about 15,000 linear feet of oceanfront shoreline was protected by sandbags. Some bags had been in place for eight years. In 1995, the CRC amended the rules addressing the size and physical location of the bags, the burial issue, and placed a time limit of two years for protection of a structure of less than 5,000 square feet or five years for structures greater than 5,000 square feet. Sandbags were allowed to remain in place for up to five years if they were located in a community actively pursuing a beach nourishment project. The Commission limited the use of sandbags to one time per property. The hurricanes in 1996 and 1998 caused the CRC to extend the deadline for sandbag removal to September 1998 in counties that were declared disaster areas. The CRC granted variances to several properties in Onslow County. Since most of the sandbags were to be removed in 2000, staff began to notify property owners that 141 sandbag structures were subject to be removed. In January 2000, Dare County submitted a Petition for Rulemaking requesting an additional extension until 2006. The Science Panel recommended granting this extension, but only for sandbag structures that met the size limits and were in communities actively pursuing beach nourishment. Given the time it takes to get a beach nourishment permit, the CRC granted a statewide extension to these communities of May 2008. By 2005, beach nourishment was increasing and presented compliance problems and enforcement challenges. Many sandbag structures were not removed prior to beach nourishment and were buried. It was common to find sandbag structures interlaced among properties. Sandbag structures often had varying expiration dates based on when the structures were installed. In 2006, the six-foot height limit became an issue as property owners were allowed to maintain this height even as the bags sank into the sand. During erosion events, 15- to 20-foot high sandbag walls were uncovered. The CRC directed staff to measure the height of the structure from the base of the structure. As 2008 approached, DCM began preparing to notify the property owners that the sandbag structures would need to be removed. The Commission discussed using degradable materials as a means of ensuring removal. Staff research showed that there were issues with these materials, primarily the amount of time the biodegradable bags could survive in the coastal environment. The CRC considered further time extensions, but ultimately decided that the current rules should be enforced. Staff sent letters to 371 property owners notifying them of the May 1 deadline. DCM conducted an inventory of sandbag

structures and prioritized removal. The CRC received Petitions for Rulemaking to allow special provisions for commercial structures and to remove time limits. The CRC looked at the inlet hazard area provisions and concluded sandbags could remain for eight years in an inlet hazard area when the use of sandbags was associated with an inlet relocation project. Sandbags were to be removed when they were no longer needed and sandbags could be used multiple times provided there would be another inlet relocation project. The Commission received variance requests from 29 property owners. In 2009, the legislature stepped in and established a moratorium on the removal of sandbags if the community was pursuing beach nourishment or inlet relocation. The moratorium did not prevent DCM from moving ahead with enforcement on other rule provisions. The CRC established a stakeholder group on sandbag management and incorporated the provisions from the terminal groin legislation. Several sandbag structures were removed from Dare County where houses had been condemned or removed. In 2015, the legislature required that certain provisions be added to the CRC rules. There was concern these provisions could lead to the proliferation of sandbags and that their use would be allowed even when no threatened structures were present. The CRC had been discussing amendments to remove the distinction between structures based on size, to set a time limit of eight years for all structures; to require that only sandbags exposed above grade be removed upon expiration of the permit; to remove the vegetated requirement that allows structures to remain beyond their permitted time; and to allow a permitted sandbag structure to remain in place for an additional eight years if DCM determines a structure is imminently threatened and the property is located in a community pursuing a beach renourishment, inlet relocation or stabilization project. In 2017, the General Assembly allowed the CRC to adopt the amendments discussed in May 2016 (16-23) and repealed the legislature's directives on temporary erosion control structures in S.L. 2015-241. Two proposals are provided for the Commission's consideration. "Version A" includes the legislative provisions from 2015. "Version B" removes the legislative provisions.

**Neal Andrew moved to approve "Version B" amending 7H .0308, 17H .1704, and 7H .1705 for public hearing. Denise Gibbs seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

#### **Amendments to 7B – Land Use Plan Certification**

##### **Rachel Love-Adrick (CRC 17-32)**

Rachel Love-Adrick stated the proposed amendments to 15A NCAC 7B .0803 are required by the passage of SL 2017-209 (House Bill 56). The proposed amendments allow the Commission to delegate the power to approve land use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.

**Neal Andrew made a motion to approve the amendments to 15A NCAC 7B .0803 for public hearing. Phil Norris seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

#### **BEACH AND INLET MANAGEMENT**

##### **Carolina Beach Inlet Maintenance – Inshore Storage**

##### **Layton Bedsole, New Hanover County Shore Protection Coordinator**

Layton Bedsole explained the management approach for Carolina Beach Inlet. In water management of dredged material is not a new concept. The Corps has been managing offshore

dredge material management sites for years. Our goals were to increase the Corps' efficiency of a special dredge fleet and improve our management of beach quality material. In a case by case analysis of two similar Corps projects, the travel time is reduced by 62% and increased the dredging time by 33% for disposal at the IDMMS (in-shore dredge material management site) versus the nearshore by the hopper dredge. (*presentation available*)

### **Town of Kure Beach Development Line Approval (CRC 17-25)**

#### **John Batson, Building Inspector**

Ken Richardson stated in March of 2017, the Town of Kure Beach adopted a development line in its local ordinances. In July, the CRC identified three locations on the proposed maps that needed to be addressed. Since then DCM received documentation that the Town adopted amendments to the development line as requested by the Commission. Mr. Batson spoke on behalf of the Town and addressed the three areas located at 217 South Fort Fisher Blvd., 1009 South Fort Fisher Blvd., and 1437 South Fort Fisher Blvd. At the CRC's request the Town straightened the development line at these locations.

**Greg Lewis made a motion to approve the Town of Kure Beach's revised development line. Larry Baldwin seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

### **PUBLIC ACCESS**

#### **Evaluation and Economic Impact of NC's Public Beach and Coastal Waterfront Access Program**

##### **Drs. Jim Herstine, UNCW/Chris Dumas, UNCW/Alexia Franzidis, UNCW**

Mike Lopazanski stated the Access Program is funded through the Parks and Recreation Trust Fund. Since the program was started in 1983, using a combination of state and federal funds, we have awarded \$46 million to local governments in the coastal area for construction of more than 430 access sites. These sites are ocean beach accesses, sound side beach accesses, parking areas, boardwalks, restrooms, and urban waterfront redevelopment.

Dr. Jim Herstine stated the purpose of this study was to look at the satisfaction that coastal business leaders, local government officials, and program users have with the public access program. We were also interested in understanding the importance the same people place upon the public access program. The purpose of the study was to provide data to DCM that could be used to make modifications or changes to the program. In each of the four districts we used focus group sessions, individual interviews, an online survey and a field survey. Based upon study results, DCM should continue the access program and consider seeking additional program funding. The study results indicated that there should be a shift from land acquisition for new sites to improvements to existing sites, especially for restrooms, showers, and parking. Chair Cahoon requested that a link to this study be provided on DCM's website for access to the study and recommended that Commissioners share the study with their local legislators.

### **PUBLIC INPUT AND COMMENT**

Brad Rosov, APTIM, commented about larval entrainment impacts from navigation maintenance. (Written comments provided) Al Smeilus, oyster farmer, commented about oyster leases near Masonboro Island.

## **SHELLFISH AQUACULTURE**

### **Overview of General Assembly Oyster Management Plan**

#### **Jeff Warren, PhD, Research Director, NC Policy Collaboratory**

Dr. Jeff Warren stated the NC Policy Collaboratory was established last year by the General Assembly to leverage the talent and research of the staff and faculty across our UNC System. The Collaboratory is designed to study statutory mandates from the General Assembly and do proactive research to bring to the General Assembly. I am the only full-time employee of the Collaboratory. Oysters are a win-win situation. They can create jobs, they provide money for the economy, a great tax base, they bring more notoriety to our State, and an ecosystem benefit. The results of our oyster study are due no later than December 31, 2018. This year's Appropriations Act mandated the Collaboratory include a shellfish mariculture plan in the study. The Collaboratory will provide a summary of available and relevant information on shellfish mariculture; analyze existing programs, policies, rules and laws that govern or affect shellfish mariculture operations within the State; summarize what is being done in other states and countries; analyze how to reduce potential user conflicts regarding siting shellfish mariculture operations, and protect riparian property owners and public trust uses. The study will also include an evaluation and consideration of enforcement mechanisms necessary to protect shellfish mariculture operations from theft and degradation, a pathway for traditional commercial fishermen to participate in enterprises in or near their own communities, and the examination of environmental policies that protect or enhance shellfish mariculture operations. The Collaboratory was tasked with creating a North Carolina Oyster Trail and Oyster Festival.

### **Strategic Shellfish Mariculture Plan**

#### **Todd Miller, Executive Director, NC Coastal Federation**

Todd Miller stated there has been a strategy to revive oysters in North Carolina since 2003. The strategy can be viewed at [www.NCoysters.org](http://www.NCoysters.org). There are seven basic goals in the strategy. The key reason to do this is to think about the quality of our environment and how it effects the foundation of the coastal economy. There is a large interest in the General Assembly and within the Administration for helping the rural areas of North Carolina. On the coast oysters are an opportunity to bring a level of economic development that will be helpful to our coastal communities. One goal is to create about 500 acres of new oyster sanctuary in Pamlico Sound. We are currently about 40% of the way there. Another key element to the strategy is to plant cultch to provide ample wild harvest. Good management of our wild harvest is another element and without good water quality all this effort will be wasted. Stump Sound in Onslow County is one of the best growing areas in the State, but a couple of years ago, that Sound was closed more than half of the year due to pollution. It is important that we document the successes of this strategy. The CRC strategy should include encouraging DCM's continued engagement in oyster restoration efforts, refine its policies and rules to promote, encourage and streamline shellfish restoration efforts, balance public trust uses through expanded spatial planning, and advocate for legislative and Governor's rural coastal economic development initiatives.

### **Division of Marine Fisheries – Shellfish Leasing Program**

#### **Steve Murphey, Section Chief, DMF Habitat Enhancement**

Steve Murphey stated the shellfish leasing program is a small part of DMF's budget, but an extremely important part of our program. In North Carolina, there have been shellfish leases of



public trust bottom for at least 100 years. The current program has existed since the mid-1960s. In 1989, the law was amended to allow water column leases. It only recently have we seen any interest in shellfish water column leasing. The authority to grant leases rest with the Department and the Secretary has delegated that authority to the DMF Division Director. From 2012 to 2015, we received 10 applications for shellfish leases. In 2016-2017 we have received over 100. Shellfish leases are playing a more prominent role in the production of shellfish. In 2016, oysters from shellfish aquaculture operations accounted for 45% of the total commercial harvest in North Carolina. It is the policy of the State to encourage development of shellfish aquaculture in ways that are compatible with other public uses. The Division takes this charge seriously and carefully considers each application to ensure it meets the standards and intent of the law. We work with the applicant to help guide a successful venture. Leases are treated like real property. Leases are on ten-year terms and can be up to a ten-acres. The Marine Fisheries Commission has rulemaking authority to develop rules relating to shellfish production. Rules have been developed to address adjacent riparian rights, marking, renewals, reporting requirements and how to transfer or cancel a lease. In addition to State law and the Commission's rules, the Army Corps of Engineers permits shellfish aquaculture under their Nationwide Permit number 48. Regional conditions are added by the Wilmington district to provide added protections to essential fish habitats and address navigation and access issues. Fractional limits on the use of the leases and setbacks and buffers are in place to ensure public access and navigation. Currently, DMF lease applications require a detailed lease management plan. This plan is forwarded to the Corps and a Nationwide permit authorizes the gear on the lease. Some gear outside the lease boundaries, such as the FLUPSY tied up at the dock, or lease marker pilings greater than four inches in diameter may require CAMA permits. Every new proposed lease site is inspected by Division lease program staff. The inspection protocol has been developed in coordination with NOAA and addresses a variety of environmental and geographical factors. Depending upon the size or complexity of a site, a single site inspection can take a week or more. Prior to 2016, the annual budget for the shellfish lease program was \$5,000 and there were no funded staff in this budget. In 2016, the General Assembly provided two positions and some operating funds. North Carolina has both public and private bottom in production for shellfish aquaculture. Leases are granted over public bottom for a fee and franchises may be granted over submerged land claims for no fee. Franchise owners may also apply to lease the water column for a fee. You must have a bottom lease to have a water column lease. There are production requirements in place to ensure leases are used for commercial purposes. New developments have led to an increase in water column leasing gear. In 2015, the General Assembly introduced an amendment to the shellfish leasing law to allow gear up to 18 inches off the bottom. Shellfish culture methods can be broadly grouped into two areas; extensive and intensive. The extensive methods include clams, oysters, clam seed, spat and spat on planted shell, minimal equipment, and are highly navigable. The intensive methods include mostly oysters, higher yields and costs, significant equipment needs, intensive labor, purchase oyster seed for grow-out, and limited navigation. There are no pre-approved areas or shellfish aquaculture zones. Each applicant selects his or her own site. Sea Grant has a full-time extension specialist in Morehead City who works closely with shellfish growers, other growers are knowledgeable about siting leases, and UNCW has a siting tool for assistance in siting leases. The application process takes between 4-6 months. Due diligence is necessary to ensure it is in the best interests of the State. Working closely with DCM, NOAA, and the Corps, this process was refined over the past year to provide broad review and comment to ensure that leases are as compatible with other uses as possible

under the law while still allowing the business to succeed. Once a lease is granted, the lease holder must maintain marking on the corners and boundaries. While MFC rules address public access, there is an incongruence between the use of the intensive gear and access across the lease. The benefits to increasing the commercial productions of shellfish, particularly oysters, include coastal county jobs, water quality enhancement, habitat function, nutrient removal, tourism, and supports working waterfront communities. Some of the challenges include the opposition to lease siting, navigations hazards, theft, terminating non-productive leases, public health issues, the costs to administer the program, and gear cleanup and abandonment. Possible solutions may result from NOAA's proposal for spatial planning, the UNC-Collaboratory's State Shellfish Mariculture Plan, a review of legal standards, consideration of navigational issues, exploration of Aquaculture Enterprise Zones and MFC acreage issues. We may need to revisit moratoriums in Core Sound and Brunswick Sound.

### **DCM Role in Shellfish Leasing Program**

#### **Braxton Davis, Executive Director and Jonathan Howell, District Manager, DCM**

Braxton Davis stated over a hundred lease applications have come across my desk at DMF for a final decision. Only two have been denied. One is in litigation. Three other lease holders have been notified that their leases, which were approved by the prior Fisheries Director, are in conflict with another State law. Over the past several years we have done a couple of things. In the current CRC rules, the placement of natural cultch material is exempt from CAMA. Jonathan Howell, is DCM's point person to review and monitor all shellfish leasing and oyster restoration applications. One of the first things we did was to determine that DCM will not require a permit for anything that is permitted under the DMF shellfish lease program. DMF has a well-defined permit application process for shellfish leases. DCM believed our best efforts would be best spend working with DMF within their existing process. As part of DMF's expanded application program DCM is a commenting agency on shellfish lease applications. As a commenting agency, DCM may request lease conditions such as requiring that the lessee will not prevent the full and free use by the public of all navigable waters at or adjacent to the authorized lease. After looking at past and present aerial photography, the Division may request that DMF confirm the location of the natural channel to ensure a lease does not cut off access to coves. To ensure there is no hazard to navigation associated with a lease, at a minimum, DCM could request permanent reflectors or reflective tape be attached to any pilings or other markers associated with the lease. To conserve and manage coastal wetlands, DCM would request a condition requiring a 20' buffer be maintained between any part of the structures associated with the lease and the adjacent coastal wetlands 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. Certain activities would require a CAMA permit including poles or pilings larger than 4-feet by 4-feet, fixed platforms within lease boundaries, and floating upwellers at private docks. DCM will also take into consideration siting of leases at Reserve sites which have unique concerns as these sites are part of a national network of pristine areas that enable the long-term studies. Due to these unique concerns, new lease applications within Reserve management boundaries were suspended from November 3, 2015 until December 31, 2016 to provide time for DCM staff to develop a policy on shellfish leases with Reserves. DCM identified potential conflicts with other uses that occur within the Reserve management boundaries and considered options for various shellfish lease activities. DCM notified the Natural Heritage Program (NHP) about three leases which had been approved within the Reserve management boundaries. DCM held local advisory committee

meetings to gather input from local stakeholders. In March 2017, NHP requested that DMF not issue any leases for commercial shellfish cultivation within the boundaries of any dedicated State Nature Preserve. The language within the State Nature Preserve dedication letters that supports NHP's position prohibits commercial activities and the removal, disturbance, molestation, or defacement of minerals, archeological, and natural resources or natural features. Based on NHP's position, DCM will deny future applications for aquaculture leases sited within the boundary of a dedicated State Nature Preserve. DMF has notified the leaseholders of the three existing leases within the Nature Preserve and Reserve boundaries that their leases can continue for the remaining term of the leases, but will not be renewed based on NHP's position. This should allow enough lead-time to allow the leaseholders to find a new location and move their operations. Currently, CRC rules do not address shellfish leases specifically. Some potential issues with these leases include public trust use conflicts, debris removal from storm damage or abandoned gear, riparian corridor conflicts, and shallow water habitat and marsh degradation.

Commissioner Andrew stated he is the vice-president of Masonboro.org, on the Masonboro Island local advisory committee, and a strong proponent of oyster programs and aquaculture. I appreciate the efforts of Marine Fisheries and Coastal Management on this issue. These agencies appear to be on the same place with the Legislature and the Coastal Federation. This is an important issue to many people in our State. I would like to request that a small subcommittee be created to meet with DEQ and DNCR staff to include oyster farmers and other interested parties to discuss a rational and reasonable approach to possible mariculture uses within preserve sites like Masonboro. Chair Cahoon stated Asst. Secretary Sheila Holman has done a great job of trying to facilitate discussion as we work through this issue. She has offered to facilitate a meeting between the lease holders at Masonboro, some CRC members, and DNCR. This will help everyone better understand what the ramifications are and implications are to the people on the coast. Braxton Davis stated there is a strong need to look at the overall issue of the role of a Nature Preserve designation and when that comes into play in terms of managing the sites.

### **CRC RULE DEVELOPMENT**

#### **Amendments to 7H .0306, 7J .1301 Development Line (CRC 17-26)**

##### **Ken Richardson**

Ken Richardson stated the development line is an alternative to the static vegetation line exception, but does not replace the static vegetation line. Since adopting this rule, the Commission has approved four development lines. DCM has considered how each community maps its proposed development line. The CRC's rules state, that Petitioner shall utilize the adjacent site line approach resulting in an average line of the structures. In areas where the seaward edge of the existing development is not linear, Petitioner may determine an average line of construction on a case-by-case basis. DCM staff is concerned about the potential for seaward encroachment. The CRC has stated that this was not the intent of the rule. After considering several alternatives for increased staff involvement in the process, and how to limit the amount of potential seaward encroachment, staff believes that our best role may be in quantifying any potential for seaward encroachment that a proposed development line might allow. This will provide the Commission additional information in support of the decision-making process.

**Amendments to 7H .0209(f)(1) Stormwater Correction for ORW Shorelines (CRC 17-27)  
Tancred Miller**

Tancred Miller stated the CRC's Coastal Shorelines rules are meant to compliment the EMC's Water Resource rules. The EMC allows the use of stormwater collection systems and the CRC's rules prohibit the use of stormwater collection systems within an ORW Coastal Shoreline. Staff is recommending an amendment so that the Commission's rules are consistent with the EMC's rules.

**Neal Andrew approved the amendment to 15A NCAC 7H .0209 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

**Amendments to 7K .0208 Single-Family Residences Exempted (CRC 17-28)  
Debbie Wilson**

Debbie Wilson stated this rule allows for development of a single-family home as long as the proposed development and all land disturbing activity is located more than 40 feet landward of normal high water or normal water level, with the exception of a six-foot wide generally perpendicular water access. 7K .0208(d) provides that before beginning any work under this exemption, a representative of the Division of Coastal Management shall be notified of the proposed activity. Staff recommends that an amendment be made to authorize the Local Permit Officers to issue these exemptions as well.

**Neal Andrew made a motion to approve the amendments to 15A NCAC 7K .0208 for public hearing. Phil Norris seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).**

**OLD/NEW BUSINESS**

Chair Cahoon stated the public comment received from Brad Rosov regarding larval impacts from navigation maintenance should be provided to the CRAC for their review and discussion.

Braxton Davis followed up on the Hyde County Drainage project and stated the appendix and final report has been reviewed. A guidance document was created for Hyde County to help clarify permitting issues and streamline permitting, and provide best practices. This final report will be on DCM's website.

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

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Braxton Davis, Executive Secretary

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Angela Willis, Recording Secretary