

NC COASTAL RESOURCES COMMISSION (CRC)

April 28, 2021

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
Doug Medlin
Phil Norris
Lauren Salter
Alexander "Dick" Tunnell

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 April 28, 2021, reminding the Commissioners of the need to state any conflicts due to Executive Order Number 34 and the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of a conflict of interest or potential conflict with respect to matters to come before the Commission. The Chair requested that if any member knows of a conflict of interest or a potential conflict of interest, they so state when the roll is called. Commissioners High and Wills were absent. No conflicts were reported. Based upon this roll call Chair Cahoon declared a quorum.

CHAIR'S COMMENTS

Chair Cahoon stated item CRC-21-14 has been removed from today's agenda and will be addressed at the June meeting. Chair Cahoon announced the retirement of DEQ Assistant Secretary Sheila Holman.

MINUTES

Phil Norris made a motion to approve the minutes of the February 18 Coastal Resources Commission meeting. Craig Bromby seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, Medlin, Norris, Salter, Smith).

Robin Smith made a motion to approve the minutes of the March 22 special meeting of the Coastal Resources Commission. Neal Andrew seconded the motion. The motion passed

unanimously (Cahoon, Andrew, Baldwin, Cooper, Emory, Medlin, Norris, Salter, Smith) (Bromby abstained).

EXECUTIVE SECRETARY'S REPORT

DCM Director Braxton Davis gave the following report:

It is good to see you all again, and hopefully soon we will meet again in person. I'll jump right into my update on DCM activities since your last meeting. On the regulatory side, first, a number of communities have recently completed beach nourishment projects, or soon will. Carteret County completed their project in Emerald Isle this week, and the Corps of Engineers dredging and beach placement project at Atlantic Beach has also wrapped up. Topsail Beach completed a beach nourishment project, and North Topsail Beach is in the process of completing a FEMA-funded truck haul dune restoration project in addition to the Corps completing their New River navigation project with beach placement by the end of the month. The Corps has also completed an AIWW crossings maintenance contract, with beach placement at Masonboro Island, Oak Island and Ocean Isle Beach, and the Wilmington Harbor maintenance dredging project with placement on the beaches of the Village of Bald Head Island. Figure 8 Island has completed the dredging of Banks Channel which included beach placement. The Town of Oak Island is in the process of finishing a project. As you may have seen in news, the Town of Ocean Isle Beach, along with the Corps of Engineers, won an appeal for their terminal groin project against SELC and Audubon in the 4th Circuit. They can now move forward with construction of the terminal groin at any time. The terminal groin project was issued a CAMA major permit in 2016, which was not appealed. That permit is set to expire at the end of this year but may be renewed. They have submitted a modification request to the Corps for activities that were previously approved by DCM. Other notable permits since your last meeting include a permit issued to the Oregon Inlet Fishing Center for the redevelopment of the buildings, marina basin dredging, and other upgrades to the marina. DCM also issued a permit to the City of Washington for expansion of their boating access area. On the DOT front, the replacement of the Alligator River bridge appears to be moving forward. DOT held an interagency Merger Team meeting on that project last week. Also, construction of the Rodanthe bridge continues and it appears the bridge will be completed in late 2021.

Federal Consistency

On April 8th, DCM was notified of an emergency dredging situation at Big Foot Slough (Ferry entrance channel into Silver Lake, Ocracoke). The NCDOT Ferry Division had suspended all services on the Pamlico Sound Routes between Cedar Island, Swan Quarter and Ocracoke. On April 9th, the Corps Wilmington District was granted an Emergency Declaration from the Corps' South Atlantic Division. Under a 1986 MOA between the Corps and DCM, if an Emergency Declaration is granted, DCM follows an expedited review process. On that same day (April 9th), DCM found the proposal consistent with NC coastal management program and therefore the project could proceed. Dredging began on April 10th and the smaller class ferries started operations on April 13th. Dredging ended on April 21st and the sound class ferries started operating again. On the offshore energy front, DCM recently had a meeting with Dominion Energy, which is in the process of planning and permitting the Coastal Virginia Offshore Wind Commercial Project, located approximately 27-miles off the coast of Virginia Beach. Dominion Energy submitted a Construction and Operations Plan to the Bureau of Ocean Energy

Management last December. No project components are proposed in North Carolina or in NC waters; however, there is a potential for visual impacts in Currituck County. Dominion Energy is currently evaluating what those visual impacts will be, and if significant, a federal consistency determination will be submitted to DCM.

POLICY & PLANNING

First, the Division reviewed two land use plan certification requests under the delegation of authority from Commission. The City of Havelock and Town of Beaufort submitted LUP amendments for certification on March 1st and 10th respectively. In both cases, the Division found that the Plans 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. For these reasons, the City of Havelock and the Town of Beaufort requests for certification of their land use plan actions were granted. DCM has received 16 applications from 14 local governments requesting over \$2.7M in funding from the Public Beach and Coastal Waterfront Access Program. We have approximately \$1.2M available for access projects during this fiscal year. Soon we will invite selected local governments to submit final applications with more detailed information. Final applications are due August 16, and all final applicants will be notified in late October whether their project has been selected for funding. At the February meeting I informed you that DCM received 30 applications from county and local governments interested in receiving technical assistance awards for resilience planning, vulnerability assessment, and community engagement under our new Resilient Coastal Communities Program. We also received applications from 24 contractors who are interested in providing their services to the program. Our staff, along with partners from NCORR, NC Sea Grant, and The Nature Conservancy, selected the communities and contractors that will participate in this first year of the program. In mid-March, DCM announced the first round of planning awards and we are now in the process of developing contracts with 10 contractors that will facilitate the work among the 18 towns and 8 counties that are receiving awards. We are providing a total of \$675,000 for these contracts, coming from state appropriations and a NFWF grant. Once planning work is completed, we will move to the next phase of the program, where we will fund engineering and design for one resilience project per community. The program is receiving a lot of positive responses, and I briefed a Senate Select Committee on the program earlier this month. We are actively seeking funding to expand the program to include more of our coastal communities. In December 2020, DCM notified local governments participating in beach nourishment projects that funding is being made available to assist with ensuring the compatibility of sediments used for beach nourishment projects with the native beach. Amendments to your Technical Standards for Beach Fill Projects rules, which are up for adoption at today's meeting, are intended to improve the characterization of recipient beaches by re-defining "large material" to be sediments equal to or greater than one inch in diameter, and shell material equal to or greater than three inches in diameter. The Division is making this grant funding available to assist local governments in meeting these rule changes and also because it is of value to the State to have more comprehensive baseline data regarding the sediment characteristics of our beaches for future comparisons. The Division received 13 applications requesting \$171,390, with requests ranging from \$6,000 - \$35,000. To date, 10 local governments are under contract. I want to re-emphasize that characterization of the native beach sediment using these methods will serve as a

permanent baseline, and re-characterization will not be required for subsequent projects. I've reported previously on NOAA's federal evaluation of our coastal management program and National Estuarine Research Reserves as required periodically under the Coastal Zone Management Act. The virtual site visit for our program evaluation took place the week of October 5, 2020 with a public meeting for both programs held on October 7. Final findings were provided by NOAA to the Department of Environmental Quality in March 2021. NOAA concluded that the department is adhering to the programmatic requirements of the federal Coastal Zone Management Act in implementing both of the programs. The findings include a number of accomplishments and recommendations, with no required actions. The final report will be sent out to you soon.

Coastal Reserve

I've also previously reported that DCM received over \$1.8M from the Natural Resources Conservation Service's Emergency Watershed Protection program, matched by over \$500K in State funds, to remove debris and abandoned vessels resulting from Hurricane Florence along North Carolina's coastline, from Brunswick through Carteret Counties, including Craven and Pamlico Counties. Four Reserve sites (Zeke's Island, Masonboro Island, Permuda Island, and Rachel Carson) have benefited from the project, with a total of 4 vessels and 371,460 pounds of debris being removed by N.C. Coastal Federation contractors. The project total for all removals along the coast to date is 17 vessels and 691,260 pounds of debris. DCM is currently seeking community members to serve on local advisory committees for each of the Coastal Reserve's ten sites. Community members with knowledge and experience of relevant topical areas and an interest in serving as a local advisory committee member are encouraged to consider applying. More information about the application period and how to apply is located on the Reserve's website. Applications are due May 5. Virtual spring local advisory committee meetings are underway now, wrapping up April 30. To increase the knowledge of living shoreline construction practices among marine contractors, engineers, consultants, and regulators, the Coastal Reserve, North Carolina Coastal Federation, and North Carolina Sea Grant are partnering to offer a new training course focusing on living shoreline design for typical residential settings. The training combines three online classroom sessions with on-the-ground field training. The online classroom sessions began last week and continue through May, with field trips in June following COVID-safety guidelines and directives. Friends of the Reserve (FOR) is a 501(c)(3) nonprofit organization that supports the N.C. Coastal Reserve and National Estuarine Research Reserve, including its sites and programs. FOR is sponsoring a new N.C. Coastal Reserve Undergraduate Internship Award to encourage promising and talented students from traditionally underserved and underrepresented populations to pursue study and careers in coastal and estuarine science. Juanita Gonzalez was selected as the first Internship Award recipient and will be working with Reserve staff at the Masonboro Island Reserve this summer. Juanita is a sophomore at the University of North Carolina Wilmington, double majoring in environmental studies and biology. A big thank you to Friends of the Reserve for its support of this award program, and congratulations and welcome to Juanita.

Legislative News

DEQ has an agency bill, SB 389, that includes several items submitted by DCM. The first proposal is to make amendments to the Beach Access program, which Mike will be going over later today. The second proposal is just housekeeping, seeking to remove an outdated

requirement that DCM keep a list of “interested persons” and to distribute “proposed developments” to that list by mail. We do have an interested parties email list, but that has always been used for general distribution of information and not for sending out notice of all permits and modification requests, which would be overly cumbersome. Third, we are seeking to extend the timeframe for the Chair’s decision on a third party appeal to 30 days rather than 15. House Bill 500 is a resilience programs bill that includes funding and positions for DCM’s new Resilient Coastal Communities Program, so we are providing feedback on that. There is also Abandoned and Derelict Vessel legislation moving that WRC is the lead on but that we have provided feedback on along the way.

Staffing News

First, we recently had a really nice retirement ceremony for Sheila Holman, who served as Assistant Secretary for the Environment for NCDEQ for the past four years and previously as director of Air Quality at DEQ for most of her career. Chair Cahoon attended and expressed her appreciation for Sheila’s longstanding support of our coastal program on behalf of the commission. We now welcome Sushma Masemore into her new role as Assistant Secretary. After a number of years with the Division of Air Quality, Sushma was named Deputy Assistant Secretary for Environment in 2018 and State Energy Director in 2019, where she worked to bring clean energy solutions and sustainable practices to North Carolina businesses, citizens, and government operations. She has led statewide initiatives related to climate change impacts, adaptation, and resiliency, and has over 30 years of public and private sector experience related to pollution control and energy systems planning. Sushma earned a B.S. in Chemical Engineering from University of Maryland Baltimore County, and is a licensed Professional Engineer in NC. DCM staff have worked with Sushma since 2009, first on the Interagency Leadership Team that produced the 2012 Climate Ready North Carolina: Building a Resilient Future report, and more recently for the 2020 Climate Risk Assessment and Resilience Plan under EO80. We are excited that she has moved into this role and look forward to continuing this strong relationship. At DCM, we are also happy to introduce our newest DCM Field Representative, Bryan Hall. Bryan comes to us from the Division of Marine Fisheries in the Wilmington Regional Office. He has a bachelor’s degree from Purdue University in Natural Resources and Environmental Science and is originally from central Indiana. Bryan’s experience in Coastal Biology, including Coastal Wetlands and Fisheries Habitat Management, will be an asset to the Division. Bryan’s territory will cover southern New Hanover County. As I mentioned in February, we have finally established two sorely needed regulatory positions. Today I’m pleased to announce that Robb Mairs has accepted the Minor Permitting Program Coordinator position, which will provide regular training for LPOs, work with local governments on more complicated permitting issues, assist with compliance and enforcement, update policy guidance, and generally manage that program. Robb previously worked as a DCM field rep for over ten years and spent the last few years over at the Division of Water Resources, and he is already making a big difference for our program. In addition, we are adding a new Field Representative in the MHC office, which will help improve our services in the central district and allow us to continue expanding that territory to the south to take some pressure off of our Wilmington office. We hope to be able to announce this hire in the next couple of days.

As a quick reminder, if anyone is interested in submitting comments during the public comment period later today, please email Angela Willis (link on agenda) and she will read the comments into the record.

Chair Cahoon invited DEQ's new Assistant Secretary to speak to the Commission. Sushma Masemore said a few words and stated she is looking forward to working with the Commission in carrying out its mission.

VARIANCES

Topsail Reef HOA (CRC-VR-20-02), N. Topsail Beach, Oversized Sandbags Roy Brownlow, Christine Goebel, Esq./Brian Edes, Esq.

Roy Brownlow reviewed the site. Christine Goebel represented staff and stated Petitioner is the Topsail Reef Condominium Homeowners Association, Inc., which is a 240-unit condominium complex. The HOA is a non-profit corporation located in Onslow County, North Carolina and owns the common-area property around the eight buildings. The Property is located on the oceanfront at the north end of North Topsail Beach, approximately a half-mile south of New Inlet. The Property is just outside of the Inlet Hazard Area of Environmental Concern but is inside the "new" Inlet Hazard Area maps which have been approved by the Commission but are waiting on public hearing for the related rules. Petitioner installed sandbags in 2012, and at that time, received a variance from the Commission to install a larger sandbag structure than allowed by rule in front of Buildings 1-5. At that same time, Petitioner installed sandbags in a 6' by 20' structure in front of Buildings 6-8. Petitioner sought a major modification to CAMA Major Permit no. 39-01 to increase the size of the sandbag structure in front of Buildings 6-8. In 2014, the Commission granted a variance to allow the larger sandbag structure until five years from the initial November 2014 permit (until Late 2019). On February 26, 2020, DCM received Petitioner's variance application seeking to keep the geotextile tube and oversized sandbag structure for five more years to allow them to keep the bags until the Town and Corps' EIS process can progress. The cancellation of the March 2020 CRC Meeting due to Covid-19 Pandemic and requests by Petitioner to postpone the hearing, have delayed this petition from coming before the Commission until now. 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 in order to grant to the variance.

Brian Edes represented Petitioner and reviewed the stipulated facts which he contends supports the granting of the variance request.

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 unnecessary hardships. Craig Bromby seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, Medlin, Norris, Salter, Smith, Tunnell).

Larry Baldwin made a motion that Petitioner has shown that hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography. The peculiarity in this case is based upon the date of construction of the structures and that

the structures were in conformity with applicable setbacks at that time. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, Medlin, Norris, Salter, Smith, Tunnell).

Bob Emory made a motion that Petitioner has shown that the 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, Medlin, Norris, Salter, Smith, Tunnell).

Larry Baldwin made a motion that Petitioner has shown that the variance request is 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 will preserve substantial justice. As a condition of the approval, any nonconforming sandbags are to be removed following any long-term project. Dick Tunnell seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, Medlin, Norris, Salter, Smith, Tunnell).

This variance request was granted.

OCEANFRONT RULES AND IMPLEMENTATION

Consideration of Rules Related to Oceanfront Development/Beach Management Plans and Fiscal Analysis (CRC 21-10)

Mike Lopazanski

Mike Lopazanski stated since the November 2020 CRC meeting, the Commission has been discussing a strategy and rule language for the development of local and subregional Beach Management Plans to replace both the Development Line and the Static Line Exception. Included in the discussion have been additional provisions for regulatory relief associated with CRC-approved beach management plans and suggestions for further streamlining and simplifying the Ocean Hazard AEC rules. Since the February meeting, staff has reviewed the proposed amendments and request consideration of additional amendments. There was interest in replacing the word “development” with “structures.” Staff proposes to keep the term “development” as it is defined in CAMA and is more inclusive. In order to recognize that local jurisdictions with existing Static Line Exceptions already have most of what is needed for an approved Beach Management Plan under the proposed rules, Staff are proposing that 7J .1204(4) “Review of Beach Management Plans” be amended to allow communities to supplement any additional information needed to be compliant with the provisions of 7H .1200 prior to or upon expiration of previously approved Static Line Exceptions. Staff is also proposing that the regulatory relief associated with approved Beach Management Plans be extended to jurisdictions with unexpired Static Line Exceptions. Additional amendments include clarification that the local jurisdiction shall provide an opportunity for comment on the Beach Management Plan and that these comments are submitted to the Division along with the request for approval, that public comments are to be related to the Beach Management Plan and not the premise of the request and clarify that public comments will be considered in the approval process as well as the five-year update/approval process. Staff recommends deleting the provision for expiration of approval for Beach Management Plans at the end of the life of the project. The intent is that the

next five-year update will contain information showing steps taken to renew or continue the beach nourishment efforts.

Commissioner Andrew asked if Staff could provide a checklist of what is required in the Beach Management Plan for the Commission to review. Larry Baldwin asked about the life of the project and the 30-year timeline. Mike Lopazanski stated that these amendments would remove the expiration as the plan will be updated every five years. Commissioner Baldwin stated this is much more streamlined and likes the direction these amendments are heading.

Neal Andrew made a motion to approve the amendments as presented for Beach Management Plans for public hearing. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, Medlin, Norris, Salter, Smith).

Mike Lopazanski reviewed the fiscal analysis for amendments associated with Beach Management Plans. Currently there are 23 communities with Static Vegetation Lines and eight have CRC approved Static Line Exceptions. The amendments propose allowing these communities to keep these until they expire. The remaining 15 oceanfront communities have elements of beach or inlet management plans, have funding information readily accessible, and already perform regular monitoring. The Division has determined that the proposed amendments will have modest cost impacts on local governments depending on whether they choose to apply for an approved Beach Management Plan. The benefits to local governments and private property owners are assumed to be the similar to the existing Static Line Exception, as are the associated opportunity costs. Based on costs associated with development of a Static Line Exception request, an approved Beach Management Plan would require an average initial cost of \$12,144 and an average five-year recurring cost of \$6,175 to maintain. No impacts to NCDOT permitting are anticipated from the proposed amendments. The new and amended rules do not create any new procedures or restrictions that would affect NCDOT permits. The Division of Coastal Management's permit review process will not be changed by these amendments and DCM does not anticipate changes in permitting receipts due to the proposed action. There would be no increased cost for staff's time as a direct result of the proposed rules and amendments. Following the Commission's approval, public hearings will be scheduled in all oceanfront counties.

Trace Cooper made a motion to approve the fiscal analysis for Beach Management Plans for public hearing. Craig Bromby seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, Medlin, Norris, Salter, Smith).

Consideration of Inlet Hazard Areas Proposed Use Standards-Fiscal Analysis (CRC 21-11) Tancred Miller

Over the past two years, the Commission has been discussing updates to the Inlet Hazard AEC, both the jurisdictional areas as well as the use standards. You will recall that the Inlet Hazard Area boundaries as recommended in the CRC's Science Panel's report, "*Inlet Hazard Area Boundary, 2019 Update: Science Panel Recommendations to the North Carolina Coastal Resources Commission*," and the IHA erosion rate setback factors presented in the report "*2019 Inlet Setback Factors*." were originally approved for public hearing in February 2019. The

Commission sent the updated boundaries and use standards (draft amendments to 15A NCAC 7H .0304, 07H .0306, 07H .0308, 07H .0309 and 07H .0310) to public hearing in the fall of 2019. Staff presented the proposed rule amendments in the seven affected counties, followed by five workshops to allow for additional public discussion. The rulemaking process was deliberately extended in order to give the Commission, the public, and Staff, the opportunity to work through all issues raised by local governments and the public. At the November 2020 meeting, the Commission considered additional public comments on the boundaries and heard from CRC Science Panel Chair, Bill Birkemeier, additional details regarding the methodology used to delineate the boundaries as well as their recommendations concerning the proposed use standards. At the February 2021 meeting, Staff presented additional amendments to the proposed use standards which were approved for public hearing. Staff has updated the original fiscal analysis to reflect the additional amendments which do not significantly affect the conclusion of the fiscal analysis.

The erosion rate setback factors currently applied in IHAs are the ones in the adjacent Ocean Eroding Areas. The proposed amendments will allow the calculated erosion rate setback factors to be used instead. The calculated setback factors are included in the 2019 Inlet Setback Factors report that the Commission has already approved. No changes are proposed to the existing standard for building density within IHAs, which is one structure per 15,000 square feet of land area. In order to prevent existing lots under 15,000 square feet from becoming unbuildable due to these amendments, Staff recommends that smaller lots in existence prior to the effective date of these amendments be excepted from the 15,000 square foot minimum. The existing 5,000 square foot total floor area limit for new structures will be retained; however, the distinction between recreational and commercial uses would be eliminated, as it has been in the Commission's oceanfront rules. The number of allowable units within a structure would also be eliminated, as the number of units within a structure is irrelevant to total allowable size. Staff recommends applying the same provisions for replacement of existing structures that cannot fully meet the setback requirement that currently apply on the oceanfront. These provisions allow the replacement of structures no larger than 10,000 square feet, subject to certain conditions. The replacement of existing structures larger than 10,000 square feet (that are damaged beyond 50% and therefore require a permit to "replace") would require a variance from the Commission. Current rules allow for a limited exception to the setback requirements in situations where the proposed development cannot meet the applicable setback. Conditions that apply for using this exception include that the lot must have been in existence prior to June 1, 1979, the structure is limited to a 1,000 square foot footprint and 2,000 square foot maximum floor area, and a minimum setback of 60 feet must be met. Staff recommends also allowing this exception to apply within IHAs. Staff has had extensive additional discussions about using the Hybrid Vegetation Line as the starting point for measuring setbacks, as recommended by the Science Panel, but has concluded that the Hybrid Line would present significant implementation and communications issues. Staff also stated during the public workshops that the Commission was not at the time considering using the Hybrid Line as the starting point for measuring setbacks. Staff continues to support retaining the first line of stable and natural vegetation as the measurement line. Staff proposes an amendment to clarify that prior existing dunes may be restored, but no new dunes may be constructed in an IHA. Current rules prohibit the construction of new dunes in an IHA but do not prohibit dune restoration.

There are no fiscal impacts for DCM or NCDOT. This fiscal analysis has been approved by OSBM. Following approval of the fiscal analysis, public hearings will be scheduled in each affected county.

After discussion, the CRC remanded the fiscal analysis back to DCM Staff to consider addressing undeveloped state and federally owned lands adjacent to inlets that were not included in the 2019 report.

NCDOT Southdock Ferry Terminal Erosion Issue Update **Paul Williams, Division I Environmental Officer**

NCDOT's CAMA permit covers a five-mile stretch on the north end of the island. In September 2018, Hurricane Florence caused us to have to rebuild the dunes along NC12. In September 2019, Hurricane Dorian caused major damages to the dunes and roadway. A request for modification to the permit requested additional sandbags in four new areas. In March 2020, NCDOT requested relief from the sandbag rules and looked at products that would provide a stronger sandbag structure. In June 2020, the CRC granted the variance request for an alternative sandbag design. Covid-19 slowed progress and funding was low, so the project was suspended. In September 2020, multiple storms caused more pavement damage along with dune damage. This newer area was not covered by the variance request, so standard sandbags were used. The dunes have been repaired and the sandbags have been installed. A feasibility study recommended moving the Southdock Ferry Terminal mid-island, just south of the Pony Pens. At this point, this project is under review. An NC12 Task Force is being created, to include DCM, that will look at collaborative development of a long-term, resilient plan for NC12 in Dare and Hyde Counties.

PUBLIC INPUT AND COMMENT

No comments were received.

CRC RULEMAKING

Amendments to 15A NCAC 7M .0303 & .0310 Shorefront Access Policies (CRC 21-12) **Mike Lopazanski**

Mike Lopazanski stated at the September 2020 Commission meeting, amendments to 15A NCAC 7M .0300 were approved for public hearing that addressed implementation aspects of the Program, and are intended to reorganize some of the individual rules based on grant administration, local government requirements, and project selection. During the initial Staff review it was noted that a provision concerning the disposition of properties acquired with Access Program funds [7M .0303(d)] was inconsistent with a similar provision in CAMA. The existing rule language of 7M .0303(d) states: "*If land acquired or improved with access grant funds is sold or otherwise disposed of the local government shall reimburse the State at a percentage equal to the proportion of access grant funds provided for the original purchase at current market value at the time of sale*". However, § 113A-134.3 states "*All grants to local governments pursuant to this Part for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the State if the local government uses the property for a purpose other than beach or coastal waters access.*" Because amending CAMA to reflect the Commission's intent would require legislative

action during the upcoming session, and in order to avoid delaying important programmatic revisions, Staff did not bring proposed rule updates related to reimbursement requirements to the CRC in September 2020. A bill (S389) has since been introduced which addresses the current language in the Shoreline Access Policies. The reimbursement language proposed for CRC rule amendment is intended to match that of the proposed S389, to then be consistent with CAMA. Since many of the existing Access Program rules have been consolidated or rearranged, these provisions are now proposed to be moved from 7M .0303, which will be repealed, and incorporated into 7M .0310.

Bob Emory made a motion to approve amendments to 7M .0302 and 7M .0310 and repeal 7M .0303 as proposed. Larry Baldwin seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Cooper, Emory, Medlin, Norris, Salter, Smith).

Mike Lopazanski further stated that the CRC's Access Program rules allow for local governments to charge parking fees. These fees are to be used for operation and maintenance and the acquisition and development of new facilities. A biannual reporting requirement is included, however there is no consequence for failing to report and DCM does not have auditing resources to track revenues and expenses. The decision to charge a parking fee is a local issue and not all access sites are state funded. DCM is proposing in 7M .0310 to make the annual reporting publicly available and if they do not comply, the local government would not be eligible for additional funding until it is rectified. Some local governments are using parking fees as a source for beach nourishment.

After discussion, the Commission provided guidance to DCM staff that fees generated from parking at state funded access sites should not be used for beach nourishment.

Amendments to 15A NCAC 7J .0405 – Permit Modification (CRC 21-13) Jonathan Howell

Jonathan Howell stated after a CAMA Major permit is issued, it is common for an applicant to request modifications of the active permit. This can be due to issues ranging from changes in construction methodology to a permittee's desire to change the size or type of development. The Division processes approximately 12 Major Modifications and 38 Minor Modifications each year. 15A NCAC 7J .0405 outlines the parameters for determining whether processing of the proposed changes should be accomplished through a "major modification" or a "minor modification" process, as well as the fees associated with the processing. The criteria associated with permit modifications were originally established in 1978. A number of changes have taken place since that time, including the processes by which other agencies approve modifications of CAMA major permits. This has resulted in a need to update your rule language to incorporate changes in other agencies' processes and fees, as well as updates to the parameters for determining the type of modification required. The Division recommends that the Commission consider the following changes to the Rules governing permit renewals: Remove language specific to bulkheads, piers, docks, boathouses, and boat ramps. Modifications to permits are site-specific and project specific. Projects that may be permitted under a minor modification for the NC Dept. of Transportation may be processed through a major modification for a single-family dwelling. The scope of the original project is considered as part of the final determination. Add language that interacts with new rule language in 15A NCAC 7J .0404 and 15A NCAC 7J .0406. In keeping with ongoing rulemaking related to oceanfront setback exceptions,

communities that have an adopted beach management plan are provided benefits for being proactive in local and regional planning of future beach projects. These communities may not be subject to the same modification requirements for projects outlined in Commission-approved beach management plans. Also, the fee schedule should be updated. As currently written, a minor modification has a \$100 processing fee, and a major modification has a \$250 processing fee. Depending on the type of 401 certification required (written vs. non-written concurrence), the Division of Water Resources requires a fee split in conjunction with a Memorandum of Agreement (MOA) established in 2001. When a fee split is required, the DCM should be charging \$400 for a major modification to allow for the fee split as outlined in the MOA.

After discussion, this rule was remanded back to staff to clarify the resource impacts that trigger a Major versus a Minor Modification. Staff will provide updated rule language for review at the June meeting.

LEGAL UPDATES

Update on Litigation of Interest to the Commission (CRC 21-15)

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

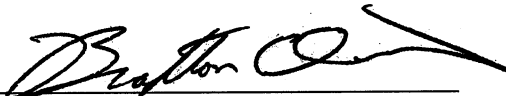
OLD/NEW BUSINESS

Chair Cahoon stated the next meeting of the CRC is scheduled for June 16-17. A new DMF Director will be announced very soon.

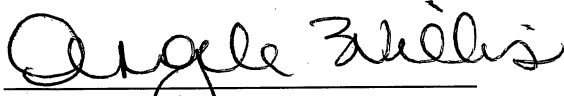
Neal Andrew commented that he is impressed with staff's work and expressed his thanks for all the work while working remotely. Chair Cahoon echoed those comments.

Larry Baldwin stated the CHPP Update will be available in June for the CRC to approve the next 5-year update. A stakeholder group has been established to tackle the broad topics within the next update.

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



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary