

NC COASTAL RESOURCES COMMISSION (CRC)

June 10-11, 2020

Via WebEx

Present CRC Members

Renee Cahoon, Chair

Larry Baldwin, Vice-Chair

Robin Smith, Second Vice-Chair

Neal Andrew

Doug Medlin (absent 6/11/20)

Craig Bromby

Phil Norris

Trace Cooper

Lauren Salter

Bob Emory

Angie Wills

Robert High

Present from the Office of the Attorney General

Mary L. Lucasse

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

Christine A. Goebel

CALL TO ORDER/ROLL CALL

Renee Cahoon called the meeting to order at 9:00 a.m. on June 10, 2020, 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. Commissioner Dick Tunnell was absent. Commissioner Bob Emory recused himself from the Schmunk variance request (CRC VR 20-01). No other 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. The Chair thanked Assistant Secretary Sheila Holman for participating in the meeting. A special meeting will be needed to readopt three rules as part of the required Periodic Review process. These three rules were inadvertently left off the notice when the rest of the Commission's rules were readopted. DCM staff is preparing a formal request to the Science Panel asking for a written response to the technical comments received on the proposed Inlet Hazard Area maps

MINUTES

Larry Baldwin made a motion to approve the minutes of the February 2020 Coastal Resources Commission meeting. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, High, Medlin, Norris, Salter, Smith) (Emory and Wills absent for vote).

EXECUTIVE SECRETARY'S REPORT

DCM Director Braxton Davis gave the following report:

Thank you, Madam Chair, and members of the Commission, it is great to see you all, at least virtually, as we continue to endure and adapt to this historic pandemic. We appreciate the patience of our commissioners and the public as we work through this, I believe this is the first-ever WebEx meeting of the NC Coastal Resources Commission. I hope you do not mind if I start today by thanking the DCM staff for all their hard work and dedication. Our regulatory staff have been very busy throughout this crisis. As you may recall, the Governor's original stay at home order did not apply to construction-related businesses, and marine contractors along the coast have remained busy. We wanted to do what we could to keep coastal businesses running, help avoid impacting real estate transactions, and do our part to keep the economy as strong as possible during this crisis as long as we could do so in a safe manner. We have implemented safety procedures including avoidance of in-person onsite meetings wherever possible, increased social distancing when that is not possible, encouragement of staff teleworking, and distribution of personal protective equipment. During the last few months, permitting has remained at all-time highs, but we are also experiencing an uptick in complaint investigations and appeals. Our field staff and administrative staff have stepped up to deal with this increased workload, despite some vacancies in some key positions, and they have adapted incredibly well to the challenging circumstances. We are all very proud of and grateful for the work they have accomplished. Our Coastal Reserve and Policy and Planning staff have also remained extra busy, as you will see from the remainder of this report. You may recall from the February meeting that NOAA conducts periodic evaluations of state coastal management programs and National Estuarine Research Reserves as called for in the Coastal Zone Management Act. Evaluations assess accomplishments and needs and include recommendations for program enhancements. There are opportunities for the public to provide comments, and a final evaluation report summarizes the process and results. Due to the pandemic, the Division will be undergoing its federal review in a virtual format this fall for both the coastal program and the national estuarine research reserve. As part of this review, NOAA has surveyed and will be speaking with various DCM and DEQ staff as well as local government representatives and other stakeholders. I wanted to give everyone a heads up that they may be contacted by NOAA's Office for Coastal Management to participate in these meetings. Your participation will be appreciated, and I will share more about the review as plans are finalized.

REGULATORY

Staff conducted a site visit to the South Dock Ferry Terminal on Ocracoke Island, where N.C. DOT has begun construction of the sandbag revetment that was authorized by CRC Variance at your July 2019 meeting. Approximately 90% of the project has been completed at this time with only the bulkhead cap and a portion of the sandbag revetment to be constructed. The NC State Port Authority recently provided an update on the Port of Wilmington dredging project and mitigation resulting from the expansion of the turning basin, which was also authorized by a CRC Variance last year. To date, approximately half of the dredging and mitigation has been completed. The NCSPA is presently assessing the need for conducting the remaining portions of the proposed dredging. You may receive a more formal update on this project from N.C. DOT later this year. DCM issued a permit to the Brunswick County Public Utilities Authority to expand the Northwest Water Treatment Plant facilities to upgrade the existing treatment process

and add low pressure reverse osmosis to remove fluorinated compounds (like Gen X) and other emerging contaminants found in the raw water supply with a new water discharge outfall on the Cape Fear River.

POLICY & PLANNING

Since our last meeting, DCM concluded review of Avangrid's Site Assessment Plan (SAP) for the Kitty Hawk Wind Energy Area, which includes meteorological buoys and platforms. This review was in accordance with DCM's consistency determination on October 10, 2016 which required BOEM to coordinate with DCM and the Division of Marine Fisheries prior to final approval of the SAP. You may recall that DCM found WesternGeco's federal consistency determination related to proposed seismic surveys inconsistent with North Carolina's coastal program. WesternGeco appealed this decision to the U.S. Secretary of Commerce, who has recently taken the one-time 15-day extension allowed under federal rules to conclude his decision. The new deadline for his decision is June 15, 2020, and Mary will provide additional information later in her report.

Dredge Moratoria / Environmental Windows

Following decades of seasonal restrictions, the US Army Corps of Engineers is proposing summertime dredging of federal shipping channels at both NC State Ports (Wilmington and Morehead City). State and federal resource agencies have raised significant concerns about potential impacts to protected species, water quality, and marine fisheries. The rationale provided by the Corps centers on limited regional dredge availability and ongoing needs of the Ports of Wilmington and Morehead City. Through an agreement with the Corps, DCM authorized a one-time summer dredging operation until July 31, 2020 (and which began June 1, 2020) in the Beaufort Inlet shipping channel serving the Port of Morehead City. This one-time authorization was based on a cooperative research and monitoring agreement between the State of North Carolina and the Corps of Engineers. Brandon Puckett, DCM's Coastal Reserve Research Coordinator, is leading a team made up of NC Div. of Marine Fisheries, East Carolina Univ., Duke Marine Lab, NOAA, and the Corps' Engineer Research and Development Center (ERDC) to develop and implement a program to monitor fish larval abundance and migration patterns in and around Beaufort Inlet, turbidity plume dynamics, and other water quality parameters before, during and after dredging operations. Brandon is collecting water column profile data and analyzing continuous water quality data already collected at nearby Reserve monitoring sites. We are contracting with ECU to significantly expand the Bridgenet fisheries sampling program, and we are contracting with the Duke Marine Lab Drone Program to deploy drones for surface monitoring during the dredging event. The ultimate goal is to provide state and federal resource agencies with a better understanding of hopper dredging and the potential implications of summertime dredging for the ecology and water quality of Beaufort Inlet. More recently, on March 27, 2020, the National Marine Fisheries Service (NMFS) issued a 2020 South Atlantic Regional Biological Opinion (SARBO) for Dredging and Material Placement Activities. The new SARBO has an increased focus on North Atlantic Right Whales, and generally recommends all dredging activities take place during summer months in North Carolina, along with associated mitigation measures. This is inconsistent with previous guidance from federal and state resource agencies. DCM is awaiting further guidance from the Corps and NOAA on how the NMFS Office of Habitat Conservation and Office of Protected Resources guidance, which could be at

odds, may align for future projects. On April 7, 2020, the Corps issued an Environmental Assessment (EA) Scoping Request for comments regarding removing all dredge restrictions for the Morehead City and Wilmington Harbors. The Department coordinated with DCM, DMF, and DWR and submitted significant concerns on behalf of all divisions, requested ongoing coordination to discuss the proposal, and requested that the Corps submit a federal consistency determination at the final stage of the Environmental Impact Statement or NEPA process so that the state can evaluate comments submitted by other federal agencies. On May 26, 2020, the Corps also issued an EA Scoping Request for the Surf City/North Topsail Beach Coastal Storm Risk Management Project. The request asks for comments regarding allowing year-round dredging and beach placement for the initial construction phase, which is estimated to take 36 months. For periodic nourishment after the construction phase, the Corps is requesting a seasonal dredge window of Nov16-April 30.

Land Use Plans

The Division received one land use plan certification request under the recent delegation of authority from Commission. The Town of Holly Ridge submitted its 2019 Comprehensive Land Use Plan for certification since our last meeting. The Division found that:

- The Plan 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 Town of Holly Ridge request for certification of their 2019 Comprehensive Land Use Plan was granted.

Public Access Program

DCM has received 17 applications from 15 local governments and the NC Coastal Reserve Program (under CRC rules DCM/Reserves are also eligible to use this funding for public access) requesting over \$2.25M in funding from the Public Beach and Coastal Waterfront Access Program. DCM has approximately \$1.2M available for access projects during this fiscal year and pending DEQ review, will be inviting selected local governments to submit final applications with more detailed information. Prior to submitting a Final Application, the local government is required to hold a public meeting or hearing to discuss its proposal and consider comments prior to its decision to submit a Final Application for state funds. Final Applications are due August 17th, and all final applicants will be notified in late October whether their project has been selected for funding.

Resiliency Efforts

On June 1, DEQ delivered the state's Climate Risk Assessment & Resilience Plan to the Governor. This plan was required under EO80 and is the state's most comprehensive effort to date to address North Carolina's vulnerability to climate change. It is the result of 11 months of stakeholder engagement, including last's year's local government workshops and Resiliency

Summit, and collaborative work with federal partners, state universities, local governments, non-governmental organizations, climate justice leaders, and other interested partners. The plan establishes a North Carolina Resilience Strategy, which includes four elements: (1) a regular *North Carolina Climate Science Report*, (2) State Agency Resilience Strategies, (3) Statewide Vulnerability Assessment and Resilience Strategies, and (4) an Enhanced State Hazard Mitigation Plan. DCM's resilience work is nested within the DEQ Resilience Strategy. In March, DCM, in partnership with the NC Office of Recovery and Resiliency, N.C. Sea Grant and the N.C. TNC, was awarded \$1.1 million by the National Fish & Wildlife Foundation through the Emergency Coastal Resilience Fund. This award is being matched by state funds (\$830,000: \$130,000 for a Temp Solutions position (2 years) within our Coastal Reserve program; \$500,000 for a DCM-issued RFP for county and local vulnerability assessments, resilience planning, and engineering/design studies and \$500,000 for a DCM-issued RFP for county and local vulnerability assessments, resilience planning, and engineering/design studies) to develop a framework for local vulnerability assessments and resilience planning, and to do the engineering and design work to develop shovel-ready projects. DCM will make awards available to local governments later this year and will host two webinars in July to share details about the program and answer questions from interested local governments.

Science Panel – IHAs and Sea Level Rise

At our last meeting Staff reviewed the feedback we have received through the IHA public hearings and workshops conducted in December 2019- Jan 2020. At the request of the Commission, DCM has been compiling all the comments collected during the public comment period (Dec. 1, 2019 – March 2, 2020) and categorizing and summarizing reoccurring themes. Staff have identified the technical comments that the Commission wanted the Science Panel to review, and we have been communicating with the Panel on how the response will be delivered. Once the CRC considers public comments, in addition to getting feedback from Staff and the Science Panel, DCM Staff anticipates that the you will want to discuss additional rule amendments – specifically those pertaining to current grandfathering rules and the size and density limitations inside IHAs. We anticipate further amendment to the rules, and that will require an update and approval of a new fiscal analysis, followed by another period of public hearings. The Science Panel's work on the sea level rise assessment update has slowed due to the challenges associated with the COVID-19 restrictions, and it is unlikely that the 2020 report will be complete by the August 31st date that the commission requested. Staff will be asking the panel to propose a revised timeline to the commission at your next meeting.

Periodic Rules Review

The Division and Commission are completing the legislatively required review and re-adoption process for existing rules. This periodic review has proceeded while the Commission has continued to amend its rules during the normal course of business. At one point during the fall of 2019, several rules were pulled back from approval by the Rules Review Commission as additional amendments were identified by Staff. Due to a miscommunication with the Dept., these rules (15A NCAC 7H .0312, 7J .0403 and .0404) were also withdrawn from the noticing process associated with the Periodic Review Process. These three rules have since been noticed in the NC Register with the public comment period ending July 14th. In keeping with the provisions of the Periodic Review Process, these rules will need to be re-adopted by the

Commission prior to July 31, which requires a short conference call meeting of the Commission. Angela will be contacting you all to find an acceptable date and time.

NC Clean Marina Program 20th Anniversary

The N.C. Clean Marina Program, coordinated by Pat Durrett in Morehead City Office, will celebrate its 20 Year Anniversary in July 2020. This voluntary non-regulatory program recognizes marinas for environmental stewardship by using Best Management Practices in the operation of their marina, helping to protect our waterways now and for future generations. A Social Media campaign will be conducted highlighting our 49 Clean Marinas starting in July.

Coastal Reserve

Most staff began teleworking in mid-March and all offices remain closed to visitors. All reserve sites are open as we continue under Phase 2 of the state's plan of slowly easing certain COVID-19 restrictions. In accordance with EO 141, mass gatherings that bring together more than 25 persons outdoors at a time are prohibited. The wet/dry beaches and uplands of the Rachel Carson, Masonboro Island, and Bird Island Reserves were closed to visitors on April 3, 2020 to protect public safety and reduce the spread of COVID-19, and to support current state and local restrictions and guidance. Sites reopened on May 9, 2020 as North Carolina entered Phase 2. The reserve will continue to closely monitor state and local COVID-19 guidelines and directives and encourage reserve visitors to comply with these measures to protect themselves and their communities. In partnership with the NC Coastal Federation, the Division secured \$1.9M in federal funding from the U.S. Department of Agriculture's Emergency Watershed Protection program and approx. 600K in state funds/match to address large marine debris such as dock sections and lumber and remaining vessels stranded on public lands as a result of Hurricane Florence. This work is expected to begin this summer. All in-person trainings and public programming has been canceled; education and training staff have been active conducting virtual outreach as well as assisting partners with virtual meeting support. Virtual training workshops will be coming in the fall and will focus on grant writing, water quality, climate communication, and community resilience. Research and stewardship work are continuing at the sites, although activities are more limited as they must meet social distancing and mission critical requirements. The reserve will not be holding spring local advisory committee meetings and will instead provide written updates to the committees next week.

Staffing News

- The Coastal Training Program is hosting two interns this summer who are working remotely:
 - Zofia Knorek is a PhD student at UNC's Institute of Marine Sciences studying oyster reef restoration in the Rachel Carson Reserve.
 - Kira Matthews is a rising senior at Pitzer College in Claremont, California.
- Two seasonal staff join the reserve team for the summer and will be monitoring shorebird and sea turtle nesting:
 - Danielle Devonport will be conducting monitoring at the Masonboro Island Reserve and producing virtual tours of reserve sites.
 - Hillman Kraus will also be monitoring shorebirds at Masonboro Island, focusing on the nesting habits of American Oystercatchers.

- Audy Peoples left the Elizabeth City office June 5th after accepting a Fisheries Biologist position with NOAA in Rhode Island.
- Tyler McGuire, field rep. in Wilmington, resigned from DCM in March. DCM interviewed and hopes to have the position filled by July.
- The Wilmington office is happy to announce that Ben Brink joined DCM in March. Ben comes to us from a local environmental consulting firm where he had a great deal of field experience. He is covering Oak Island, Holden Beach, and other inland portions of Brunswick County.
- We are also happy that Kent Vaughan recently joined DCM in the Washington Regional Office. Kent began his career with NC DMF and later served as an environmental specialist with the Department of Agriculture soil and water division. Kent has a great knowledge of the area and has worked with multiple resource agencies on soil and water conservation.

I am happy to report two changes in our leadership roles at the Division. First, Mike Lopazanski is now serving as DCM's Deputy Director. In his new role, Mike directly oversees many non-regulatory, administrative, and budgetary functions, and assists the director with oversight of all other division responsibilities and functions. Mike has been with DCM for 28 years. He has guided our program through significant coastal issues including offshore energy, beachfront management approaches (including but not limited to sand bags), all kinds of inshore and estuarine management issues, Coastal Habitat Protection Plan work, coastal mapping and monitoring, land use planning approaches, clean marinas, land acquisitions, and public access grants, just to name a few. My first professional interaction with Mike was back around 2002, when he was the division's lead on the topic of marine protected areas. From 2016-2018, Mike served as Acting Assistant Director during my brief tenure at DMF, and did a fantastic job keeping our program running smoothly during an otherwise tumultuous period. His historical, practical, and science-based understanding of our programs, rules, and policies will continue to serve DCM well in this new role. Tancred Miller now serves as DCM's Policy and Planning Section Chief. In his new role, Tancred oversees federal consistency, policy development, strategic planning, coastal resilience, land use planning, legislative studies, and other non-regulatory program areas at DCM. Tancred has been with DCM for 15 years. He started out as a coastal policy analyst and since then served as DCM's Coastal and Ocean Policy Manager. He too has guided our division and the commission through significant coastal issues, including work with the CRC Science Panel and commission in the development of the NC Sea Level Rise Assessment and numerous legislative studies. Tancred has overseen all 309 assessments, strategies, and projects, and has served as the division's and one of DEQ's lead staff on resilience and EO80 efforts. Tancred's wisdom and positive approach to challenging policy issues, and his passion for making a real difference for coastal communities in North Carolina, will continue to lead us in the right direction on all our policy and planning endeavors.

VARIANCES

Schmunk (CRC VR 20-01), Nags Head, Oceanfront Setback

Kelly Spivey & Christine Goebel, Esq./Charles Evans, Esq.

Commissioner Emory recused himself from discussion and voting on this item

Kelly Spivey gave an overview of the site. Christy Goebel of the Office of General Counsel represented staff and stated Charles Evans is present and represents Petitioners. Petitioners Mark

and Tonya Schmunk propose a bathroom and deck on an existing house located at 8613 East Tide Drive in the Town of Nags Head, Dare County. Petitioners are seeking a variance from 15A NCAC 07H .0306 as the proposed deck and bathroom are inconsistent with the CAMA setback rules. Ms. Goebel reviewed the stipulated facts of the variance request.

Larry Baldwin made a motion that petitioner has not shown that strict application of the development rules standards or orders issued by the Commission cause the petitioner an unnecessary hardship with relation to the proposed deck. Craig Bromby seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, High, Medlin, Norris, Salter, Smith, Wills).

Phil Norris made a motion that petitioner has not shown that hardships result from conditions peculiar to petitioner's property as it relates to the proposed deck. Craig Bromby seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, High, Medlin, Norris, Salter, Smith, Wills).

Neal Andrew made a motion that petitioners have not shown that, for the deck, any hardships are not a result of actions taken by petitioner. Larry Baldwin seconded the motion. The motion passed with seven votes in favor (Cahoon, Andrew, Baldwin, Bromby, Medlin, Norris, Wills) and four opposed (Cooper, High, Salter, Smith).

Larry Baldwin made a motion that petitioner has not shown that the variance request for the deck is consistent with the spirit, purpose, and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and preserve substantial justice. Craig Bromby seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, High, Medlin, Norris, Salter, Smith, Wills).

Larry Baldwin 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 unnecessary hardships for the proposed bathroom. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, High, Medlin, Norris, Salter, Smith, Wills).

Robin Smith made a motion that petitioner has shown that any hardships resulting from denial of the request to construct the proposed bathroom arise from conditions peculiar to petitioner's property. Larry Baldwin seconded the motion. The motion passed with seven votes in favor (Cahoon, Andrew, Baldwin, High, Medlin, Norris, Smith) and four opposed (Bromby, Cooper, Salter, Wills).

Larry Baldwin made a motion that petitioner has shown that hardships do not result from petitioner's actions as related to the proposed bathroom. Trace Cooper seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, High, Medlin, Norris, Salter, Smith, Wills).

Larry Baldwin made a motion that petitioner has shown that the request for the bathroom is consistent with the spirit, purpose, and intent of the Commission's rules; will secure

public safety and welfare; and will preserve substantial justice. Doug Medlin seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, High, Medlin, Norris, Salter, Smith, Wills).

Petitioner's variance request is granted for the proposed bathroom. Petitioner's request for the deck was denied.

**Walters (CRC VR 20-04), Brunswick County, ¼ width pier rule
Brendan Brock & Christine Goebel, Esq.**

Brendan Brock gave an overview of the site. Christy Goebel of the Office of General Counsel represented staff and stated Mr. Walters is present and represents himself. Petitioner Charles Walters, Jr. owns property at 9269 Peakwood Drive SW in Calabash, Brunswick County within the bounds of the Town of Sunset Beach. Petitioner applied for a CAMA Major Permit which proposed development of a 194' pier. Petitioner's application was denied due to the proposed pier's inconsistency with the Commission's quarter-width rule in 15A NCAC 7H .0208 requiring piers not to extend beyond the established pier length and requiring piers not to extend past one-fourth of the width of the natural water body. Ms. Goebel reviewed the stipulated facts of this variance request and stated staff and petitioner agree on all four statutory criteria which must be met to grant the variance.

Larry Baldwin 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 an unnecessary hardship. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Medlin, Norris, Salter, Smith, Wills).

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

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

Larry Baldwin made a motion that petitioner has shown that the variance requested will be consistent with the spirit, purpose, and intent of the rules, standards, or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. Craig Bromby seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Medlin, Norris, Salter, Smith, Wills).

This variance request was granted.

NCDOT (CRC VR 20-06), Hyde County, over-sized sandbags

Jonathan Howell & Christine Goebel, Esq./Colin Justice, Asst. Attorney General

Jonathan Howell gave an overview of the site. Christy Goebel of the Office of General Counsel represented staff and stated Colin Justice from the Attorney General's office is present and represents petitioner. Ms. Goebel reviewed the stipulated facts of this variance request and stated staff and petitioner agree on all four statutory criteria which must be met to grant the variance.

Bob Emory made a motion that petitioner has shown that unnecessary hardships will result from strict application of the rules, standards, or orders issued by the Commission. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Norris, Salter, Smith, Wills).

Trace Cooper made a motion that petitioner has shown that hardships result from conditions peculiar to the property. Craig Bromby seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Norris, Salter, Smith, Wills).

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

Larry Baldwin made a motion that petitioner has shown that the requested variance will be consistent with the spirit, purpose and intent of the rules, standards, or orders; will secure public safety and welfare; and will preserve substantial justice. Bob Emory seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Norris, Salter, Smith, Wills).

This variance request was granted. The Commission requested that NCDOT provide an update next year outlining long-term solutions.

PUBLIC INPUT AND COMMENT

No public comments were received.

LEGAL UPDATES

Update on Litigation of Interest to the Commission (CRC 20-15)

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

PETITION FOR RULEMAKING

Procedures 15A NCAC 7J .0600 (CRC 20-11)

Mary Lucasse

Mary Lucasse reviewed the procedures for a formal petition for rulemaking as outlined in NCGS 150B-20 and the NC Administrative Code 15A NCAC 7J .0605. The Commission has the option to deny the petition, which may be appealed by the petitioner to superior court. If the Commission approves the petition, then formal rulemaking will commence. The matter will eventually come back to the Commission for a final decision on whether to adopt the proposed

amendment based on staff's recommendation and its own deliberations. The Commission's decision on whether to adopt a proposed amendment is not subject to judicial review.

Tom Lampley reviewed the site and requested the Commission consider revisions to 15A NCAC 7H .0209. Petitioner requests an additional exception to the current language to allow for the use of spaced pavers. The current rules allow limited development within the buffer. Mr. Lampley stated, that our 200-foot spaced paver patio is less detrimental than the current exceptions. Throughout the three years that petitioners have worked with DCM and the CRC, no one has been able to demonstrate that petitioner's proposal would negatively impact water quality. These pavers have been in place for over three years and there is no evidence of stormwater runoff. Petitioners request the Commission undertake rulemaking to add this additional exception to the rules.

Division Response to Petition for Rulemaking (CRC 20-13)

Christine Goebel, Esq.

Christy Goebel stated the Lampleys purchased this property in 2007. The patio was built in April 2017 without a CAMA permit. In September 2017, petitioners applied for a pier permit and the patio was discovered at that time. Petitioners then requested a variance from the CRC. This variance request was denied. A petition for rulemaking was submitted by the Lampleys. The Lampleys withdrew this initial petition. The Commission reviewed the current exceptions in place and discussed allowing additional materials within the buffer. The Commission was concerned about maintenance and efficacy of these additional materials. The Lampleys have filed this petition for rulemaking. Staff has concerns that the petitioners' proposal incorporates no safeguards for water quality. The petitioners' proposal lacks standards and maintenance and would apply to all coastal properties. DCM recommends that the CRC deny petitioners' request for rulemaking.

Neal Andrew made a motion to deny the petition for rulemaking. Robin Smith seconded the motion. The motion passed with nine votes in favor (Cahoon, Andrew, Baldwin, Cooper, Emory, Norris, Salter, Smith, Wills) and two opposed (Bromby, High).

OCEANFRONT RULES AND IMPLEMENTATION

Development Line Implementation Subcommittee Update (CRC 20-14)

Ken Richardson

Ken Richardson stated at the February 2020 CRC meeting, staff presented a detailed review of the Static Vegetation Line, Static Line Exception, and Development Line rules. Staff requested clarification on the siting of exceptions listed in 7H .0309 in communities with approved Development Lines. Staff also asked the CRC whether communities can have both a Development Line and a Static Line Exception, and if so, how the rules should be applied to development applications. The Development Line rules are challenging in that they do not require a demonstrated commitment to maintaining projects; have no State oversight in the mapping process; and can allow seaward encroachment of new development, including the expansion of existing structures. The Chair appointed a subcommittee that was tasked with identifying strategies and alternatives for consideration. On March 3, 2020, the subcommittee conducted a conference call with DCM staff. The subcommittee did not reach a conclusion on how to retain both the Static Line Exception and the Development Line rules, while also

eliminating rule implementation issues. The subcommittee favored an approach that would simplify these rules and asked staff to summarize provisions that could be considered and to prepare the different options and recommendations for the full Commission to consider.

Chair Cahoon requested the subcommittee meet again prior to the September Commission meeting and a full discussion will be placed on that agenda.

OLD/NEW BUSINESS

Update on Inland Waters Boundary

DEQ Assistant Secretary Sheila Holman stated a WRC economist requested information from DMF to prepare a fiscal analysis. Director Myers provided a timeline back in February. This timeline includes completion of the fiscal analysis by November 2020. No response has been received from the Governor's office on the request from the CRC to develop a task force for this issue.

CHPP Update

Larry Baldwin stated the Commission will hear an update on the work of the CHPP Steering Committee at the next meeting. The CRC will be asked to approve the goals set forth by the Steering Committee.

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

Braxton Davis, Executive Secretary

Angela Willis, Recording Secretary