

NC COASTAL RESOURCES COMMISSION (CRC)

November 10, 2021

DoubleTree, Atlantic Beach

Present CRC Members

Renee Cahoon, Chair
Larry Baldwin, Vice-Chair
Neal Andrew
Trace Cooper
Bob Emory
Robert High
Doug Medlin
Phil Norris
Lauren Salter
Angie Wills

Present CRAC Members

Greg “rudi” Rudolph, Chair
David Kellam
Mike Moore
Spencer Rogers
Debbie Smith

Present from the Office of the Attorney General

Shawn Maier

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 November 10, 2021, reminding the Commissioners of the need to state any conflicts due to Executive Order Number 34 and the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of a conflict of interest or potential conflict with respect to matters to come before the Commission. The Chair requested that if any member knows of a conflict of interest or a potential conflict of interest, they so state when the roll is called. Commissioners Bromby and Tunnell were absent. Trace Cooper stated he would recuse himself from the proposed beach management plan rules discussion. Based upon this roll call Chair Cahoon declared a quorum.

CHAIR’S COMMENTS

Chair Cahoon stated Robin Smith has resigned from the CRC as she has been named Chair of the NC Environmental Management Commission. Greg “rudi” Rudolph, the Chair of the CRAC, is resigning from the CRAC, but will remain on the CRC’s Science Panel. The CRC Executive Committee has appointed Dr. Laura Moore as Chair of the Science Panel.

MINUTES

Doug Medlin made a motion to approve the minutes of the September 15, 2021, Coastal Resources Commission meeting. Angie Wills seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Cooper, Emory, High, Medlin, Norris, Salter, Wills).

EXECUTIVE SECRETARY'S REPORT

DCM Director Braxton Davis gave the following report:

First, a quick report on this weekend's storm event. North Carolina was very fortunate not to experience landfall from a named hurricane in 2021. However, last weekend a coastal low-pressure system combined with king tides caused impacts due to flooding and ocean overwash in numerous areas. N.C. Highway 12 was closed on Sunday and Monday from Rodanthe north to the Marc Basnight Bridge at Oregon Inlet due to ocean overwash, which has caused beach erosion, exposed sandbags, damaged septic systems and accessways, and caused some minor flooding. I also heard that there was some damage to the pier in Rodanthe. As always, we have been in regular communication with DOT staff to avoid any delays in DOT's response efforts. It appears that no asphalt was significantly damaged and existing sandbags are undamaged and still in alignment. NCDOT plans to submit dune repair/maintenance information, under existing dune maintenance permits today. At this time, NCDOT does not plan any activities that are not covered under existing permits. Farther south, most of the eastern-facing beaches had major erosion and have large dune escarpments. Damage assessments were still being conducted yesterday. Figure 8 has contacted DCM for proposed emergency beach bulldozing in some areas. Carolina and Kure Beach had significant beach accessway damage and loss, and the north end remains closed due to erosion and flooding. Parts of Canal Drive on the north end were still flooded yesterday and the Town will be doing sand removal from Carolina Beach Ave North near the pier. Ocean Dunes in Kure Beach is requesting sandbags for the remaining buildings, as high water is coming up to and under some of the buildings. There is also substantial debris piled up at the Riggings/Fort Fisher area from beach accessways and lifeguard stands. We are still waiting on damage assessments for the southern beaches. We are aware that some sandbags were over-washed in Ocean Isle and there are some breaches on the West End of Oak Island. I also wanted to provide a quick glimpse of the types of coastal provisions and funding in the recently passed congressional Infrastructure Bill (HR 3684). Much of this is still to be worked out, so apologies for any errors or omissions. First, NOAA, our federal partner, will receive over \$500M/year for five years to be distributed across its programs subject to a spend plan. In addition, state coastal zone management programs will receive over \$200M, allocated over 5 years, for technical assistance on coastal resilience initiatives and for conservation and land acquisition efforts. The National Estuarine Research Reserve program will receive over \$77M to be allocated over 5 years for similar purposes. It is likely that much of the CZM and NERR funds will be dispersed on a competitive basis across the 35 coastal states and territories. The National Coastal Resilience Fund will receive \$492M over 5 years for competitive grants with a focus on natural infrastructure. NOAA Fisheries (or NMFS) will receive \$492M over 5 years for its Community-Based Habitat Restoration Program. NOAA's Marine Debris Program will receive \$150M over 5 years. NOAA Mapping, Observations, and Modeling will receive \$492M over 5 years, and other NOAA programs will also receive one-time increases under this bill. These funds are in addition to base program funding. Under the EPA, Clean Water State

Revolving Funds will receive over \$11.7B over 5 years, and the National Estuaries Program will receive \$132M over 5 years. Under FEMA, over the 5-year period, the pre-disaster hazard mitigation assistance will receive \$1B, the Hazard Mitigation Revolving Loan Fund will receive \$500M, and the NFIP will receive \$3.5B. The Corps of Engineers will receive approximately \$150M for studies and planning assistance, over \$250B for CSRMs projects targeting states impacted by federally-declared disasters over the past 6 years – not all shoreline protection; \$4B for operations and maintenance; and over \$250B for Flood Control and Coastal Emergencies to “restore authorized shore protection projects to the full project profile at full federal expense” where certain requirements are met. Under the Federal Highways Administration, there is also a new resilience program (“PROTECT”) establishing grants to strengthen, stabilize, harden, elevate, relocate, or otherwise enhance the resilience of coastal highways and non-rail infrastructure. Depending on what happens with the state budget, DCM may also receive funds distributed to the States from the American Rescue Plan Act, which was passed in March 2021. Early state budget bills also included significant coastal project funding, and we hope to know what the final budget will look like in the coming weeks. I’ll note that our Department is already preparing to execute funds and funding agreements quickly and efficiently, while ensuring the maximum amount of funding is getting to the end users and to project work. At the same time, we will need to ensure successful projects – so project selection, permitting, and oversight will be very important. Overall, it appears that we are heading into unprecedented times with respect to coastal planning and project funding at the federal and state levels, which presents both an incredible opportunity and some significant work ahead for all of us, but I think coastal North Carolina is in a great position due to our strong, existing partnerships and networks.

I’ll move over to the regulatory side of DCM. One procedural item of note - some of you may recall that applicants for CAMA Major Permits were required to request a meeting with the NC Division of Water Resources 30 days before their application could be accepted due to the EPA’s adoption of a revised 401 certification rule back in 2020. This was challenging for our staff and for applicants, and I am happy to report that, following comments submitted on our behalf by the Department, the federal rule has reverted to the pre-2020 rule and we can now accept applications without the 30-day waiting period. Next, as part of the NEPA process, the Corps is scheduling a scoping meeting concerning North Topsail Beach’s proposal to construct a terminal groin along the western shoulder of New River Inlet. The scoping meeting will include resource and regulatory agencies as well as relevant stakeholders to identify issues to be considered in the development of the Draft Environmental Impact Statement. The Town of Topsail Beach is working on a long-term (30-year) beach plan and permit application. The Town is in the scoping phase and will be working with agencies to discuss plans for the long-term maintenance of the ocean front. The Town of Oak Island is also developing a long-term beach plan for permitting. DCM supports these long-term planning approaches to beach management by proactively identifying project needs, sand sources and funding mechanisms, which can streamline the permitting process, reduce costs, and provide better protection and predictability.

Federal Consistency

DCM has submitted a Routine Program Change request to NOAA’s Office for Coastal Management. The Coastal Zone Management Act requires state Coastal Programs to formally incorporate changes made to the laws, rules and policies that are used for Federal Consistency. Your rules at 07H .0208 were recently amended to remove outdated provisions and clarify vague

and ambiguous language. The purpose of this action is to incorporate these changes into our enforceable policies for Federal Consistency review. Comments will be accepted until November 15th.

BOEM requested public input on a proposed wind energy lease sale in federal waters in the Carolina Long Bay area offshore the Carolinas. The proposed lease area consists of over 125,000 acres and includes the majority of the Wilmington East Wind Energy Area, with the potential to produce more than 1.5 GW annually (which can power more than 500,000 homes). Staff has been in contact with BOEM and is expecting a Federal Consistency Determination for the lease sale and site assessment plan in early 2022. Comments on the Proposed Sale Notice can be submitted through BOEM's website.

Land Use Plan Certifications

DCM certified two land use plans since your last meeting - the Town of Atlantic Beach's CAMA Land Use Plan Update on September 24th, and an amendment to the Town of Carolina Beach's Land Use Plan on October 25th. Please let us know if you have a question about this process, or the plans themselves.

Access Grants

The Public Beach and Coastal Waterfront Access program is now in its 40th year. In October, DCM awarded more than \$1.1 million to nine local governments to improve public access to coastal beaches and waters. That includes a grant to the Town of Atlantic Beach, which received \$73,288 to construct a handicap-accessible dune crossover right here at the DoubleTree East Public Beach Access. Please let me know if you are interested in information on the other projects funded this year.

Resilient Coastal Communities Program

Work in the Resilient Coastal Communities Program's 26 communities continues to go well. There are over 200 people serving on Community Action Teams, and most communities are working on vulnerability assessments and community outreach. Work will continue through next March, resulting in completed vulnerability assessments, along with project identification and prioritization. We will issue a request for applications for engineering and design projects in January.

Coastal Reserve

The Coastal Reserve will hold its fall Local Advisory Committee meetings for all ten Reserve sites via web conference November 30-December 8. We welcome the newly appointed and reappointed community members, community organizations, and partner organizations. The meetings are open to the public and meeting details are located on the Reserve's event calendar. The Department adopted proposed amendments to the rules related to the Coastal Reserve on October 1 (15A NCAC 07O). These amendments satisfy the Legislative Periodic Review and Expiration of Existing Rules process requirements, and address priority updates to enhance clarity of existing rules and address issues and gaps to ensure effective management of the Coastal Reserve. Changes were made to 2 rule sections following the public comment period, and staff are now working on technical changes requested by the Rules Review Commission. We

anticipate that the rules will be heard by the RRC at their November 18 meeting. The proposed effective date is February 1, 2022. The Coastal Training Program and Division regulatory staff are offering a Coastal Area Management Act Basics Webinar on December 1. Participants will learn how DCM balances competing coastal pressures through development permitting under the rules of the Commission. This includes an overview of permits needed for coastal development; development rules for the oceanfront, inlet hazard areas, and estuarine shorelines; and development rules related to coastal habitats including wetlands and primary nursery areas. Registration is full, but a recording of the webinar will be available after the event given the high demand for the offering. The Coastal Training Program will host NOAA Office for Coastal Management's Nature-Based Solutions for Coastal Hazards 101 training on January 11, 2022. This virtual course is a starting point in preparing coastal managers and planners to plan and implement green, natural infrastructure projects to reduce impacts to coastal hazards in their community. Registration is required and more details are located on the Reserve's website. The Division of Coastal Management has wrapped up its federally funded project to remove Hurricane Florence debris and abandoned vessels from public lands and waters along North Carolina's coast. In total, over 1.25M pounds of debris and 24 vessels were removed from Brunswick through Carteret, including Craven and Pamlico Counties, and from 4 of the Coastal Reserve sites managed by the Division (Zeke's Island, Masonboro Island, Permuda Island, and Rachel Carson). Funded by the Natural Resources Conservation Service's Emergency Watershed Protection program (EWP; \$1,562,445 expended) and matched with State funding (\$444,480 expended), the Division contracted with the NC Coastal Federation to complete the debris and vessels removal, working closely with the Wildlife Resources Commission on the vessel removals given their authority over that activity. This project was part of the largest coordinated debris removal effort along North Carolina's coast in the State's history and has received significant media attention. Funds provided by other partners were focused primarily on removal of additional vessels. Debris and vessel removal is important activity to avoid resuspension and relocation of debris in future storms, maintain ecosystem functionality and aesthetics, and protect public safety.

Staff News

Last, I wanted to take a moment to recognize Tancred Miller as recent recipient of the DEQ Distinguished Employee Award, and furthermore, Distinguished Employee of the Year – the highest recognition among all awardees. As you know, Tancred serves as chief of DCM's Policy and Planning Section, but over the past several years, he has taken on far more than his role usually requires. Starting back around 2010, with the DCM's efforts to document the impacts of sea level rise, Tancred has taken the lead in coordinating DCM's efforts on coastal resilience. He has focused on addressing the needs of coastal communities through regional workshops and pilot projects, which led to the successful launch of the Resilient Coastal Communities Program. In addition, last year DEQ delivered the state's Climate Risk Assessment & Resilience Plan – the most comprehensive effort to date to address North Carolina's vulnerability to climate change. Tancred played a key role in writing and developing the Plan. He also worked in partnership with the NC Office of Recovery and Resiliency, N.C. Sea Grant, and The Nature Conservancy to secure over \$1M in federal funding from the Emergency Coastal Resilience Fund and is managing this award in addition to over \$800K in state funds associated with the 2019 NC Disaster Recovery Act. He has also served on several regional climate resilience initiatives and has kept NC involved at that scale. And while he has been leading our division's efforts on all

these fronts, he has also been handling rule development, fiscal analyses, 5-year strategies and NOAA funding for special projects, among many other things. We are all very proud to work with him, and glad that he has received this recognition from the Department for a job well done.

CRAC REPORT

Greg “rudi” Rudolph, CRAC Chair, stated the main topic of discussion during our meeting was parking fees at public access sites. The CRAC would like some more information on how parking fees are used that are generated at state funded sites. Officer elections will be postponed until the next meeting. The CRAC also discussed the possibility of using hay bales in lieu of sand fencing. Figure Eight Island property owners have been trying this approach and reports that it is working well. Chair Cahoon directed staff to look at rule amendments that would allow the use of hay bales.

VARIANCES

**Town of Kure Beach (CRC-VR-21-04), Development Line
Bryan Hall, DCM/Christine Goebel, Esq./Holly Ingram, Esq.
Jim Eldridge, Esq.**

Bryan Hall gave an overview of the site. Christy Goebel and Holly Ingram represented staff. Jim Eldridge represented the Town of Kure Beach. Ms. Ingram stated the Town owns a right-of-way area and an ocean rescue service building located at 104 Atlantic Avenue in Kure Beach. The Town has proposed a 12x16 foot addition to an existing structure to store its five ATVs, which it uses for its ocean rescue duties as well as some general town duties. The site of the proposed addition is waterward of the Town’s CAMA development line that the Commission authorized in 2017. The Minor Development permit was denied due to its inconsistency with the Commission’s development line rules which states that in no case shall new development be sited seaward of the development line. The Town is seeking relief from 15A NCAC 07H .0306(a)(2). Ms. Ingram reviewed the stipulated facts of this variance request and stated staff and Petitioner agree on all four statutory criteria which must be met to grant the variance. Jim Eldridge represented the Town of Kure Beach and reviewed the stipulated facts which Petitioner contends supports the granting of the variance.

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

Bob Emory made a motion that Petitioner has shown that hardships result from conditions peculiar to Petitioner’s property. Larry Baldwin seconded the motion. The motion passed unanimously (Cooper, Wills, Medlin, Andrew, Baldwin, Cahoon, Salter, Emory, Norris, High).

Bob Emory made a motion that Petitioner has shown that hardships do not result from actions taken by Petitioner. Phil Norris seconded the motion. The motion passed

unanimously (Cooper, Wills, Medlin, Andrew, Baldwin, Cahoon, Salter, Emory, Norris, High).

Larry Baldwin made a motion that Petitioner has shown that the variance request will be consistent with 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. Doug Medlin seconded the motion. The motion passed unanimously (Cooper, Wills, Medlin, Andrew, Baldwin, Cahoon, Salter, Emory, Norris, High).

This variance request was granted.

BEACH MANAGEMENT PLANS

Review of Proposed Beach Management Plan Rules (CRC 21-34)

Mike Lopazanski

***Trace Cooper recused himself from discussion and voting on this agenda item.*

Mike Lopazanski stated to address implementation issues with the development line, the CRC formed a subcommittee to look at the development line, static line exception, and strategies for encouraging long-term planning for development on the oceanfront. The subcommittee recommended the CRC form a comprehensive strategy that would provide incentives for local governments to develop long-term planning for siting development along the oceanfront. The Commission was interested in regulatory flexibility and a demonstrated local commitment for long-term maintenance projects. Staff incorporated the provisions approved by the Commission and simplified and streamlined the oceanfront setback rules. The beach management plans are based on the static line exception process and would be reviewed and approved by the CRC. Local governments would be eligible to submit a beach management plan after an initial large-scale project. DCM staff will provide a recommendation to the CRC on whether to approve the plan. If approved, this will provide regulatory relief for communities with beach management plans. A public comment requirement has been added at the local level during the development of the beach management plan. These communities will have to come back to the CRC every five years to provide an update on their long-term maintenance. Clarifying language has also been added to provide guidance for adjacent properties and how to measure setbacks if there is not an existing structure on the adjacent lot. This will provide consistency with the landward most adjacent requirement. Staff recommends approving these amendments for public hearing.

Bob Emory made a motion to approve the beach management plan rules for public hearing. Phil Norris seconded the motion. The motion passed unanimously (Wills, Medlin, Andrew, Baldwin, Cahoon, Salter, Emory, Norris, High).

PUBLIC ACCESS

Additional Amendments to 15A NCAC 7M .0300 Shoreline Access Policies – Parking Fees & Clarifying Language (CRC 21-35)

Mike Lopazanski

Mike Lopazanski stated these amendments address whether parking fees can be used to fund beach nourishment at public access sites. The decision to charge for parking is a local decision.

The Commission has been discussing state funded sites and whether to allow parking fees to be used for beach nourishment. At our last meeting, Commissioner Robin Smith provided an analysis of the current rules and General Statute, and the Commission was interested in seeing the options available.

Neal Andrew stated he would like to allow parking fees to be used for beach nourishment. Chair Cahoon stated parking fees should only be used for maintenance and services of state funded sites. Trace Cooper stated Towns should be allowed to use any funds available for beach nourishment including parking fees. Phil Norris stated Towns should have the flexibility to use parking fees for any costs related to access sites including beach nourishment.

Neal Andrew made a motion to approve Option C as presented in CRC 21-34 to allow for parking fees to be used for beach nourishment for public hearing. Angie Wills seconded the motion. The motion passed with seven votes in favor (Cooper, Wills, Medlin, Andrew, Baldwin, Norris, High) and two opposed (Cahoon, Emory)(Salter abstained).

COASTAL HABITAT PROTECTION PLAN

Consideration of Public Comments and Approval 2021 CHPP Update

Jimmy Johnson/Anne Deaton

Jimmy Johnson stated the public comment period has ended and each of the Advisory Committees has reviewed the comments and recommended actions within the Update. Anne Deaton provided an update of changes that have been made based on comments received. We are seeking the Commission's approval of the 2021 CHPP Update.

Larry Baldwin and Bob Emory, members of the CHPP Steering Committee, both spoke in favor of approving the CHPP Update. Angie Wills stated the number of letters of support for the update is impressive. Phil Norris stated this effort can clear the way for potential funding. Chair Cahoon stated this document and all those who have worked on it have done a huge service to the state of North Carolina.

Bob Emory made a motion that the CRC approve the 2021 Amendment to the Coastal Habitat Protection Plan. The CRC further encourages that all avenues to obtain federal, state, local and private funds to implement the actions in the plan be pursued, including forming the private/public partnership that the plan recommends. As suggested by the CHPP Steering Committee, the CRC will help identify engaged stakeholders to participate in the partnership and encourages the EMC and MFC to do the same. Larry Baldwin seconded the motion. Motion passed unanimously (Cooper, Wills, Medlin, Andrew, Baldwin, Cahoon, Salter, Emory, Norris, High).

PUBLIC INPUT AND COMMENT

Chris Matteo, NC Shellfish Growers Assn., spoke in favor of larger floating structures being allowed within shellfish leases. (Written comments provided)

Written Comments Received

Kyle Frey, Crystal Coast Oysters, wrote in favor of larger floating structures within shellfish leases.

Chris Millis, NC Homebuilders Association, wrote regarding continued discussion of 7B CAMA Land Use Plans Enforceable Policies and suggested revisions.

FLOATING STRUCTURES

Proposed Amendments to 15A NCAC 7M .0600 and 7H .0208 – Floating Structures Associated with Shellfish Leases

Daniel Govoni

Daniel Govoni stated shellfish growers have requested floating structures as a workspace on shellfish leases. Based on input and feedback from shellfish growers, the Division of Marine Fisheries, the Coastal Federation and DCM staff, the commission instructed staff to proceed with developing draft rule language to allow floating structures at a DMF-approved shellfish leases. A list of management considerations from past discussions were used as concepts for possible rule language including navigational issues, resource impacts, aesthetics, marine sanitation, the size of the structure and time limits. When looking at possible rule amendments, we reached out to the Corps for their regulatory requirements. The Corps explained that NWP 48 allows floating bags, cages, and structures but not an enclosed structure so they would need a separate authorization. In discussions with other states, we learned that some floating structures have required an Individual Permit from the Corps. We have also had preliminary discussions with DMF, Shellfish Sanitation, and DWR regarding their regulatory requirements. For the potential rule amendments, staff began with the CRC's floating structure policy in the 7M section of your rules. Currently these policies do not allow a floating structure within a shellfish lease. A sentence was added in 7M .0603 which states that a floating structure is allowed within a shellfish lease authorized by DMF. We also drafted Specific Use Standards to address the management considerations such as: navigation; siting criteria; anchoring; marine sanitation; and dimensions. The standards require that the structures shall not block navigation, not be located over shellfish beds or SAV and shall have 18-inches of water at low tide to prevent the structure from sitting on the bottom within a primary nursery area, and the structure shall be limited to a maximum of 450 square feet and shall not be attached to permanent moorings. To address aesthetics and sanitation concerns the amendments prohibit second story and habitation, require approved sanitation devices, and any requirements by DMF to reduce bird or mammal waste. After discussions with DMF, staff felt it is appropriate to allow these structures for the life of the lease and only one structure is allowed within a shellfish lease. We are currently in discussions with DMF and DEQ legal counsel, and plan to bring a recommendation back to both commissions.

Braxton Davis stated that DCM intends to seek further guidance from the Department of Environmental Quality on these standards and on the overall lease approval/permitting processes at DMF and DCM. For example, a lease issued by DMF is intended to resolve conflicts through siting criteria and authorize gear through the management plan submitted to DMF as part of the lease application. Violations within a lease would result in a breach of contract with DMF. Once the lease is authorized, the CRC could develop standards regarding what is allowed within the lease by way of a CAMA permit, but there may not be a need to duplicate all or part of these reviews. Historically, DCM has only had a commenting role in DMF leases. Jacob Boyd is present from DMF and can answer any questions the Commission may have on the lease process.

Phil Norris stated we should support shellfish growers, but there should be standards. Trace Cooper stated the lease process needs some work and while there is support for the industry, there isn't enough information to alleviate conflicts of water column leases and structures within them. Commission Cooper further stated he would not support these structures outside of permitted marinas. Robert High asked if there is a limit on the number of leases one person could have and the possibility of a floating structure on each lease within a 50-acre tract. Jacob Boyd stated these are some of the details that still need to be discussed. Bob Emory asked to discuss the absence of rules and whether it hinders the industry while the details are being worked on. Jacob Boyd stated it would be more of an impediment to rush through this process without considering all potential conflicts. Larry Baldwin commented that this is a good step towards helping the shellfish industry. Neal Andrew stated there is discrepancy in the size limitations proposed and the size request from the growers. Commissioner Baldwin stated riparian property owner notification needs to be incorporated into the process and there should be a limit on the number of structures allowed in areas with more than one lease. Chair Cahoon stated this issue will be discussed further at the February CRC meeting.

CAMA Land Use Plans

Continued Discussion of Amendments to 15A NCAC 7B CAMA Land Use Plans – Enforceable Policies (CRC 21-36)

Tancred Miller

Tancred thanked Gregory Rudolph for his work on the CRC's Science Panel and for leading the Coastal Resources Advisory Council as Chair. Tancred also congratulated Braxton Davis for his 10 years of service to the State of North Carolina as Division Director.

At the September Commission, meeting, staff presented proposed amendments to Subchapter 7B that would require local governments to clarify which of their land use policies exceed the Commission's coastal development rules, and which policies the local government wishes the Division to enforce during CAMA permitting reviews. The Commission's Subchapter 7B rules define the template that local land use plans must follow, and the topics that must be addressed to be certified by the Commission, but do not prohibit a local government from adopting policies or ordinances that are more stringent than the Commission's standards or establishing standards for development activities that the Commission's rules do not address. Since the last meeting, staff has reviewed a September 14th comment letter from Mr. Chris Millis, Director of Regulatory Affairs for the NC Home Builders Association, regarding the proposed amendments. The letter expressed support for the goal of clarifying enforceable policies, but also concern that the amendments alter existing powers that the Commission gives to local governments, enabling them to adopt ordinances that exceed the Commission's authority to enforce, putting the amendments in conflict with existing law. Per our discussion with DCM and CRC counsel, the proposed amendments do not grant any new authority to local governments, nor do they seek to expand the commission's existing permitting authority. G.S. 160A-174 expressly authorizes a local government to adopt a standard that is more stringent than a State standard, and G.S. 113A-120(a)(8) requires the Division to deny a CAMA permit application that is inconsistent with a local land use plan. It is also important to note that CRC certification of a local land use plan is an acknowledgement that the plan has fulfilled the required planning elements under Subchapter 7B; a local government has the freedom to include any desired standard within its legislative authority. Staff has added language to the proposed amendment to clarify that the term

“exceeding” refers to a policy that is more stringent than a Commission development standard, or to an activity for which the Commission has no standard and is within the Commission’s jurisdiction by requiring a CAMA permit.

Bob Emory made a motion to approve amendments to 15A NCAC 07B as presented for public hearing. Trace Cooper seconded the motion. The motion passed with nine votes in favor (Cooper, Wills, Medlin, Andrew, Cahoon, Salter, Emory, Norris, High) and one opposed (Baldwin).

ACTION ITEMS

Consideration of Fiscal Analysis 15A NCAC 07H .0208(b)(6) & 07H .1200 – Structural Boat Covers (CRC 21-39)

Mike Lopazanski

Mike Lopazanski stated these amendments address canvas over fixed frames and will permit them similarly to boat houses. There is no additional cost to property owners because of these amendments. The fiscal analysis has been approved by DEQ and OSBM. Staff recommends approval of the fiscal analysis for public hearing.

Neal Andrew made a motion to approve the fiscal analysis for 15A CAC 07H .0208 and 07H .1200 for public hearing. Phil Norris seconded the motion. The motion passed unanimously (Cooper, Wills, Medlin, Andrew, Baldwin, Cahoon, Salter, Emory, Norris, High).

Consideration of fiscal analysis 15A NCAC 07H .0308 & 07H .1800 – General Permit for Beach Bulldozing (CRC 21-40)

Ken Richardson

Ken Richardson stated these amendments address new dune creation within Inlet Hazard Areas and restoration of existing dunes. The fiscal analysis for these amendments indicates a minimal impact with no increase in costs to local governments or NCDOT. This analysis has been approved by the Department and OSBM. Staff recommends approval of the fiscal analysis for public hearing.

Neal Andrew made a motion to approve the fiscal analysis for 15A NCAC 07H .0308 and 07H .1800. Doug Medlin seconded the motion. The motion passed unanimously (Cooper, Wills, Meldin, Andrew, Baldwin, Cahoon, Salter, Emory, Norris, High).

Consideration of Fiscal Analysis 15A NCAC 07J .0405 – Modifications (CRC 21-41)

Curt Weychert

Curt Weychert stated these amendments apply to both major and minor modifications to CAMA Major Permits. These amendments will provide staff with guidance on when a modification is considered major or minor. This change will reduce the burden on Minor Permit holders when notifying adjacent property owners of modifications of approved Minor Permits as well as correcting the fee schedule for Major Modifications to Major Permits. This fiscal analysis has been reviewed and approved by OSBM and staff recommends approval of the analysis for public hearing.

Neal Andrew made a motion to approve the fiscal analysis for 15A NCAC 07J .0405 for public hearing. Bob Emory seconded the motion. The motion passed unanimously (Cooper, Wills, Medlin, Andrew, Baldwin, Cahoon, Salter, Emory, Norris, High).

LEGAL UPDATES

Update on Litigation of Interest to the Commission (CRC 21-32)

Shawn Maier, serving as CRC Counsel, reviewed all active and pending litigation of interest to the CRC.

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



Braxton Davis, Executive Secretary

AMW

Angela Willis, Recording Secretary