

NC COASTAL RESOURCES COMMISSION (CRC)

February 9-10, 2016

DoubleTree

Atlantic Beach, NC

Present CRC Members

Frank Gorham, Chair

Renee Cahoon, Vice-chair

Neal Andrew, Second Vice-chair

Larry Baldwin

Denise Gibbs

Marc Hairston

Greg Lewis

Phil Norris

Russell Rhodes

Jamin Simmons

John Snipes

Bill White

Present CRAC Members

Debbie Smith, Chair

Rudi Rudolph, Vice-chair

Spencer Rogers, Vice-chair

John Brodman

Jett Ferebee

Beth Midgett

Mike Moore

David Moyer

Kris Noble

Bobby Outten

Ray Sturza

Dave Weaver

Present Attorney General's Office Members

Mary Lucasse

Christine Goebel

CALL TO ORDER/ROLL CALL

Frank Gorham called the meeting to order reminding the Commissioners of the need to state any conflicts due to Executive Order Number One 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 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. Gwen Baker was absent. Larry Baldwin stated he would recuse himself from the SCS Ventures, LLC variance request. Denise Gibbs read her evaluation of statement of economic interest received from the NC Ethics Commission into the record. Based upon this roll call Chairman Gorham declared a quorum.

Chairman Gorham recognized and welcomed Dr. Devon Eulie and her graduate class in Foundations of Coastal Management from UNCW.

VARIANCES

Gray (CRC-VR 15-10), North Topsail Beach

Christine Goebel

Christine Goebel of the attorney General's office represented staff and stated petitioner, Dowell Gray, Jr., is present and will represent himself in this variance request. Ms. Goebel gave an overview of the property located in North Topsail Beach. The property is near, but not adjacent to Stump Sound, part of the AIWW. At this location, Stump Sound is designated as an Outstanding Resource Water (ORW) and petitioner is within the ORW Shorelines AEC as defined in 15A NCAC 07H .0209(f). In October 2015, petitioner applied for a CAMA minor permit to construct a single family residence on this lot. On November 13, 2015, DCM denied petitioner's CAMA permit application as the proposed development exceeded the 25% impervious surface limit in the Commission's rules at 15A NCAC 07H .0209(f)(10). Petitioner is seeking a variance from the 25% impervious surface limit. Ms. Goebel reviewed the stipulated facts of this variance request and stated that staff and petitioners agree on two of the four statutory criteria which must be met in order for the variance request to be granted. Staff disagree with petitioner that hardships are caused by conditions peculiar to the property and staff contends that any hardships are a result of actions taken by the petitioner since the built upon area could be reduced by removing the roof from the proposed 150 square foot covered porch.

Mr. Gray spoke on his own behalf and requested the Commission grant his variance request.

Renee Cahoon made a motion that the Commission affirmatively find that strict application of the applicable development rules, standards or orders issued by the Commission will cause the petitioner an unnecessary hardship. Bill White seconded the motion. The motion passed with eleven votes in favor (Hairston, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis) and one opposed (Rhodes).

Renee Cahoon made a motion that the Commission affirmatively find that hardships result from conditions peculiar to the petitioner's property. Larry Baldwin seconded the motion. The motion passed with eleven votes (Hairston, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis) and one opposed (Rhodes).

Renee Cahoon made a motion that the Commission affirmatively find that the hardships do not result from actions taken by the petitioner. Jamin Simmons seconded the motion. The motion passed with ten votes in favor (Hairston, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes) and two opposed (Rhodes, Lewis).

Renee Cahoon made a motion that the Commission affirmatively find that granting the variance request will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. John Snipes seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

This variance request was granted.

SCS Ventures, LLC (CRC-VR-15-12), Wilmington

Christine Goebel

***Larry Baldwin recused himself from discussion and voting on this variance request.*

Christine Goebel of the Attorney General's office represented staff and stated Charles Baldwin is present and will represent the petitioner in this variance request. Robb Mairs, DCM field representative, gave an overview of the property. Ms. Goebel stated SCS Ventures, LLC owns an existing marina in New Hanover County along River Road south of the City of Wilmington on the Cape Fear River. The existing marina was originally constructed by a prior owner in 2005-2006 pursuant to a CAMA Major Permit. In 2013-2014, another prior owner sought a permit modification and CAMA variance in order to extend the existing forklift pier to the -6 foot mean low water depth or -5 foot mean low water depth. The Commission denied this request in May 2014. In April 2015, petitioner applied for a permit modification for a redesigned project which extended the pier to the 1/3 width mark and shifted the structure extension to the south. On December 4, 2015, DCM denied petitioner's application based on the proposal's inconsistency with the Commission's 1/4 width rule at 15A NCAC 07H .0208(b)(6)(G)(iii) and the rate to deep water rule at 15A NCAC 07H .0208(b)(H). Petitioner now seeks a variance from these rules in order to construct the pier as proposed in their 2015 CAMA Major Permit application. Ms. Goebel reviewed the stipulated facts of this variance request and stated that staff and petitioner agree on all four statutory criteria which must be met in order for the variance request to be granted.

Charles Baldwin of Brooks Pierce represented petitioner and gave an overview of the site location. Mr. Baldwin reviewed the stipulated facts which petitioner contends supports the granting of this variance request.

Renee Cahoon made a motion that the Commission affirmatively find that strict application of the applicable development rules, standards, or orders issued by the Commission will cause the petitioner an unnecessary hardship. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Renee Cahoon made a motion that the Commission affirmatively find that hardships result from conditions peculiar to the petitioner's property. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Renee Cahoon made a motion that the Commission affirmatively find that hardships do not result from actions taken by the petitioner. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Renee Cahoon made a motion that the Commission affirmatively find that that granting the variance requested by the petitioner will be consistent with the spirit, purpose and intent of the rules, standards or order issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

This variance request was granted.

2015 Coastal Habitat Protection Plan (CHPP) Update (CRC 16-01)

Jimmy Johnson

Jimmy Johnson with the Albemarle Pamlico National Estuary Partnership stated the CHPP was enacted under the Fisheries Reform Act of 1997. Part of this Statute required the Department to develop a habitat plan to enhance fisheries and fisheries production. The Statute also required the CHPP be updated every five years. The CHPP before you today for adoption is the third revision. The Plan includes the status and trends of the habitat, the threats to the habitats, and the condition of the habitats. This is an ongoing process as the document will continue to include new studies that are ongoing and may require changes to the recommendations in the document. The overarching goal of the CHPP is the long-term enhancement of coastal fisheries. This is done by addressing habitat and water quality needs. The Plan describes six specific habitats, explains why they are important to fisheries and water quality, and the status of those habitats. The recommendations in the CHPP are the important part of the plan that subject to CRC approval. The two members from the CRC are on the CHPP Steering Committee, Larry Baldwin and John Snipes. This update contains no requests for any regulatory rule changes. Public comment took place in late November and the entire month of December. We received comments from Commissioners Baldwin and Snipes on behalf of the CRC and have addressed those comments. Next week this document will be before the Marine Fisheries Commission and then before the Environmental Management Commission at the beginning of March for their approval. Following the adoption of the Plan by the three Commissions, the CHPP will go to the General Assembly. Braxton Davis stated the CHPP can be viewed as a state of the coast report that most states do not have. This document provides guidance to the three Commissions and fosters communication and coordination between the commissions.

Chairman Gorham thanked Larry Baldwin and John Snipes for their involvement with the CHPP.

Frank Gorham made a motion to adopt the 2015 CHPP Update. Neal Andrew seconded the motion. The motion passed with eleven votes in favor (Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis) and one opposed (Hairston).

Frank Gorham made a motion to reappoint Larry Baldwin and John Snipes to the CHPP Steering Committee. Renee Cahoon seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

SEA LEVEL RISE FINAL REPORT

Science Panel Report on Public Comments (CRC16-02)

Tancred Miller

Tancred Miller stated this is the second Statewide Sea Level Rise Study and that we are the only State that has done two assessments. The first report was completed in 2010 by the Science Panel. Session Law 2012-202 instructed the Commission to direct its Science Panel to deliver a five-year updated assessment to the original March 2010 report no later than March 31, 2015. The law asked the Science Panel to consider all relevant literature and data from federally-maintained tide gauges, and mandated the reporting of regional rates of sea level rise as well as a discussion of predictive modeling and opportunities for public comment. The Commission was also directed to look at the economic and environmental costs and benefits of adopting or not adopting sea level rise policy recommendations. The CRC determined at their April 2015 meeting that since there are no regulations or policies under consideration, it is not feasible to study potential costs or benefits at

this time. Any future regulatory changes will undergo a fiscal impact analysis as required under the Administrative Procedure Act. The final report is due to the Environmental Review Commission by March 1, 2016. The Commission took the charge from the legislature and developed a process for the update. The Commission transmitted a charge to the Science Panel that included the requirements of the Session Law and added in a request to limit the projection to 30 years. This projection will be a rolling 30-year time table that will be updated every five years. The next update will be done in 2020. The Commission instituted a technical peer review process for the 2015 update. Drs. Robert Dean and James Houston agreed to serve on the peer review committee. If the Commission approves the final report, this report as well the accompanying documents will be delivered to the Department and will subsequently be submitted as a complete package to the General Assembly's Environmental Review Commission.

Neal Andrew made a motion to approve and submit the Sea Level Rise Assessment Report 2015 Update to the Department of Environmental Quality. Larry Baldwin seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Chairman Gorham asked that a letter be sent to the members of the Science Panel and the peer review committee thanking them for their time and participation in the updated sea level rise assessment report.

CHAIR COMMENTS

Chairman Gorham stated a task force will be set up to review the variance process. If any Commissioners have an attorney that would be helpful on the task force, please send him the names so he can set up the task force.

MINUTES

Renee Cahoon made a motion to approve the minutes of the November 2015 Coastal Resources Commission meeting. Marc Hairston seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Gibbs, Hairston, Lewis, Norris, Simmons, Snipes, White)(Rhodes abstained).

John Snipes made a motion to approve the minutes of the December 8, 2015 special meeting of the Coastal Resources Commission. Neal Andrew seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Gibbs, Hairston, Lewis, Norris, Rhodes, Simmons, Snipes, White).

EXECUTIVE SECRETARY'S REPORT

Braxton Davis, DCM Director, gave the following report:

I would like to extend a special welcome to Commissioners Rhodes and Gibbs. Staff at the Division of Coastal Management look forward to working with you, and I hope to get together with you soon to provide an overview of our agency. We had a pretty rough weekend. To be quite honest the storm that developed took many of us by surprise. Hurricane force winds out of the north caused some minor flooding on the sound side in some areas, but in particular, we had significant beach erosion and overwash at Kitty Hawk and on Hatteras Island, where rain combined with overwash to create standing water and flooding problems. Staff met with DOT, which will be doing dune repair. At this time, we do not anticipate any requests for additional sandbag structures.

Notable permit actions since your last meeting include the rapid issuance of an emergency Major permit at Ocean Isle Beach allowing for the replacement of a failing bulkhead that was jeopardizing the structural stability of an adjacent structure. An emergency Major permit was also issued to the Department of Transportation for the protection of a failing section of US 70 in eastern Carteret County. Finally, DCM issued separate major permits for beach nourishment projects to Dare County and the Towns of Duck, Kitty Hawk, and Kill Devil Hills. The permit issued to Dare County was for nourishment activities to take place in the Buxton area. In addition, as a follow-up to the variance granted by the Commission in December, the Division has issued the permit to the State Port Authority authorizing the expansion of the turning basin at the Port of Wilmington. Yesterday, our office issued a federal consistency concurrence for dredging operations at the Port of Morehead City around Beaufort Inlet. In this case, due to the fact that the original bids for the project came in more than two times higher than the budgeted amount, the Corps has made a one-time request to dispose of all beach quality sand dredged from the inlet into the Offshore Dredged Materials Disposal Site (ODMDS) a little more than 3 miles offshore. In issuing our federal consistency concurrence, the Division considered the urgency of the dredging operations for the continued operation of the Port and safe navigation of ship traffic through the inlet, as well as the Corps' initial efforts toward beneficial use of the dredged materials.

DCM Policy staff are working on the various legislative reports that were included as part of the budget bill. You'll be hearing updates on two of those studies at this meeting, including the Cape Fear Estuarine Restoration study and the Beach Erosion Control study. We will also be following up on the budget bill's requirement that the Commission amend your sandbag rules by finalizing temporary rules and beginning the development of new permanent rules. One other study in the budget bill requires DCM and the Division of Marine Fisheries, in consultation with representatives of nongovernmental conservation organizations, to simplify oyster restoration project permitting by creating a new permitting process specifically designed for oyster restoration projects. A team of staff from DCM and DMF met with nongovernmental conservation organizations on February 1st to discuss various options. We are currently preparing our implementation report that must be submitted to the legislature by May 1. It is expected that staff will be coming to the Commission at the May meeting to initiate possible rule-making efforts necessary to implement our selected option or options.

As you can see from the list of action items, Staff are also continuing the rulemaking process and have completed fiscal analyses for a number of rules. Included in the action items are also a couple of land use plan certification that contain policies which may exceed state rules regarding buffers. Recent legislation set forth in S.L. 2015-246, Riparian Buffer Reform, places limitations on local government riparian buffer requirements. With a few exceptions, a local government may not enact, implement, or enforce a local government ordinance that establishes a riparian buffer requirement that exceeds requirements necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency. The two land use plan up for certification may contain a policy that is counter to this recent legislative action. Staff is working with the local governments to resolve the issue and will request that the land use plans be certified to the extent that they are not inconsistent with the new legislation.

We are pleased to announce that for the first time in several years, the Division is notifying local governments in the 20-county coastal area that grant funding will be made available for Local Planning and Management projects for the upcoming 2016-17 fiscal year. The Division has \$75,000 available for grants of up to \$15,000. Local governments are invited to apply for funding for projects that are anticipated to begin July 1, 2016 and to be completed by June 30, 2017. The

primary objective of the planning and management grant program is to provide funding to assist local governments in developing and implementing land use plans and management strategies for their coastal resources that are consistent with the state guidelines. A solicitation for projects will be sent to local governments later this week with proposals due to the Division on April 1, 2016. DCM has also notified local governments in the 20-county coastal area that grant funding is available for Public Beach and Coastal Waterfront Access projects for the upcoming 2016-17 fiscal year. Local governments are invited to apply for funding for projects that are anticipated to begin after November 2016 and to be completed within eighteen months. DCM estimates that approximately one million dollars will be available for public beach and coastal waterfront access projects in FY 2016-17. Pre-applications are due to the Division by March 16, 2016.

On the Coastal Reserves front, the Division learned last week that it will be awarded a grant of \$339,000 from the USFWS' National Coastal Wetlands Program to acquire the Woodley tract in Tyrrell County for incorporation into the Buckridge Coastal Reserve. The Woodley tract includes 2,040 acres and a combination of habitats including Low Pocosin, Tidal Swamp, and Estuarine Fringe Pine Forest, two of which are imperiled according to the NC Natural Heritage Program and support a number of sensitive species. Acquisition will be accomplished through a partnership with the U.S. Air Force and The Nature Conservancy in which the Readiness and Environmental Protection Integration Program will provide 50% of the purchase price of the tract to match the USFWS grant, and will help secure operational boundaries around the Dare County Bombing Range. Additionally, this acquisition will strengthen the link between more than 400,000 acres of protected upland and aquatic habitat in the area.

Our next meeting will be in Manteo on May 10-11 at the County Government Complex.

CRAC REPORT

Debbie Smith, CRAC Chair, stated the CRAC met to discuss sandbags. The only change the CRAC would like to suggest to the Commission outside of the recommendations from the last CRAC meeting was that the time frame for all sandbag permits should be eight years regardless of the size of the structure. This would give any property owner a more reasonable length of time to address other solutions. At the last meeting a resume was provided for Todd Roessler for consideration. The CRAC would like to recommend Mr. Roessler for appointment to the CRAC.

Larry Baldwin made a motion to appoint Todd Roessler to the Coastal Resources Advisory Council. Renee Cahoon seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

CRC RULE DEVELOPMENT

Update on Amendments to 15A NCAC 7H .0306

Grandfathering Provisions for Multi-family Oceanfront Structures (CRC 16-03)

Tancred Miller

Tancred Miller stated the CRC approved rule language at the last meeting to move forward to public hearing. The concept was to grandfather multi-family residential oceanfront structures constructed prior to August 11, 2009, with a maximum square footage of 10,000 square feet. The rule language approved at the November 2015 meeting would have also applied to single-family and duplex residential structures that were the focus of S.L 2012-202. This session law directed the Commission to grandfather single-family and duplex residential structures over 5,000 square feet, but did not specifically authorize the Commission to set a maximum size limit. Staff has revised the draft language to accomplish the action the Commission wants to take on multi-family structures,

without contravening what the Commission was directed to do under S.L. 2012-202. The Commission will need to approve this revised rule language for public hearing.

Shane Johnson, Wilmington Regional Association of Realtors, stated the Association researched the number of properties impacted by the proposed rule for legal, non-conforming structures by reaching out to local planning and tax officials. Ten communities responded. It appears from the responses that the impact will average out to about 17 per community. While this number is low, it still has a large impact on the real estate community.

Tancred Miller stated staff will begin developing the fiscal analysis for this proposed amendment. To complete the fiscal analysis, the Division will need to determine the number of multi-family residential structures on the oceanfront that are between 5,000 and 10,000 square feet and were constructed prior to August 11, 2009. A GIS analysis will also have to be performed on the location of the relevant structures relative to the applicable setback lines. Once we know the number of structures that will be affected by the rule change, we will need to estimate the value of granting grandfather status to nonconforming structures. We are working with the towns directly to get this information. The fiscal analysis will be reviewed by the Commission once it is completed. If the fiscal analysis determines that this rule change would create a substantial economic impact then, per the Administrative Procedure Act, the Commission is required to consider alternatives.

Braxton Davis stated staff presented concerns with this proposal at the last meeting. The concern for this provision is separating out residential versus commercial. A condominium complex would be allowed to rebuild, but a bed and breakfast of the same size would not. Staff recommends that in fairness, all structures of a certain size, regardless of use, should be considered. Also, as in alternative 3, there should be some incentive for communities to have a beach plan in place that shows that they have a long-term plan for beach renourishment or erosion control to justify the grandfathering of their structures.

John Snipes stated that he agrees that it should be based on size and not use. Greg Lewis stated that since there is no request for changes to the regulations for commercial properties, we could address that at a later date. Renee Cahoon stated she would also like to explore the inclusion of commercial properties.

Neal Andrew made a motion to approve the revisions to the draft rule language, as presented, for public hearing. Larry Baldwin seconded the motion. John Snipes added a friendly amendment to include commercial structures up to 10,000 square feet. The friendly amendment was accepted by Commissioners Andrew and Baldwin. The revised motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Sandbag Rules and CRAC Recommendations

Mike Lopazanski

Mike Lopazanski stated the CRC's rules allow individual property owners to use sandbags for temporary erosion control of imminently threatened structures. Sandbags are considered temporary by law. Time limits are from two to eight years depending on whether the structure being protected is in a community seeking beach nourishment, inlet relocation or stabilization. The CRC has been struggling with sandbags for a long time. The Commission has recognized that property owners need a way to temporarily protect their structures, but it has been difficult to enforce the time limits. Another question facing the Commission has been when do sandbags need to be removed?

Legislation was recently passed that directed the CRC to adopt temporary rules to expand the use of temporary erosion control structures. At the same time the CRC has been taking a comprehensive look at the sandbag rules with the CRAC directed by the Chairman to look at the sandbag rules and provide alternative management recommendations, particularly on enforcement issues related to the removal of sandbags.

Regarding the legislation for rule change, the budget bill directs the Commission to allow sandbags even if there is no imminently threatened structure, allow sandbags to span from one property boundary to another regardless of proximity to a threatened structure, and require the termination dates for all sandbag permits be calculated from the date the last bags were placed. In drafting rules to meet the legislative directive, Staff have added some caveats to address concerns relating to these changes. Specifically, when allowing sandbags where there are no imminently threatened structures or adjacent to a property that already has sandbags, the bags may not be placed any further oceanward than the landward most sandbag structure. This is an attempt to keep them from creeping out onto the beach since there is no siting criteria. Staff also had some concerns with the repair, replacement or modification of bags under litigation and have added language that states the modification would be limited to the permitted dimensions.

Chairman Gorham asked about the option for geotextile tubes. Mike Lopazanski stated this was also considered during the State Port Inlet AEC discussion. The current rules do not allow for geotextile tubes. When geotextile tubes have been discussed this in the past, there were concerns about the stability of the structure and the Commission had chosen not to allow tubes as temporary erosion control. Spencer Rogers stated the major factor addressing the temporary nature is the size limits. If the Commission wants to consider geotextile tubes, then there are aprons and anchors attached. The Commission would have to define what the tube dimensions would be similar to the size limits for the other bags. The Commission would not be permitting them as good structures or stable engineering. There are some engineering issues with these tubes. The tubes reduce the amount of fabric so there will be less debris on the beach when they go away. They could potentially be less expensive for the property owner. Jett Ferebee stated the geotextile tube is a faster process, but cannot speak to whether they are more effective. Spencer Rogers added that given the way the regulations are going; I don't see a problem if the Commission wanted to move in that direction. Braxton Davis stated we have talked about doing it as a trial approach in the inlet management area for the Cape Fear River. There is always the concern of allowing a seawall-type structure. Mike Lopazanski added that there are other engineering concerns such as aprons and anchors. It is also easier to repair individual bags versus one enormous bag. These considerations would have to be factored into allowing the use of geotextile tubes. Chairman Gorham asked staff to include geotextile tubes and then receive comments during the public hearing process. If the Commission finds out that this isn't a good option, then we can remove it. Mike Lopazanski stated there needs to be some time to consider the standards for these tubes. Braxton stated staff will prepare some draft rule language with the addition of geotextile tubes for the next meeting and will look into the use of geotextile tubes in other states for the Commission's review and discussion. Larry Baldwin asked if the Office of Administrative Hearings could be added to the draft language to define litigation.

Mike Lopazanski stated the Commission and Advisory Council have spent a lot of time discussing time limits for sandbags, the provisions used for the removal of temporary erosion control structures, the covered and vegetated requirements, as well as what to do about sandbags in advance of a beach nourishment project. The Advisory Council discussed removing the square footage reference and the associated time limits. Currently permittees have a two-year time limit if you have structure less than 5,000 square feet or five years if the structure is greater than 5,000 square feet.

These provisions were tied to the old setback rules. Staff suggested setting the time limit to five years regardless of the size of the structure. The CRAC recommends changing the time limit to eight years for all structures that are not within an area with a planned beach nourishment or inlet relocation or stabilization project. There is still a provision in the rule that states if you are not in an area that has a planned project then it can only be protected once regardless of change of ownership. Debbie Smith stated the shorelines change naturally all the time and realtors are not required to disclose if sandbags have previously been installed on a property. It is unfair to a new property owner to not be permitted for sandbags if the need arises again years later. Spencer Rogers stated this is a major hidden defect in buying coastal property and was added in the real estate commission's last revision to the disclosure statement. A vast majority of people don't know about this until closing. Chairman Gorham asked about any problems that could arise out if this provision were taken out of the rule. Mike stated the incentive is for the community to undertake a project to address a chronic erosion issue. If this provision is removed, there would no longer be an incentive for the local government to address the underlying issue. Braxton Davis stated at the end of eight years the sandbags need to come out or the permit can be renewed if there is a planned project in place. If you come up with a project within eight years, then the permit can be renewed. What if there isn't an effort towards a project within eight years? Greg Lewis stated the temporary sandbag rules allow people to save their property from natural events and develop a plan. If the structure isn't moved and there is no plan for a beach project, then the sandbags become permanent. If we are going to allow them to use sandbags, which I agree with, then there must be a mechanism to force them to come up with a solution within the time frame. Renee Cahoon stated, at some point the sandbags end up on the public trust. These become a hazard on the beach. Just because they are covered at one point doesn't mean they won't be exposed by a storm. Mike Lopazanski stated when bags are no longer considered necessary the current rule requires the bags to be removed if the structure is relocated or taken down. The CRAC discussed only removing the exposed bags and not digging up the beach in these cases. Braxton asked what are the triggers for removing sandbags? One is a significant impact to the public trust beach. The other would be immediately following a renourishment project. Right after a project goes in, if you still have bags that are above grade then these bags need to come out. The other trigger would be after the eight-year time limit, if you still have not come up with some kind of project for your community then it is reasonable to say that those bags need to come out if they are above grade. Commissioner Cahoon makes a good point that just because they are buried doesn't mean they always will be. Mike Lopazanski stated the CRAC agreed that if the bags were covered and vegetated then the sandbags could remain. The CRAC suggested changes to the language that requires the removal of bags that are above grade upon the completion of a beach project. This would allow the local government to work with property owners on how the bags could be covered once the project is completed.

After discussion, the Commission agreed to set the time limit on all sandbag structures at eight years from the date of permit issuance, then require removal of any exposed sandbags and allow the property owner to reapply for a permit if necessary. The one time per property provision should be removed. Staff will prepare draft rule language for the Commission to review at the next meeting.

LEGISLATIVE STUDIES

Cape Fear Estuarine Resource Restoration "The Rocks" Update

Rebecca Ellin

Rebecca Ellin stated Session Law 2015-241, Section 14.6(h), laid out the findings of the General Assembly and the steps articulated in this section of the bill. The General Assembly found that the New Inlet River Dam was constructed by the Army Corps of Engineers in the late 19th century and is made up of two components. The first is the northern component which extends from Federal

Point to Zeke's Island. The second is the southern component that extends southwestward from Zeke's Island and separates the New Inlet from the main channel of the Cape Fear River. The southern component of the New Inlet Dam impedes the natural flow of water between the Cape Fear River and the Atlantic Ocean that occurred prior to the emplacement of the dam. The General Assembly found that it was necessary to consider removal of the southern component of the New Inlet Dam in order to reestablish the natural hydrodynamic flow between the Cape Fear River and the Atlantic Ocean. The Cape Fear Estuarine Resource Restoration section of the bill laid out several steps that would be required to consider removal of the southern component. First, DEQ was required to notify the US Army Corps of Engineers of the State's intent to study the removal of the southern component of the New Inlet Dam. Second, DEQ was to issue a Request for Information for a firm capable of conducting an analysis of the costs and benefits of removing the southern component of the Dam, including necessary permits and approvals. Third, the bill required DEQ to request approval from the National Oceanic and Atmospheric Administration (NOAA) to adjust the boundary for the Zeke's Island component of the NC National Estuarine Research Reserve by moving the western boundary of the Zeke's Island Reserve 200 feet seaward and removing the area that lies between the current and new boundary from the Reserve, and adding equivalent acreage to the northern boundary of the Reserve from adjacent acreage at the Fort Fisher State Recreational Area. Lastly, if NOAA approves the boundary adjustment, the NC Coastal Resources Commission is then required to amend the Reserve Component rule, 15A NCAC 07O .0105, as further described in the Act. The Division sent a letter to Colonel Landers, USACE, on November 30, 2015, describing the intent of the State to study the removal of the southern component of the Dam. We received a letter from Justin McCorcle, USACE, on January 28. The response letter includes a summary of the history of the New Inlet Dam and Swash Defense Dam. According to the ACOE, the southern component is a different dam structure that works in tandem with the New Inlet Dam. The letter also describes an overview of the Wilmington Harbor project. The Corps' perspective on Section 14.6(h) of this bill is also included as well as an overview of the regulatory process that would be required in order to implement this project and a list of unresolved issues that should be addressed by the State. Some of the issues include the identification of a clear purpose and need for the project, shoaling and the need for maintenance of navigation channel, financing of the project and project maintenance, consideration of alternatives, evaluation of direct and indirect environmental impacts, and establishing who will be representing the State on this project. This is a complex project as it is proposed and a lot of different state agencies would need to be involved. The Request for Information was published by DEQ on January 8 and it closed four weeks later on February 4. Two firms responded to this request. The Division sent a letter to NOAA on November 30, 2015. In this letter we requested information on the process and the specific submission requirements to request a boundary change to the NC National Estuarine Reserve system. Per the response letter, considering a boundary change is an involved process. The detailed information that is needed for us to fully evaluate the NOAA requirements including the ecological, research, education and management implications to the proposed boundary change is not currently available. A detailed study would be required to justify a request for a boundary change from NOAA. We also sent a letter to the Director of the Division of Parks and Recreation. The purpose of this letter was to make him aware of the legislation and articulate the Department's intent to work collaboratively with the Division of Parks and Recreation on a potential boundary change because of the involvement with the Fort Fisher State Recreation area. We received a response back from Parks and more information was requested on how the proposed project may affect Fort Fisher State Recreation area and the Bald Head Island State Natural area. No action has been taken on the rule change step in the legislation. It is the Department's understanding that the Reserves' rules are departmental rules and the CRC does not have the authority to amend 15A NCAC 07O. The report is due to the General Assembly on April 1 and the draft is due to the Department on March 1. We

are aware than many communities have passed resolutions against this section of the Appropriations Act and we are not aware of any resolutions in support of it. Chairman Gorham asked Commissioner Andrew to contact Senator Lee and find out who is requesting this study.

Beach Erosion Study Update (CRC 16-05)

Ken Richardson

Ken Richardson stated Session Law 2015-241 also included a section directing the Division to look at beach erosion. In September 2015, the Division was charged with studying and developing recommendations to address preventing, mitigating, and remediating the effects of beach erosion. The law requires DCM to report the results to the Environmental Review Commission, the Chairs of the Senate Appropriations Committee on Natural and Economic Resources and the House Appropriations Committee on Agriculture, Natural and Economic Resources, and the Fiscal Research Division by February 15, 2016. This report is not an erosion rate report. The Department is still reviewing the report provided by the Division. The report addresses the natural and human causes of beach erosion, historical shoreline change in North Carolina, the Commission and Division's history in reviewing beach erosion, and looks at mitigation and prevention strategies from other states as well as North Carolina. We have also included in the report a summary of past studies and comments received. We invited the public to comment on beach erosion in general. The comment period ended December 31, 2015 and we appended the comments to the report. The report will be available to the public review on February 15, 2016 and if the Commission would like, we can present the findings and recommendations at the May CRC meeting.

BEACH MANAGEMENT

Beneficial Use/Generic MOU Study Group Update

Rudi Rudolph, Justin McCorcle

Rudi Rudolph stated as part of the development of the State Port Inlet Management AEC, Carteret County proposed beneficial use standard language. It was aimed at addressing the concerns at the Morehead City harbor about dumping the sand in the ODMDS. The Corps raised issues about the beneficial use standard language. At the Chairman's request, a beneficial use working group was established to discuss the possible development of an agreement where the state and local governments could contribute funds to facilitate beneficial use. The working group met January 13 at the Ports Authority. The Appropriations Act mandated in Section 14.6(b) that the State Ports Authority shall negotiate with the Army Corps of Engineers a memorandum of agreement to allow for the non-federal funding of dredging and maintenance at the State Ports. This MOA would be used as a vehicle for any non-federal group to provide funds to the Corps for any additional dredging or beneficial use of dredged material. The Appropriations Act also created the Deep Draft Fund, but they didn't endow the fund with any money. Federal funds available are down in the President's budget. We need the State to find a dedicated funding source to dredge the harbors and put the sand back on the beach. We don't think it makes a lot of sense for the State Port Inlet AEC to wait on our beneficial use language.

PUBLIC INPUT AND COMMENT

No comments were received.

PUBLIC HEARING

15A NCAC 07H .0304 Ocean Erodeable AEC – OEA Calculation

Mike Lopazanski stated this proposed amendment alters the formula for calculating the width of the AEC. The dune recession model has not been updated since it was first developed and dune recession is now incorporated by FEMA. The factor in the calculation has been changed from 60 to

90 to correspond with the maximum setback factor in the erosion rate setback calculations. This amendment will result in a decrease in the CRC's permitting jurisdiction in the south and slightly increase the jurisdiction in the north.

Penny Hooper, Croatan Group of Sierra Club, spoke in favor of the rule amendment.

Chairman Gorham designated Mike Lopazanski as hearing officer for the public hearings scheduled outside of Commission meetings for 15A NCAC 07H .0304.

ACTION ITEMS

Review of Public Comments and Adopt Development Line Rules

15A NCAC 7H .0305, 7H .0306, 7J .1201, 7J .1301, 7J .1302, 7J .1303 (CRC 16-06)

Ken Richardson

Ken Richardson stated when a town implements a large-scale beach project they receive a static vegetation line which establishes a line from which the construction setback is measured. A lot of communities have concerns about the static line. Communities that are proactive in managing their beaches are eligible for a static line exception. The exception requires the community to come before the Commission every five years to review their beach management plan. The development line was proposed as an alternative. With the development line there is no proven commitment to beach management. It allows the community to measure from the first line of stable and natural vegetation.

The fiscal analysis has been completed, approved by DEQ and OSBM. The public comment period has ended. The comments we received in support of the development line were hopeful it would make non-conforming homes conforming. Those opposed were focused on oceanward encroachment of structures and the lack of commitment by the community to have a long-term beach plan.

Renee Cahoon made a motion to amend 15A NCAC 7H .0305, 7H .0307, 7J .1201, and adopt 15A NCAC 7J .1301, 7J .1302, and 7J .1303. Neal Andrew seconded the motion. The motion passed with eleven votes in favor (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Lewis) and one opposed (Snipes).

**Approval of Fiscal Analysis for Amendments to Beach Bulldozing GP and Emergency GP
15A NCAC 7H .1801, 7H .1802, 7H .1804, 7H .1805, 7H .2505, 7H.2704, 7H.2705 (CRC 16-07)**

Ken Richardson

Ken Richardson stated at the last meeting the Commission voted to support the amendments for beach bulldozing as well as the emergency General Permit. These amendments are consistent with the Army Corps regional general permit. These amendments allow for beach bulldozing below mean high water and landward of mean low water, and alters the time window that requires interagency coordination.

Renee Cahoon made a motion to approve the fiscal analysis for Amendments to 15A NCAC 7H .1801, 7H .1802, 7H .1804, 7H .1805, 7H .2505, 7H .2704 and 7H .2705. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

**Approval of Fiscal Analysis for Amendments to Marsh Sill GP
15A NCAC 7H .2701, 7H .2704, 7H .2705 (CRC 16-08)**

Daniel Govoni

Daniel Govoni stated the Commission approved amendments to the marsh sill General Permit at the November meeting. There has been an ongoing effort to streamline this General Permit to remove the more time-consuming conditions. The Division of Marine Fisheries is comfortable that the resource impacts associated with a marsh sill authorized under the General Permit are relatively minor and has agreed that there is no longer a need to review each potential marsh sill GP. The Division of Water Resources has revised and reissued their General Water Quality Certifications which no longer requires written concurrence for marsh sill projects that receive a CAMA General Permit. DCM does not anticipate any economic impacts as a result of these proposed amendments.

Renee Cahoon made a motion to approve the fiscal and regulatory impact analysis for the amendments to the Marsh Sill General Permit. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

**Approval of Fiscal Analysis for Amendments to Coastal Wetlands
15A NCAC 7H .0205 (CRC 16-09)**

Daniel Govoni

Daniel Govoni stated the Commission approved amendments to 7H .0205 at its October 2014 meeting to codify how regular and occasional flooding of marshes is being determined. The term occasional flooding is currently used in the rule but is not defined and this has led to some confusion. Precise definitions of "regular" and "occasional" flooding are impractical since it is impossible to monitor the precise frequency and extent of tidal inundation across the state's more than 2.5 million acres of coastal wetlands. DCM has determined, and DEQ and OSBM have concurred, that this amendment will have little to no impact on state or local governments.

Renee Cahoon made a motion to approve the fiscal and regulatory impact analysis for the amendment to 15A NCAC 7H .0205. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Town of Emerald Isle LUP Amendment Certification (CRC 16-11)

Rachel Love-Adrick

Rachel Love-Adrick stated the Town of Emerald Isle is seeking certification of amendments to their 2004 CAMA Land Use Plan. The Town amended the LUP to modify the Future Land Use Map designations on two parcels of land to reflect newly adopted zoning requests since the LUP was last amended and certified by the CRC on February 12, 2009. The Town held two duly advertised public hearings. Staff has determined that the Town has met the substantive requirements outlined in the 7B LUP Guidelines and there are no conflicts with state or federal law or the state's coastal management program. Staff recommends certification of the amendment.

John Snipes made a motion to certify the Town of Emerald Isle's Land Use Plan Amendment. Greg Lewis seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Perquimans/Hertford/Winfall LUP Certification (CRC 16-12)

Charlan Owens

Charlan Owens stated this is a Joint Land Use Plan. The Hertford and Winfall town councils unanimously adopted the LUP at separate, duly advertised public hearings on November 9, 2015. The Perquimans County Board of Commissioners unanimously adopted the LUP at their duly advertised public hearing on November 16, 2015. Since the adoptions, DCM has become aware of a change in state law that has resulted in a potential conflict with county and town water quality policies. DCM represented to the Commission that it has asked the County to review the policy in the 2015 Joint LUP Update to resolve any potential conflicts with the recent state law regarding riparian buffers. DCM recommended the Commission certify the Plan based on DCM's representations that any provision of the 2015 Joint LUP Update in conflict with the new riparian buffer law will not be enforced.

John Snipes made a motion to certify the Perquimans County/Town of Hertford/Town of Winfall Joint Land Use Plan based on DCM's assertion that only provisions in the 2015 Joint LUP Update consistent with State and federal law will be enforced. Bill White seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Bertie County LUP Certification (CRC 16-13)

Charlan Owens

Charlan Owens stated Bertie County has submitted its Land Use Plan for certification. The County LUP covers unincorporated areas of Bertie County as well as seven towns. The remaining area is covered under the Town of Windsor's certified LUP. The Bertie County Board of Commissioners unanimously adopted the LUP at their duly advertised public hearing on January 4, 2016. Since that hearing DCM has become aware that recent changes in state law have resulted in a potential conflict with the county's water quality policy. Bertie County has been asked to resolve this potential conflict with the recent state law regarding riparian buffers. Staff recommends a conditional certification based on the determination that the Plan has met the substantive requirements of the 7B LUP Guidelines, there are no conflicts evident with state or federal law, and it is consistent with the State's coastal management program. DCM explicitly notes that the conditional certification of the 2016 LUP Update reflect that the provision in the LUP relating to a 75-foot buffer will not be enforced in a manner inconsistent with State Law.

Bill White made a motion to conditionally certify the Bertie County Land Use Plan. Phil Norris seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Resolution Delegating LUP Certification to DCM (CRC 16-14)

Mike Lopazanski

Mike Lopazanski stated the CRC completed the process of amending the 7B Land Use Planning rules. One of these amendments delegated authority for the certification of Land Use Plans to the Department/Division. This amendment could not be included as the necessary amendment to the Coastal Area Management Act was not enacted by the General Assembly in their last session. Given the lack of statutory authority, the wording of the rule language was revised to reflect that the Commission would continue to certify Land Use Plans. The Commission has requested that a resolution be sent to the Department requesting that a delegation of authority from the Commission to the Department Secretary to certify Land Use Plans be included in its legislative requests during the next session.

Renee Cahoon made a motion to approve the resolution requesting the Department include a legislative request that LUP certification authority be delegated by the Commission to the DEQ Secretary. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Adoption of 15A NCAC 7L Local Planning and Management Grant Program Amendments (CRC 16-15)

Mike Lopazanski

Mike Lopazanski stated the 7L amendments were approved by the Commission at the November 2015 meeting and sent to the Rules Review Commission. During their review, the RRC attorneys suggested several technical changes that included the deletion of a rule which seemed unnecessary as well as combining two rules which deal with similar subject matter. DCM staff agreed with the RRC staff and made the technical changes. Since these changes were not part of the package of amendments approved by the CRC in November, the Division requested that the RRC extend the time for review in order that the Commission have time to approve these additional amendments. If the Commission approves these amendments, they will be resubmitted to the RRC for consideration at their February 18, 2016 meeting with a proposed effective date of March 1, 2016.

Neal Andrew made a motion to approve the additional amendments to Subchapter 7L. Larry Baldwin seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Public Comment/Adopt Sandbag Temporary Rules: 15A NCAC 7H .0308 Specific Use Standards for Ocean Hazard Areas; 15A NCAC 7H .1704 GP for Emergency Work; and 7H .1705 Specific Conditions (CRC 16-16)

Mike Lopazanski


Mike Lopazanski stated these amendments were approved by the Commission at its November 2015 meeting. A public hearing was held December 10, 2016. A total of five written comments were received and all were opposed to the amendments. The comments received opposed sandbags generally. The Town of Nags Head commented that each location should be able to choose for themselves which means and methods it chooses to protect its ocean shorelines. NC Coastal Federation and the Southern Environmental Law Center submitted several concerns with these temporary rules. Lopazanski advised that DCM is required to consult with the Corps for these permits during the moratorium period from April through November. There may be an issue with permitting sandbags on a vacant lot as this is not included in their general permit. It is possible that it will require an individual authorization from the Corps. The public comment period ended December 22, 2016.

Renee Cahoon made a motion to adopt the temporary rule amendments for 15A NCAC 7H .0308, 7H .1704, and 7H .1705. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

With no further business, the CRC adjourned.

Respectfully submitted,


Braxton Davis, Executive Secretary


Angela Willis, Recording Secretary