

**NC COASTAL RESOURCES COMMISSION (CRC)**

**February 22, 2024**

**Aloft at Coastline Center, Wilmington**

**Present CRC Members**

Renee Cahoon, Chair  
Neal Andrew, Vice-chair  
Larry Baldwin  
D.R. Bryan  
Bob Emory  
Jordan Hennessy  
Robert High  
Sheila Holman, 2<sup>nd</sup> Vice-chair  
Steve King  
Lauren Salter  
Steve Shuttleworth  
Earl Smith  
James “Robbie” Yates

**Present CRAC Members**

Bobby Outten, Chair	David Kellam
Candy Bohmert	Kris Noble
Kyle Brewer	Kathleen Riely
Sandy Cross	Debbie Smith
Ryan Davenport	John Spruill
John Farrell	Dave Weaver
David Hewett	John Windley

**Present from the Office of the Attorney General**

Mary Lucasse

**Present from the Department of Environmental Quality, Office of the General Counsel**

Christine Goebel

**CALL TO ORDER/ROLL CALL**

CRC Chair Renee Cahoon called the meeting to order at 9:00 a.m. on February 22, 2024, 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 state when the roll is called. Commissioners King and Shuttleworth read their Statements of Economic Interest evaluation letters from the NC State Ethics Commission into the record indicating no actual conflicts. No conflicts were reported, and based upon this roll call Chair Cahoon declared a quorum.

## **CHAIR'S COMMENTS**

Chair Cahoon thanked those that participated in yesterday's presentations to review the past 50 years of the Coastal Area Management Act.

## **MINUTES**

Chair Cahoon advised the Commission that the minutes from the November 9, 2023, closed session had been placed at their seat for review. These minutes are confidential and protected by attorney-client privilege.

**Neal Andrew made a motion to approve the minutes of the November 9, 2023, closed session. Sheila Holman seconded the motion. The motion passed unanimously (Salter, Holman, King, Emory, Baldwin, Andrew, Cahoon, High, Shuttleworth, Bryan, Yates, Smith)(Hennessy absent for vote).**

**Neal Andrew made a motion to approve the minutes of the November 9, 2023, Coastal Resources Commission meeting. Bob Emory seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bryan, Emory, High, Holman, King, Salter, Shuttleworth, Smith, Yates)(Hennessy absent for vote).**

**Sheila Holman made a motion to approve the minutes of the December 13, 2023, Special meeting of the CRC. Bob Emory seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bryan, Emory, High, Holman, King, Salter, Shuttleworth, Smith, Yates)(Hennessy absent for vote).**

## **EXECUTIVE SECRETARY'S REPORT**

DCM Director Tancred Miller gave the following report:

Good morning, Madam Chair and members of the Commission. It is an honor to be seated here for the first time as your Executive Secretary to deliver the staff report on behalf of the Division of Coastal Management. As you know, I was named Division Director by Secretary Biser last month following Braxton's departure to take on his new role as Executive Director of the NC Coastal Federation. I appreciate the trust that the Secretary has placed in me, along with Deputy Secretary and General Counsel Bill Lane who was able to join us yesterday, and the overwhelming support I have received from the team at DCM, and from so many partners and stakeholders across the state and region. I thank Braxton for his 12 years of service and leadership at DCM. Having been in the position for almost four weeks it is truly remarkable to think about the energy, enthusiasm, work ethic, and inspiring attitude that Braxton brought to the office every day for 12 years. We are grateful for everything he did for the coastal program. For Commissioners whom I have not had the pleasure to interact with closely so far, I will just briefly say that I have been with the division for almost 21 years in various roles within the Policy & Planning Section, most recently as Section Chief. I have been heavily involved in the Commission's rulemaking and land use planning work over this time, and with the division's and department's initiatives on strategic planning and resilience. I have also been very involved in our coastal program's collaborations within the Southeast & Caribbean region, and at the national level. My intention as your new Executive Secretary and as Division Director is to continue to be a strong collaborator and problem solver, to listen, to support our amazing team at

DCM, and to work with transparency, integrity, and purpose. My door is always open, and I look forward to working with each and every one of you.

### **Regulatory**

Starting on the regulatory side, Robb Mairs, DCM's Minor Permitting Coordinator and other DCM staff held two Local Permitting Officer workshops in the northern and southern part of the State. The two workshops combined had approximately 100 participants and included field trips to Nags Head and Wrightsville Beach. Staff conducts these LPO workshops yearly and does an outstanding job working and meeting with the local governments to implement this vital part of our program. A few noteworthy projects in November we issued a major permit to NCDOT for the replacement of the US-64 Lindsay C. Warren Bridge over the Alligator River and Atlantic Intracoastal Waterway in Tyrrell and Dare Counties. Funding included \$110-million-dollars from the USDOT under the Bipartisan Infrastructure Law. The final project design stresses avoidance and minimization of impacts to several resources including wetlands, wildlife, and the public trust. The project is adjacent to conservation lands at the USFWS Alligator River National Wildlife Refuge and incorporates wildlife crossings and wetland mitigation for project impacts through the N.C. Division of Mitigation Services and an NCDOT on-site wetland mitigation plan. In December, we issued a permit to Dare County that authorizes the dredging of existing federal channels and the surrounding channels associated with the Hatteras Ferry route. The permit is similar to the recent Oregon Inlet dredge permits that authorized the county to dredge the existing federal channels from Wanchese Harbor to Oregon Inlet. The Hatteras project also authorizes the placement of dredge material in nearshore existing disposal areas. We are also processing a Major Permit application for a 1600-linear foot living shoreline adjacent to Carolina Beach State Park here in New Hanover County.

### **Policy & Planning**

In Policy & Planning, there were five land use plans certified since your November meeting: Dare County, City of Washington, and the Towns of Beaufort, Calabash, and Cedar Point. There was one land use plan amendment certified for Carteret County. Several other land use plans are currently being reviewed by staff. In November, DCM planning staff presented proposed LUP rule concepts to the CRAC. To further this conversation DCM is hosting a virtual workshop on March 14th for local government planning staff. Staff will provide a brief overview and history of CAMA land use planning and discuss potential changes to the land use planning rules. During the workshop DCM staff will seek input concerning the potential rule changes, which will include a live questionnaire and poll to gather input. Please contact our district planners Rachel Love-Adrick or Mike Christenbury for questions about the workshop. The Public Beach and Coastal Waterfront Access Grant Program's 2024-25 round of grant solicitations is now open. Communities within the 20-coastal counties are eligible to apply for grant funding to improve pedestrian access to ocean and estuarine waters. Pre-applications are due April 15, 2024. As always, additional information is available on our website or from our district planners.

### **Resilience**

Staff are working to release a Request for Applications for Phases 3 and 4 of the Resilient Coastal Communities Program (RCCP) later this spring. Phase 3 of the RCCP provides funding to communities for the engineering and design of a prioritized project, and Phase 4 provides funding for project implementation. Staff estimates that \$5-6 million will be available for this round of funding. Award decisions will be announced this summer. 15 communities currently

participating in Phases 1 and 2 of the RCCP will complete their risk and vulnerability assessments and prioritized project portfolios in May and be eligible for Phase 3 funding. DCM staff submitted a grant proposal on February 9<sup>th</sup> to NOAA's Climate Resilience Regional Challenge in partnership with the NC Coastal Federation. The proposal is titled "Coastal North Carolina Resilient Communities: Strengthening Nature and People Together". We are requesting \$25 million for RCCP and NCORR's RISE implementation projects that focus on nature-based solutions within socially vulnerable communities. We will hear an award decision this summer.

### **Science Panel**

Your Science Panel will convene virtually on Thursday, February 29<sup>th</sup> and Friday, March 15<sup>th</sup> to further address sea level rise, inlet hazard areas, and oceanfront erosion rates. The Panel has already assessed the preliminary findings of the Inlet Hazard Area Method and is presently collaborating with Staff to assess if any adjustments are warranted. Regarding the methodology for comparing oceanfront erosion rates, the Panel has endorsed the utilization of linear regression over the end-point method, which has been the standard for calculating rates along North Carolina's oceanfront since 1979. Staff is currently in the process of drafting a report that will present and contrast results obtained through each method. As usual, Science Panel meetings will be open to the public and announced in advance. Please be on the lookout for a meeting announcement and WebEx link from Christy Simmons. The Panel is still targeting your April meeting to deliver their sea level rise update.

### **Coastal Reserve**

The N.C. Coastal Reserve, in partnership with SECOORA, NOAA, and the Duke University Marine Lab, hosted the Drones in the Coastal Zone conference in early February in Beaufort to share resources, strategies, and innovations regarding the use of unoccupied aircraft systems, AKA drones, for mapping and managing coastal resources. The meeting included a plenary on how drones are used to manage the Rachel Carson Reserve, improve wetland and oyster mapping and monitoring, tours of the local marine labs, and training on drone mapping and photogrammetry. That same week in February, the Friends of the Reserve (FOR), the nonprofit organization dedicated to supporting the work of the Coastal Reserve, received a nearly \$18,000 donation to support the Rachel Carson Reserve from the Beaufort Hotel as part of the hotel's participation in the Coins for Conservation program. We are grateful for this innovative partnership and support from local businesses and FOR. The N.C. Coastal Reserve, Cape Lookout National Seashore, and the Foundation for Shackleford Horses, Inc., are partnering to create a volunteer opportunity known as the Pony Patrol. The volunteers will help to raise community awareness, protect wild horses, and increase visitor compliance with regards to wild horse rules and guidelines at Shackleford Banks and the Rachel Carson Reserve. The Coastal Reserve will host its local advisory committee meetings in April. We welcome newly appointed and reappointed community members and organizations to the committees following last year's application process and appointment by DEQ Secretary Biser. An orientation will be held for new members in March. Meeting information will be available on the reserve's website.

### **Staff News**

In staffing news, we continue to try to fill our vacant field representative position in the Elizabeth City office, which has been vacant for over 7 months. The position was recently re-advertised, and we are hoping to fully staff that office ASAP. We're sorry to say that Wilmington field representative Brendan Brock has left the agency, his last day with us was

January 22. But in good news we would like to welcome Daisha Williams to the role of administrative assistant in our Wilmington Regional Office. Daisha started on February 12th. We also welcomed Jennifer Lassiter as our receptionist in the Morehead City Office.

Finally, I hope that most of you were able to be here yesterday for some engaging and informative discussions with an impressive lineup of partners, legislators, and staff. We covered a lot of ground and I hope the Commission found it to be valuable. For anyone that was unable to attend, the panel discussions were recorded, and a link will be made available soon for viewing.

### **CRAC REPORT**

Bobby Outten, CRAC Chair, stated the CRAC discussed proposed amendments of the CAMA Land Use Planning program in 15A NCAC 07B. At the November CRAC meeting, DCM staff provided an overview of the goals of the amendments and CRAC members were asked to take this information back to their communities. The first notable issue was the enforceability of policies within a Land Use Plan. After discussion, the CRAC recommended that policies within the Plans should be simply policy statements and enforceability should come from local ordinances. The second discussion was regarding policy analysis and policy development. Communities need more clarity on what is required in the policy analysis. There were concerns about costs and making the Plans more expensive by requiring consultants. If the idea is to make the process of updating Plans more cost effective and a simpler process, this idea seems more complicated and expensive. The third issue was resilience and natural hazards and, the CRAC discussed merging the goals of natural hazards and infrastructure capacity into one topic of resiliency. There wasn't a clear understanding of the reasoning for doing this. Resiliency planning in some communities is broader than what may be in the land use plan. It was the consensus of the CRAC that both should be addressed but they should be addressed separately. There was no action taken on Land Use Planning, but staff will bring back draft amendments to the rules to incorporate the comments heard during the meeting. The CRAC then discussed the dune rules. Following the presentation in November, the CRAC brought back comments that requested clarity on damaging the integrity of the dune and the standards and thresholds connected with it. In the rules there is language of "other dunes" and there needs to be clarity here as well. What are "other dunes"? In 7H .0309, it appears that too much development is allowed within the dune structure if all of the exceptions are utilized. If the goal is to protect dunes, this is counterproductive. There are also questions about how to regulate development in and around dunes. Are the protections provided by local or state regulations? Currently, we have both. Do we want both layers of rules? Sand fencing was also discussed. The rules have changed over time and one size does not fit all. The CRAC would like rules to allow for the fencing where it needs to be done. There are also rules that limit when plantings can take place. Planting is only allowed during the growing season and this limits when planting can take place. Planting is beneficial and should be allowed when needed. Monitoring could be required to avoid environmental risks. A motion was made to allow for the local government to plant when they deemed it was necessary and particularly following a storm event or nourishment. The CRAC unanimously approved this concept. Hay bales were discussed where sand fencing does not work. The CRAC feels that hay bales are no worse than Christmas trees on the beach. There was some concern about the bales raising the sand temperature, but after discussion the CRAC does not believe that this is a big issue. The CRAC made a motion to allow unrestricted use of hay bales at the local government's discretion where sand fencing is unsuccessful. That motion

passed unanimously. Another issue discussed briefly was septic tanks on the beach. In Rodanthe, if a homeowner has a house and the pilings are in the water but there is enough land behind the house then the Department of Health and Human Services will allow a septic tank. The local government has to issue a septic permit. This issue needs to be addressed. The CRAC also discussed the temporary rules that the Commission will consider replacing the emergency rules currently in place. During this discussion, comments received included concern that without these rules, and that there will be chaos in development due to lack of rules resulting in unwanted development. A motion was made to support the adoption of the temporary rules. That motion passed unanimously.

By consensus, the CRC advised Staff to bring rule language back to the CRAC based on the recommendations received on hay bales as an alternative to sand fencing and to allow dune plantings at the discretion of the local government without time limitations.

Larry Baldwin asked when there is a CAMA Land Use Plan and a planning/zoning document at the local level, which document takes precedence? Bobby Outten stated the Land Use Plan is a policy guidance document and is not an enforceable zoning ordinance that directs development. Based on the policies that are adopted, the local government should adopt ordinances that carry out the policies. These are the enforceable rules. Mike Christenbury stated for CAMA permitting purposes, the Land Use Plan policies may be regulatory in nature if a community decides they want a policy to address a specific situation, such as new dredging or how a local government wants to define a marina. When communities have specific policies regarding specific items that they want enforced during CAMA permit review, we look at the policies that may be more restrictive than the CRC's development rules and apply them to the permit review. This can result in a development proposal being denied based on a Land Use Plan policy. Tancred Miller added that CAMA states that no permit may be issued that is in conflict with the local Land Use Plan. If the local government does not intend the policies to be enforceable, then the Plan should say that.

## **ACTION ITEMS**

### **Consideration of Town of Kure Beach's Beach Management Plan**

#### **Ken Richardson/Nicole Vanderbeke**

Ken Richardson reminded the Commission of the requirements for approving a beach management plan. The Commission considers historic beach fill projects within the Town, the maintenance plans for a period of not less than 30 years, the sediment sources available, the financial resources available, and any public comments submitted on the Beach Management Plan. Since 1979, setbacks have been measured from the first line of stable and natural vegetation. Distances are determined by the oceanfront erosion rates multiplied by graduated factors ranging from 30 to 90. This measurement also delineates the landward boundary of the Ocean Erodible Area of Environmental Concern (OEA). Because the vegetation line's position is subject to significant changes due to storm events, the OEA is not mapped. Since 1979, updates to the oceanfront erosion rates have occurred roughly every five years to incorporate refreshed data. As erosion persists, eventually communities are often faced with having to install beach fill projects. When the shoreline erodes closer to existing structures, the vegetation line moves farther landward relative to its current position. As a result, this can and does make vacant lots unbuildable and existing structures non-conforming. These properties cannot be developed, or

re-developed, and existing structures may not be able to be rebuilt if damaged beyond 50%. Beach nourishment and routine maintenance of the initial project have emerged as the favored response to erosion. As defined in the CRC's rule, 15A NCAC 7H .0305(a)(7), a large-scale beach nourishment is the placement of 300,000 cubic yards of material. Currently, over 80% of the communities along the ocean shoreline have installed a large-scale project on all, or a portion, of their oceanfront jurisdiction. Of the approximately 160 miles of developed shoreline, almost 70% have an established pre-project vegetation line. The CRC has determined that the vegetation on nourished beaches is not stable and natural and should not be used for measuring oceanfront setbacks. In 1995, the CRC codified a method of measuring setbacks on nourished beaches that utilizes the surveyed pre-project vegetation line, which became known as the static line. The static line rules were based on three primary issues: evidence that nourished beaches can have higher erosion rates than natural ones; concern about whether funding for future nourishment projects would be available for maintenance work as the original project erodes away; and a concern that structures could be more vulnerable to erosion damage since their siting was tied to an artificially forced system. The intent of the pre-project vegetation line provisions has been to recognize that beach nourishment is an erosion response necessary to protect existing development but should not be a stimulus for new development. Once a pre-project vegetation line is established, it never expires. Setbacks are then measured from the pre-project line, or vegetation line, if it is farther landward than the pre-project line. In conjunction with a beach project, communities can also plant vegetation. While not required, this can significantly contribute to fostering dune stabilization and growth, as well as enhancing habitat quality. As the CRC determined, initial planting of vegetation does not make it stable and natural and therefore is not suitable for measuring setbacks. Communities began to see the benefits of their long-term commitment to beach nourishment, and they began to ask the CRC about opportunities for regulatory relief. The Commission acknowledged that some communities had demonstrated a long-term commitment to beach nourishment and maintenance of their nourished beaches and that the vegetation had become stable and migrated oceanward of the pre-project vegetation line. In many cases, proposed development on lots within these communities could meet the required setback from the natural vegetation line but could not be permitted since they did not meet the setback from the pre-project vegetation line. In 2009, the CRC introduced the static vegetation line exception procedures as a means to acknowledge and support local government initiatives aimed at reducing erosion through sustained beach nourishment efforts. This initiative evolved into the Beach Management Plan rules in 2022. Under these procedures, local communities were required to formally request an exception to the pre-project vegetation line from the CRC, which has now become an established part of the Beach Management Plan. A CRC approved Beach Management Plan enables property owners within the community to establish construction setbacks based on the first line of stable and natural vegetation rather than the pre-project vegetation line, subject to specific conditions. Beach Management Plan regulatory relief allows setbacks to be measured from the first line of stable and natural vegetation, but the siting of development is limited to no farther oceanward than the landward-most adjacent structure. Structures greater than 5,000 square feet must meet the minimum setback of 120 feet or 60 times the setback factor, and grandfathering relief applies to all structures. While having a Beach Management Plan in place is certainly a crucial step, its effectiveness hinges on proper implementation. Without actively carrying out the measures outlined in the plan, the shoreline will regress to its pre-project state, leaving existing structures vulnerable to continued erosion. Consequently, failure to implement the plan can not only undermine the initial investment in

erosion mitigation, but also potentially result in significant environmental and economic consequences for the affected area. Therefore, it is imperative for coastal communities to not only develop robust Beach Management Plans, but also identify resources and ensure consistent execution of the plan. With the formulation of these rules and procedures, the CRC has taken on the substantial responsibility of reviewing beach management plans. This entails not only examining the specified criteria laid out in the plans but also conducting comprehensive evaluations of their effectiveness. Furthermore, the CRC has tasked itself with assessing the success of previous beach nourishment efforts based on the data and information presented. This multifaceted approach ensures that beach management plans are not merely superficial documents, but robust strategies geared towards effectively addressing erosion challenges and helping to safeguard oceanfront development. DCM staff have reviewed the Town's Beach Management Plan and have determined that all required elements are addressed within the Plan and are recommending that the CRC consider approval.

Nicole Vanderbeke, Moffatt & Nichol, stated the Town received a development line in 2017, but that line expired with the change in the rules in 2022, which is what brings the Town here today requesting approval of their Beach Management Plan. The first nourishment project was authorized in 1962 but was not constructed until 1997 and has an estimated 3-year nourishment cycle. There have been nine projects constructed under the current authorization with an average placement of 628,000 cubic yards during eight maintenance events since initial construction. The current authorization extends through 2047. The initial placements concerned the entire authorized extents, but monitoring showed that smaller placement extents were warranted due to lower erosion rates in the northern and central portions of Kure Beach. The authorized design template extends approximately 18,000 feet. The southern project limit is approximately 1,000 feet north of the developed portion of Kure Beach and the northern project limit extends to 3,500 feet into southern Carolina Beach. The template consists of a 25-foot wide dune, a 50-foot wide storm berm, and a variable width berm sloping down to existing ground slope. During the course of the nourishment cycle, the berm and sometimes the storm berm gets eroded leaving the dune intact for protection to infrastructure. The local cooperation agreement with the Corps establishes a 3-year nourishment cycle for this project unless monitoring indicates the need to deviate. Historically the project has stuck to this interval. It is expected that the nourishment cycle will remain at 3 years throughout the remainder of the authorization. Work was done by CPE to establish the native beach characterization in 2013-2014 with a re-characterization of larger clasts performed in 2021. DCM has laid out borrow material parameters to where the borrow area sediment characterization must be within a certain percentage of the native beach. Borrow area A was used for the initial construction of the Kure Beach Coastal Storm Reduction Management project as for the three following maintenance events. However, borrow area A was eventually depleted of suitable sand resources and as a result, borrow area B was identified as a new sand source. The Corps initiated design level investigations during 2012 which were subsequently used for the 2013 and 2016 events. Further vibrocore investigations were performed by the Corps in 2018 and the Corps continued use of borrow area B for the 2019 and 2022 events. In 2019, the Corps performed the most recent compatibility analysis of borrow area B as part of the Carolina Beach CSR project validation study. It was determined that suitable material exists throughout the borrow area and current volume estimates for borrow area B are approximately 9.7 million cubic yards which is enough for up to 15 more projects. After the 2016 dredging event which accidentally uncovered some rocky material in the southeastern portion

of the site when the dredge cutter head was lowered below the suitable material elevation, new dredge cut elevation limits were established for future renourishment contracts to ensure avoidance of non-suitable material. While it is assumed area B will continue to be the borrow source for the Corps' project for the foreseeable future, Carolina Beach Inlet provides a potential for supplemental material. County monitoring indicates a recharge rate of approximately 300,000 cubic yards per year and as of May 2023, the borrow area contained 1.2 million cubic yards. The Corps initially conducted quarterly surveys for monitoring, but now conducts annual surveys. Based on their monitoring results, the dune has typically stayed intact, and renourishment efforts have focused on the berm and storm berm. The County also has its own annual monitoring program which started in 2014 and it calculates annual shoreline and volume changes along the oceanfront at USACE transects. The County regularly provides the annual monitoring data to the Corps for use. The annual monitoring program also tracks the project performance throughout each nourishment cycle to see how much sand was lost versus how much was placed. The Town intends to cooperate with the Corps to extend the authorization once it expires in 2047. Carolina Beach recently went through this process and got a 15-year extension. Currently there is a cost share for the Corps project where the Federal government pays 65% while the State and Local government split the remaining 17.5%. The local portion is paid by the County from their beach nourishment fund with collected room occupancy taxes from Wrightsville, Carolina, and Kure Beaches. There is an interlocal agreement between the County and Towns for use of these funds towards beach nourishment. The County beach nourishment fund is derived from a 6% occupancy tax in which 60% of the first 3% is allocated to beach nourishment. For reference, the 2022 room occupancy tax allocated to beach nourishment was \$6.1 million. Average annual expenditures over the last 10 years were \$3.6 million, while average annual beach nourishment allocations over the last 10 years were \$4.7 million. Average annual collections have been greater than average annual expenditures, allowing the beach nourishment fund to grow to \$51.3 million. In case of emergency, the current beach nourishment fund could fully fund all three County projects one time. The Town has also established a public involvement process. The public comment period was advertised, and a draft copy of the plan was provided online with the ability to provide written comments or in person comments at a Town meeting. The plan was presented at a Town meeting after which public comments were received and the Town approved the Beach Management Plan. All comments received were included as an appendix to the Plan.

**Larry Baldwin made a motion to approve the Town of Kure Beach's Beach Management Plan. Neal Andrew seconded the motion. The motion passed unanimously (Hennessy, Salter, Holman, King, Emory, Baldwin, Andrew, Cahoon, High, Shuttleworth, Bryan, Yates, Smith).**

## **CRC/DCM COMMUNICATION**

### **Meeting Format and Other Communication**

#### **Tancred Miller**

Renne Cahoon stated at the last meeting there was a question about the possibility of hybrid meetings and staff were asked to look into options and come back to the Commission with additional information. Tancred Miller stated we reached out to the Division of Marine Fisheries, our closest sister agency, who broadcasts meetings to find out what kind of equipment, manpower, and technology it takes to facilitate this. We received an extensive response. It appears that our first step would be to try to broadcast the CRC meetings. The CRC asked

specifically about the ability for Commissioners to participate in a live, in-person meeting remotely. Tancred Miller responded that the Division would need to look into equipment to facilitate this, cameras, secure links to connect remotely, and staff dedicated to monitoring online participants and ensuring voting accuracy. If the CRC would like to move forward, DCM is willing to look into equipment and training to facilitate this request, but it will take some time. Jordan Hennessy spoke in favor of streaming the CRC's meetings for public viewing. DMF and EMC are already doing this via YouTube and do allow some virtual participation. Broadcasting to the public should be the first step. Lauren Salter stated she staffed the MFC back when broadcasting began, and it is not as easy as it sounds and should be a graduated process. Virtual, interactive participation is difficult when meeting up and down the coast in multiple locations. There are uncertainties such as Wi-Fi connectivity. A wired-in set location would be more predictable to accommodate remote participation by Commissioners.

**Jordan Hennessy made a motion to proceed with broadcasting to the public for live viewing and replay capabilities (such as YouTube streaming). Robbie Yates seconded the motion. The motion passed unanimously (Hennessy, Salter, Holman, King, Emory, Baldwin, Andrew, Cahoon, High, Shuttleworth, Bryan, Yates, Smith).**

#### **PUBLIC INPUT AND COMMENT**

No public comments were received.

#### **INFORMATION ITEMS**

##### **Consideration of Public Comments on Temporary Rules**

##### **Mary Lucasse/Daniel Govoni**

The Commission reviewed the temporary rules during the December special meeting to adopt emergency rules and proceed with the temporary rulemaking process. An overview of the rule making process was provided. During the meeting, an updated timeline was provided to the Commission informing them that the emergency rules were submitted to the Codifier on December 14, 2023, and notice of the temporary rulemaking was provided to the interested parties list and the public hearings were advertised. The Codifier of Rules within the Office of Administrative Hearings provided an opinion that the findings of need did not satisfy the emergency rule requirements of the NC Administrative Procedure Act (APA). As allowed by the APA, the CRC asked the Codifier to post the emergency rules to the website and enter the rules back into the Administrative Code. The rules were re-entered on January 3, 2024, with the exception of 15A NCAC 7J .0204, which was sent to Joint Legislative Commission on Governmental Operations (Gov Ops) for review since there is a fee included in this rule. Gov Ops has 90 days to consult with the agency, so this rule was not entered into the Code. If Gov Ops does not consult with the CRC by May 1, 2024, then 7J .0204 will also be entered as an emergency rule. DCM staff held public hearings on the temporary rules and the public comment period was extended to February 22, 2024, to allow for additional comments. A special meeting will be necessary to review the comments that have been received on the temporary rules. These temporary rules will need to be submitted to the RRC for review by April 1, 2024, otherwise, the emergency rules will expire. If the temporary rules are approved by the Rules Review Commission, the next step for this Commission will be to begin the permanent rulemaking process.

Daniel Govoni stated that to date, the Division is in receipt of 171 comments. Of the comments received, all but three were in favor of the temporary rules; there were three comments that were neither for nor against the temporary rules. Favorable comments on adoption of the temporary rules were received from the Town of North Topsail Beach, two from Coastal Carolina Riverwatch, 44 from NC Sierra Club, and 25 private citizens. Comments were received supporting the readoption of Jockey's Ridge AEC from Dare County Tourism Board, Division of Parks and Recreation, Outer Banks Chamber of Commerce, Friends of Jockey's Ridge, 2 from the Outer Banks Realty Group, Town of Nags Head, Jockeys Ridge State Park, and 83 private citizens.

Tancred Miller stated DCM staff will review all comments received through the close of business today, February 22, 2024. A summary of these comments will be provided to the CRC as well as any comments received that may cause the Commission to want to change any of the temporary rules. Chair Cahoon proposed a March 13, 2024, Special CRC meeting to consider comments and adoption of temporary rules.

### **LITIGATION UPDATE**

Mary Lucasse stated since the litigation update memo was provided to the CRC, the only updates are the withdrawal of Brice's Creek third party hearing request. As of today's date, four third party hearing requests have been received. The Cedar Point lawsuit versus the CRC is a case where the Plaintiff has requested declaratory judgement from the Wake County Superior Court based on its allegation that the emergency rules did not meet the requirements of the APA. In the Complaint, Cedar Point, a developer, alleged it received CAMA Major Permit 79-22 from DCM to begin developing a subdivision near Bogue Sound in Cedar Point in Carteret County in 2022. Cedar Point did not challenge the terms of the CAMA permit when it was issued. On behalf of the CRC, we will respond by filing a motion to dismiss. Jordan Hennessy asked that any suits filed against the CRC be shared with the full Commission. Ms. Lucasse agreed to do so and to continue providing updates on this case. Ms. Lucasse also reported that in the CRC v. RRC litigation, two settlement proposals have been offered to the RRC and there has been no response from its counsel.

### **OLD/NEW BUSINESS**

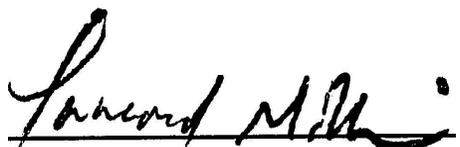
#### **3<sup>rd</sup> Party Appeals Process Subcommittee**

Chair Cahoon appointed Commissioners Sheila Holman, Larry Baldwin, Earl Smith, and Bob Emory to this subcommittee to work alongside Mary Lucasse and Christy Goebel to draft process recommendations for the Commission's consideration.

Neal Andrew brought up his concern that permits are being held up by comments received late in the permitting process or when comments from reviewing agencies are not received. He suggests there should be a deadline for when comments can be received on a permit application and a timeframe of 30 days seems reasonable. Gregg Bodnar commented that comments are accepted on applications up to the date of issuance. After discussion, by consensus, the CRC asked Staff to prepare a white paper on the process for soliciting comments and the implications of a timeframe to receive comments.

With no further business, the CRC adjourned.

Respectfully submitted,



Tancred Miller, Executive Secretary



Angela Willis, Recording Secretary

The NC Division of Coastal Management would like to thank the participants of the CAMA 50<sup>th</sup> anniversary review on February 21, 2024.

**History of the NC Coastal Area Management Act**

Mike Lopazanski, DCM Deputy Director

Judge Willis Whichard, Associate Judge (ret.), NC Supreme Court, Former State Representative, and Principal House Sponsor of the Coastal Area Management Act

David Owens, Emeritus Professor UNC School of Government, Former DCM staff/Director

Joelle Gore, Chief, Stewardship Division, NOAA OCRM

**CAMA Regulatory Framework Panel**

Jonathan Howell, DCM Regulatory Section Chief

Tommy Fennel, USACE Wilmington District

Dawn York, Moffatt & Nichol

Greg “Rudi” Rudolph, NC5

**Local Governments and Partnership Panel**

Rachel Love Adrick-, DCM District Planner

Janie Heath, Md-East Commission Planner

Kris Noble, Hyde County

Bill Raney, Masonboro Island Reserve Local Advisory Committee

Layton Bedsole, New Hanover County

**Legislative Panel**

Senator Norman Sanderson

Representative Carson Smith