

NC COASTAL RESOURCES COMMISSION (CRC)

July 12-13, 2016

NOAA/NCNERR Auditorium

Beaufort, NC

Present CRC Members

Frank Gorham, Chair

Renee Cahoon, Vice-Chair

Neal Andrew, Second Vice-Chair

Larry Baldwin

Denise Gibbs

Greg Lewis

Phil Norris

Russell Rhodes

Jamin Simmons

John Snipes (absent 7/12/16)

Present CRAC Members

Spencer Rogers, Vice-Chair

Rudi Rudolph, Vice-Chair

John Brodman

Johnny Martin

Beth Midgett

Mike Moore

David Moye

Kris Noble

Bobby Outten

Todd Roessler

Dave Weaver

Lee Wynns

Present from the Office of the Attorney General

Mary Lucasse

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

Christine A. 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 also the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called.

Angela Willis called the roll. Gwen Baker, Marc Hairston, and Bill White were absent both days, John Snipes was absent July 12, 2016. No conflicts were reported. Based upon this roll call Chairman Gorham declared a quorum.

CHAIRMAN'S COMMENTS

Chairman Gorham acknowledged a letter the Commission received from Julie Dean Rosati, daughter of the late Dr. Robert Dean, thanking the Commission for their Resolution. Dr. Dean, along with Dr. Houston, provided the peer review on the NC Sea Level Rise Assessment provided

by the Science Panel. Chairman Gorham also advised the Commission that the Division had recently received a couple of third party hearing requests on which he may have a potential conflict. The Chairman will confer with CRC counsel to determine if the Vice-Chair should handle these requests. The Chairman also advised the Commission that at each meeting going forward a regional representative would be responsible for one hour of subject matter at the meeting in their respective region. Renee Cahoon will coordinate the north region, Greg Lewis will coordinate the central region, and Neal Andrew will coordinate the southern region.

Variance Procedure Overview

Mary Lucasse, CRC Counsel, stated the Legislature has given the Commission the right to vary its regulations to deal with special situations as long as the requested variance is consistent with the spirit, purpose and intent of the rules. When a request for a variance is made, the CRC serves as the judge to decide whether to grant the request. Just as judges in a courthouse are not allowed to talk to an individual litigant outside the presence of the opposing party, the members of the CRC are also prohibited from discussing a variance request with individual parties. A variance petition is a quasi-judicial matter. The CRC must base its decision on the packet of information provided with the petition. If additional information is required, it can be requested through CRC counsel. The authority to issue variances is found in the Statute and the CRC rules as are the four variance factors. The legislature has said that the petitioner has the burden to show each of the four factors before a variance may be granted. The motions made by the CRC are based on the statutory requirements. Motions should be crafted to following the statutory requirements; for example, "I move that the CRC find that petitioner has or has not shown that unnecessary hardships will result from strict application of the rules, standards or orders"; "has or has not shown that hardships result from conditions peculiar to the property"; "has or has not shown that hardship results from actions taken by the petitioner"; and, petitioner "has or has not shown that the variance request will be consistent with the spirit, purpose and intent of the Commission's rules; will secure the public safety and welfare, and will preserve substantial justice". Subchapter 15A NCAC 7J .0700 are the Commission's rules which explain the process for petitioning the Commission for a variance. The Chairman has the authority to waive the timeframe set by the rules based on good cause. The Commission does not take testimony during a variance request proceeding. This is an expedited process that allows the CRC to make a decision on stipulated facts. The parties are required to agree to the facts. If the CRC needs more information to make a decision, it may send the request back to the parties for additional stipulated facts. If the parties cannot agree on additional facts, then the request is sent for a contested case hearing process in the Office of Administrative Hearings. That statute also requires the DCM staff to provide a written recommendation to the Commission. The Commission can delegate review of the variance request to a member or a committee however, this has never been done by the CRC. The parties are allowed oral argument at the meeting in which the variance request is heard. The rules also require that the final decision be made no later than the next CRC meeting after the petition is considered. The CRC must consider what are "unnecessary hardships" when considering a variance request. Under the Williams case, the Court of Appeals has given us some guidance and the most important question to ask is whether the petitioner can make reasonable and significant use of the property if the variance request is not granted. There is no requirement that a variance request be granted to allow the owner the use they want as long as there is reasonable, significant use of the property. Financial impact alone is not enough to establish an unnecessary hardship. The CRC is required to basis its decision on the property in question and not the owner. After the CRC makes its decision, CRC counsel drafts a final order and the written final agency decision must be sent out within 30 days following the date the decision is made. If a petitioner's request for a variance is denied by the CRC, then they have 30 days to appeal after receiving the decision.

VARIANCES

**Engel (CRC VR 16-01), Oak Island, Development Seaward of Vegetation Line
Tara MacPherson, Christine Goebel, Esq., and Gary Lawrence**

Tara MacPherson gave an overview of the site. Christine Goebel, DEQ Assistant General Counsel, represented staff and stated petitioners Mark and Kellyanne Engel own an oceanfront lot on the west end of the Town of Oak Island. Petitioners are represented by Gary Lawrence who is present. The property is located within the Commission's Ocean Hazard Area of Environmental Concern. Petitioners applied for a Minor Development permit to fill in a hole in their oceanfront deck which used to have a swimming pool in it until it was undermined and removed. The Local Permit Office denied the permit application as it was inconsistent with the applicable setback rules. Ms. Goebel reviewed the stipulated facts of the variance request and stated that staff and petitioners disagree on three of the four variance criteria which must be met in order to grant the variance. Petitioner and staff agree that any hardship is not a result of actions taken by the Petitioners. However, staff suggests that petitioners could address the safety concerns relating to the hole in the deck by removing the deck structure from the public trust beach waterward of the FLSNV and retaining the dune accessway. Petitioners could also construct up to 500 square feet of elevated decking to replace the use they now propose while meeting the rules and not siting development inappropriately where it is more at risk from long-term erosion and storm events.

Gary Lawrence, counsel for petitioner, reviewed the stipulated facts in which petitioner contends supports the granting of the variance request. Mr. Lawrence stated that if the Commission denied the variance petition, petitioner would be required to leave the deck with a large hole in the center of it which is a safety and liability concern.

Neal Andrew made a motion that petitioner has shown that strict application of the applicable development rules, standards or orders issued by the Commission cause the petitioner an unnecessary hardship. Larry Baldwin seconded the motion. The motion passed with eight votes in favor (Rhodes, Norris, Baldwin, Andrew, Gorham, Lewis, Gibbs, Simmons) and one opposed (Cahoon).

Neal Andrew made a motion that petitioner has shown that hardships result from conditions peculiar to the petitioner's property. Larry Baldwin seconded the motion. The motion passed with seven votes in favor (Rhodes, Norris, Baldwin, Andrew, Gorham, Gibbs, Simmons) and two opposed (Cahoon, Lewis).

Neal Andrew made a motion that petitioner has shown that hardships do not result from actions taken by the petitioner. Larry Baldwin seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

Neal Andrew made a motion that petitioner has shown that 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 will preserve substantial justice. The variance will be conditioned upon petitioner finishing the work within sixty days of the issuance of the permit. Larry Baldwin seconded the motion. The motion passed with seven votes in favor (Rhodes, Norris, Baldwin, Andrew, Gorham, Gibbs, Simmons) and two opposed (Cahoon, Lewis).

This variance was granted with conditions.

**Davenport (CRC VR 16-02), Oak Island, Development Seaward of Vegetation Line
Tara MacPherson, Christine Goebel, Esq., and Merrie Jo Alcock, Esq.**

Tara MacPherson gave an overview of the site. Christine Goebel, DEQ Assistant General Counsel, represented staff and stated Merrie Jo Alcock is present and will represent petitioners. Petitioner owns a lot on the west end of the Town of Oak Island. The property is located within the Commission's Ocean Hazard Area of Environmental Concern. The existing 3,000 square foot home was destroyed by fire in October 2015. Petitioner filed for a CAMA Minor Permit in February 2016 in order to reconstruct a home of the same size and in the same location as the home lost in the fire. The Town of Oak Island's LPO denied petitioners permit application as it was inconsistent with the applicable setback rules since the proposed development would be almost entirely waterward of the current vegetation line. Ms. Goebel reviewed the stipulated facts for this variance request and stated staff and petitioners disagree on three of the four variance criteria which must be met in order to grant the variance request. Staff and petitioners agree that any hardships did not result from actions taken by the petitioner.

Merrie Jo Alcock, counsel for petitioner, reviewed the stipulated facts which petitioner contends supports the granting of this variance request. Petitioner is only requesting to rebuild what was there before the fire destroyed the residence. Under the current rules no residential structure of any size would be permitted. Additionally, petitioner has made a significant investment to build a dune, push sand over and behind the dune and has planted vegetation.

Renee Cahoon made a motion to support petitioner's position that strict application of the applicable development rules, standards or order issued by the Commission cause the petitioner an unnecessary hardship. Phil Norris seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

Renee Cahoon made a motion to support petitioner's position that hardships result from conditions peculiar to petitioner's property. Jamin Simmons seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

Renee Cahoon made a motion to support petitioner's position that hardships do not result from actions taken by petitioner. Russell Rhodes seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

Renee Cahoon made a motion to support petitioner's position that the variance request will be consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and preserve substantial justice. A condition should be placed on this variance request that the permit should be issued within 90 days of receiving the Commission's final order. Russell Rhodes seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

This variance request was granted with conditions.

Wade (CRC VR 16-03), Sneads Ferry, 30' Buffer

Tara MacPherson, Christine Goebel, Esq. and Sidney Wade (pro se)

Tara MacPherson gave an overview of the site. Christine Goebel, DEQ Assistant General Counsel, represented staff and stated petitioner Sidney Wade is present and will represent himself in this variance request. Petitioner owns property in Sneads Ferry which is adjacent to an unnamed creek which is part of the New River. The property is within the Coastal Shorelines AEC. The first 30 feet landward from normal high water is subject to the Commission's 30-foot buffer rule which limits impervious surfaces and development within the buffer. In September 2015, petitioner applied for a CAMA Minor development permit to construct a larger sunroom on the waterward side of his home, where a smaller porch currently exists. In October 2015, the Onslow County LPO denied petitioner's permit application as a portion of the proposed and expanded development extended into the 30-foot buffer contrary to 15A NCAC 7H .0209. Ms. Goebel reviewed the stipulated facts of this variance request and stated that staff and petitioners disagree on all four statutory criteria which must be met in order to grant the variance.

Petitioner Sidney Wade stated a shed has been removed on the property which was about the same size as the proposed addition to the sunroom. Petitioner agreed to construct an engineered stormwater system consistent with the Commission's rules to control runoff.

Renee Cahoon made a motion to support petitioner's position 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 (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

Renee Cahoon made a motion to support petitioner's position that hardships result from conditions peculiar to petitioner's property. Russell Rhodes seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

Renee Cahoon made a motion to support petitioner's position that hardships do not result from actions taken by the petitioner. Neal Andrew seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

Renee Cahoon made a motion to support petitioner's position that 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. Phil Norris seconded the motion. The variance request is conditioned on petitioner installing a stormwater management plan as agreed to in Stipulated Fact #14. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

This variance request was granted with conditions.

Picha (CRC VR 16-04), Ocean Isle Beach, Sandbags

Sean Farrell, Christine Goebel, Esq., and I. Clark Wright, Esq.

Sean Farrell gave an overview of the site. Christine Goebel, DEQ Assistant General Counsel, represented staff and stated Clark Wright is present and will represent petitioners. Petitioners own the westernmost lot on Ocean Isle Beach located at 149 Ocean Isle West Boulevard, adjacent to

Tubbs Inlet. In 2007, petitioner sought and was granted three CAMA General Permits authorizing placement of sandbags along the oceanfront and inlet-front shorelines of the property. These sandbags were authorized to remain for up to two years. In 2009, petitioner got another CAMA General permit authorizing additional sandbags for five years on the inlet and rear side of the property. All the permits authorized sandbag structures with standard dimensions. In April 2016, petitioner applied for a CAMA Major permit to add additional sandbags to the existing but expired sandbags in order to increase the size of the structures beyond the Commission's authorized size limits. DCM denied petitioner's Major permit application as the proposed sandbag structure would exceed the maximum dimensions for sandbag structures found in 7H .0308(a)(2)(K), the bags had already exceeded the sandbag time limits found in 7H .0308(a)(2)(F) and (G), and the request is inconsistent with 7H .0308(a)(1)(A) which states that erosion response activities shall be consistent with the general policy statements of 7M .0200. Petitioner seeks a variance from these regulations in order to increase the size of the existing, expired sandbag structure to a maximum of 45' base width, 53' overall width, and an elevation of 12' NGVD and also requests that the sandbags remain for eight additional years until 2024. Ms. Goebel reviewed the stipulated facts of the variance request and stated that staff agrees with petitioners that the time limit is an unnecessary hardship, however staff disagrees that strict application of the applicable development standards addressing the size limitation for sandbags will cause petitioner an unnecessary hardship. The applicant has room landward of the existing sandbags to place additional bags if necessary to protect the property from shoreline erosion due to wave energy. Staff's position is that adding additional bags oceanward of the existing sandbags to prevent undercutting of the sandbag structure by the migration of Tubbs Inlet channel is not a proper inlet management strategy. Staff disagrees with petitioner on the second criteria as the erosion present at this site is typical of inlets and the adjacent oceanfront shorelines. While staff agrees that petitioner has done nothing to change the rate that the inlet channel has moved toward petitioner's property, staff are not aware of any significant steps the petitioner or the Town has taken to address the erosion problem on site since the first sandbags were installed eight years ago. Only recently has the Town begun the permit application process for an island-wide plan and staff agrees granting a variance for eight additional years would protect public safety and welfare, would be within the spirit, purpose and intent of the rules and would preserve substantial justice. However, Staff disagrees with petitioner that the size proposed would be within the spirit, purpose and intent of the rules, would protect the public safety and welfare or preserve substantial justice. Staff is very concerned that the proposed larger sandbag alignment will be undercut and slump into the channel, creating a very tall wall of sandbags. The proposal appears to create a hardened structure wall, which is not the intent of the Commission's sandbag rules. Staff is further concerned that the larger sandbag structure will have impacts on navigation if additional sandbags are allowed to slump into the channel. Finally, staff recommends the Commission deny this variance on the size issue as it is not within the spirit, purpose and intent of 7M .0202(f).

Clark Wright, counsel for petitioner, reviewed the stipulated facts which petitioner contends supports the granting of the variance request. Mr. Wright stated the petitioner's experts have expressed their opinion that the existing revetment will soon become ineffective to protect the home from the advancing inlet channel. The petitioner's experts' opinion is that an enlarged sandbag revetment is the only option to pursue for protection of the shoreline.

Renee Cahoon moved that the Commission find Petitioner had failed to show that application of applicable development rules, standards, or orders issued by the Commission will cause unnecessary hardships. Greg Lewis seconded the motion. The motion failed with two votes in favor (Cahoon, Lewis) and seven opposed (Rhodes, Norris, Baldwin, Andrew, Gorham, Gibbs, Simmons).

Neal Andrew made a motion that petitioner has shown that strict application of the applicable development rules, standards, or orders issued by the Commission will cause the petitioner an unnecessary hardship. Larry Baldwin seconded the motion. The motion passed with seven votes in favor (Rhodes, Norris, Baldwin, Andrew, Gorham, Gibbs, Simmons) and two opposed (Cahoon, Lewis).

Neal Andrew made a motion that petitioner has shown that hardships result from conditions peculiar to petitioner's property. Phil Norris seconded the motion. The motion passed with eight votes in favor (Rhodes, Norris, Baldwin, Andrew, Gorham, Lewis, Gibbs, Simmons) and one opposed (Cahoon).

Neal Andrew made a motion that petitioner has shown that hardships do not result from actions taken by the petitioner. Russell Rhodes seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

Neal Andrew made a motion that petitioner has shown that 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 will preserve substantial justice. As long as the variance includes the condition that Petitioner will be responsible for the removal of the sandbags and any associated materials if failure occurs, bags fall out of alignment, or should they fall within the navigable waters and that Petitioner will make efforts to move toward a long-term solution to address the erosion on this site. Larry Baldwin seconded the motion. This motion passed with eight votes in favor (Rhodes, Norris, Baldwin, Andrew, Gorham, Lewis, Gibbs, Simmons) and one opposed (Cahoon).

This variance request was approved with conditions.

COASTAL RESERVE

15A NCAC 70 NC Coastal Reserve – Legislative Periodic Review of Existing Rules (CRC 16-27)

Rebecca Ellin

Rebecca Ellin reminded the Commission that the Coastal Reserve rules are Departmental rules and that CAMA instructs the Department to work with Coastal Resources Commission in its administration of the Reserve program. The Division is requesting the Commission's support of staff's initial draft agency determinations for 15A NCAC 070 to inform our recommendations to the Department. In 2013, the General Assembly added a section to the APA requiring that agencies adopt a ten-year periodic review of their rules. If this review is not undertaken, the rules will expire. The Coastal Reserve rules are scheduled to be reviewed by the Rules Review Commission in June 2017. Staff classified each rule and then sought input from the Reserve's ten local advisory committees on the initial draft agency determinations. These initial draft determinations will be submitted to the Department and then published for a 60-day comment period. In May 2017, Staff will compile a report for submittal to the Rules Review Commission that responds to any comments received. The RRC can agree or disagree with the agency classification of the rules. A final assessment is then sent to the Joint Legislative Administrative Procedure Oversight Committee for review. The final determination on an agency's rules becomes effective when the Oversight Committee reviews the report or on the 61st day after having received the report from the RRC. Rules that are classified as necessary with substantive public interest must be re-adopted by the Department as if they are new rules. If rules are not re-adopted, they will be removed from the Administrative Code. Rules designated as necessary without substantive public interest will remain in the Administrative Code. Rules designated as unnecessary will expire. Any proposed

amendments to rule language received during the comment period will be considered during the rule re-adoption process.

Neal Andrew made a motion to approve the initial agency classifications for the Legislative Periodic Review of Existing Rules Report. Phil Norris seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

ACTION ITEMS

Approve Fiscal Analysis 15A NCAC 7H .0306 Grandfathering Provisions for Multi-Family and Commercial Oceanfront Structures (CRC 16-28)

Tancred Miller

Tancred Miller stated the draft rule language was approved by the Commission at the February 2016 meeting to grandfather certain multi-family, residential and commercial structures along the oceanfront. For the fiscal analysis staff reviewed the available data to determine which structures would be impacted by the proposed amendment. To make these determinations, staff was required to make several assumptions about the potential impacts of this amendment. Staff eventually concluded that since this proposed amendment will allow voluntary action, but does not require an affected party to take any action, the proposed amendment will not have any direct fiscal impact. The proposed amendment will allow high-value oceanfront structures to be rebuilt, an action that is currently prohibited. This may facilitate more real estate transactions. As a result, staff concludes that the amendment may potentially have an indirect and significant economic impact. Staff determined that indirect economic impacts may be felt by federal, state and local governments, private property owners, and private sector businesses such as the real estate, finance, and insurance industries. The Department has certified Staff's fiscal analysis and the OSBM has reviewed and approved the fiscal analysis. If the CRC approves the fiscal analysis, a public hearing on the rule amendment and fiscal analysis will be held at the CRC's September 2016 meeting.

Greg Lewis made a motion to approve the fiscal analysis for 15A NCAC 7H .0306 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

Adopt 15A NCAC 7H .1801, .1802, .1804, .1805 Beach Bulldozing General Permit and 15A NCAC 7H .2505 Emergency General Permit

Ken Richardson

Ken Richardson stated the US Army Corps of Engineers' General Permit allows emergency construction of a primary dune and any associated excavation below mean high water. In order to minimize impacts to the beach and adjacent properties, beach bulldozing under the CAMA General Permit have been limited to above mean high water. The proposed amendments will align the CAMA General Permit and Corps' General Permit and make the dates consistent for agency coordination. No public comments have been received on these proposed amendments.

Greg Lewis made a motion to adopt amendments to 15A NCAC 7H .1801, .1802, .1804, .1805 Beach Bulldozing General Permit and 15A NCAC 7H .2505 Emergency General Permit. Renee Cahoon seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

Public Comments and Adoption of 15A NCAC 7H .2701, .2704, .2705 Marsh Sill General Permit (CRC 16-31) was removed from the agenda. No action taken.

Adopt 15A NCAC 7H .0205 Coastal Wetlands

Daniel Govoni

Daniel Govoni stated this rule describes coastal wetlands, significance, management objectives, and establishes use standards. The proposed amendment will codify how regular and occasional flooding of marsh is determined and ensure consistent wetland delineations in the field. No comments have been received on the proposed amendments.

Phil Norris made a motion to adopt 15A NCAC 7H .0205. Renee Cahoon seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

Greg Lewis made a motion that the CRC go into closed session pursuant to N.C.G.S. § 143-318.11(a)(3) to consult with its attorney regarding filing an amicus brief in *Nies v. Emerald Isle* (409PA15). Denise Gibbs seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Gibbs, Simmons).

During the closed session, Attorney Lucasse briefed the Commission on the issues raised by *Nies v. Emerald Isle* and the procedure for filing an amicus brief in the North Carolina Supreme Court. Following discussion, the Commission unanimously agreed to return to open session and recessed until the following day, July 13, 2016.

MINUTES

Renee Cahoon made a motion to approve the minutes of the May 2016 Coastal Resources Commission. Neal Andrew seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Gibbs, Lewis, Norris, Rhodes, Simmons, Snipes).

EXECUTIVE SECRETARY'S REPORT

Braxton Davis, DCM Director, gave the following report:

I'd like to start with a status report on the work done to date developing a six-month plan and process for a review of the operations, programs, procedures, and management frameworks of both DCM and DMF that I spoke about at our May meeting. In an effort to identify opportunities for improvements and efficiencies across both divisions, I've been meeting with staff of both agencies according to program areas including Budget, Facilities, IT, Compliance & Enforcement, Habitat, Marine Aquaculture and Outreach & Education. Each subgroup will develop clear and objective recommendations regarding overlap in agency missions and goals, authorities, possible alignment areas, new or expanded collaborations, cost/benefits of realigning or combining, impacts on customer service and possible necessary statutory, regulatory or administrative changes. I expect to receive draft information from the subgroups by the end of August and will be making my recommendations to the Department by the end of October or early November. I'd like to reiterate my sincere appreciation for the support I've received from members of both commissions, staff at both agencies, and the various interest groups that I've begun to meet with over the past two months.

Legislative Update

The NC General Assembly short session ended on July 1st. While there were several bills being considered that would have impacted DCM; neither the Regulatory Reform Act nor Amend Environmental Laws was passed. Although the budget passed by the legislature has not altered the Division's budget, the modification of the Appropriations Act of 2015 did contain a few provisions relevant to DCM. Section 14.19 SHALLOW DRAFT FUND SPONSORED COASTAL MANAGEMENT POSITION G.S. 143-215.73F(b) is amended by adding a new subdivision to read: "(3) For the compensation of a beach and inlet management project manager with the Division of Coastal Management for the purpose of overseeing all activities related to beach and inlet management in the State."

BEACH NOURISHMENT STUDIES SECTION 14.22.(a) The Division of Coastal Management and the Department of Environmental Quality shall study and provide an executive summary of readily available data and existing studies on the physical and economic, storm mitigation, and public safety benefits of out-of-state coastal storm damage reduction and beach nourishment projects. Specific items benefitted by coastal storm damage reduction shall include, at a minimum, public infrastructure, public property, private property, small businesses, and tourism.

These two Sections are part of the larger Beach Nourishment Studies provision that directs the county tax offices in the coastal area to identify all privately and publicly owned property island-wide in the county and determine whether the mailing/ownership address on the tax record of such property is (i) in the county where such property is located, (ii) in a noncoastal county in North Carolina, or (iii) outside the State of North Carolina. Each County Tax Office shall send an electronic list of the property addresses and matched mailing/ownership addresses suitable for electronic sorting. It also directs the Department of Commerce to provide an executive summary of readily available economic data related to the 20 coastal counties for the purpose of quantifying the contribution of the coastal economy to the economy of the State as a whole, considering, at a minimum, the benefits of travel and tourism, small businesses, job creation and opportunity, and tax revenues, including property, sales, and income taxes. All these studies are due to the Department of Environmental Quality and the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources by November 1, 2016 and are to be made appendices to the updated Beach and Inlet Management Plan. Departmental procedures will require DCM to complete its portion of the studies by October 1, 2016.

Regulatory

Permit activity is slightly higher than last year, and we're seeing an uptick in site visits, complaints, and compliance/enforcement actions. Notable permit actions since your last meeting include the issuance of several emergency permits. An emergency permit was issued to the NCDOT Ferry Division authorizing the excavation of a heavily shoaled area within the Hatteras Inlet complex that is necessary for the safe usage of the inlet by commercial and recreational boat traffic. Two separate emergency permits were issued to the N.C. State Port Authority. The first emergency permit was for excavation of a shoaled portion of the turning basin at the State Port facility in Wilmington. The second emergency permit authorized excavation of a shoaled area of the Wilmington Harbor Shipping Channel approximately 17 miles downriver from the Wilmington Port facility. Both of these emergency permits were necessary to allow for the potential usage of the Wilmington port facility by larger cargo ships resulting from the recent expansion of the Panama Canal. The Division also issued a permit to the NCDOT for the replacement of the Topsail Island Bridge at Surf City. Construction on this bridge is expected to begin within the next few months.

Federal Consistency

The federal Coastal Zone Management Act requires state Coastal Programs to formally incorporate changes made to state laws and rules in order for them to be used in state reviews of federal permits and activities (federal consistency process). In 2010, the Commission added “wind energy facilities” to the other types of offshore energy activities that are regulated under your administrative rules, changes are included in 7H.0106, 7H.0208, 7H.0309, and 7M .0400. When approved by the National Oceanic and Atmospheric Administration, these rules will be incorporated into our Program and used in future Federal Consistency determinations. This “Routine Program Change” requires a public notice and located today in the back is the public notice that explains how to view and comment on this procedure. Comments should be sent to NOAA’s Office of Coastal Management by August 12, 2016. The USACE has notified us that they plan on reissuing their Nationwide Permits and we should be expecting a Federal Consistency request at the beginning of 2017. This process is conducted every 5 years by the USACE and this year there is a proposal to create a NWP for Living Shorelines. Staff will soon be meeting with USACE regarding this issue and to ensure consistency with these federal permits. The USACE has prepared the Morehead City Harbor, Final Integrated Dredged Material Management Plan (DMMP), and has sent this to us for Federal Consistency Determination. The USACE proposes to implement the final 20-year DMMP, for maintenance dredging of existing Federal navigation channels in Morehead City Harbor. The Federal Consistency review process will conclude in August. The public comment period is open and will close July 16.

Coastal Reserves

The Reserve is offering a number of summer programs including field trips to the Rachel Carson, Masonboro Island, and Bird Island Reserves and summer camps for children. One summer camp is underway this week in the classroom just down the hall. This program is delivered by Reserve staff in partnership with the N.C. Maritime Museum. Feel free to take a peek in the classroom to learn more about this aspect of the Division’s activities. More details about the Reserve’s summer programs are located on the Reserve’s event calendar.

Policy & Planning

We are pleased to announce that in response to our solicitation for Local Planning & Management Grant Program projects, the Division has awarded five local governments \$15,000 each in federal grant funds. Chowan County/Town of Edenton, Ocean Isle Beach, Shallotte and Wrightsville Beach will receive funding to update their land use plans. Morehead City will develop a flood mitigation plan to enhance its CRS program. The Division received 10 applications from local governments requesting \$150,000. The intent of the grant program is 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.

In February 2014, DCM and DMF published a Living Shorelines Strategy to identify short and long-term actions to advance the use of living shorelines in NC. Staff recently drafted an Accomplishments Report to supplement the original Strategy - it includes information about progress made on actions identified in the Strategy from 2014 - 2015. Accomplishments include:

- Streamlining the riprap / marsh sill General Permit;
- Improving communications strategies, outreach initiatives, and resources;
- Training of 365 professionals through CTP living shoreline workshops;
- Installing educational signage and developing templates for future use;
- Enhancing our estuarine shoreline mapping and inventory efforts; and

- Implementing research projects designed to advance understanding of the success of different estuarine shoreline stabilization techniques.

The Accomplishments report was previewed at the CRAC meeting yesterday and will be posted on the DCM website in the near future.

Staffing News

Holley Snider, a field representative working out of the Wilmington Regional Office, has recently taken a new position with the Division of Energy, Mineral and Land Resources. Emily Woodward, the Reserve's Communications Specialist, left the Division in late June to take a job as the Public Relations Coordinator with UGA Marine Extension and Georgia Sea Grant in Savannah, GA. Elise Gilchrist has been hired to fill this vacant position and she will begin work with the Division in mid-August. We wish Emily and Holley the best of luck in their future endeavors. Also, I have some sad news to report. Former DCM Director Roger Schechter passed away on June 5, 2016. Roger, who was the longest serving DCM Director, occupied this position from 1990 and 1998, after which he went to work for NOAA. He later became an environmental consultant, working with staff on numerous projects in coastal North Carolina. The Division would like to offer our condolences to Roger's family and friends.

Finally, I would like to acknowledge Ray Sturza's service to the CRAC and the North Carolina Coastal Program. Ray has served on the Council since 1984 and has announced his resignation. He has represented Dare County and has been an active advocate for local government involvement in coastal issues. The Division appreciates his service and dedication over the past 32 years.

CRAC REPORT

Spencer Rogers stated the CRAC continued its discussion of sandbags. In the previous meeting, the CRAC made a recommendation for the CRC to consider changing the time limit to eight years. After the CRAC made that recommendation, the CRC moved in the direction of removing the one time per structure provision. During our discussion, the CRAC's general feeling was that if the one time per structure provision is removed then it would allow replacement every eight years which would essentially remove all the time limits for as long as a structure remains threatened. The CRAC has concerns that this will remove the incentive for beach nourishment, terminal groins, or other mitigation options at the local level as an alternative to sandbags. These incentives should be maintained. One way to do that is to retain the one time per structure provision. The CRAC also looked at a brief presentation on the erosion impacts of sea level rise on the coastal inlets and were given an update on the marsh sill regulation process.

CRC SCIENCE PANEL

CRC Science Panel – Inlet Hazard Areas Scope of Work (CRC 16-29)

Ken Richardson

Ken Richardson stated in 2012, the NC General Assembly directed the Commission to study the feasibility of creating a new Area of Environmental Concern for lands adjacent to the mouth of the Cape Fear River. During the course of this study, the Commission found that while the Cape Fear River inlet did present a unique set of challenges, other inlets may have similar issues. The Commission decided to undertake a comprehensive review of inlet-related issues with the expectation of developing additional management tools that will allow the Commission to more proactively address the issues confronting local governments in these dynamic areas. The Commission reviewed shoreline management strategies, inlet dynamics, erosion rates and setback factors, as well as the CRC's development standards adjacent to inlets. The Commission sought input on inlet management from a wide array of stakeholders including sand managers, engineers,

dredging industry representatives, the Corps of Engineers, and those with an interest in the impacts associated with inlet management. Stakeholders provided the Commission with an overview of their concerns and ideas including in-water issues such as dredging, erosion control alternatives, and development standards on adjacent lands. The Commission utilized the information gathered from the stakeholders and from public comments to develop a list of priorities. The Science Panel was asked to develop a methodology for calculating shoreline change rates at inlets. However, during this period of time, the focus for the Panel was on updating the 2015 sea level rise assessment report and the Commission did not issue a formal scope of work requesting the Panel develop a methodology for calculating shoreline change rates at inlets. With the sea level rise assessment update completed, staff is asking the Commission to consider approving a scope of work for the Science Panel to finalize their inlet shoreline change rate methodology. The Science Panel has considered inlet shoreline change rates throughout their inlet studies for the Commission. The Panel most recently utilized a linear regression method that incorporates multiple shorelines, versus the end-point methodology currently used to calculate rates on the oceanfront which only uses two shorelines (early and current). To date, inlet shoreline change rates have not been used for the purpose of determining construction setbacks at inlets. The Science Panel should also be directed to re-evaluate points along the oceanfront shoreline where inlet processes no longer influence shoreline position. When the Science Panel first started working on updating Inlet Hazard Area boundaries in 2005, the Panel evaluated changes in shoreline position over time to determine the location along the shoreline where inlet-related processes no longer have a dominant influence on the shoreline's position. However, data collected after 2005 have not been included in this analysis, thus establishing a need to utilize newer data sets. Upon completion of this project, the results would be presented to the CRC. The expectation is that the inlet shoreline change rate calculation methodology and study results will be presented at a late spring or early summer Commission meeting in 2017. At that time, alternatives for updating and improving inlet management strategies could also be pursued by the Commission. As recommended in the 2014 Inlet Management Study, staff proposes to work with the Science Panel to utilize newer data and the Panel's methodology to re-analyze inlet shoreline change rates, and to re-evaluate the transition point along the oceanfront shoreline where inlet related processes no longer have a dominant effect on the shoreline.

Jamin Simmons made a motion to approve a Scope of Work relating to an Inlet Erosion Rate Calculation Methodology and send it to the Science Panel. Renee Cahoon seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Snipes, Gibbs, Simmons).

Groundwater Resources and Issues in Coastal NC: Challenges and Solutions

Dr. Richard K. Spruill, East Carolina University

Dr. Richard Spruill stated aquifers are rock or sedimentary layers that have the ability to transmit usable quantities of waters. Most of the time the materials in the coastal plain are composed of sand grains of different sizes and occasionally the coastal area materials are made of limestone that can have larger cavities. For the longest period of time, drinking water in the coastal plain has come from the shallow part of the groundwater system. We have developed an ability to develop deeper and deeper wells. These deeper wells go through the clay layers to deeper aquifers. The beauty of these deeper aquifers is that water is pressurized. The water quality is better and the water rises closer to the surface so it costs less money to bring it to the surface. In the coastal plain we have aquifers stacked one on top of the other. East of I-95 there is an eastward dipping and wedging of sand, silt and clay and occasional limestone. This area is composed of a series of aquifers. In 1961, we drilled a well at Cape Hatteras and it bottomed out at 11,000 feet and has the same kinds of rocks that you find in Raleigh and into the mountains. We have named the aquifers and the

confining clay layers different names depending on where you can see them. In Onslow County, the city of Jacksonville and County like to use the deeper cretaceous aquifers. The Castle Hayne aquifer system is utilized by Camp Lejeune. Onslow County has started developing wells in the Castle Hayne aquifer and the City of Jacksonville has as well. We are using a lot of different aquifers. As the population expands, we are using all of the small aquifers in a single location. The Castle Hayne has a thin aquifer above it called the Pungo River aquifer. The Pungo River aquifer is important because it has phosphorous in it. Phosphorous is one of the key ingredients in fertilizer. Years ago at the location of the PCS Phosphate mine, prior to any attempt to mine this area, a bunch of wells were drilled into the Castle Hayne aquifer. We discovered in a well at Belhaven a phosphate deposit that could be a great source of fertilizer. There is a cone of depression from dewatering the PCS Phosphate mine and it shows that the water level that was above sea level is now 157 feet below sea level and all the groundwater flows into this area from all directions because of the removal of up to 75 million gallons of water per day. This drew a lot of attention, especially from environmental groups, who were concerned that this could have an adverse impact on our groundwater system. While our attention was on the PCS mine and the impacts associated with it, Greenville, Kinston and Jacksonville were drilling more than 100 wells into the cretaceous aquifer because the water is exceptional. When we are taking out millions of gallons of water per day it creates a cone of depression for the cretaceous aquifer. No one was focused on this impact to the groundwater system. Starting in the 1990s we started to realize that if we continue to take water out of the groundwater system from the cretaceous aquifer without regulation then we would soon run out of water. We were able to convince a lot of people that we needed to regulate the cretaceous aquifer system because the water levels were declining. In Morehead City, if you look at the Castle Hayne aquifer and find a well that is drilled into it then you will see that the water levels from 1976 to 1996 then you will see the water level falls, then rises, then falls again. This is due to the tourists coming to the area then leaving then coming back. There are tremendous changes in demand for water in our coastal environment. If you were to go to Craven County or Onslow County and look at the Black Creek aquifer, a cretaceous aquifer, the water level from 1965 to 1995 declined at a rate of six feet per year. The State came in and said in addition to regulating the capacity use area we are going to regulate this part of the groundwater system. The Central Coastal Plains Capacity Use Area Act was passed. In the coastal counties the amount of groundwater that can be withdrawn from the cretaceous aquifer system is limited. In Greenville, we were taking about eight million gallons of water per day from the groundwater system. The rules said that the withdrawal rate of eight million gallons is not sustainable so the State will let Greenville withdraw eight million gallons per day for six years, but then you have to cut back 25 percent and then another 25 percent reduction in another six years. The State had an obligation written in the rule that said that they would evaluate during each of these phases to see if the water levels were recovering. When we look at some of the water levels through time, by the early 2000s the water levels had stopped declining and had started recovering. They started recovering because we started looking for alternative sources of water. Water levels have started to recover and there may not be a need for the additional 25 percent reduction. The biggest problem we would have from stopping our complete reliance on the cretaceous aquifers is we could experience the potential issue of overdevelopment of the Castle Hayne aquifer system in response. The biggest issue associated with this is salt water intrusion. On Bogue Banks, there are multiple wells attached to the Castle Hayne aquifer and it is their dominant source of water. More and more wells in our coastal areas run the risk of salt water intrusion. Reverse osmosis systems are used to eliminate the salt and discharge the byproduct into the estuaries and sounds. One of the things that we are doing is something called aquifer storage and recovery. When we find sources of water that we don't need seasonally and can produce water in the winter months then we could take that water and inject it underground and push the native water

out of the way and store the water underground. When the demand goes up then we can pump it back out.

NC Ports Authority

Paul Cozza, Chief Executive Officer NC Ports Authority

Paul Cozza stated the North Carolina Ports does not receive annual funding from the General Assembly. We are an independent organization with revenues coming from both Wilmington and Morehead City. The Authority uses a profit and loss statement just as private companies do. Last year we had the best earnings in the Authority's history and we are on track to be ahead again this year. On the container side of the business we had an eighteen percent increase in our container volume. Container business is only in Wilmington but we have general cargo in both locations. We are smaller in size and volume than ports to the north and south, but on a percentage basis we are the fastest growing container port on the east coast. We are competing with Virginia, South Carolina, and Georgia. We go around the state and talk with our customers about getting more service options. We want to increase our presence to facilitate growth for the state. We were recognized this past year as one of the top five ports in the United States in Expansion Solutions magazine which identifies economic development organizations which have shown exceptional progress and potential in the area of recruiting, retaining, and growing business. We work very closely with the Department of Transportation as well as Commerce as part of our economic development because we can help each other increase business in the state. We track container business from where they come from to where they go. Forty-three percent of Charleston's container business starts or stops in North Carolina. This means that a lot of our companies in North Carolina are using ports around us. We are looking at public-private partnerships. The turning basin project is something that is very important. The new Panama Canal is open and allows larger container ships. The international transportation community needs larger vessels and the turning basin in Wilmington will be able to accommodate them. This will allow us to better serve our cargo community. We were able to secure funding from the General Assembly for infrastructure investments at the ports. Part of those funds went into the turning basin project. We are replacing berth 8 to handle post Panamax container vessels and purchasing new post-Panamax container cranes. There is a study underway with the US Army Corps of Engineers to complete navigational improvements to the Cape Fear River channel, including deepening the Cape Fear River basin. Intermodal rail service is important as well. One part is getting the ships to the port then getting the cargo off, but it must get out of the terminal. A project that the state is looking at with CSX is a Central Carolina Connector. This is an intermodal hub in eastern North Carolina which will serve as the major transportation hub in the southeast. When we say intermodal that is moving material from truck to rail or rail to truck. This would be great for the state. We will have a much more efficient transportation network. This will encourage businesses to move closer to this hub and will create jobs. This will also give the NC Ports a direct rail line to Charlotte. There is already rail at both port facilities. Charlotte is a growth center which will enable more direct international options. Our transportation network impacts every region in North Carolina. An efficient and modern transportation system is and will be the key for future economic development. We are doing well but can get better. Annually 14 billion dollars of economic contribution comes to the state of North Carolina based on the ports. \$707 million of tax revenues are gained through the ports for the statewide economy. Over 76,000 jobs are provided directly or indirectly by the ports statewide. We spend a huge amount of time looking at how we move cargo from the port. We track the time it takes a trucker that gets to our facility to the time he leaves. We look at how quickly and efficiently we move cargo around. Congestion is an issue in our entire transportation network. We have an efficient system that is well maintained.

PUBLIC INPUT AND COMMENT

No public comments were received.

CRC RULE DEVELOPMENT

Proposed Amendments to Sandbag Rules (CRC 16-30)

Mike Lopazanski

Mike Lopazanski reviewed the CRC's work on the sandbag rules and stated at the last meeting the CRC approved the draft amendments for public hearing, but also asked staff to come back with revisions to remove the provision allowing sandbags "once per property."

At the CRC's direction, Staff made the requested revisions to the draft amendments to the sandbag rules and some additional revisions required for consistency. The legislature previously directed the CRC to make amendments to the sandbag rules that incorporated several provisions. These provisions were to allow sandbags to be placed even if there isn't an imminently threatened structure on the property; to allow contiguous sandbag structures to extend from one property boundary to the other; to have the termination dates for all sandbag permits on the property to expire on the latest date of the last permit issued; and to allow the replacement, repair or modification of sandbags that were legally placed under the current or expired permit if it is being litigated by the owners of the property in court. All of these provisions were included in the current draft and clarification was provided on some of these amendments. For lots with no imminently threatened structures, language was added to require that the bags be placed no further oceanward than the landward most sandbag structure. For allowing contiguous sandbag structures from one property boundary to the other, language was deleted prohibiting sandbag structures extending no further than 20 feet past the structure. Finally, the CRC recommended adding additional language about litigation that specified in state, federal or administrative court. In addition, the CRC and CRAC have also been discussing the time limits, removal criteria, the requirement that sandbags be covered and vegetated, sandbags and beach nourishment projects, and the once per property provision. Currently, unless you are in an area that is pursuing a mitigative strategy then the structure can only be protected once by sandbags. The CRAC requested that the distinction be removed on the size of the structure as far as time limits are concerned and set a time limit for all structures to eight years. Amendments have been made to remove the vegetated requirement for sandbag structures to remain in place beyond their permitted time when covered by sand. Language was added that only require sandbags that are exposed above grade be removed at the expiration of the permit. Modification was made to the "no longer necessary" provisions that require the removal of sandbags that are exposed above grade upon completion of a beach nourishment or inlet relocation or stabilization project. The amendments delete the provision for properties located in communities with a planned beach nourishment or inlet relocation or stabilization project and clarifies that structures determined to be imminently threatened upon the expiration date of the permitted temporary erosion control structures may be permitted to remain in place for an additional eight years. The size limits were retained as the Commission determined at the last meeting that larger bags and geotextile tubes should be handled by the variance process. The current amendments also include deletion of the "onetime per structure limitation." It was noted that these amendments were discussed at the CRAC meeting and the CRAC recommended that the CRC not remove the one time per structure provision.

Following discussion of the draft language,

Frank Gorham made a motion to approve the removal the one time per structure provision from the sandbag amendments. Jamin Simmons seconded the motion. The motion failed with four votes in favor (Rhodes, Gorham, Gibbs, Simmons) and six opposed (Norris, Baldwin, Andrew, Cahoon, Lewis, Snipes).

Larry Baldwin made a motion to approve amendments to the sandbag rules that incorporate the one time per structure provision, reinstate the definition of “actively pursuing” and include other small edits proposed by staff. Renee Cahoon seconded the motion. The motion passed with seven votes in favor (Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Snipes) and two opposed (Rhodes, Gibbs) (Simmons abstained).

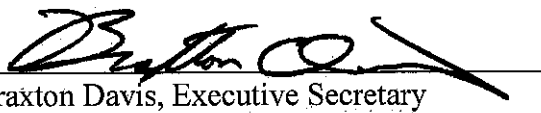
OLD/NEW BUSINESS

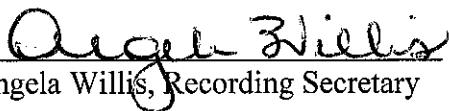
Chairman Gorham proposed four meeting dates for the Commission in 2017. One additional meeting date in July will be reserved for a conference call to address any variance requests received. The Commission agreed upon February 7-8, April 26-27, September 27-28, and November 7-8. July 11 will be held as a potential conference call meeting to hear variances. Chairman Gorham also reminded Commissioners to contact Angela Willis if they are unable to attend a meeting to ensure there is a quorum.

John Snipes made a motion to approve the 2017 meeting scheduled. Renee Cahoon seconded the motion. The motion passed unanimously (Rhodes, Norris, Baldwin, Andrew, Cahoon, Gorham, Lewis, Snipes, Gibbs, Simmons).

With no further business, the CRC adjourned.

Respectfully submitted,


Braxton Davis, Executive Secretary


Angela Willis, Recording Secretary