

# **NC COASTAL RESOURCES COMMISSION (CRC)**

**July 11, 2013**

**NOAA/NCNERR Auditorium**

**Beaufort, NC**

## **Present CRC Members**

Bob Emory, Chair

Lee Wynns

David Webster

Jerry Old

Bill Peele

Joe Hester

Larry Baldwin

Gwen Baker

Ed Mitchell

Pat Joyce

## **Present Attorney General's Office Members**

Mary Lucasse

Christine Goebel

Amanda Little

## **CALL TO ORDER/ROLL CALL**

Bob Emory called the meeting to order reminding the Commissioners of the need to state any conflicts due to Executive Order Number One and also 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 any 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.

Angela Willis called the roll. No conflicts were reported. Joan Weld, Renee Cahoon, Jamin Simmons and Scott Cutler were absent. Based upon this roll call, Chairman Emory declared a quorum.

## **MINUTES**

**David Webster made a motion to approve the minutes of the May 2013 Coastal Resources Commission meeting. Jerry Old seconded the motion. The motion passed unanimously (Wynns, Hester, Webster, Old, Peele, Baldwin, Baker) (Joyce, Mitchell absent for vote).**

## **EXECUTIVE SECRETARY'S REPORT**

DCM Director Braxton Davis gave the following report.

In your meeting materials you will find the DCM Update Memo that covers the Division of Coastal Management's recent permitting, enforcement, Planning and Coastal Reserve activities. It's also a good place to find the status of proposed rules. As you'll see in this meeting's Division update, our permit numbers continue to be up in comparison with the last few years, which is hopefully a good sign for the coastal economy. Our Policy/Planning staff are continuing to work on beach and inlet management planning efforts, and are working with our Coastal Reserve staff on "living shorelines"

approaches to estuarine shoreline stabilization. We are also making progress on our comprehensive review of the land use planning program, which you will hear more about later today. From what I understand, this year's July 4 celebrations at our Masonboro Island Coastal Reserve were relatively calm in comparison with last year. We appreciate the work of our partners in law enforcement, the efforts of our Reserve staff who have been working to improve coordination among the various agencies down there, and who developed what seems to have been a successful public relations campaign, and we appreciate all of the local volunteers who have pitched in to help with this situation.

We worked with the Executive Committee to develop today's agenda, and I will just highlight a few items. First, we are very grateful for today's participation of Mayor Richard Stanley from the Town of Beaufort. We look forward to hearing his thoughts about the Town's experiences with coastal issues and interactions with CAMA and the Division of Coastal Management. This afternoon, we have a series of action items for you to consider, including the approval of several proposed rule changes that continue to follow from the Division's internal review of rules to help identify unnecessary burdens or negative impacts on customer service. We will also have a follow-up discussion, as you requested at the last meeting, on different approaches to the replacement of septic tanks on the beachfront and related implications. We are planning for the September Commission meeting to be held at Jennette's Pier in Nags Head.

#### **CHAIRMAN'S COMMENTS**

Bob Emory announced that following the public comment period the Commission will go into closed session for consideration of some legal matters. Chairman Emory also reported that Lester Simpson, CRAC member since 1989, has passed away.

#### **LEGISLATIVE UPDATE**

Braxton Davis gave an overview of legislative bills that have implications for the coast, the Commission and the Division.

**HB1011 (formerly SB10)** – This bill passed the House on May 9 and the language regarding the CRC and CRAC was included in Senate Bill 402 which is the Senate Budget Bill. The House took up the Budget Bill and removed the special provision in the bill related to Boards and Commissions. The current status is now unclear. It could be resolved in budget negotiations.

**SB151** – This bill makes changes to the 2011 terminal groin construction law and clarifies that cities and towns may enforce ordinances within the state's public trust areas on the beachfront. The Senate version has passed. A House substitute went through the House Environment Committee on June 20. The House version retained the cap of four terminal groins which had been removed from the Senate version. The House has not voted on this bill.

**HB94** – This is an omnibus bill that amends a number of different environmental laws. The most recent version includes many provisions of the Senate's version of this bill. This bill would change the threshold at which an agency must prepare a fiscal note for a rule change. It amends the definition of a 'built upon area' to exclude gravel surfaces and wooden slatted decks. This is directly related to coastal stormwater rules and would probably have implications on some of the CRC's rules. This bill combines the Divisions of Water Resources and Water Quality into one Division of Water Resources. There are two pieces in this bill that the Department requested on behalf of the Division and we were pleased to see in it. The first is the elimination of the requirement for newspaper publications of public notices for CAMA Minor Permits. This will

improve the Minor Permitting program and standardizes the notices for Minor Permits with General Permits. This bill also amends the Dredge and Fill Law to allow signed statements of no objection by the adjacent property owners to be considered as an acceptable alternative to certified mail requirements for Major Permits. This bill has been referred to the House Committee on Environment.

**SB112** – This is another omnibus bill. A House substitute was brought to committee on July 10 including language similar to what was in HB74. This bill would require agencies to review all of their existing rules once every ten years. It would also require cities and counties to repeal any ordinances stricter than any state or federal regulation. This bill passed the House Regulatory Reform Committee on July 10.

**HB707** – This bill directs DENR to pursue various strategies to maintain the state's shallow draft inlet navigation channels. It also establishes the Oregon Inlet Acquisition Task Force for the purpose of considering options for acquiring federally owned property adjacent to Oregon Inlet. This was signed into law by Governor McCrory on June 19.

**HB294** – This allows Brunswick and Dare counties to remove abandoned vessels from navigable waters. This bill has passed both houses.

**HB484** – This bill establishes a permitting program for the siting and operation of wind energy facilities within the Department's new Division of Energy, Mineral and Land Resources. This was signed into law on May 17.

**HB300** – This gives cities and towns the right to enforce local ordinances on ocean beaches. This passed the House and was sent to the Senate State and Local Government Committee.

## **PRESENTATIONS**

### **Town of Beaufort – Welcome Richard L. Stanley, Mayor**

Mayor Stanley welcomed the CRC on behalf of the Town of Beaufort, America's Coolest Small Town. Beaufort is one of the homes of Blackbeard, home of the Rachel Carson Coastal Reserve, home of the North Carolina Maritime Museum, home of Duke University's Nicholas School of Environment, and home of the NOAA facility which is one of the nation's first marine laboratories in the United States. Beaufort residents and visitors hold dear our natural resources from our sandy dunes to our clean waterways and access facilities. We welcome you to drive Front Street to observe our old homes as we treasure the past while planning for the future. A lot of this had to do with the Coastal Resources Commission. It is through your planning, permit process and water access programs, rulemaking and enforcement programs that you have helped us observe our maritime heritage. We have public docks enjoyed by thousands every year which were approved and permitted by the CRC. For this and the many things you do for coastal North Carolina, we applaud you and owe you a great debt of gratitude. I have appeared before the CRC as town attorney for Emerald Isle. I have also worked with DCM staff regarding a permanent beach restoration program involving our counties oceanfront towns. We have been involved with the staff with many marina projects and are investigating the establishment of a harbor refuge and anchoring area. All of the interaction with the staff has been excellent and most supportive. I have been asked to comment on some problems that we are facing now. Beaufort is a town that is 304 years old and

has never done much about stormwater other than the natural flow of water. We are facing stormwater problems. We have a new bridge that is coming and there are going to be some changes to the accesses, but we have problems with the ditches, canals and creeks that take out the stormwater. We are undertaking a study and looking at possible solutions that we know will not be cheap. Much of this will have to be coordinated with DCM staff. Our state is most fortunate that the coastal counties and communities have CAMA and the planning and permit process. We have clean waters as a result and I would like to thank you.

### **USF&W Service's Proposed Designation of Critical Habitat for the Sea Turtle – Update Braxton Davis**

Braxton Davis stated the USF&W Service proposed a rule to designate 740 miles of shoreline in six states as critical habitat for the northwest Atlantic population of loggerhead sea turtles. That includes 96 miles in North Carolina, including all of Bogue Banks and part of the shoreline in Brunswick, New Hanover, Onslow and Pender counties. This proposal generated significant concern among coastal communities over what the proposal means in terms of additional rules, procedures and costs for coastal projects. A good deal of pride exists in North Carolina over the existing sea turtle conservation programs that we have in this state. We learned of the proposed rule the same way most everyone did, in the newspaper. The implications of this suggested that there were no additional regulatory burdens. That was reflected later in the proposed rule language. The Department and many others were not so sure about that. We were concerned that the designation may unfairly impact beach and inlet management activities in particular. We weren't sure how this would affect requirements for biological assessments in consultations with the Fish and Wildlife Service under the Endangered Species Act. Given the lack of clarity over exactly what the Critical Habitat Designation meant and the potential for significant impacts on the way we manage beaches and inlets in North Carolina, DENR sent a letter to the Fish and Wildlife Service as part of the public comment period that concluded with five key requests. The first was to submit a federal consistency determination to the Division of Coastal Management as we believe is required by the Federal Coastal Zone Management Act. This would initiate the formal public and agency review process on this federal action. The second was to clarify the potential range of management efforts, regulatory reviews or other operational conditions that could be placed on activities considered threats in the critical habitat designation. The third was to prepare a comprehensive economic analysis of impacts to coastal communities and stakeholders. The fourth was to provide additional information on data utilized for designations. Finally, we requested a meeting with the relevant North Carolina agencies, local governments, and National Marine Fisheries Service to discuss the potential for integrated environmental studies, streamlined permitting, and improved regulatory conditions for projects in critical habitat areas for coastal threatened and endangered species in North Carolina. After the CRC's discussion at its last meeting, Chairman Emory put together a letter on behalf of the Commission to the Fish and Wildlife Service seconding the concerns raised by the Department and reinforcing the recommendations in the Secretary's letter. Yesterday, staff had a conference call with several Fish and Wildlife Service representatives and one from the Department of Interior to follow up on our requests. Fish and Wildlife indicated that their decision remains the same. They will not submit a federal consistency determination to North Carolina. They are also communicating this position to several other southeastern states which had requested a review. Their position is that no federal consistency determination is required because no federal action has taken place until specific reviews take place under the new designation. They also argue that the proposed rule change is a procedural change and there is no specific standard or requirements that come along with it. We placed a call to NOAA OCRM which manages the federal consistency program. The staff response there was initially in line with the Fish and

Wildlife position based on a prior case in Hawaii that critical habitat designation at the federal level only requires other federal agencies to consult with each other and therefore may not constitute a coastal effect. Furthermore, a procedural change like this without a specific standard may not be enough to invoke a coastal effect under federal consistency law. They did say that they would entertain additional review of the matter with Fish and Wildlife Service and other states in the region. They will be following up with us on additional background information that we submitted to them. Even with the federal consistency review process on this matter, there is no predetermined outcome for this. Under federal consistency law a federal action or permit has to be consistent to the maximum extent practicable with enforceable state policies. There are a number of things to look at. A lot of times it is not a strong hammer, but it is an important coordination mechanism with state policies and procedures. Regardless, we reminded them that using the federal consistency provision is a really important coordination mechanism with state coastal programs and instead of the 19,000 comments that they have received so far on this proposed rule change, we could have helped coordinate a state agency, local government and public review of this and provided a coordinated response.

My interpretation of the management measures included with this designation is that it would involve a different process for reviewing projects within a critical habitat area. Most of the beach and inlet management projects already require consultation with the Fish and Wildlife Service under the Endangered Species Act. A biological opinion is issued. For a long standing Corps of Engineers project this biological opinion may have to be revisited and additional analysis may have to be done for the critical habitat impacts. For a new project a section of the review would have to address critical habitat impacts. The treatment of critical habitat would be within the same biological opinion and would have to be done within the same allowed timeframe for the review. There cannot be conditions imposed on a project that are only required to protect habitat. The condition has to be required to protect the species. Most of the projects that we are doing these days already require conditions, monitoring and mitigation that would resolve the critical habitat issues for this species. They also did not foresee additional requirements for local projects like lighting and beach access. Most importantly, there will be public hearings in this region at multiple locations in early August. We asked them to conduct a comprehensive economic impact analysis. That should be coming out very soon. They were also receptive to having a broader meeting among the key agencies to look at coastal endangered or threatened species more holistically to think about regional and integrated analysis. They were willing to discuss the potential for a programmatic biological opinion for beach nourishment projects as is currently practiced in Florida which covers multiple species.

Braxton then invited comment from Louis Daniel, Director Division of Marine Fisheries, who was present at the CRC meeting. Director Daniel stated we have been working very closely with DCM and the Department on this and I feel comfortable with where we are. We have been dealing with the turtle issue since 1999. Our protected resources section staff are here today to hear this discussion. The one thing I would be cautious of as we move forward is there does tend to be some differences in how the Fish and Wildlife Service does things and how the National Marine Fisheries Service does things. We may find additional differences as we move forward. I am in lock step with Braxton and think that we have a good coordinated Departmental position on this issue.

## **Progress on Cape Fear River AEC Study (CRC 13-22)**

### **Heather Coats**

Heather Coats stated that last year the General Assembly passed HB819 which is best known for its directive on sea level rise. The law also contained a section directing the CRC to study the feasibility of creating an AEC for the lands adjacent to the mouth of the Cape Fear River. HB819 directs the CRC to consider if the unique coastal morphologies and hydrographic conditions of the area warrant appropriate development standards for a single unique AEC. Our report is due to the Secretary of the Department, the General Assembly and the Governor by the end of this calendar year. In October, DCM staff held a meeting with the Village of Bald Head Island (Village), the Town of Caswell Beach (Town) and representatives from the North Carolina Baptist Assembly. Chairman Emory was also present at that meeting. At that time we heard initial concerns and thoughts on the study. We asked the Village, Town and their consultants to use the AEC nomination procedure set forth in 7H .0503 as a guide to provide DCM with the information as to how the Cape Fear Inlet area is unique and why a new AEC is needed. Staff then met in May with representatives of the Village and Town to plan a workshop to identify further concerns. The workshop was held in late June in Southport. A background of the law was given as well as a description of AECs and the current regulatory structure and permitting process. We heard from Charles Baldwin, the attorney for the Village. He gave a presentation explaining the Village's premise that the federal channel is the dominant influence of the Cape Fear River Inlet and the fact that the channel is maintained in a fixed location makes this area unique and results in manmade erosion. The Village has spent over \$22 million over the years to mitigate erosion on the island and because of this the Village would like DCM to develop a new AEC and rules that are more collaborative, cooperative and flexible with engineering based problem solving for this unique location. The Village would also like to see more staff-level resolutions and rules that are more efficient, effective and anticipatory. The Village conceptualizes the new Cape Fear AEC limits on their side of the inlet to encompass the proposed inlet hazard area box. The AEC boundaries would be established by the CRC at a later date if you decide to proceed with the creation of the AEC. The Village would also like new rules for the AEC to replace those of the current inlet hazard and ocean erodible AECs. They stated that existing regulations would continue to apply outside the Cape Fear AEC and that they are not looking to reduce development setbacks or change the Estuarine Shoreline AEC rules. The Village's regulatory concerns seem to focus specifically on responses to shoreline erosion. The Village also stated that they would like the CRC to recommend to the General Assembly an exception for the Cape Fear AEC from the state's hardened structure ban. The Village would also like the CRC's rules to allow staff to permit structures or options such as rock groins, terminal structures, breakwaters, jetties, sandbags, beach bulldozing, and sand placement projects to mitigate channel induced erosion that are otherwise currently prohibited. Of course before some of these structures could be allowed, a change in state law would be required. The Village also wants these permits to be issued more quickly and with expedited processing. We also heard from Johnny Martin of Moffat and Nichol who presented on behalf of the Town of Caswell Beach. He discussed the historical deepening of the Cape Fear River, the independent littoral system, the importance of adjacent shoals and a couple of other unique features on Caswell Beach including Fort Caswell and the Duke Energy Outfall. The Town's findings show that work performed on one side of the channel does not influence the other side. He expressed some concerns regarding erosion on Caswell Beach, particularly on the east end of the island near Fort Caswell. We also heard comments from numerous other people representing various interests at the workshop. To summarize, people felt this was a good opportunity to collaborate and innovate. There was widespread concern regarding impacts of the federal channel. There are also some who want DCM and the CRC to acknowledge the impacts of channel maintenance. The Department of

Cultural Resources informed us that the area encompasses 9 listed historic properties and 27 known ship wrecks. There are also questions regarding state versus federal permitting requirements. Some things to keep in mind as we proceed through the study are that we feel we have the flexibility in the rules to respond to unique situations as they arise, we have the variance process, a declaratory ruling process to establish the applicability or validity of rules, the petition for rulemaking, and the AEC nominations and designations procedure. These processes are available to any individual at any time. Current permitting often requires coordination with the Army Corps of Engineers and other state and federal agencies and many of these types of projects require permits from these other agencies. We need to be cognizant of the impact of changing the rules and whether the changes may inadvertently bog down the system rather than streamlining it. Creating a new AEC and use standards does not change the permit requirements or the procedures required. In August we plan to refine the concerns and zero in on more specifics during an additional meeting. In September we will present the draft report at the next Commission meeting. We will then send the report out for public comment and hold a public hearing in Southport during the October/November timeframe. Then upon incorporating all the comments received, we will present the final report to the CRC at the December meeting allowing time to make changes before the final report is submitted at the end of the calendar year.

### **Regional Planning and Permitting of Beach Nourishment Projects (CRC 13-23)**

#### **Matt Slagel**

Matt Slagel provided an update on the steps the Division is taking to implement the Beach and Inlet Management Plan (BIMP). The BIMP was approved in April 2011. It set up a framework for regional planning and permitting of beach projects by dividing the coast into sub-regions and looking at beach and inlet project needs before an emergency, pooling of resources between communities, integrating data and improving data collection, streamlining permits, and developing proactive nourishment plans. DCM is focusing on the Bogue Banks master beach nourishment plan. Bogue Banks is trying to develop a plan for a multi-decadal long term beach nourishment program. This could be a model for other communities around the state. Our hope is to create a guidance document that would walk communities along the path to follow the process for getting their own multi-decadal beach nourishment program in place. The Pine Knoll Shores project was primarily funded by FEMA and the Carteret County Beach Commission used some local funding to extend the project and add more sand to the project than FEMA was going to reimburse. This project was eligible for FEMA funding since Bogue Banks has an annual beach erosion monitoring program in place where they take yearly beach profiles and show FEMA the loss. In conjunction with the Bogue Banks master beach nourishment plan, the information in the document will feed into a programmatic environmental impact statement. DCM has been working with the towns on Bogue Banks, the County, their consultants, and state and federal agencies to figure out what the process will look like and how it could be permitted at the state and federal levels. We have been assessing the goals and priorities of the local communities, figuring out what the regulatory requirements of the permit would be, what the proposed thresholds for adding sand to the beach would be, and required monitoring. We have met with Carteret County, the Town of Atlantic Beach, the Town of Pine Knoll Shores, and the Town of Emerald Isle to get their local perspectives on the development of the plan and what should be included in it. We met with consultants that are developing the programmatic EIS to assess their preliminary permit wish list and the project overview. We also met with state and federal regulatory and resource agencies that would be involved in the review and permitting of such a project to try to determine the scope of this programmatic instrument. Across the board the participants noted that the three tiered approach that they have employed has worked well. They have a Beach Commission which provides the

organizational structure necessary to have the different municipalities talking together. They have a coordinator that staffs the Commission and they may have an approved planning, engineering and funding document which provides the framework for the long term project. They also identified long term funding concerns. They expressed a desire to be proactive. In speaking with the consultants there were four key components. One would be documenting the sediment needs over the years. Once that need is established, where will the sand be found? Then there is a need for a volumetric trigger. The last is they would like to include inlet management. The preliminary idea is to establish a safe box based on historical inlet migration and where the channel has been located in the past. Once the Bogue Inlet channel begins to migrate outside of the safe box then they would initiate action to try to relocate it back into a location that is no longer threatening. The agencies that we have talked with believe that we should start at DCM with the Army Corps' permit conditions from recent nourishment projects as a starting point. Once we come to an agreement of what the minimums are then we can determine if there are additional requirements that would be needed for a long term project. There are concerns about including inlet relocation as part of a fifty year project. We have a good handle on what is required for beach nourishment projects and how many successful projects have taken place. But with inlet relocation projects there are a few more variables to consider. There are also concerns about the frequency interval of sand placement on a given beach. Would Carteret County want to put sand on the beach every year? What would that do to the benthic invertebrates and sea turtle nesting and other issues that would be impacted by sand being added every year? That is probably not likely to happen, but there were concerns about it. The last thing discussed was how often would data need to be reviewed over the course of the project? If it is a fifty year project and a permit is issued would they have to update the data every five or ten years? A time period for updating the data would need to be established. We would like to meet with other towns and stakeholders around the state to determine if there is interest in pursuing a similar regional strategy. There have been a lot of discussions in Dare County about a better way to coordinate projects. We want to try to understand the format of existing local regional agreements and explore the potential for region specific implementation. We intend to draft a guidance document based on the discussions that we have had so far using Bogue Banks as a model. Then we will present it to the Commission, CRAC and other local governments with the goal of addressing a range of anticipated beach nourishment activities. We envision some amendments to the CRC's shoreline erosion policies.

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

Chris McCall, Assistant Village Manager and Shoreline Protection Manager for the Village of Bald Head Island, stated I have been a CAMA LPO for about nine years and work directly with DCM staff and it has been a good relationship. I have nothing bad to say about the work that DCM does with the local permitting program and we work well together. As Heather indicated in her presentation, the channel between Bald Head and Caswell Beach comes close to the toe of Bald Head. The channel was realigned in 2001. *(slides of the channel were shown)* The channel is maintained at a particular location unlike natural inlets that migrate. A couple of years ago we came to the CRC for a variance for a 350 foot sandbag revetment to put at the Point to stop the erosion. The CRC granted the variance and we installed the revetment. Since then there hasn't been any further landward migration of the first line of vegetation. We received sand from a dredging project this past winter which has been helpful. At the time of the variance request we had lost about 350-400 feet of shoreline within a year's time. The private residential structures at the Point all have sandbags and for the most part we have been able to keep them covered and vegetated. That process works. The morphology is changing as the Point unravels and moves north. The local tax payers have spent upwards of \$22 million to mitigate this over the last decade



which doesn't include the ongoing work we have with the terminal groin. The Village feels that looking at a Cape Fear AEC is in the best interest of the Village, the State, the Port Authority, the environment, and commerce. We would appreciate the opportunity to work with DCM staff and the Commission and hope that we will receive a favorable recommendation for the move to the next step.

**Lee Wynns made a motion that the Coastal Resources Commission go into closed session pursuant to N.C. General Statute 143-318.11(a)(3) to consider and give instructions to its attorney concerning the handling of the petition for judicial review case filed in Wake County Superior Court as 12 CVS 16364. There are two named Petitioners in that lawsuit (1)Defenders of Wildlife and (2)National Wildlife Refuge Association. The named respondents are the North Carolina Department of Environment and Natural Resources, Division of Coastal Management, who has been dismissed from the appeal, and the North Carolina Coastal Resources Commission. NCDOT was allowed to intervene as a Respondent in the petition for judicial review. Jerry Old seconded the motion. The motion passed unanimously (Baldwin, Mitchell, Webster, Peele, Wynns, Baker, Hester, Old)(Joyce absent for vote).**

**Bill Peele made a motion to close the closed session and return to open session. Lee Wynns seconded the motion. The motion passed unanimously (Baldwin, Mitchell, Webster, Peele, Wynns, Baker, Hester, Old)(Joyce absent for vote).**

#### **LAND USE PLAN CERTIFICATIONS AND AMENDMENTS**

##### **Currituck County LUP Implementation Status Report (CRC 13-29)**

**John Thayer**

John Thayer stated the rules require that local governments that prepare a land use plan using state money provide an implementation status report every two years. Currituck County's plan was originally certified in 2007 and it reflects amendments in the plan through 2009. No action is necessary on this item.

##### **Characterization of Land Use Plans – Assessment Update (CRC 13-28)**

**John Thayer**

John Thayer reviewed the preliminary results from the planner's review of the local land use plans. We wanted to see how the plans have been personalized and use this information as background to local governments as well as see if there is something that could help us in the 7B clarifications. This review will also help us with the technical manual. We looked at Joint Land Use Plans which are when a city and a county go in on a land use plan process together. The city and county separately adopt the plan and hold their own public hearings per the state's requirements. In the future when the document is amended the city and county adopt the amendments separately. The other types of land use plans are where towns and cities are pulled into the document. Many of the plans are of this category. The other type of plan is the workbook plan. We have a few communities that have taken advantage of this process, but oceanfront communities do not prepare a workbook plan. The counties are required to prepare a land use plan. If a municipality does not join in with the county and doesn't prepare their own land use plan then they are subject to the plan of the county. The assessment focused on common community attributes such as economics, permanent populations, management topics, marinas, existing and future infrastructure, beach nourishment, transportation planning and flood mapping. We looked at 52 plans during this review.

Overall there were 13 county plans reviewed, 34 municipal plans, and five joint land use plans. Of all the plans that were prepared, 41 of the communities have one or more planners and 35 of the communities also have an LPO. We will be taking our observations out to a workshop with the Coastal Federation and BASE. We will look at who has done their plan well and do some outreach to hear from communities that have been involved with the plans to see what is working and what is useful.

### **ACTION ITEMS**

#### **Adopt 15A NCAC 7H .0312 Technical Standards for Beach Fill Projects (CRC 13-31)**

**Tancred Miller**

Tancred Miller stated the public comment period on this amendment just ended. These changes apply to maintained navigation channels, nearshore disposal areas and offshore dredge disposal sites. The purpose of this change is to reduce the sampling costs and sampling burden for projects that we know have beach quality material. This will reduce the burden on communities that want to use these regularly dredged areas with good quality sand and not spend money to sample again. The fiscal analysis shows about \$100,000 savings per year per project. This is a significant cost savings. No comments were received from the public. A public hearing was held May 2 and no comments were received since we had worked with the communities while drafting the changes. The proposed effective date is September 1, 2013.

**Jerry Old made a motion to adopt 15A NCAC 07H .0312. Larry Baldwin seconded the motion. The motion passed unanimously (Joyce, Baldwin, Webster, Peele, Wynns, Baker, Hester, Old) (Mitchell absent for vote).**

#### **Adopt 15A NCAC 7H .0306(a)(2)**

#### **General Use Standards for Ocean Hazard Areas (CRC 13-24)**

**Mike Lopazanski**

Mike Lopazanski stated HB 819 directed the CRC to not deny permits for the replacement of single family or duplex residential structures with a total square footage of 5,000 square feet or more based on their failure to meet the oceanfront setback requirements in 7H .0306. The CRC's rules set up a graduated setback for the siting of development on the oceanfront. There were certain conditions in the legislation that included the structure being constructed prior to August 2009, when they are replaced they cannot exceed their original square footage or their original footprint, they have to meet the minimum setback, and they can only take advantage of this grandfather provision if they cannot meet the graduated setback. Temporary rules were adopted in November of last year and the permanent rulemaking process began at that time. We did not receive any comments on the rule amendment. The permanent rule will take the place of the temporary rule once it becomes effective. The proposed effective date is September 1, 2013.

**David Webster made a motion to adopt 15A NCAC 7H .0306. Gwen Baker seconded the motion. The motion passed unanimously (Joyce, Baldwin, Webster, Peele, Wynns, Baker, Hester, Old) (Mitchell absent for vote).**

## **Amendments to 15A NCAC 7H .1200**

### **GP for Construction of Piers and Docking Facilities (CRC 13-25)**

**David Moye**

David Moye stated that currently the way the rules are written allows for two slips on a General Permit. In the 1990's the Commission's guidance was that anywhere there was a boat was counted as a slip. When I was going back through the rule change made ten years ago, I came upon a reiteration of that definition. When we started down this path there weren't as many jet skis, personal watercraft or kayaks. A lot of people have multiple types of vessels. What we are talking about today is for the exclusive use of the landowner. The GP does not authorize the lease, rental or commercial use of the dock. We want to keep the rule intact with a two slip maximum. If you want more than two slips then a Major Permit will be required. Staff is suggesting to the Commission a change in the way we count slips. If you are going to place a kayak, canoe or jet ski on your platform then we would not count it as a boat slip.

**Jerry Old made a motion to approve 15A NCAC 7H .1200 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously (Joyce, Baldwin, Mitchell, Webster, Peele, Wynns, Baker, Hester, Old).**

## **Amendments to 15A NCAC 7H .0312**

### **Technical Standards for Beach fill Projects (CRC 13-26)**

**Matt Slagel**

Matt Slagel stated at the May 2013 CRC meeting options for amendments to this rule were presented. Based on continuing discussions DCM has had with stakeholders since that meeting rule language will be presented today. The goal of this rule is to meet the sediment criteria threshold comparing the native beach to material that will be placed on the beach. This rule tries to strike a balance between minimizing the risks of incompatible material being placed on the beach while at the same time ensuring that the rules are not overly burdensome. Discussions with stakeholders have revealed support for the existing rules, but there are a few issues that need to be addressed. A suggestion was made that instead of requiring 100% coverage of a proposed borrow area with multi-beam bathymetry the proposed rule be changed to allow a certain spacing of single beam bathymetry. The multi-beam bathymetry equipment is about 15% more expensive than the single beam. For the moderate cost increase the applicant gets more certainty about the resource. The single beam requires more time on the water. The multi-beam is also better at detecting hard bottoms. The Division recommends that the requirement for 100% coverage with multi-beam remain in the rule. The rule will be clarified to define swath sonar and seafloor imaging without an elevation component. The second item under consideration is to allow more flexibility in vibracore plans, especially when the borrow area is relatively small. Currently for each individual borrow site the rules require no less than ten evenly spaced vibracores or one core per 23 acres whichever is greater. DCM recommends that the minimum number of vibracores be reduced from ten to five but that the 1,000 foot per grid spacing remain for larger borrow areas. For small borrow sites it would require five cores instead of ten. For larger borrow sites it would keep the existing required spacing. This will be a significant cost savings for permit applicants. The third item under consideration is to expand the granular coarse sand threshold from native plus five percent to native plus ten percent. That would allow slightly more coarse sand to be placed on the beach based on the native beach. This will provide more flexibility for applicants. There will be no change to the fine material and gravel requirements. The fourth item under consideration is to allow excavation depths to exceed the maximum vibracore depth but only where geophysical sub-bottom data clearly

indicates that below the core is beach compatible. After talking with geologists and coastal engineers we found that to meet the thresholds we need to have the vibracore data to perform the sediment grain size analysis. DCM proposes no changes to this part of the rule. Since the May meeting, DCM has talked about excavation exceeding the permitted dredge depth. We believe that the language is somewhat redundant and could lead to confusion. Throughout the permit review process a review would be done of the proposed dredging depths and subsequently indicate the depth that dredging can occur. DCM recommends that this language be stricken from the rule.

**David Webster made a motion to approve 15A NCAC 7H .0312 for public hearing. Bill Peele seconded the motion. The motion passed unanimously (Joyce, Baldwin, Mitchell, Webster, Peele, Wynns, Baker, Hester, Old).**

### **Continued Discussion of 15A NCAC 7J .0210**

#### **Replacement of Existing Structures**

##### **Frank Jennings**

Frank Jennings provided a presentation to facilitate further discussion on the interpretation and application of 7J .0210. At the last meeting, the Division presented a memo to the Commission regarding treatment of septic systems in the Ocean Hazard Area. The memo stated that the Commission's rule on the repair of existing structures in an AEC allows repairs to be made without a permit if the cost to do the work does not exceed 50% of the market value. DCM regulatory staff had been applying this rule in such a manner that septic systems servicing oceanfront structures were viewed as separate structures. A damaged septic system could not be repaired without a permit if the cost of the repairs exceeded 50% of the market value of the septic system. After a thorough review of the CRC's rules, DCM determined that the rules do not clearly state whether septic systems and houses should be treated as one structure for the purpose of the repair and replacement rule or as separate structures. As a result of this review the Division informed the Commission that it is interpreting the rule to require that an oceanfront structure and its septic system be treated as a single structure for the purposes of repair and replacement determinations. At the last meeting, the Commission had directed DCM to come back with three general options to deal with this matter. Specifically, the CRC wanted to see language for a rule amendment that defines septic systems in the Ocean Hazard AEC as a separate structure and language that would define the septic systems as a component of a primary structure. The anticipated impacts or consequences of both options were to be provided as well as ways to mitigate the matter as it currently exists and for future purposes. Frank Jennings presented a first option which would consider a septic system in the Ocean Hazard AEC as a separate structure for the purposes of repair or replacement determinations. In 7J .0210 a paragraph could be added to state that septic systems will be considered separate. The consequences of this would be that septic systems in a lot of cases would not be able to be repaired. The result will be abandoned cottages. The cottage may not have received much, if any, damage and yet will not be habitable if DCM considered the septic system as a separate structure. In Nags Head there are approximately 42 houses that would be impacted if septic systems are treated as a separate structure. In addition, just about every cottage in Kitty Hawk could end up in this situation. The second option is to define a building and septic system as a single structure for the purpose of repair or replace determinations. The impact of this interpretation is that it would be more likely that the septic system repairs would be allowed (since a damaged septic system would be less likely to exceed the combined value of the structure and septic and therefore could be repaired). If these septic systems are repaired, then the house could be habitable for another twenty years or more. The third option DCM was asked to provide was ways to mitigate the matter as it currently exists and for future purposes and to consider a different way to



manage this specific issue in Ocean Hazard Areas. Frank reported that the CRC's rules already allow a property owner ways to mitigate this type of issue. Specifically, under the existing rules, a property owner could use relocation to mitigate this situation. In addition, the CRC allows property owners to protect their septic systems with sandbags which is another way to mitigate the situation. Beach nourishment is another alternative. One new management approach would be to declare septic systems as separate structures in 7J .0210 or limit the replacement of septic tanks based on specific conditions under 7J .0211. Non-conforming development excludes the ocean hazard area and this would require including the ocean hazard area for this specific issue. The rule could be expanded to authorize development in the Ocean Hazard AEC specifically to allow replacement of septic systems under certain conditions. Following the presentation on this issue, the Commission decided to continue the discussion on this issue at a future meeting.

### **CRC SCIENCE PANEL UPDATES**

#### **Science Panel Member Appointments**

##### **Mike Lopazanski**

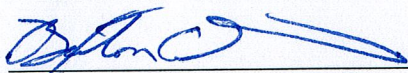
Mike Lopazanski stated at the last meeting we talked about changes to the Science Panel and adopted a Charge to the Panel as well as the process for nominations. New members are to be nominated by the CRC, CRAC, DCM and the Science Panel. The appointments would be made by the CRC Chair based on a review of their expertise and credentials. The initial appointments would be for four years and conditioned on being mutually agreed upon for reappointment at the expiration of the term. We included provisions for appointing *ad hoc* members that would facilitate specific projects at the request of the Science Panel. The Sea Level Rise Assessment Report Update is an example of where we would use some *ad hoc* members. We came up with a process for reviewing Science Panel nominations and noted that there were four full membership vacancies and the Commission added an additional two members. A Call for Nominations was sent out. The Executive Committee and the Science Panel Chair will review the nominations and make recommendations to the CRC Chair who will make the appointments. A separate Call for Nominations was sent out for the Sea Level Rise Assessment group. Due to the potential legislative action affecting the membership of the Commission, we didn't want to appear to rush appointments. We received ten nominations for appointment to the full Panel membership and three nominations for *ad hoc* members for the Sea Level Rise Assessment Update. There is a Science Panel meeting scheduled for August 22 and they will review the nominees and make their recommendations to the Science Panel Chair. The Science Panel Chair will sit with the CRC Executive Committee to make the nominations. We hope to have that take place in September so we can have everyone in place by the September CRC meeting. The current Science Panel members were reappointed at the last CRC meeting.

With no further business, the CRC adjourned.

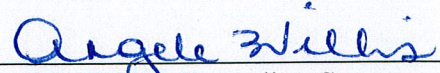
### **OLD/NEW BUSINESS**

Chairman Emory announced the next Coastal Resources Commission meeting is scheduled for September 24-26 in Nags Head.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary