

**NC COASTAL RESOURCES COMMISSION (CRC)**

**November 18, 2020**

**Via WebEx**

**Present CRC Members**

Renee Cahoon, Chair  
Larry Baldwin, Vice-Chair  
Robin Smith, Second Vice-Chair  
Neal Andrew  
Craig Bromby  
Trace Cooper  
Bob Emory  
Robert High  
Phil Norris  
Angie Wills

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

Mary L. Lucasse

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

Christine A. Goebel

**CALL TO ORDER/ROLL CALL**

Renee Cahoon called the meeting to order at 9:00 a.m. on November 18, 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. Commissioners Doug Medlin, Lauren Salter, and Dick Tunnell were absent. Commissioner Cooper reported that he will recuse himself from voting and discussion on the Town of Atlantic Beach's static line exception reauthorization and proposed amendments for local governments with approved beach management plans. Based upon this roll call Chair Cahoon declared a quorum.

**CHAIR'S COMMENTS**

Chair Cahoon outlined the way the virtual meeting will be conducted. Staff has identified additional amendments needed to 7J .0403/.0404. This agenda item (CRC 20-28) will be removed from today's agenda and will be brought before the Commission for consideration in February.

**MINUTES**

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

## **EXECUTIVE SECRETARY'S REPORT**

DCM Director Braxton Davis gave the following report:

My report on DCM activities since September will be a little shorter this morning, and I'll begin with the Regulatory section. We continue to experience significant permitting demands across the coast. I don't have solid permit numbers to report at this time due to some issues we are working through with our database, but I can tell you that permit fees in the first quarter of this fiscal year (from July 1 – Sept 30) were 35% higher than in the first quarter last year and last year was already as strong as we've seen since the mid-2000's. This trend has continued through October and November. A couple of notable permit actions since September, staff worked with the Wildlife Resources Commission to develop a programmatic permit for the installation of Aids to Navigation channel markers. Previously, the WRC or a local government would request a permit for the installation of Aids to Navigation, which typically required an individual Major Permit. Early in 2020, the WRC approached DCM about potentially streamlining this process. After reviewing their legal process for designating new channels and installing markers, it was determined that a programmatic CAMA major permit could help expedite the WRC approval process without raising any environmental or other concerns. DCM and WRC worked together to develop conditions and notification procedures that would satisfy the concerns of both agencies, and the CAMA major permit was issued last month. Another item of note is a major permit issued for the Old Ferry Channel and Deer Creek in Cape Carteret. This major permit was issued in early November and authorized the dredging of existing channels in the location of the old ferry dock that was used in the 1960's to support the ferry operation connecting Cape Carteret to Emerald Isle until the Emerald Isle Bridge was constructed. This project required significant coordination with resource agencies due to SAV and shellfish resources in the area.

## **POLICY & PLANNING**

### **Land Use Plans**

The Division received one land use plan certification request under the recent delegation of authority from the Commission. The Town of Kill Devil Hills submitted its 2020 Comprehensive Land Use Plan for certification on October 28. The Division found in 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 Kill Devil Hills request for certification of their 2020 Comprehensive Land Use Plan was granted.

### **Public Access Program**

The Division's Planning Staff have completed the grant process for the 2020 Public Beach and Coastal Waterfront Access Program, and the Governor's Office has announced awards of more than \$1.2 million to 11 local governments and the NC Coastal Reserve to improve public access to coastal beaches and waters for the 2020-21 fiscal year. The awards range from \$27,000 - \$191,000 and include projects such as a fully handicap accessible kayak launch, solar powered restrooms, boardwalks, a floating dock, and urban waterfront renovation.

### **Coastal Resiliency Efforts**

Following on three informational webinars in August and September, DCM formally launched the Resilient Coastal Communities Program with an invitation to local governments to apply for no-cost technical assistance. DCM will select up to 20 local governments to receive \$30,000 each in contracted planning services for vulnerability assessments and community engagement, leading to a Resilience Strategy and prioritization of local projects. In the next phase of the program, DCM will fund engineering and design services for one project per community, to bring them to shovel-ready status. The application period for local governments is open until January 15<sup>th</sup>. Local governments do not need to provide matching funds. More information about the program and how to apply is available on our website, including contact info for staff who will be happy to answer questions about the program.

### **Coastal Reserve**

The final revised management plan for the N.C. National Estuarine Research Reserve for 2020-2025 is located on the Reserve website. NOAA will publish notification of the plan's availability in the federal register. In addition, NOAA conducts periodic evaluations of coastal management programs and National Estuarine Research Reserves as required by the federal Coastal Zone Management Act. The virtual site visit for NOAA's evaluation of the N.C. coastal management program and N.C. National Estuarine Research Reserve took place the week of October 5 with a public meeting for both programs held on October 7. Findings from the evaluations are anticipated in early 2021. The Reserve will hold virtual meetings for its ten local advisory committees December 1st through 11th. Meeting information will be available on the Reserve website and via DEQ press release. The Coastal Training Program hosted a virtual workshop in September for real estate professionals to learn the ecology and geology of barrier islands and the rules and policies that govern development, including updates to the National Flood Insurance Program, hurricane-resistant construction, and insurance incentives. Staff also assisted in facilitating a Drones in the Coastal Zone virtual workshop series in October. The series covered the use of drones in ecosystem and fisheries management in the Southeast and Caribbean, including governmental policy and procedures, mission planning, data management, demonstrations on emerging technologies, and more.

### **Staffing News**

Brandon Puckett, Research Coordinator, received the Division of Coastal Management's 2020 Distinguished Service Award at a DEQ awards program on November 10. Brandon was recognized for his scope of high quality and impactful work, including his work on living shorelines. Duncan Anderson joined the Reserve as a temporary GIS Specialist. Duncan is a

recent graduate of NC State University where he received his B.S. in Environmental Technology and Management. He is working to organize and further the program's mapping and cataloging spatial information from all 10 Reserve sites. Grace Roskar will join the Reserve November 30 as the temporary Natural Resources Resilience Specialist. Grace has a B.S. in marine science and biology from the University of Miami and a M.S. in biology from Florida Atlantic University. Grace recently completed a Sea Grant Knauss Marine Policy Fellowship, during which she worked for the NOAA Fisheries Office of Science and Technology. She will be working with staff on the Rachel Carson Reserve resilience plan, which was funded by the National Fish and Wildlife Foundation's Emergency Coastal Resilience Fund. Mackenzie Todd joined our staff in September as a Coastal Resilience Specialist. Mackenzie is working with Samantha Burdick and other staff on the new Resilient Coastal Communities Program. Mackenzie brings good local government experience to our staff, having spent two years as Morehead City's Town Planner. She is a North Carolina native with a Bachelor's Degree in Environmental Science, and Master's in Coastal & Ocean Policy, both from UNCW. She also interned at the Masonboro NERR in 2015.

### **CRAC REPORT**

Rudi Rudolph, CRAC Chair, thanked DCM staff for the Ferry Channel permit located in Emerald Isle and the work on obtaining a Local Permitting Officer Coordinator position. The Advisory Council has not met since prior to the Covid-19 pandemic. During this time, several communities have had dune related issues related to nourishment projects including sand fencing, dune overwash, and beach accessways which the Advisory Council discussed. No conclusions were made, but the CRAC and DCM will continue to discuss these issues.

Braxton Davis commented that the Commission took a comprehensive look at dune rules in 2017-2018 to allow flexibility for sand overwash wind transport sand and it is now an exempted activity. All that is required is to advise the LPO or DCM staff.

### **BEACH MANAGEMENT**

#### **Static Line Exception Reauthorization – Towns of Atlantic Beach, Pine Knoll Shores, Indian Beach & Salter Path, and Emerald Isle (CRC 20-25)**

##### **Ken Richardson**

*\*\*Commissioner Cooper recused himself from voting and discussion on the Town of Atlantic Beach static line exception reauthorization.*

Ken Richardson stated each community submitted their reports requesting reauthorization. When a community installs a beach nourishment project, with regular maintenance and reduced storm frequency a wide beach can be maintained allowing for oceanward vegetation growth. Without regular maintenance beach erosion will continue along with continued vegetation loss. In 2009, the CRC adopted the Static Vegetation Line Exception to offer regulatory relief for communities maintaining projects and that have a 30-year beach nourishment maintenance plan. With the approval of a SVL Exception, communities can measure setbacks from the vegetation line. No portion of new construction can be oceanward of the landward-most adjacent structure. Structures greater than 5,000 square feet must meet the minimum setback of 120 feet or 60 times the shoreline erosion rate. For a community to receive approval of a SVL Exception, a community must submit a request to the CRC, provide the Commission with a 30-year plan to

maintain the initial beach fill project, and the Commission must reauthorize this exception every five years. The CRC considers four criteria when considering a reauthorization: a summary of the fill projects, the overall project design and performance, compatible sediment sources, and identification of financial resources. The Towns of Atlantic Beach, Pine Knoll Shores, Indian Beach & Salter Path, and Emerald Isle have all met these criteria. Staff recommends that the Commission renew each of these Towns' Static Vegetation Line Exceptions for an additional five years.

**Neal Andrew made a motion to reauthorize the Static Vegetation Line Exception for the Town of Atlantic Beach for five years. Angie Wills seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Emory, High, Norris, Smith, Wills).**

**Neal Andrew made a motion to reauthorize the Static Vegetation Line Exception for the Town of Pine Knoll Shores for five years. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Norris, Smith, Wills).**

**Neal Andrew made a motion to reauthorize the Static Vegetation Line Exception for the Towns of Indian Beach and Salter Smith for five years. Robin Smith seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Norris, Smith, Wills).**

**Neal Andrew made a motion to reauthorize the Static Vegetation Line Exception for the Town of Emerald Isle for five years. Bob Emory seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Norris, Smith, Wills).**

## **OCEANFRONT RULES AND IMPLEMENTATION**

### **Proposed Rule Changes for Local Governments and Communities with Approved Beach Management Plans (CRC 20-06)**

#### **Mike Lopazanski**

Mike Lopazanski stated at the last meeting the Subcommittee provided recommendations to the full Commission to combine the Static Line and Development Line rules and provide incentives for beach management plans. The Commission supported its current oversight role for beach plans, a demonstrated local commitment to project maintenance, not encouraging seaward encroachment as a result of beach nourishment, and limiting seaward encroachment by the landward most adjacent neighbor provisions. Flexibility would be provided for unique situations. Staff has looked at all of the rules that deal with oceanfront development and identified changes that would be required. Some of these rules can be combined and clarified. Staff will incorporate the provisions supported by the CRC, provide regulatory relief for communities that have approved beach plans, and simplify and streamline existing rules. While the beach management plan requirements would be similar to those for the Static Line Exception, additional requirements could be incorporated including historic and projected volumetric losses, maintenance event triggers, long-term volumetric sand needs, and annual monitoring protocols. Staff would also like the local governments to present their plans to the CRC and staff would review the information provided and make a recommendation to the Commission regarding

approval. Regulatory relief would include keeping graduated setbacks for larger structures currently allowed with the Static Line Exception and allowing the replacement of all structures up to 10,000 square feet within its original dimensions, setback a minimum of 60-feet, as far landward as possible, and remove the distinction between commercial and residential. Staff would also change “static vegetation line” to “pre-project vegetation line”. Other changes for consideration are the repeal of 7H .0104. This is an old rule that only applies to pre-1979 lots and is similar to the existing exception in 7H .0309. The language will also be simplified and consolidated relative to dunes and update language related to imminently threatened structures to mirror the sandbag rules. Other changes would provide for streamlined permitting of certain projects under CRC approved beach plans in 7J .0404 and .0405 and to allow flexibility in making landward-most adjacent structure calls where irregular shoreline or lot configurations are present. Twenty-four communities currently have Static Vegetation Lines and eight have CRC approved Static Line Exceptions. Staff would propose that these communities keep these designations until they expire. The remaining 15 oceanfront communities already have some elements needed for a beach and inlet management plan. At the last meeting, the Commission discussed Inlet Management Plans that could provide regulatory relief near inlets. The CRC is continuing its discussion on boundaries for the Inlet Hazard Areas and proposed use standards within them. Staff proposes that the Commission keep working on IHAs and how they might be related to beach management plans and what an Inlet Management Plan would entail.

Commissioner Andrew asked staff to continue to work in this direction and provide draft rule language to the Commission for discussion at the February meeting.

### **Inlet Hazard Areas – Science Panel Response to Public Comments** **Bill Birkemeier, Chair CRC Science Panel**

Bill Birkemeier stated two years ago the Commission was presented with the IHA update on the ten developed inlets. DCM held multiple public hearings, five workshops, and received public comments. DCM provided the Science Panel with all the comments received and today I will review the Panel’s responses to the comments received. The Inlet Hazard Area Update Report was completed in 2018 and was presented to the Commission in 2019. All the comments received on the report have been included in the Commission’s meeting packet. The Science Panel did not change any of its recommendations based on the comments received.

On the open coast, waves at an angle cause longshore and cross-shore transport. Storm waves cause cross-shore transport and overwash. The shoreline responds with linear and shore parallel retreat or advance. Because the vegetation moves with the shoreline, the vegetation line is a robust indicator of shoreline movement. This is what we expect in the Ocean Erodible Area (OEA). In 1979, it was recognized that inlets are different than the oceanfront. On the oceanfront the shoreline change is linear with low standard deviation and inlet shoreline change varies with high standard deviation. Inlets interrupt longshore transport. Drowned beaches are cut off from sediment and dredging can enhance the interruption. The Inlet Hazard Area boundaries separate the oceanfront from the inlet influence. The Panel used the Inlet Hazard Area Method (IHAM) to map the inlet shorelines using the inlet erosion rate and the standard deviation. The standard deviation is used to define the longshore extent of the inlet’s influence. The landward-most position of the historic vegetation lines was used to map the reference line for the IHA landward boundary. When required, the boundary was refined based on the knowledge of inlet processes,

geomorphology, and engineering activities. The 30 and 90-year risk lines were based on the inlet erosion rate and mapped relative to the hybrid vegetation line. One of the comments that we received stated that the IHAM was not 100% objective. The response is that historic shorelines are insightful but are an incomplete measure of inlet dynamics. IHAM provided a starting point to mapping the boundaries and the Panel's expertise improved the results. Inside the boundaries staff propose applying the vegetation line to determine construction setbacks, but this is not low risk, safe or smart development. The Science Panel has identified a mechanism to help. The 30-year risk line is based on the hybrid vegetation line and works for erosional and accretionary shorelines. Individual vegetation lines do not reflect the active inlet area, but collectively they do. The hybrid vegetation line is the landward-most line defined by all previous vegetation lines. The hybrid vegetation line robustly defines the active inlet area. In conclusion, the 30-year risk line provides a robust vegetation line mechanism for development setbacks that recognize the dynamic nature of inlets. IHA boundaries and the hybrid vegetation line should be reassessed every five years to incorporate new data and changing inlet shorelines and management.

While not all comments received will be addressed in this presentation, a detailed written response was provided in the meeting materials. Many of the comments received concerned the Holden Beach side of Shallotte Inlet. A comment was received that accreting shorelines were not properly accounted for. The IHA is defined by the alongshore extent of the inlet influence on the adjacent shoreline, both erosional and accretional. Accretion is incorporated in the inlet erosion rate and accretionary inlet fillets should be considered ephemeral features. Another comment related to beach nourishment not being accounted for. That should be a positive thing since the IHA defines the alongshore extent of the inlet influence. Beach nourishment does not change the region of the influence. Any nourishment influence on the shoreline is included in the inlet erosion rate. Historically, nourishment near inlets has a poor success rate.

Braxton Davis stated the use standards within the IHA will be discussed in February.

### **PUBLIC INPUT AND COMMENT**

No comments were received.

### **ACTION ITEMS**

#### **Consideration of Fiscal Analysis 15A NCAC 7M .0300 Shorefront Access Policies (CRC 20-27)**

##### **Rachel Love-Adrick**

Rachel Love-Adrick stated these rules apply to the public beach and waterfront access program. This fiscal analysis has been reviewed and approved by OSBM. The intent of the amendments is to reorganize the rules, add maintenance funding as an approved activity to Tier 1 communities, and the addition of an acquisition waiver. The analysis shows that there will be no financial impacts to the private sector, NCDOT, nor DCM. Local governments will see direct benefits and beneficial financial impact. Staff recommends approval of the fiscal analysis.

**Phil Norris made a motion to approve the fiscal analysis for 15A NCAC 7M .0300 for public hearing. Trace Cooper seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Norris, Smith, Wills).**

**Consideration of Fiscal Analysis 15A NCAC 7M .0600 and 7H .0208 Floating Structure Policies/Floating Upweller Systems (CRC 20-29)**

**Mike Lopazanski**

Mike Lopazanski stated floating upweller systems are used in shellfish aquaculture. DCM requires that these structures be on a lease, in a marina, or private dock. These structures will be subject to usual platform limitations and only allowed in permitted marinas and residential docks. This needs to be formalized by incorporating requirements into 7M .0600 (floating structures policies). The benefit to private property owners and shellfish growers will be a clear regulatory pathway for permitting and will decrease navigation issues and use conflicts. This will also provide a clear process for DCM and will result in time savings. The Division anticipates permitting one structure per year over the next five years. There will be no foreseen impacts to NCDOT. OSBM has reviewed and approved this fiscal analysis. DCM recommends approval of the fiscal analysis.

**Robin Smith made a motion to approve the fiscal analysis for 15A NCAC 7H .0208 and 7M .0600. Craig Bromby seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Norris, Smith, Wills).**

**Consideration of Fiscal Analysis 15A NCAC 7H .0306 and 7J .1300 Clarifying Use of Development Line vs. Static Line Exception by Local Governments and Development Authorized Seaward of the Development Line (CRC 20-30)**

**Ken Richardson**

Ken Richardson stated OSBM has reviewed and approved this fiscal analysis. There were no significant or substantial economic impacts associated with these rule amendments. The amendments are intended to address the conflicts between the Static Line Exception and the Development Line. It is anticipated that there will be no added restrictions or costs to local governments or property owners. DCM recommends approval of the fiscal analysis for public hearing.

**Craig Bromby made a motion to approve the fiscal analysis for amendments to 7H .0306 and 7J .1300 for public hearing. Bob Emory seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Norris, Smith, Wills).**

**CRC RULEMAKING**

**Repair v. Replace – Elevating Structures (CRC 20-32)**

**Tara MacPherson**

Tara MacPherson stated under the current rules in 7H .0306(j) relocation of structures requires a CAMA permit. Oceanfront structures relocated with public funds must meet applicable oceanfront setbacks and structures relocated entirely with private funds shall be located the maximum feasible distance landward of the present location. The goals of the proposed amendments clarify that elevation of the structure's foundation, even within the same footprint, requires a CAMA permit. Structures elevated with public funds need to meet the applicable Ocean Hazard Area development setback and structures may be elevated with private funds within the setback as long as they are located the maximum extent feasible landward on the lot. In addition, staff recommends elevation of structures within the same footprint in Coastal

Shorelines AECs be exempt from CAMA permitting. In 7H .0208 elevation of a structure is already permissible as development over existing impervious surfaces. This would allow staff to expedite non-oceanfront flood mitigation projects.

**Bob Emory made a motion to delay discussion and add to the agenda at a future meeting to discuss policy relating to public versus private funding. Larry Baldwin seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Norris, Smith, Wills).**

Chair Cahoon asked staff to focus on whether policy decisions should be based on the financial distinction between public or private funding.

## **COASTAL HABITAT PROTECTION PLAN**

### **CHPP Timeline Update**

#### **Bob Emory/Larry Baldwin**

Bob Emory reviewed the timeline that will be shared with each of the Commissions at their 2020-2021 meetings. The Steering Committee is working on issue papers and an update of the CHPP. The final plan revision will be brought to each of the Commissions involved for review and approval. Most of the discussions of the Steering Committee have centered around SAV (submerged aquatic vegetation). Larry Baldwin added that he is not certain that policy can be updated relating to SAV when the science is still evolving. CAMA permits take SAVs into account in permitting and there may not be a need for the CRC to tighten the rules any further, particularly with this objective. Jimmy Johnson, who leads the CHPP, is aware of our comments.

## **OLD/NEW BUSINESS**

### **Update on Inland Waters Boundary**

Braxton Davis gave an update on behalf of DEQ Assistant Secretary Sheila Holman. Braxton updated the CRC on the ongoing discussion on inland waters boundaries between MFC and WRC. DEQ sent a letter to WRC expressing concerns on behalf of all agencies that would not be affected. The CRC sent a letter to Governor Cooper outlining implications of the proposed changes. MFC is readopting their rules without change. The new WRC Executive Director has commented that the WRC is moving forward with re-adoption with changes. The next meeting of the WRC is scheduled for December.

Larry Baldwin advised the Commission that Dr. Pete Peterson, UNC Institute of Marine Sciences, passed away last month. He was very involved with our Science Panel and the CHPP. Chair Cahoon stated a card was sent to the family on behalf of the Division and the Commission. Braxton Davis stated that Pete was a large part of the coastal program.

Neal Andrew stated DCM is accepting comments on year-round maintenance dredging in Wilmington and Morehead City by the USACE. Should the Commission provide comments to the Division in support of this? Braxton Davis stated DEQ is in discussions as part of the federal consistency review. An update can be provided at the February meeting. The deadline for public comments is November 21, 2020.

**LEGAL UPDATES**

**Update on Litigation of Interest to the Commission (CRC 20-31)**

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

**Robin Smith made a motion that the commission go into closed session pursuant to N.C. General Statute, section 143-318.11(a)(3) to discuss with its attorneys the litigation filed in the NC Office of Administrative Hearings by Petitioners James and Joanne Kastberg against the North Carolina Department of Environmental Quality, Division of Coastal Management, Case No. 20 EHR 03105. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Norris, Smith, Wills).**

The Commission returned to open session.

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



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Braxton Davis, Executive Secretary



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Angela Willis, Recording Secretary