

**NC COASTAL RESOURCES COMMISSION (CRC)**

**September 18-19, 2019**

**New Hanover County Government Center  
Wilmington, NC**

**Present CRC Members**

Renee Cahoon, Chair

Larry Baldwin, Vice-Chair

Robin Smith, Second Vice-Chair

Neal Andrew

Craig Bromby

Trace Cooper

Bob Emory

Robert High

Doug Medlin

Phil Norris

Angie Wills

**Present CRAC Members**

Rudi Rudolph, Chair

Spencer Rogers, Vice-Chair

Candy Bohmert

Jett Ferebee

David Kellam

Seth Laughlin

Mike Moore

Kathleen Riely

Todd Roessler

Debbie Smith

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

Mary L. Lucasse

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

Christine A. Goebel

**CALL TO ORDER/ROLL CALL**

Renee Cahoon called the meeting to order at 1:00 p.m. on September 18, 2019, reminding the Commissioners of the need to state any conflicts due to Executive Order Number 34 and the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of a conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called. Commissioners Alexander Tunnell and Lauren Salter were absent. Neal Andrew and Angie Wills read their evaluation of statement of economic interest from the State Ethics Commission, indicating a potential for conflict, but no actual conflict. Based upon this roll call Chair Cahoon declared a quorum.

## **CHAIR'S COMMENTS**

Chair Cahoon welcomed the newly appointed commissioners and DEQ Assistant Secretary Sheila Holman.

## **MINUTES**

**Larry Baldwin made a motion to approve the minutes of the July 17, 2019 Coastal Resources Commission meeting. Doug Medlin seconded the motion. The motion passed unanimously (Cahoon, Andrew, Baldwin, Bromby, Cooper, Emory, High, Medlin, Norris, Smith, Wills).**

## **EXECUTIVE SECRETARY'S REPORT**

DCM Director Braxton Davis gave the following report:

A special welcome to our new commissioners, Wills and Tunnel, and a welcome back to Commissioner Andrew. We look forward to working with you and please let me know if you'd like to get together to review any or all parts of our coastal program as you continue to get up to speed on things.

### **Hurricane Dorian**

Much of the coast suffered only limited damages from the storm, at least in comparison with Hurricane Florence last year. Southern and central beaches held up well, and my understanding is that the recent renourishment project in the Nags Head area also performed well.

Unfortunately, Ocracoke Village experienced historic flooding from the storm, and there were several soundside breaches that occurred along Portsmouth Island and Ocracoke Island. DEQ Secretary Regan, DMF Director Steve Murphey and I were able to view this from the air a few days after the storm. Highway 12 on Ocracoke suffered significant damages, and we are working very closely with NCDOT to review emergency permitting needs and options going forward to restore the road as quickly as possible. In addition, yesterday, Secretary Regan authorized the activation of your Emergency CAMA General Permit (7H .2500) for the replacement of shoreline structures impacted by Hurricane Dorian. This will expedite staff reviews and allows DCM to waive permit fees in order to assist with short-term recovery efforts.

### **REGULATORY**

In our Regulatory section, the Division continues to work with the Department's IT staff to develop a new e-permitting process for major permits. This new process should eventually allow for applicants to fill out and submit application packages electronically, including fees and all required drawings and documentation. This should simplify filing and data management requirements for Division staff. We expect that the e-permitting system will make online data available in real time to both applicants and members of the public. DCM is the first Division in the Department to work on developing this new application process, and we are excited about its potential. We will provide updates on this effort at future meetings. Notable permit actions since your last meeting include the issuance of a CAMA Major Permit to Town of Shallotte to create a mixed-use development including residential, retail, restaurant, and office units, a hotel, event space/areas, a riverfront boardwalk, a fixed riverwalk pier, a fishing pier, a floating kayak launch and floating docks. The Division also issued a CAMA Major Permit to the City of Wilmington to construct a city park and public amphitheater adjacent to a section of the Northern Wilmington downtown Riverwalk along the east bank of the Northeast Cape Fear river.

I would also like to offer you an update on a variance that was granted to the NC Department of Transportation's Ferry Division at your last meeting. The ferry facility at the north end of Ocracoke Island received a variance at your last meeting to implement temporary erosion control measures at the facility. The work authorized by the variance is ongoing, and the ferry facility did not appear to be significantly impacted by Hurricane Dorian but experienced some sand loss that may affect the crane being used to install sheet piles. NCDOT has advised us that they are currently conducting a feasibility study to look at longer term options for the north end of Ocracoke Island, including the potential costs and benefits associated with construction of a mid-island ferry terminal. They hope that feasibility study will be ready by this fall.

## **POLICY & PLANNING**

### **Strategic Planning (309)**

DCM has begun the process of updating our 5-year Program Assessment & Strategy. Under Section 309 of the federal Coastal Zone Management Act, North Carolina and other coastal states with NOAA-approved 5-year Strategies are eligible for non-matched funds to pursue improvements to our Coastal Management Program. Every five years, states and territories review our programs to identify priority needs and opportunities for improvement. The programs then work with NOAA to develop multi-year improvement strategies that focus on one or more of the priority enhancement goals. Section 309 funding to DCM primarily funds staff time for work on coastal hazards; e.g. Ken Richardson's work on erosion rates and inlet hazard areas, and Tancred Miller's work on coastal resilience. Stakeholders are invited to participate in the process. DCM sent out an email survey last week to our Interested Parties email list, and there are some hard copies on the documents table. Tancred Miller is the point of contact for any questions about the Section 309 program.

### **Land Use Plans**

The Division received two land use plan amendment requests under the recent delegation of authority from Commission. The Towns of Belhaven (July 18, 2019) and Morehead City (also July 18, 2019) submitted land use plan amendments for certification since our last meeting. The Division found in all cases that:

- The plans met the substantive requirements outlined within your 7B Land Use Planning Requirements;
- There are no conflicts evident with either state or federal law or the State's Coastal Management Program; and
- The elected bodies of the local governments provided opportunity for the public to provide written comment following local adoption of the plan (as required by N.C.G.S. § 113A-110 and 15A NCAC 7B .0802 and .0803)
- For these reasons, the Towns of Belhaven and Morehead City's requests for certification of their land use plans were granted.

### **Public Access Program**

DCM has received 14 applications from 14 local governments requesting over \$2.4M in funding from the Public Beach and Coastal Waterfront Access Program. DCM has approximately \$1M available for access projects during this fiscal year and has invited 10 local governments to submit final applications with more detailed information. Prior to submitting a Final Application, the local government is required to hold a public meeting or hearing to discuss its proposal and

consider comments prior to its decision to submit a Final Application for state funds. Final Applications were due September 9<sup>th</sup>, but due to Hurricane Dorian, the submission deadline has been extended to October 7<sup>th</sup>. All final applicants will be notified in late October whether their project has been selected for funding.

### **Clean Marina Program**

You may be aware that the Division administers the NC Clean Marina program, which is designed to show that marina operators can help safeguard the environment by using management and operations techniques that go above and beyond regulatory requirements. It is a voluntary program that began in the summer of 2000. Marina operators who choose to participate must complete an evaluation form about their use of specific best management practices. If a marina meets criteria developed by N.C. Marine Trades Services and the Division of Coastal Management, it will be designated as a Clean Marina. Such marinas will be eligible to fly the Clean Marina flag and use the logo in their advertising. The flags signal to boaters and their community that a marina cares about the cleanliness of area waterways. The Division also administers the NC Pumpout Station Grant Program with the goal of enabling boaters to receive sewage pumpout for their boats as easily as they can get other common boating services, such as fuel. The program, established as a result of the federal Clean Vessel Act of 1992, provides financial assistance to marinas and other boat-docking facilities for the installation and renovation of pumpout and dump stations in North Carolina. Using funding from the US Fish & Wildlife Service, DCM has made grants of up to \$20,000 available on a yearly basis to private and commercial marinas, gas/service docks, fish houses/seafood dealers and other boat docking facilities in the 20 coastal counties. A 25 percent match is required of the marinas. Since 1995, the Program has made \$958,529.00 available for private and commercial marinas. Our Clean Marina Coordinator, Pat Durrett was recently recognized by the States Organization for Boating Access (SOBA) for her outstanding commitment to the Clean Vessel Act program throughout the State of NC, and promotion of the importance of boater education across multiple divisions. I'd like recognize Pat for her work and dedication to this program, and for receiving this national program recognition of excellence.

### **Coastal Reserve**

All Reserve sites were closed to visitors on September 3 in preparation for Hurricane Dorian to protect public safety from the potential risk of downed trees, flooding and other hazards. Five of the ten sites have reopened including Rachel Carson Reserve, Permuda Island Reserve, Zeke's Island Reserve, Masonboro Island Reserve, and Bird Island Reserve. Visitors should exercise caution when visiting the sites and be aware of the risk of potentially hazardous conditions associated with storm damage. Grounded vessels have been documented on several Reserve sites. The remaining five Reserve sites are still closed to visitors to protect public safety until immediate hazards are addressed. This week is National Estuaries Week and across the nation, the National Estuarine Research Reserve System, National Estuary Programs, and Restore America's Estuaries are celebrating our nation's estuaries and coasts. We thank Governor Cooper for officially proclaiming this as 'Estuaries Week' here in NC. The Reserve is hosting clean-ups and educational events throughout the week to build awareness of the important benefits provided by estuaries. See the Reserve's event calendar for more details. This week the Reserve is also holding Meet & Greets with researchers and graduate students in Beaufort and Wilmington to introduce the Reserve program and share upcoming funding opportunities with

the research community, including the new NOAA Margaret Davidson Fellowship and the 2020 Coastal Research Fellowship. The Davidson Fellowship will fund a graduate student for 2 years to conduct collaborative research on a management priority, and the Coastal Research Fellowship is sponsored by the Division and NC Sea Grant and will support a North Carolina-based graduate student to conduct research for 1 year within one or more of the 10 sites of the Reserve on identified focus areas. More information on both fellowships is available on the Reserve's website. Registration is open for the Living Shorelines Tech Transfer Workshop to be held October 8-9 at the new Beaufort Hotel. Hosted by the North Carolina Coastal Federation and Restore America's Estuaries, the workshop will provide participants with information on emerging living shoreline techniques, regulations, community engagement, and more. Field trips to area living shorelines are included in the workshop.

### **Staff News**

We are pleased to announce that Robert Corbett has begun working for the Division as a field representative in our Elizabeth City Office. Robert started in early August and comes to us from the Division of Marine Fisheries, where he worked for the last 6 years. He has a bachelor's degree from UNC Wilmington. We are also pleased to welcome Shane Staples back to the Division. Shane, who is our newest field representative in our Washington regional office, worked for DCM from 2014 till 2018 as a fisheries resource specialist. For the last year, Shane has been at the Division of Marine Fisheries. Once he is up to speed, Shane will be covering Hyde and Beaufort County, as well as Ocracoke Island. We would like to welcome both Robert and Shane to the DCM family. I am less happy to report that, after 12 years with DCM and a few with DMF as well, Melissa Sebastian, our Accounting Technician, has left DCM to take a position with the NC School for the Deaf earlier this month. We wish her the best, and we will be interviewing for her replacement in the upcoming weeks. Debbie Wilson, District Manager of the Division's Wilmington Regional Office, is retiring as of November 1st. Debbie has been with the Division since 2005, first as a field representative, and since 2011 as District Manager. Before coming to DCM, Debbie worked for New Hanover County as a local permit officer and collectively has over 20 years of state service. Debbie has been an invaluable part of our senior management team and a true friend. We will certainly miss her and wish her the very best in her retirement. Lastly, after 24 years with the Division of Coastal Management and over thirty years of state service; having joined DCM in 1995 following his work with the NC Dept of Transportation, Doug Huggett will be retiring on October 1 and joining the private sector at a firm in Morehead City.

### **CRAC REPORT**

CRAC Chair, Greg "rudi" Rudolph, stated the Advisory Council discussed oceanfront decks and repairs. The CRAC reviewed the proposed amendments and following discussion approved the proposals for CRC consideration. The main concern was that any action taken not cause a disincentive for property owners to repair decks for safety reasons. The CRAC will create an ad hoc committee to look at deck construction standards. The CRAC also discussed how nesting sea turtles are being managed by the US Fish and Wildlife. Outside of the nesting season it is unclear about how sea turtle management can conflict with development such as temporary erosion control structures and beach nourishment. The outcome of the discussion was to ask DCM staff to advocate for balance. Director Davis stated DCM has been involved in these discussions and there are opportunities for streamlining and applying the standards more fairly. The CRAC also

reviewed a nomination from Hyde County nominating Daniel Brinn. The CRAC unanimously supported this nomination.

**Doug Medlin made a motion to appoint Daniel Brinn to the Coastal Resources Advisory Council. Trace Cooper seconded the motion. The motion passed unanimously (Bromby, Emory, Norris, Medlin, Smith, Baldwin, Cahoon, Wills, Cooper, High, Andrew).**

#### **VARIANCES**

**Pollard (CRC VR-19-05), Jacksonville, Coastal Shoreline AEC Impervious Cover  
Brad Connell, Christine Goebel, Esq./Glenn Dunn, Esq.**

Brad Connell gave an overview of the site. Christine Goebel represented staff and stated Glenn Dunn is present and will represent Petitioners. Ms. Goebel stated Petitioner owns property located at 320 Willbarry Road in Jacksonville, Onslow County. The property is adjacent to the New River, which at this location is inland fishing waters and the first 30 feet landward of normal water level is Public Trust Shoreline AEC. Petitioner proposes to develop four bed and breakfast units on top of the existing house, which is built below the upper grade on the lot, into the bank of the property. The waterward proposed B&B units would be considered development within the Commission's 30-foot buffer area and include some development outside the existing footprint including the four pilings. The proposal would also increase an existing non-conformity with the Commission's 30% impervious limits within the 30-foot-wide AEC. On July 25, 2019, the Onslow County CAMA Local Permit Officer denied Petitioner's CAMA Minor Permit application based on its incompatibility with the Commission's Public Trust Shoreline AEC rules. Ms. Goebel reviewed the stipulated facts of this variance request and stated staff and Petitioner agree on all four variance criteria which must be met in order to grant the variance request.

Glenn Dunn of Poyner Spruill represented Petitioner and stated this design is done to minimize the affect of the development within the AEC. Mr. Dunn reviewed the stipulated facts which Petitioner contends supports the granting of this variance request and stated Petitioner agrees with staff on all four variance criteria.

**Bob Emory 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 ten votes in favor (Bromby, Emory, Norris, Medlin, Baldwin, Cahoon, Wills, Cooper, High, Andrew) and one opposed (Smith).**

**Larry Baldwin make a motion that Petitioner has shown that hardships result from conditions peculiar to the Petitioner's property. Phil Norris seconded the motion. The motion passed unanimously (Bromby, Emory, Norris, Medlin, Smith, Baldwin, Cahoon, Wills, Cooper, High, Andrew).**

**Phil Norris made a motion that hardships do not result from actions taken by the Petitioner. Bob Emory seconded the motion. The motion passed unanimously (Bromby, Emory, Norris, Medlin, Smith, Baldwin, Cahoon, Wills, Cooper, High, Andrew).**

**Trace Cooper made a motion that Petitioner has shown 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. Doug Medlin seconded the motion. The motion passed unanimously (Bromby, Emory, Norris, Medlin, Smith, Baldwin, Cahoon, Wills, Cooper, High, Andrew).**

This variance request was granted.

#### **ACTION ITEMS**

##### **Consideration of Fiscal Analysis 15A NCAC 7H .0312 – Technical Standards for Beach Fill Projects (CRC 19-23)**

###### **Ken Richardson**

Ken Richardson stated the Commission adopted the technical standards for beach fill projects in 2007. The CRC adopted these rules to ensure that sand used for beach nourishment closely matches the sand on the existing beach. The rule requires that the sediment intended for beach placements as well as the sand on the existing beach are analyzed for grain size and composition and be within defined ranges of similarity before the project begins. The proposed amendments do not intent to jeopardize the quality of North Carolina's beaches, but rather strengthen the methodology for sampling and characterizing beach sediment. The current sampling protocol associated with the sediment criteria rules is highly precise with regards to sample design, transect spacing, and numbers of cores. This precision can limit flexibility in sample design and can also limit the ability of communities to pursue small projects or respond to nourishment opportunities in a short period of time. The sampling protocol can also severely limit the applicants' ability to use existing data from past projects. The sampling protocol may also eliminate the ability of communities to take advantage of beneficial use projects that present themselves late in the planning process. The CRC's proposed amendments meet Session Law 2017-10 Section 3.15's mandate to exempt sediment characterization of beaches receiving the material from a cape shoal system and borrow areas within the cape shoal system. The proposed amendments also eliminate the rigid data sampling protocol in favor of a simpler process where the project's consultant or engineer is allowed flexibility to design a sampling protocol that assures sediment compatibility between the beach and borrow area. The rules will retain existing standards for grain sizes and strengthen recipient beach sampling protocols. The fiscal analysis has been approved by the Office of State Budget and Management.

**Larry Baldwin made a motion to approve the fiscal analysis for 15A NCAC 7H .0312 for public hearing. Craig Bromby seconded the motion. The motion passed unanimously (Bromby, Emory, Norris, Medlin, Smith, Baldwin, Cahoon, Wills, Cooper, High, Neal).**

##### **Consideration of Fiscal Analysis 15A NCAC 7H .0304, .0306, .0309, and .0310 – Inlet Hazard Areas (CRC 19-24)**

###### **Ken Richardson**

Ken Richardson stated the Inlet Hazard Area boundaries have been updated. Currently, the erosion rate setback factor applied inside the Inlet Hazard Area is the setback factor of the adjacent Ocean Erodible Area. These proposed amendments will remove the distinction between commercial and residential structures. The proposed amendments will result in a net of 307 structures that will be removed from the Inlet Hazard Area boundaries. There will be

approximately 219 structures that are currently not within an Ocean Hazard Area that will now be included within the update Inlet Hazard Area. There will also be approximately 137 structures that will experience an increased construction setback factor when compared to existing requirements. Per the current rules, all new construction will be limited to 5,000 heated square feet, with a density limit of no more than one unit per 15,000 square feet of land area. If a structure is destroyed or damaged beyond 50%, it could potentially be rebuilt on its original footprint and size if the structure was built before August 11, 2009 and can meet certain grandfathering provisions found in 15A NCAC 7H .0306. Grandfathering applies to single-family residences of any size, and commercial and multi-family structures of 10,000 square feet or less. For existing vacant lots within the proposed Inlet Hazard Area, these rule amendments do not restrict development, but do limit size structure to 5,000 heated square feet and development density to no more than one unit per 15,000 square feet of land area. If an existing lot cannot meet the setback requirements defined in the amendments, property owners could still potentially develop their property utilizing 7H .0104 which allows for a structure up to 2,000 square feet to be constructed with minimal conditions. DEQ and OSBM have approved the fiscal analysis and staff requests the CRC approve the fiscal analysis for public hearing.

**Phil Norris made a motion to approve the fiscal analysis for 15A NCAC 7H .0304, .0306, .0309, and .0310 for public hearing. Craig Bromby seconded the motion. The motion passed unanimously (Bromby, Emory, Norris, Medlin, Smith, Baldwin, Cahoon, Wills, Cooper, High, Andrew).**

**Consideration of Fiscal Analysis 15A NCAC 7J .0403, .0404 – Development Period/Commencement/Continuation & Development Period Extension (CRC 19-25)  
Courtney Spears**

Courtney Spears stated at the February meeting, the CRC approved amendments to 15A NCAC 7J .0403 and .0404 to lengthen the initial expiration date for most new Major Permits to five years from the date of permit issuance; eliminate the ability to obtain a single two-year renewal when permitted development has not begun; lengthen the initial expiration date for publicly-sponsored, multi-phased beach nourishment projects to ten years from the date of permit issuance, and allow for 10-year renewals; and eliminate the provisions of 7J .0404(b) which allows for the circulation of renewal requests to commenting agencies when the requests do not meet the criteria for permit renewal. These proposed amendments are a potential financial benefit to local, state and private entities in terms of time and permit fees. The fiscal analysis has been approved by DEQ and OSBM and staff is requesting the CRC approve the fiscal analysis for public hearing.

**Larry Baldwin made a motion to approve the fiscal analysis for 7J .0403 and .0404 for public hearing. Doug Medlin seconded the motion. The motion passed unanimously (Bromby, Emory, Norris, Medlin, Smith, Baldwin, Cahoon, Wills, Cooper, High, Andrew).**

**STAFF RULEMAKING RECOMMENDATIONS  
Permeable Surfaces in the Buffer (CRC 19-26)**

**Mike Lopazanski**

Mike Lopazanski stated the 30-foot buffer rule allows for water dependent structures, but there are exceptions for non-water dependent structures. The Commission has had a clear intent since

the initial adoption of the 30-foot buffer rule and has been consistent in not allowing non-water dependent amenities within the buffer that could undermine the purposes and effectiveness of the buffer. There have been advances in technology that are intended to address stormwater runoff associated with traditional impervious surfaces. Various institutions and DEMLR (Division of Energy, Minerals, and Land Resources) have addressed the use of "pervious" pavement, pavers, and associated installations requirements. The Commission's buffer rule exceptions allow for decks/observation decks that are limited to slatted, wooden, elevated and unroofed decks that do not singularly or collectively exceed 200 square feet. The provision for decks to be slatted and elevated is related to retaining the infiltration capacity of the buffer. If the Commission is interested in allowing similarly functioning structures that also maintain the infiltration capacity of the buffer within the buffer area, the limitations on non-water dependent structures could be amended to incorporate DEMLR's Best Management Practices standards (15A NCAC 02H .1055) for pervious pavement by reference in the rule and to limit such development to 200 square feet.

Commissioner Norris stated as an engineer he deals with this kind of product frequently and it requires intense maintenance for it to function as designed. Commissioner Cooper agreed that even if these products were to be permitted, but there is no enforcement or follow-up on the maintenance to ensure they maintain their permeability. Commissioner Andrew stated he would have more confidence in allowing a washed aggregate or river rock, etc., which in his experience is more permeable than a pervious concrete or asphalt pavement. Commissioner Emory stated when the buffer rules were implemented, the Commission did a thorough review of what would be allowed within the buffer and he feels the standards are adequate. Commissioner Medlin stated in his experience porous concrete and asphalt, even with maintenance, does not work well. After Commission discussion, there was consensus to not allow any additional exemptions to the 30-foot buffer rule.

#### **Oceanfront Decks and Repairs (CRC 19-27)**

##### **Tancred Miller**

Tancred Miller stated the CRAC discussed this topic at their meeting. Currently, the Commission's rules create a disincentive to proper maintenance on existing decks. There have been multiple deck collapses and we have found that there are oversized decks within the setback that need repair, but the owners fear that they will not be allowed to maintain these non-conforming structures. The CRAC recommends the Commission allow citizens to repair existing decks.

**Bob Emory made a motion to approve the amendments to 15A NCAC 07H .0309 as presented for public hearing. Robert High seconded the motion., The motion passed unanimously (Bromby, Emory, Norris, Medlin, Smith, Baldwin, Cahoon, Wills, Cooper, High, Andrew).**

## **CRC SCIENCE PANEL**

### **2020 Sea Level Rise Report Update – Charge to the Science Panel (CRC 19-29)**

#### **Tancred Miller**

Tancred Miller stated the Charge to the Science Panel has been completed and captures the intent of the Commission to allow the Science Panel to look beyond a 30-year timeline for sea level rise assessments. The Science Panel will meet next month to begin their work on the Update.

**Trace Cooper made a motion to approve the Charge to the Science Panel. Robin Smith seconded the motion. The motion passed unanimously (Bromby, Emory, Norris, Medlin, Smith, Baldwin, Cahoon, Wills, Cooper, High, Andrew).**

Chair Cahoon stated there has been a resignation from the Science Panel. Staff will send out a request for nominations to fill the vacancy.

## **LEGAL UPDATES**

Mary Lucasse, CRC Counsel, updated the Commission on issues relevant to DCM and CRC. Ms. Lucasse also reviewed the “litigation hold” requirement for ongoing litigation.

## **OCEANFRONT RULES AND IMPLEMENTATION**

### **Setbacks, Static Lines, Static Line Exceptions and Development, Development Line Implementation, Grandfathering Provisions (CRC 19-31)**

#### **Ken Richardson**

Ken Richardson stated there are three AECs which make up the Ocean Hazard Area (OHA), the Ocean Erodible Area (OEA); the Inlet Hazard Area (IHA); and the Unvegetated Beach area. These AECs identify areas on barrier islands where there is a potential risk from erosion. The OEA is measured from the first line of stable and natural vegetation. The landward boundary is based on the erosion rate setback factor. This boundary is dynamic, and these areas are updated every five years. The calculation is defined as the setback factor times 90. The Inlet Hazard Area is a static boundary. IHAs are areas vulnerable to rapid change due to inlet related processes. The unvegetated beach AEC is a temporary designation for areas where there is no vegetation from which to measure a setback. Following Hurricane Florence, the CRC designated areas of North Topsail Beach and Surf City as Unvegetated Beach AECs. Each AEC has specific use standards within the rules. Graduated setbacks are determined based on the size of a structure. The Static Vegetation Line is established where beach nourishment projects exceed 300,000 cubic yards of material. A nourished beach erodes more quickly than a natural beach. There is also no assurance that a community will maintain a nourished beach. Since the establishment of the static vegetation line, the CRC wanted to recognize communities that were committed to long-term beach nourishment and maintenance. The CRC approved the static vegetation line exception in 2009. The exception allows communities to measure setbacks from the first line of stable and natural vegetation under specific conditions. The Development Line was adopted by the CRC in 2016. Communities delineate a development line and request approval from the Commission. Under this rule, development can be no further waterward than the Development Line. Within the OEA there are exceptions for development to be permitted seaward of the setback. However, under the rule establishing a Development Line, no new development shall be sited seaward of the Development Line. This has caused the Division some rule application challenges. The intent of the CRC for the Development Line was to not include accessory structures within the

Development Line rule, however on the ground and in the field, this is problematic because no new development is allowed seaward of the Development Line. Staff requests the CRC look at the existing exceptions for consideration in communities with a Development Line. Following discussion, the CRC directed Staff to bring back some draft rule language that would allow existing decks, gazebos, camp sites, beach accessways, amusement stands, and sand fences seaward of the development line. The CRC requested that the proposed rule language not included pools and driveways in the list of exceptions allowable seaward of the development line.

### **CRC RULE DEVELOPMENT**

#### **Shellfish Leases and Permitting (CRC 19-28)**

##### **Jonathan Howell**

Jonathan Howell stated the CRC has reviewed some of the issues related to shellfish leases such as floating upwellers, pilings, and gear retrieval. Commissioners Salter and Emory attended the last shellfish growers meeting. The shellfish growers are requesting larger pilings and the ability to have enclosed and/or roofed staging and storage areas. A second meeting was held with commenting agencies to receive their comments and concerns. Senate Bill 648, Support Shellfish Aquaculture, was approved unanimously in both the House and the Senate. Moratoriums were enacted in 2019 for Bogue Sound and New Hanover County. Shellfish Enterprise areas were designated, three large-scale shellfish leases of 50-acres were approved in Pamlico Sound, and Floating upweller systems were approved in closed waters. The CRC reviewed a draft exemption for shellfish leases providing specific criteria were met. The CRC did not move forward with the exemption. Draft language was introduced for a General Permit that would require an applicant to provide notice to the adjacent property owners and the local government in which the lease is located. Applicants would also be limited to clearly marked pilings of less than 12 inches in diameter. No wave baffles would be allowed, platforms would be prohibited, floating upweller systems would be limited to four-foot walkways, no storage or staging areas, power would be limited to solar power only, minimum water depths would be observed, and additional limitations would be placed on floating upweller systems. Bottom leases, shell only, would be exempt from CAMA permits under existing rules. Under a new General Permit, pilings would be limited to eight pilings for marking lease corners and would be limited to 12 inches in diameter, and there would not be an allowance for piling supported gear. DCM does not think floating upweller systems are appropriate for typical open water leases. A CAMA Major Permit would be required if floating upwellers are used within a marina or a private dock and they would not be allowed on leases unless the lease was greater than 10 acres.

### **HURRICANE FLORENCE UPDATE**

#### **Abandoned Vessels and Marine Debris**

##### **Paula Gillikin (NCCR)/Todd Miller and others from (NCCF)**

Paula Gillikin stated vessels and debris are common management concerns at several of the Reserve sites and in all 20 coastal counties, particularly after Hurricane Florence. The Division was involved in post-Florence displaced vessel pollution response through a FEMA Mission Assignment that was coordinated by the US Coast Guard in cooperation with the Wildlife Resources Commission and Department of Environmental Quality. DCM was also involved in the development of the NC Marine Debris Action Plan, which includes some strategies based on our experience with Hurricane Florence. A consulting firm hired by the US Department of

Agriculture collected information on medium and large debris that was generated by Hurricane Florence in the coastal federal disaster areas. Through imagery, drone flights, and field observations an inventory of debris was conducted at the Rachel Carson Reserve in Beaufort. The debris found was not consumer debris such as bottles and bags, but rather large items such as dock sections. During Hurricane Florence a lot of infrastructure was damaged and ended up displaced in our estuarine areas. This debris is not just aesthetically unpleasing, it can cause marsh impacts and if not removed and can resuspend by subsequent storms, risking more habitat damage and possible damage to private and commercial properties. About 40 vessels were displaced by Florence and remain in sensitive habitats from Brunswick County north through Carteret, Craven and Pamlico Counties. 362 vessels were displaced during Florence and according to Wildlife Resources Commission, about 90 are still in the environment. There is no state authority to remove vessels from the water. Vessels had to be left in the water, with the hazardous materials removed, except for the Town of Beaufort that has passed an ordinance to address abandoned and derelict vessels. Eleven vessels were removed from the waters within the Town of Beaufort. Seven vessels, per the advice of the Division of Marine Fisheries, Coastal Management, NOAA, and the Wildlife Resources Commission, were moved from particularly sensitive habitats to less sensitive habitats. The primary concern with removal of these displaced vessels is habitat damage.

Todd Miller, Executive Director NC Coastal Federation (NCCF), introduced the project managers and contractors that participated in the Hurricane Florence Marine Debris Recovery Project. Following the storm, the NCCF received multiple notifications of large storm debris. NOAA provided imagery following the storm. Many docks were damaged or destroyed which left large portions of lumber in the estuaries. During February and March of 2019, LDSO, Inc. gathered information and performed a survey by boat of debris and abandoned and derelict vessels visible along the Atlantic Intercoastal Waterway from Core Sound to the Cape Fear River. The marine debris recovery crews started with phase I, which consisted of cleanup of the Swansboro area and the lower New River to Surf City. The 11-person crew collected 87.6 tons of debris that could be gathered without heavy equipment. This effort took 117 days to complete. Phase II, focused in the Swansboro area, collected 112.7 tons of debris with excavators and barges which took 45 days to complete. The marine debris recovered included household trash, plastic, cans, foam, fishing gear, tires, crab pots, building supplies, pressure treated wood, decking and pilings. There were 200.3 tons of debris removed from over 42 miles of coastal shoreline.

### **PUBLIC INPUT AND COMMENT**

Matthew Gruenewald, Blackbeard Oyster Company, commented on the Commission's oyster lease general permit and requested that the Commission consider allowing floating structures and enclosed floating structures within the lease area.

### **OLD/NEW BUSINESS**

#### **Update on DEQ MOU with State Ports**

##### **Christine Goebel**

Christy Goebel stated the Commission granted a variance to Petitioner North Carolina State Port Authority at its April 2019 meeting, conditioned on Petitioner agreeing to a Memorandum of Understanding (MOU) with the North Carolina Department of Environmental Quality outlining a

process for specific public and interagency engagement for any future plans, studies, and alternative analysis related to the expansion of NC Port facilities. The MOU between DEQ and the State Port Authority has been signed by DEQ. The NC Ports Executive Director is out of the country but has confirmed by email that he plans to sign the MOU upon his return.

#### **Report from Commission's Committee on Elevated Structural Components in Setback Robin Smith**

Robin Smith stated the ad hoc Committee was appointed following a variance request before the CRC relating to an existing oceanfront house that did not meet the setback. In the variance petition, the owners requested approval of a plan to remove an upper deck from the structure and add a roof over the existing lower deck. The permit was denied because the house could not meet the setback and none of the existing exceptions in 7H .0309 applied to this situation. Following the variance request, Chair Cahoon requested that Commissioners Emory and Smith, along with Commission Counsel and DCM Counsel, consider whether these types of modifications should be allowed without a variance. Following several meetings, the Committee recommends that the Commission request staff prepare a draft amendment to 7H .0309 to allow roofs over the 500 square foot decks already allowed in the setback. There was consensus among the Commission to move forward and request staff prepare the proposed amendment.

#### **Update on Inland Waters Boundary and CRC Jurisdictional Areas – Possible Changes Mike Lopazanski**

Mike Lopazanski stated earlier this year Gordon Myers, Director Wildlife Resources Commission (WRC), made a presentation about actions that the WRC was considering relative to the inland waters boundary which differentiates the jurisdictional areas of Marine Fisheries Commission (MFC) and WRC. The CRC's jurisdiction includes the Estuarine and Ocean System AEC (public trust areas, estuarine waters, coastal wetlands, and coastal shorelines), the Estuarine Shoreline AEC extends to the inlet waters, Public Trust Shoreline AEC extends the extent of navigability in CAMA counties, and all of these together comprise the Coastal Shoreline AEC. The CRC incorporates the dividing line between coastal fishing waters and inland fishing waters by reference in 15A NCAC 07H .0206, the definition of estuarine waters. The MFC and WRC jointly determine the boundaries that define North Carolina's inland, coastal, and joint fishing waters. DMF and WRC determine the boundaries and adopt regulations governing agency responsibilities in joint waters. A joint committee of WRC and MFC staff has met several times since January 2019 with staff developing proposals with the intention to reach agreement by November 2019. To date, the joint committee has not finished its work. Nevertheless, at the August 2019 WRC meeting, the WRC approved delineations based on long-term averages of salinity. WRC directed its staff to review the potential impacts and hold public input forums. MFC disagrees with WRC's delineations and will discuss the issue at its November meeting. This delineation will have an implication on CRC jurisdiction. There will be large changes to the Estuarine Shoreline AEC. There will be a reduction of jurisdictional area from 75' to a 30' buffer upstream of the inland waters boundary. The 30% impervious limitation will be reduced to the 30' buffer area and the jurisdiction is reduced in the Public Shoreline AEC. There are also implications to other State agencies and DEQ is concerned with less regulation of impervious surfaces upstream and the associated impacts on water quality and fish habitats.

**2020 CRC Meeting Dates**

The Commission approved the following dates for 2020 CRC Meetings:

February 12-13

April 8-9

June 10-11

September 9-10

November 18-19

**PUBLIC HEARING**

**15A NCAC 7H .0304, 7H .0309, 7H .0313 – State Ports Inlet Management AEC**

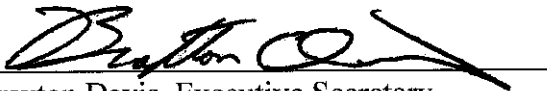
No public comments were received.

**15A NCAC 7H .1900 – General Permit to Allow Temporary Structures Within Coastal Shorelines and Ocean Hazard AECs**

No public comments were received.

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Wilkies, Recording Secretary