

**NC COASTAL RESOURCES COMMISSION (CRC)**

**February 18, 2021**

**Via WebEx**

**Present CRC Members**

Renee Cahoon, Chair  
Larry Baldwin, Vice-Chair  
Robin Smith, Second Vice-Chair  
Neal Andrew  
Craig Bromby  
Trace Cooper  
Bob Emory  
Robert High  
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 February 18, 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. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called. No conflicts were reported. Based upon this roll call Chair Cahoon declared a quorum.

**CHAIR'S COMMENTS**

Chair Cahoon outlined the way the virtual meeting will be conducted. DEQ Secretary Michael Regan has been nominated to serve as the U.S. EPA administrator. Senators Burr and Tillis attended and spoke on his behalf during his confirmation hearing. The Governor has appointed a new DEQ Secretary, Dionne Delli-Gatti. Chair Cahoon thanked DEQ Assistant Secretary Sheila Holman for attending today's meeting and turned it over to her for comments.

Sheila Holman stated due to Covid we are all still meeting virtually and hope to return to in-person meetings when we are able. Secretary Regan sends his thanks for the Commission's State service. Secretary Delli-Gatti will begin March 1. I will be helping with the transition; however, I will be retiring on May 1. I am honored and privileged to have worked with the staff of DCM

and am appreciative of the Commission's dedication to protecting the resources of North Carolina.

### **MINUTES**

**Trace Cooper made a motion to approve the minutes of the November 18, 2020 Coastal Resources Commission meeting. Angie Wills seconded the motion. The motion passed unanimously (Cahoon, Andrew, Bromby, Cooper, Emory, High, Medlin, Norris, Smith, Wills) (Baldwin, Salter, Tunnell absent for vote).**

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

DCM Director Braxton Davis gave the following report:

We are very proud that our own Secretary, Michael Regan, was nominated to serve as EPA Administrator. We look forward to meeting our new Secretary and hope to invite her to attend a Commission meeting soon. Sheila Holman has been engaged and very involved with the Division and the Commission and we cannot thank her enough for her dedication and service to the State.

Since your last meeting on the regulatory side, our southern beach communities continue to rebuild following the storms that have impacted our State the last few years. Presently, there are several beach nourishment projects underway or soon-to-be underway. In the south, the Town of Oak Island is starting their nourishment project soon as well as receiving some sand from the Army Corps of Engineers dredging of the Lockwoods Folly AIWW crossing. The Corps contractor then plans to move to Ocean Isle Beach for additional maintenance dredging and beach placement. The Wilmington Harbor Corps project is also currently placing sand on Bald Head Island as part of their scheduled channel maintenance. Topsail Beach and Figure Eight Island are both finishing dredging projects with beach placement. North Topsail Beach is currently working on a dune restoration project via truck haul and the north end of North Topsail Beach is receiving some sand from a Corps navigation dredging project. Emerald Isle will soon be starting their nourishment project as part of Carteret County's 50-year project. Atlantic Beach is also receiving sand from the Army Corps of Engineers MHC Harbor maintenance dredging. Since your last meeting, a few Major Permits of note. Staff issued a permit to NCDMF for a new 75-acre Oyster Sanctuary off Cedar Island that will consist of traditional reef making materials such as broken concrete and marl, as well as reef balls when possible. Staff also issued a permit for 250 additional reef balls to complete a 5-acre Artificial Reef site in Bogue Sound.

### **Federal Consistency**

Back in August 2020, DCM received a draft Environmental Assessment and federal consistency determination from the Wilmington Corps District seeking to eliminate longstanding seasonal restrictions for hopper dredging to maintain the federal shipping channels servicing the Ports of Morehead City and Wilmington. In accordance with the federal Coastal Zone Management Act, DCM conducted a review of the proposal for consistency with the State's enforceable coastal policies. As part of this review, the Corps' proposal was circulated to the other state resource agencies that typically comment on CAMA major permits and federal consistency submissions, including the NC Wildlife Resources Commission, Division of Marine Fisheries, and Department of Transportation. We also issued a public notice along with a public comment period. As a result of comments received from other state agencies, local governments, and the

public, in addition to comments the Corps received from federal agencies and fisheries management councils, and following negotiations between the division, DEQ, and the Corps, the Corps submitted a revised proposal on December 23 for a more limited, three-year period, rather than a permanent elimination of seasonal dredging restrictions, and with commitments to model, monitor and report biological and water quality data in coordination with state and federal partners. The three-year period is intended to provide additional time to expand on initial data collection efforts that were conducted during the summer 2020 Beaufort Inlet dredging event and will now include modeling and monitoring of Cape Fear Inlet. Based on the revised proposal and partnership among agencies involved, DCM issued a consistency concurrence on December 31, 2020. The Corps has not issued its final decision document but has revised the draft Environmental Assessment to reflect these and other changes. A number of environmental nongovernmental organizations, as well as the Atlantic States Marine Fisheries Commission, have requested that the Corps undertake a full Environmental Impact Statement based on the importance of the proposed changes locally and potentially across the East Coast. DCM, DMF, WRC, the Corps, NOAA, and academic partner organizations have already had several meetings to begin collaborating on the upcoming monitoring effort. We believe these studies will improve our understanding of the potential impacts of dredging on marine species and habitats during the most biologically productive months of the year and improve future decisions regarding mitigation requirements for dredging associated with these two inlets. For example, DCM is already planning to fund an expansion of a long-term survey of larval and juvenile fish populations in and around both inlets this coming summer, and a separate study using acoustic sensors and sampling methods to assess fish mating, spawning, migration, or other habitat utilization in and around Beaufort Inlet for commercially and recreationally important fisheries. Brandon Puckett, our Coastal Reserve Research Coordinator, is the Division's main point of contact in coordinating this effort with other partner organizations, and he will also be directly involved with water quality and habitat assessments building on the similar work he completed last summer. We will keep you informed of this work along the way, and of the results as we begin to pull that together on an annual basis and at the end of the three-year period.

### **POLICY & PLANNING**

The Division received one land use plan certification request and one amendment certification request under the delegation of authority from Commission. The Town of Carolina Beach submitted its 2020 Land Use Plan for certification on November 18<sup>th</sup> and the Town of Atlantic Beach submitted a LUP amendment for certification on January 28<sup>th</sup>. In both 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 (as required by N.C.G.S. § 113A-110 and 15A NCAC 7B .0802 and .0803)
- For these reasons, the Towns of Carolina Beach and Atlantic Beach requests for

certification of their land use plan actions were granted.

### **Public Access Program**

DCM has notified local governments in the 20-county coastal area that grant funding is available for Public Beach and Coastal Waterfront Access projects for the upcoming 2021-22 fiscal year. Local governments are invited to apply for funding for projects that are anticipated to begin after November 2021 and to be completed in eighteen months. DCM estimates that approximately \$1 million dollars will be available for public beach and coastal waterfront access projects in FY 2021-22. Pre-applications are due by April 16, 2021.

### **Coastal Resiliency Efforts**

At the November meeting I informed you that DCM formally launched the Resilient Coastal Communities Program with an invitation to local governments to apply for no-cost technical assistance. Following three informational webinars in August and September, DCM began accepting applications. As of January 15<sup>th</sup>, Policy & Planning staff, including Tancred Miller, Samantha Burdick and Mackenzie Todd, received 30 applications from county and local governments interested in receiving technical assistance awards for resilience planning, vulnerability assessment, and community engagement. We also received applications from 24 contractors who are offering to provide their services to the program. Our staff, along with partners from NCORR, NC Sea Grant, and The Nature Conservancy, are in the process of selecting the communities and contractors that will participate in this first year of the program. The RCCP currently has funding for up to 20 communities, and we are seeking additional sources of funding to assist even more communities under another funding cycle.

### **Sediment Sampling Grants**

On December 14, 2020 DCM notified local governments participating in beach nourishment projects that funding is being made available to assist with ensuring the compatibility of sediments used for beach nourishment projects with the native beach. You will recall that amendments to your Technical Standards for Beach Fill Projects rules, which are up for adoption at today's meeting, are intended to improve the characterization of recipient beaches by re-defining "large material" to be sediments equal to or greater than one inch in diameter, and shell material equal to or greater than three inches in diameter. The Division is making this grant funding available to assist local governments in meeting these rule changes and because it is of value to the State to have more comprehensive baseline data regarding the sediment characteristics of our beaches for future comparisons. It is important to emphasize that characterization of the native beach sediment using these methods will serve as a permanent baseline, and recharacterization will not be required for subsequent projects. To date, the Division has received 11 applications from local and county governments requesting over \$145,000. The Division is presently working with local governments to develop contracts, and we are prioritizing areas with upcoming nourishment projects.

### **Coastal Reserve**

The reserve hosted a NC Coastal Protected Land Manager Stakeholder Meeting on December 8 to understand where coastal protected land managers are in planning for and implementing resilience-related projects on their properties. Participants shared case studies of resilience work and discussed barriers to implementing resilience projects. This meeting was held in conjunction

with the development of a Rachel Carson Reserve habitat resilience plan. The reserve and planning staff hosted two virtual workshops for local communities in January on access grant opportunities to acquire land and make improvements to beach and waterfront access, parks, and boating facilities. Participants discussed what makes a successful grant proposal, and State grant opportunities for beach and waterfront access, including parks and boating facilities. We had a total of almost 140 participants, and recordings of the workshops are available on our website for anyone who is interested.

### **Staffing News**

- Erik Alnes joined the Division as the Reserve's Northern Sites Manager in February. Erik comes to us from the NC Forest Service where he worked for the past 2 years as the Currituck County Ranger. Prior to that, Erik worked for the US Forest Service on the Lewis and Clark Hotshot Crew in Montana. He has Bachelor's and Master's degrees in Resource Conservation from The University of Montana. We are looking forward to having Erik's natural resource management expertise in our Reserve Program.
- We are very close to replacing a field representative in Wilmington.
- Finally, I am excited to announce that DCM, with strong support from our Department, has been able to establish two sorely needed regulatory positions. First, we are in the midst of the interview process for a Minor Permitting Program Coordinator, who will work with local governments on more complicated permitting issues and assist with compliance and enforcement, update policy guidance, and generally manage that program. We are also adding a new Field Representative position in the MHC office, which will help improve our services in the central district and allow us to expand that district's territory to the south to take some pressure off our Wilmington office. We are very grateful for this administration's support and I am excited to start off the new year with the extra help.

As a quick reminder, if anyone is interested in submitting comments during the public comment period later today, please email Angela Willis (link on agenda) and she will read the comments into the record.

### **VARIANCES**

#### **Town of Carolina Beach (CRC-VR-21-01), Oceanfront Setback Christine Goebel, Esq.**

Christy Goebel reviewed the site and stated Noel Fox will represent Petitioner. Petitioner is the Town of Carolina Beach, which owns much of the dry sand beach under and waterward of the existing boardwalk. Since 2017, the Town, through the group Ocean Cure, Inc. has installed beach mats in the summer months which allow wheelchair access along and across the dry sand beach. Following a July 2020 DCM Notice of Regulatory Requirements, the Town filed a CAMA Minor Permit application in September of 2020 seeking authorization to continue to place the approximately 2,958 square feet of beach mats each May – September. On October 6, 2020, 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 behind the development line, behind the oceanfront setback, and behind 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 their permit application. Ms.

Goebel reviewed the stipulated facts of this variance request and stated staff and Petitioner agree on all four factors which must be met in order to grant the variance request.

Noel Fox, attorney for the Town of Carolina Beach, stated the Town and DCM agree on all four variance criteria and reiterated facts that the Town contends supports the granting of this variance request.

**Phil Norris made a motion that Petitioner has shown that strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships. Doug Medlin seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Emory, High, Medlin, Norris, Salter, Smith, Tunnell, Wills).**

**Bob Emory made a motion that Petitioner has shown that hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography. Dick Tunnell seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Emory, High, Medlin, Norris, Salter, Smith, Tunnell, Wills).**

**Robin Smith made a motion that Petitioner has shown that hardships do not result from actions taken by the petitioner. Bob Emory seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Emory, High, Medlin, Norris, Salter, Smith, Tunnell, Wills).**

**Doug Medlin made a motion that Petitioner has shown that the variance request 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 will preserve substantial justice. Commissioner Medlin also removed the May through September condition from the permit. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Emory, High, Medlin, Norris, Salter, Smith, Tunnell, Wills).**

This variance request was granted.

## **OCEANFRONT RULES AND IMPLEMENTATION**

### **Proposed Amendments to Rules Related to Oceanfront Development and Beach Management Plans (CRC 21-01)**

#### **Mike Lopazanski**

Mike Lopazanski stated at the November 2020 CRC meeting, Staff outlined for the Commission a strategy for the development of local and subregional Beach Management Plans to replace both the Development Line and the Static Line Exception. Also outlined were additional provisions for regulatory relief associated with CRC-approved beach management plans and suggestions for further streamlining and simplifying the Ocean Hazard AEC rules. The strategy was based on Commission discussion of the recommendations of the Subcommittee on Development Line Implementation and Division staff. The proposed rule amendments incorporate the Commission's guidance to retain State oversight in areas where beach nourishment projects are installed; reflect increased regulatory flexibility for construction setbacks where beach communities demonstrate a local commitment to maintaining beach nourishment projects; prevent beach nourishment projects from becoming a stimulus for new development in unsuitable areas; minimize seaward encroachment of new or expanded structures; and utilize the

landward-most adjacent neighbor rule to limit seaward encroachment provided that there is flexibility to address unique circumstances (curved shorelines, development around cul-de-sacs, or peculiar lot configurations) utilizing a sight-line or average line of construction approach. No action is required today, but with the Commission's approval the fiscal analysis on these amendments will be completed and brought before the Commission at the April meeting.

### **Proposed Inlet Hazard Area Boundaries – Additional Comments (CRC 21-02)**

#### **Ken Richardson**

Ken Richardson stated at the Coastal Resources Commission's February 2019 meeting in Manteo, the Commission approved the updated Inlet Hazard Area (IHA) boundaries as recommended in the CRC's Science Panel's report, "*Inlet Hazard Area Boundary, 2019 Update: Science Panel Recommendations to the North Carolina Coastal Resources Commission*," and the IHA erosion rate setback factors report prepared by the Division of Coastal Management, "*2019 Inlet Setback Factors*," which are associated with rule amendments to 15A 7H .0304, 07H .0306, 07H .0309 and 07H .0310. On August 30, 2019, the NC State Office of Budget and Management approved the fiscal analysis. As part of the rule making process, the Division of Coastal Management held seven public hearings (Brunswick, New Hanover, Pender, Onslow, Carteret, Hyde, and Dare Counties) for the purpose of presenting updated IHA boundaries, proposed rule amendments, and collecting public comments. Five additional workshops (Ocean Isle Beach, Holden Beach, Carolina Beach, Topsail Beach, and North Topsail Beach) were held to allow additional opportunities to address questions from public officials and the general public. At the Coastal Resources Commission's November 2020 meeting, Mr. Bill Birkemeier, CRC's Science Panel Chair, presented a detailed response to questions and comments specific to the Inlet Hazard Area Methodology (IHAM) used by the Panel to delineate the proposed new IHA boundaries. In addition, the CRC was also provided access to the full packet of comments received during the public comment period. Since the November 2020 meeting, DCM has received follow up comments from Mr. Smith at Ocean Isle. In reference to Figure 17 in the IHA boundary update report, Mr. Smith asked why transect #291 was identified at Ocean Isle (Shallotte Inlet) by the Science Panel to be the location where inlet related processes start to have a dominate influence on the shoreline and suggested that transect #295 appears to be a more accurate location since that seems to more closely reflect where the standard deviation curve (solid black line) starts to increase. Mr. Smith also pointed out a labeling error on the graph where "Inlet Influence" and "Oceanfront" should be reversed. To address Mr. Smith's concern, DCM Staff consulted with the Science Panel to reaffirm that transect #291 was identified intentionally and correctly. After further consideration, it was agreed that #291 is correct; however, it was noticed that the identification of #291 was also influenced by the linear regression curve (dashed gray line) where shoreline accretion influenced by beach nourishment ends, and the shoreline change rate begins a rapid transition to erosion approaching the Shallotte Inlet. While this detail was not included in the report, the Science Panel is recommending an amendment be made to record this consideration, in addition to correcting

the graph labels. Mr. Smith's second submission contains additional comments; however, Staff believe these were adequately address by the Science Panel Chair at the November 2020 Commission meeting.

### **Inlet Hazard Areas – Proposed Use Standards (CRC 21-03)**

#### **Tancred Miller**

Tancred Miller stated in February 2019, the Coastal Resources Commission approved the updated Inlet Hazard Area (IHA) boundaries as recommended in the CRC's Science Panel's report, "*Inlet Hazard Area Boundary, 2019 Update: Science Panel Recommendations to the North Carolina Coastal Resources Commission*," and the IHA erosion rate setback factors presented in the report "*2019 Inlet Setback Factors*." The Commission sent the updated boundaries and use standards to public hearing via draft amendments to 15A NCAC 7H .0304, 07H .0306, 07H .0308, 07H .0309 and 07H .0310. Staff presented the proposed rule amendments at public hearings in the seven affected counties (Brunswick, New Hanover, Pender, Onslow, Carteret, Hyde, and Dare Counties), followed by five workshops (Ocean Isle Beach, Holden Beach, Carolina Beach, Topsail Beach, and North Topsail Beach) to allow for additional public discussion. The rulemaking process was deliberately extended in order to give the Commission, the public, and Staff, the opportunity to work through all issues raised by local governments and the public. Staff has incorporated all input into revised draft amendments for Commission consideration. The erosion rate setback factors currently applied in IHAs are the ones in the adjacent Ocean Erodeable Areas. The proposed amendments will allow the calculated erosion rate setback factors to be used instead. The calculated setback factors are included in the 2019 Inlet Setback Factors report that the Commission has already approved. No changes are proposed to the existing standard for building density within IHAs, which is one structure per 15,000 square feet of land area. In order to prevent existing lots under 15,000 square feet from becoming unbuildable due to these amendments, Staff recommends that smaller lots in existence prior to the effective date of these amendments be excepted from the 15,000 square foot minimum. The existing 5,000 square foot total floor area limit for new structures will be retained; however, the distinction between recreational and commercial uses would be eliminated, as it has been in the Commission's oceanfront rules. The number of allowable units within a structure would also be eliminated, as the number of units within a structure is irrelevant to total allowable size. Staff recommends applying the same provisions for replacement of existing structures that cannot fully meet the setback requirement, that currently applies on the oceanfront. These provisions allow the replacement of structures no larger than 10,000 square feet, subject to certain conditions. The replacement of existing structures larger than 10,000 square feet (that are damaged beyond 50% and therefore require a permit to "replace") would require a variance from the Commission. Current rules allow for a limited exception to the setback requirements in situations where the proposed development cannot meet the applicable setback. Conditions that apply for using this exception include that the lot must have been in existence prior to June 1, 1979, the structure is limited to a 1,000 square foot footprint and 2,000 square foot maximum floor area, and a minimum setback of 60 feet must be met. Staff recommends also allowing this exception to apply within IHAs. Staff has had extensive additional discussions about using the Hybrid Vegetation Line as the starting point for measuring setbacks, as recommended by the Science Panel, but has concluded that the Hybrid Line would present significant implementation and communications issues. Staff also stated during the public workshops that the Commission was not at the time considering using the Hybrid Line as the starting point for measuring setbacks. Staff continues to support retaining the first line of stable and natural vegetation as the



measurement line. Staff proposes an amendment to clarify that prior existing dunes may be restored, but no new dunes may be constructed in an IHA. Current rules prohibit the construction of new dunes in an IHA, but are silent on dune restoration. Once the Commission approves new language for public hearing, Staff will need to update the fiscal analysis before proceeding to another round of public hearings in the seven affected counties.

**Bob Emory made a motion to approve the proposed amendments to the Inlet Hazard Area Use Standards for public hearing. Angie Wills seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Medlin, Norris, Salter, Smith, Wills).**

### **PUBLIC INPUT AND COMMENT**

Renee McCullen provided a comment regarding the Inlet Hazard Area proposed use standards and her support of DCM's staff recommendation to continue using the vegetation line as the measurement line for setbacks. (written comments provided)

Mike Benson provided a comment regarding the Inlet Hazard Area boundary near Ocean Isle. (written comments provided)

### **ACTION ITEMS**

#### **Consideration of Adoption 15A NCAC 07H .0312 Technical Standards for Beach Fill Projects (CRC 21-04)**

##### **Ken Richardson**

Ken Richardson stated the Technical Standards for Beach Fill Projects Rules set forth the sampling protocols for characterizing native beach and borrow site sediments. Sediment characterization is the process of defining the type of sediments found in borrow sites and on the recipient beach prior to a fill project to ensure that material placed on beaches is not too fine (mud or clay), or too coarse (rocks and large shells), and is similar in composition to pre-project beach sediment. The rule establishes specific sampling and mapping protocols and numerical standards to determine sediment compatibility. As you may recall, these rule amendments have been under consideration and ongoing refinement over the past year, and are intended to serve several purposes: 1) ensure consistency with the requirement in Session Law 2017-10 (S131) Section 3.15 to exempt sediment characterization of beaches receiving sediment from a cape shoal, and borrow areas within the cape shoal system – such as Frying Pan shoals at Cape Fear, Cape Lookout, and Diamond Shoals; 2) allow use of historic data and more flexibility in sampling where there are logistical challenges; 3) strengthen sediment characterization of recipient beaches by re-defining “large material” to better ensure sediment compatibility between the beach and borrow areas, and; 4) avoid placing large material (rocks and shell) on the recipient beach and costs associated with project delays, and/or having to remove incompatible material. Based on past experiences and lessons learned from recent beach fill projects, the most significant concern for DCM staff is the placement of large material (specifically rocks) on the recipient beach. In turn, the most significant rule amendments are associated with the sampling protocols for and definition of “large material.” Currently, 07H. 0312(1)(c) defines “large material” as sediment or shell material greater than or equal to three inches in diameter. The background value for large material is determined by counting the total number of sediment and shells at one area equal to 50,000 square feet anywhere within the project boundaries. The

proposed amendments would: 1) change the definition of “large material” to sediment greater than or equal to one inch in diameter, and shell material greater than or equal to three inches in diameter; 2) change sampling area requirements to a 10,000 square foot area centered on each transect and between the frontal dune toe and mean tide level, and; 3) result in the calculation of two separate background values, one for sediment ( $\geq 1$  inch in diameter) and one for shell material ( $\geq 3$  inches in diameter). These proposed changes to requirements for sampling recipient beaches will require additional efforts and costs for project sponsors. However, it is important to emphasize that characterization of the native beach sediment using these methods will serve as a permanent baseline, and re-characterization will not be required for subsequent projects. The rules will retain existing standards for the various grain sizes (e.g., the percentage of “fines” shall not exceed more than 5% over the recipient beach). The fiscal analysis associated with these rule amendments was approved by the NC Department of Environmental Quality, Office of State Budget and Management, and then by the CRC on September 9, 2020. These amendments would result in an additional one-time expenditure for sampling large material (sediments/rock greater than or equal to 1 inch in diameter, and shell material greater than or equal to 3 inches in diameter) in areas where sediment has already been characterized using methods consistent with those defined in current rules. Because the amended rules change the methodology from a single 50,000 square foot area to multiple 10,000 square foot areas centered on each transect, it is estimated that the cost per transect to re-sample large material would range between \$330 and \$1,100. Coastwide, it is estimated that the cost to re-characterize large material would range from \$31,020 to \$103,400. For a new project area, where a beach fill project has never been installed and beach sediment has never been characterized, it is estimated that there would not be an added cost to sample beach sediment because of these amendments as the costs are similar. For a single 50,000 square foot area as defined in current rule, the cost range is approximately \$2,000 to \$3,000, while the estimated cost range for sampling five transect 10,000 square foot areas as defined in amended rules (07H. 0312(1)(h)) is \$1,630 to \$2,400. Pursuant to North Carolina General Statute 150B-21.2, the Division of Coastal Management held a virtual public hearing via WebEx on Tuesday, November 3, 2020 for the purpose of inviting public participation in the consideration of the proposed amendments to 15A NCAC 07H .0312 of the North Carolina Administrative Code and associated fiscal analysis. The hearing record remained open until December 14, 2020. As of January 29, 2021, the Division of Coastal Management did not receive any public comments. The Division is currently awarding grants that should cover most, if not all, the anticipated costs associated with sampling large material only. As of February 1, 2020, DCM has received 13 applications and are actively preparing contracts. Staff is recommending that the Commission consider adoption of the rule amendments to 15A NCAC 07H .0312.

**Neal Andrew made a motion to adopt amendments to 15A NCAC 07H .0312. Larry Baldwin seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Medlin, Norris, Salter, Smith, Tunnell, Wills).**

#### **Consideration of Adoption 15A NCAC 07H .0304 Designation of Unvegetated Beach AEC-Oak Island (CRC 21-05)**

##### **Ken Richardson**

Ken Richardson stated the Unvegetated Beach Area of Environmental Concern (AEC) is defined in 15A NCAC 07H .0304(3) and is one of three AECs within the Ocean Hazard system. An Unvegetated Beach can be designated by the Commission in areas where no stable and natural

vegetation is present, including areas that have suddenly become unvegetated due to a hurricane or other major storm event. Under 15A NCAC 07H .0304(3)(b), the Unvegetated Beach designation may be for a specific period of time, or until stable and natural vegetation has re-established. Once the CRC designates an Unvegetated Beach, Division of Coastal Management (DCM) staff can establish a Measurement Line (15A NCAC 07H .0305(a)(9)) to serve as the reference feature from which oceanfront construction setbacks are measured until vegetation has re-established. Staff mapped the location of the Measurement Line by determining the average distance the pre-storm vegetation line receded at both of the nearest, vegetated sites adjacent to the area being designated by the Commission as the Unvegetated Beach AEC. On August 3, 2020, Hurricane Isaias severely impacted the oceanfront dune system along portions of Oak Island, completely washing away the primary frontal dune along with the established vegetation, from which oceanfront setbacks are measured. The geographic extent of the two affected areas makes it impossible to identify a vegetation line necessitating designation of an Unvegetated Beach Areas of Environmental Concern (AEC) in these two locations to establish a Measurement Line. This process requires amendments to 7H .0304(3) to designate Unvegetated Beach AECs. Two separate areas are proposed for designation, from west to east: 1) starting from 6725 W. Beach Drive and stopping at 6601 W. Beach Drive, where the average vegetation recession equaled 81.4 feet, and; 2) starting from 2357 W. Beach Drive and stopping at 1429 E. Beach Drive, where the average vegetation line recession equaled 41.3 feet. The Division has determined that there are 191 oceanfront structures adjacent to the proposed Measurement Lines. Of those, it is estimated that 178 (93%) could not meet the minimum setback when measured from a pre-storm vegetation line (January/February 2019), and all 191 (100%) cannot meet the minimum setback measured from the proposed Measurement Line. Essentially, the status of most existing structures within the proposed Unvegetated Beach AEC will not be affected, as most did not meet the minimum setback requirement measured from the pre-Hurricane Isaias "First Line of Stable and Natural Vegetation." The fiscal analysis associated with these rule amendments was approved by the NC Department of Environmental Quality, Office of State Budget and Management, and then by the CRC on September 9, 2020. As you may recall, the Division of Coastal Management does not anticipate any increase in expenditures in the government or private sector because of this action. The proposed amendments to 15A NCAC 07H .0304 are necessary for the Division to implement the Coastal Resources Commission's administrative rules as they apply to any proposed oceanfront development in the proposed Unvegetated Beach AEC. Pursuant to North Carolina General Statute 150B-21.2, the Division of Coastal Management held a virtual public hearing via WebEx on Tuesday, November 3, 2020 for the purpose of inviting public participation in the consideration of the proposed amendments to 15A NCAC 07H .0304 of the North Carolina Administrative Code and associated fiscal analysis. The hearing record remained open until December 14, 2020. As of January 29, 2021, the Division of Coastal Management did not receive any public comments. Staff is recommending that the Commission consider adoption of the rule amendments to 15A NCAC 07H .0304.

**Phil Norris made a motion to adopt the amendments to 15A NCAC 07H .0304 with the Unvegetated Beach designation for Oak Island. Neal Andrew seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Medlin, Norris, Salter, Smith, Tunnell, Wills).**

**Consideration of Amendment to Town of Kure Beach Development Line (CRC 21-06)  
Ken Richardson/John Batson (Kure Beach)**

Ken Richardson stated on April 1, 2016, the Commission's rules were amended to allow oceanfront communities with large-scale beach nourishment or inlet relocation projects to

establish a "Development Line" as an alternative to the Static Vegetation Line Exception. A static vegetation line represents the vegetation line that existed just prior to a community's initial large-scale beach nourishment project and must be used for measuring oceanfront construction setbacks. A Development Line is established by a local government to represent the seaward-most allowable location of oceanfront development, provided the development can meet the setback measured from the first line of stable and natural vegetation. Under the CRC's Development Line Rule, buildings and accessory structures could potentially move seaward up to the approved Development Line if minimum setbacks are met. Local governments are required to request approval for a Development Line, or any subsequent amendments from the Commission according to the procedures outlined in 15A NCAC 7J. 1300. To receive the CRC's approval for a Development Line, the petitioner shall establish the Development Line using on-ground observation and survey, or aerial imagery along the community's oceanfront jurisdiction or legal boundary. The proposed Development Line must extend the full length of the large-scale beach nourishment project area (length of static vegetation line) and may extend beyond the boundaries of the large-scale project to include the entire oceanfront jurisdiction or legal boundary of the petitioner. In establishing the Development Line, an adjacent neighbor sight-line approach is to be utilized, resulting in an average line of structures. In areas where the seaward edge of existing development is not linear, the Development Line may be determined by average line of construction on a case-by-case basis. In no case shall the Development Line be established seaward of the most seaward structure within the petitioner's oceanfront jurisdiction. Once adopted, the petitioner shall then submit the following to the Director of the Division Coastal Management in accordance with CRC's rules (15A NCAC 07J. 1300): a detailed survey of the Development Line; to also include the Static Vegetation Line; a copy of local regulations/ordinances associated with the Development Line, and; the record of local adoption of the Development Line by the petitioner. On March 21, 2017, the Town of Kure Beach adopted the town's development line into their ordinances, and then the Coastal Resources Commission's (CRC) unanimously approved the Town's Development Line on July 12, 2017. The existing CRC certified Development Line at Kure Beach generally follows the USACE/Town of Kure beach nourishment easement line, though the CRC's initial certification came following the Commission's request to re-map a 100 foot portion (2 parcels) of the proposed development line since it did not follow the line-of-structures, and did protrude seaward approximately 45 feet from adjacent sections of the proposed line. Once amended per the CRC's request, the Town's development line was certified because it generally follows a construction line-of-sight, and it also served to consolidate management lines along the Town's oceanfront. Recently, the Town discovered an easement line change that occurred between 1995 and 1996; that change was mentioned on a recordation, but a survey referenced in the document was not attached, and so the 1995 easement line has been referenced without this change until recently. As part of a contested case, the Town rediscovered the 1996 easement survey in their records and affects approximately 18 oceanfront properties. For consistency with the USACE/Town beach nourishment easement line in this area, the Town is asking the CRC to consider certifying an amendment to the existing Development Line to follow the easement line in the area of these 18 oceanfront properties from 502 Fort Fisher Boulevard North to 628 Fort Fisher Boulevard North. It should be noted that the proposed amendment to the Town's development line is approximately 50 feet seaward of the existing development line.

John Batson stated he represents the Town of Kure Beach in this request at the Town Council's request. A CAMA permit was denied based upon the current development line. The applicant has appealed this denial. On November 16<sup>th</sup>, Town Council requested a development line amendment that moves the line 50 feet seaward and affects 18 parcels along the oceanfront.

**Robin Smith made a motion to deny the Town of Kure Beach's development line amendment. Bob Emory seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Medlin, Norris, Salter, Smith, Tunnell, Wills).**

### **CRC RULEMAKING**

#### **Repair v. Replace – Elevating Structures (CRC 21-07)**

##### **Tara MacPherson**

Tara MacPherson stated at your last meeting, the Commission reviewed 15A NCAC 07H.0306(j), which clarifies that the relocation of structures requires a Coastal Area Management Act permit, and that oceanfront structures relocated with public funds must meet applicable oceanfront setbacks. The Rule goes on to state that structures relocated entirely with private funding "shall be relocated the maximum feasible distance landward of the present location." Staff understands the intent of this rule to be that public funds should only be used to relocate structures entirely outside of the Ocean Hazard setback area, while the use of private funds to relocate a structure farther back, but still within the setback area, can be beneficial and is undertaken at the property owner's financial risk. The Commission also discussed the issue of elevating structures within the Ocean Hazard setback area. To review, in the years following Hurricane Floyd (1999), a large number of houses were elevated for flood mitigation using public funds. Due to the volume of structures and large areas impacted, the Division determined at that time that elevating structures within the same footprint was exempt from CAMA permitting. More recently, the Division has been reviewing proposals to elevate oceanfront houses on pilings under procedures outlined at 15A NCAC 07J .0210, which exempts a project from CAMA permitting if it is determined to be "repair" vs. "replacement." Under 7J.0210, if the cost of the proposed work is less than half of the depreciated market value of the structure, the work is considered to be "repair" and no permit is required (as long as the structure is not expanded). Staff have three primary concerns with these past approaches to determining permit requirements. First, if elevating a structure within its existing footprint is automatically exempt from CAMA permitting, then even a structure located in the Ocean Hazard Area seaward of the vegetation line can be fortified against flooding and storm surge so that it is more likely to remain and continue impacting the public trust beach. Second, Staff's use of the "repair vs. replace" determination in 7J requires a high level of expertise related to the review of complex repair bids and appraisals of the depreciated replacement values for different structures. Third, approaching the elevation of structures in the same manner, regardless of the AEC in which the structure is located, disregards the dynamic nature of the Ocean Hazard AEC. The proposed amendments would clarify that the elevation of a structure's foundation, even within the same footprint, is considered "development" under the NC Coastal Area Management Act; the elevation of existing structures in the Ocean Hazard Area of Environmental Concern shall be prohibited where any portion of the structure is seaward of the oceanfront Vegetation Line, regardless of the source of funds; and the elevation of existing structures (within the same footprint) in the Coastal Shorelines Areas of Environmental Concern is exempt from permitting. (In these cases, the elevation of a structure would already be permissible under rules in 15A

NCAC 7H.0208 as development over existing impervious surfaces. For this reason, and in order to expedite non-oceanfront flood mitigation projects, an exemption for elevating structures in the Coastal Shorelines AEC is warranted.

**Bob Emory made a motion to approve amendments to 15A NCAC 07H .0306 and 07K .0208 for public hearing. Craig Bromby seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Medlin, Norris, Salter, Smith, Tunnell, Wills).**

**Consideration of Fiscal Analysis 15A NCAC 7H .0308 and 7K .0207  
Structural Accessways – Beach Mats (CRC 21-08)**

**Heather Coats**

Heather Coats stated the CRC has established specific use standards for structural pedestrian accessways that allow for public access to the beach while minimizing potential impacts to the fragile dune system and sea turtle nesting habitat. The use standards currently limit these accessways to elevated, pile-supported structures terminating on the beach near the seaward toe of the frontal dune. Synthetic or wooden material roll-out matting has increasingly been developed and used as a cost-effective and handicap-accessible alternative for beach access. Numerous local governments in North Carolina have expressed interest in using these types of mats for public beach access. However, your rules do not acknowledge an allowance for these types of mats. While these mats can better facilitate handicap access, the NC Wildlife Resources Commission and the US Fish & Wildlife Service have expressed concerns about potential adverse impacts on sea turtle habitat resulting from their widespread use, particularly when sited waterward of the frontal dune. By limiting these mats to the same general standards that apply to structural accessways, and by limiting applicants to only those local, state, and federal agencies providing public access, a balance can be achieved between public access and wildlife protection goals. Any such mats proposed for private accessways or proposed to extend out onto the public trust beach (for example, to enhance handicap access) would require a variance from the Commission and thereby reviewed on a case-by-case basis. At the November meeting, the Commission discussed these considerations and approved amendments to 15A NCAC 07H .0308(c) and 7K .0207 to allow the use of these mats for local governments and state and federal agencies providing public access to the beach. 15A NCAC 07H .0308(c) amends the specific use standards for structural accessways to allow the use of mats for public accessways, when installed at grade, do not involve any excavation or fill, and when terminating no more than 6' waterward of the toe of the frontal dune. Changes to 15A NCAC 7K .0207 would include the allowance for these mats to be installed through a permit exemption with certain limitations. The proposed changes to 07K .0207 also would include a requirement that all structural accessways terminate no more than 6' waterward of the toe of the frontal dune. This is an existing rule contained in the specific use standards which has been added to the exemption language for clarification purposes. Additionally, a requirement that any damaged, non-functioning portions of accessways that become non-compliant be removed has also been added to the exemption language. The Division of Coastal Management does not anticipate any significant increase in expenditures for local governments, NCDOT or other state agencies, nor significant costs imposed upon private property owners. Local governments are expected to benefit from the increased flexibility in allowing the use of beach mats for the construction of pedestrian beach accessways, particularly when installing handicap-accessible accessways. While the proposed

amendments are not expected to affect local government revenues or expenditures significantly, the ability to provide public access at a reduced cost (\$42 per linear foot vs \$333 per linear foot) and should also reduce maintenance costs of these accessways in addition to potentially allowing them to install more handicap-accessible accessways. The requirement in 07K .0207(5) to remove damaged, non-functioning or non-compliant accessways is expected to result in minimal to no added cost to property owners and/or government entities, as removal would generally only be required after a storm and this work is often already voluntarily performed, even without a rule requirement. Any attempt to quantify this change would be highly speculative as it is dependent on the frequency and severity of storms and beach erosion as well as the intent of property owners. Staff requests approval of the amendments and fiscal analysis for public hearing.

**Neal Andrew made a motion to approve amendments and associated fiscal analysis for 15A NCAC 07H .0308 and 7K .0207 for public hearing. Doug Medlin seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Medlin, Norris, Salter, Smith, Tunnell, Wills).**

**Further Amendments and Consideration of Fiscal Analysis 15A NCAC 7J .0403  
Development Period/7J .0404 Development Period Extension (CRC 20-28)  
Daniel Govoni**

Daniel Govoni stated the Commission's rules for permit issuance and renewal allow for an inconsistent active time period. Major Permits are active until December 31st of the third year from the date of permit issuance and are allowed an automatic two-year renewal. The proposed amendments would lengthen the initial active period to five years from the date of permit issuance, extending the permit active period and thereby incorporate the existing automatic renewal period. Additionally, DCM has seen an increase in the number of large multi-phased beach nourishment projects. The proposed change would acknowledge the longer implementation period of these projects and allow for an initial active period of ten years, with an additional ten-year renewal. The amendments also allow for renewals for maintenance of previously approved dredging projects to be granted for periods not to exceed five years. This has been standard practice of the Division and the rule amendments would codify this policy into rule. DCM does not anticipate any negative economic impacts as a result of this proposed rule change. The proposed rule change will provide potential financial benefits to local, state, and private entities in terms of time and permit fees. These amendments will have no negative impacts on Department of Transportation projects, local governments or the federal government. DCM will be impacted due to the reduction in permit fees, however, would be mostly offset by the savings in staff time in processing those requests. DEQ and OSBM have reviewed the fiscal analysis and determined the proposed rule amendments have little to no impact on state or local governments and no substantial economic impact. The CRC is also required to approve this fiscal analysis before the proposed amendments can proceed to public hearing. Staff is recommending approval of the fiscal analysis.

**Phil Norris made a motion to approve the fiscal analysis for 15A NCAC 07J .0403 and 7J .0404 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Medlin, Norris, Salter, Smith, Tunnell, Wills).**

**Larry Baldwin made a motion to approve amendments to 15A NCAC 07J .0403 and 7J .0404 for public hearing. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Medlin, Norris, Salter, Smith, Tunnell, Wills).**

### **COASTAL HABITAT PROTECTION PLAN**

#### **Wetlands Protection & Habitat Monitoring and Assessment Issue Papers**

##### **Anne Deaton/Casey Knight, NCDMF**

Anne Deaton stated DEQ staff is updating the CHPP. This issue paper is part of the five-year update and is titled Wetland Protection and Enhancement with Focus of Nature-Based Solutions. The CRC's authority over wetlands is limited to certain plants. The CHPP encompasses many more wetlands in many ecosystems. All wetlands serve a specific function. This issue paper will provide an update on the many ecosystem services and benefits. Since pre-Colonial times there has been a 58% loss in coastal wetlands. The biggest factors on these losses are attributed to agriculture, development, and climate change. The issue paper also identifies current and future threats to wetlands. We will have this issue paper completed this fall and will identify ways to reduce future losses by planning for marsh mitigation, targeting restoration where it is most needed, the additional use of living shorelines, and regulatory changes.

Casey Knight stated another issue paper as part of the CHPP update is Priority Habitat Issues – Habitat Monitoring to Assess Status, Trends, and Regulatory Effectiveness. There are six habitat types within North Carolina. Through monitoring we are able to assess current status and trends of each habitat type to make management decisions and determine regulatory needs. Water quality plays the biggest role in the health of each habitat. DWR monitors water quality and there are currently 300 active stations. The data collected provides overall trends.

Chair Cahoon acknowledged the CRC's two CHPP Steering Committee members for comment. Commissioner Baldwin stated that there need to be targeted goals within the CHPP. Commissioner Emory stated that presentations were well done but agrees with Commissioner Baldwin about measurable goals.

### **LEGAL UPDATES**

#### **Update on Litigation of Interest to the Commission (CRC 21-09)**

Mary Lucasse, CRC Counsel, reviewed all active and pending litigation of interest to the CRC. Ms. Lucasse also updated the Commission on variance and third party hearing request totals from 2020.

### **OLD/NEW BUSINESS**

#### **Beach and Inlet Management Plan (BIMP) Update**

##### **Braxton Davis**

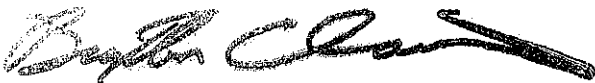
Braxton Davis stated Kathleen Riely, NCBIWA Chair, requested an update to the BIMP. DWR is the lead agency on this and there may be a need for a legislative directive. Braxton further stated that he would follow up with Kathleen and express the Commission's support for an update.



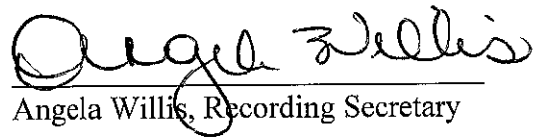
Chair Cahoon stated Steve Murphy has retired as Director from the Division of Marine Fisheries. John Batherson is the interim DMF Director.

**Robin Smith made a motion to approve a Resolution from the CRC acknowledging Dr. Pete Peterson's commitment to the resources of the State and contributions to the Science Panel. Larry Baldwin seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Medlin, Norris, Salter, Smith, Tunnell, Wills).**

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



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary