

**NC COASTAL RESOURCES COMMISSION (CRC)**  
**MARCH 22-23, 2007**  
**RAMADA INN**  
**KILL DEVIL HILLS, NC**

**Present CRC Members**

Courtney Hackney, Chairman  
Doug Langford, Vice Chair

Charles Elam  
Bob Emory  
Joan Weld  
Bob Wilson  
Jerry Old (Absent 03/23/07)  
Melvin Shepherd

Bill Peele  
Wayland Sermons  
Chuck Bissette  
Joseph Gore  
Lee Wynns

**Present Coastal Resources Advisory Council Members (CRAC)**

Bill Morrison, Chair  
Dara Royal, Co-Chair

Deborah Anderson  
Joe Beck  
Randy Cahoon  
Carlton Davenport  
Eddy Davis  
Webb Fuller  
Judy Hills  
Al Hodge  
Maximilian Merrill  
Joe Lassiter  
Travis Marshall  
Michael Moore  
W. Burch Perry  
Spencer Rogers

Robert Shupe  
Michael Street  
Ray Sturza  
Penny Tysinger  
Beans Weatherly  
David Weaver  
Ginger Webster  
William Wescott  
Tracie White  
Rhett White  
Phil Harris (Travis Marshall)  
Tim Tabak (Harold Blizzard)

**Present Attorney General's Office Members**

Jill Hickey  
Merrie Jo Alcocke  
Christine Goebel

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

Chairman Hackney called the meeting to order and reminded Commissioners the need to state any conflicts.

Angela Willis called to roll. Jim Leutze was absent. Wayland Sermons stated that he had a potential conflict on one of the variances and would not participate in the vote when that variance was addressed. Renee Cahoon also stated that she had a potential conflict. Based upon this roll call, Chairman Hackney declared a Quorum.

## **MINUTES**

**Doug Langford made a motion seconded by Joseph Gore to approve the minutes of the January 2007 meeting with no corrections noted. The motion passed unanimously. (Weld, Elam, Old, Sermons, Bissette, Peele, Emory, Langford, Gore, Wynns, Wilson, Cahoon) (Melvin Shepherd abstained from the vote).**

## **EXECUTIVE SECRETARY'S REPORT**

Ted Tyndall gave the Executive Secretary's report in Charles Jones' absence.

Charles Jones has announced his retirement effective June 1, 2007.

### **Public Access Grants**

In 2006, DCM enhanced public access to public beaches and coastal waters through \$3.4 million in grants for 29 projects in 19 local communities. The grants help pay for a variety of projects to improve public access to coastal beaches and waters, including walkways, dune crossovers, restrooms, parking areas and piers.

DCM has recently asked local governments for pre-applications for this year's grant cycle. The total amount available for grants is about \$3 million. To date, 41 requests have been received for projects totaling about \$7 million.

### **Legislative Update**

A few bills have been introduced during this legislative session that are of particular interest to the CRC:

- Senate Bill 599 (Soles, D-Columbus) provides for Ocean Isle Beach shore protection, via a variance from the CRC.
- Senate Bill 646 (Albertson) would continue the study of Waterfront Access issues.
- Senate Bill 679 (Hoyle, D-Gaston) proposes to consolidate the Environmental Regulatory Commissions. This act would abolish the existing Environmental Management Commission and replace it with a new EMC modeled on the Utilities

Commission. The new EMC would also consolidate other existing environmental commissions, including the CRC; and the commissions on Marine Fisheries, Radiation Protection, Sedimentation Control, Soil and Water Conservation, and several others.

### **LPO Workshops**

DCM will hold its annual local permit officer training workshops April 11-12 in Kill Devil Hills and April 18-19 in Morehead City. The 2-day workshops will include hands-on training in the field as well as classroom training.

### **DENR deputy secretary**

William Laxton has agreed to become chief deputy secretary of the N.C. Department of Environment and Natural Resources. Bill will begin his duties April 23. He took Dempsey Benton's position.

Bill comes to DENR from the U.S. EPA, where for the past 14 years he has served as director of administration and resource management of EPA's research facility in Research Triangle Park.

### **Wetlands education website**

A new web site for middle school teachers and students, NC Coastal Explorers, has recently gone online. The site, created by our wetlands specialist Melissa Carle, will be used in middle school classrooms to teach students about coastal wetlands ecology. It can be reached from the wetlands page on the DCM website.

### **Earth Day events**

On Monday, April 23, the Currituck Banks and Rachel Carson NERRs will conduct Earth Day Hikes on the reserve sites.

On Saturday, April 28, the Carolina Estuarine Reserve Foundation's second annual Kitty Hawk Woods Earth Day 8k run will be held in the Kitty Hawk Woods Coastal Reserve. This event raises money for the NC Coastal Reserves' friends group.

### **Staff News**

Melissa Carle, Wetlands Specialist in our Raleigh Office, will be leaving DCM on March 30.

Major Permits clerk Shery Keel left us on March 2nd to take a job with the Department of Corrections in Davidson County.

Our Budget Officer, Dale Schmidt, has left DCM for a position in the private sector.

Scott Geis is our new Ocean and Coastal Policy Analyst in the Raleigh Office. Scott received a Master of Environmental Management Degree from Duke University in September 2006, and has extensive experience as a field researcher, including working with the NC Coastal Federation on a marine pump-out station assessment involving

policy comparisons with other states. He also has served as a policy analyst while working for county government in Albany, NY.

Jennifer Webber is the Division's new Clean Marina Program Coordinator. Jennifer, who has an undergraduate degree from UNC-Chapel Hill and a Masters degree from NCSU, will be charged with marketing the Clean Marina program to marina operators and certifying marinas into the program. She will also be working with marinas through the NC Pumpout Station Grant Program. The position is funded through the NC Coastal Nonpoint Source Program and the NC Coastal Reserve.

Mike Christenbury, DCM's Wilmington Region Planner, has been awarded the Region O Planner of the Year for 2006 by the Cape Fear Council of Governments.

### **Chairman's Comments**

Chairman Hackney stated that two variances and the petition for rulemaking had dropped off of the agenda, and therefore, the discussion of the CRC Science Panel and the AG's opinion on marsh burning will be addressed for the entire Commission rather than just for the I & S Committee. He asked Jill to give an update on legal issues.

Jill Hickey gave an update on completed litigation. There was a variance request from the Town of Ocean Isle Beach for a larger sandbag structure at the end of the island. This variance request was denied by the CRC. This decision was challenged under judicial review and the court on judicial review upheld the CRC's decision.

Secondly, there was case of Mr. Glenn Sasser, who had a house on a lot in Surf City. The house was wiped out due to hurricane Fran. Mr. Sasser came to the CRC and requested a variance, which was denied. He challenged the denial of the permit (because he couldn't meet the setback line) and also filed a takings claim claiming that the CRC's setback rule deprived him of all reasonable use of his property. The court upheld the denial of the variance, upheld the denial of the permit and ruled in the CRC's favor on the motion for summary judgment.

Merrie Jo Alcock reported on a recent favorable ruling in a case in Ocean Isle Beach which involved a third party hearing request challenging construction of oceanfront residences. There were several third party challengers who own homes behind the property where some permits had previously been issued. The ALJ upheld the LPO's issuance of the permit, the CRC in turn upheld the LPO finding that the permits were properly issued despite the claims of the third party owners. The Superior Court found that the agency did not properly set the vegetation line, because the data was missing for three or four blocks prior to the project, and DCM reset the line. DCM did not recreate the line from where it had been; they set the line where it actually was because so much time had passed. The judge found that this line was erroneous and advised DCM to reset the line again, which it did. The third parties challenged the new line again through a "motion for clarification," claiming that the new line did not comply with the judge's order. The Superior Court recently denied that motion and found the new vegetation line was properly set. It is now subject to the Court of Appeals.

Chairman Hackney stated that he has sent out an e-mail regarding the ethics board requirements and forms. He further stated that if anyone did not get his or her forms in on time, please advise him or contact Jill Hickey.

At the executive meeting on March 21, there was discussion regarding the Science Panel. At the January meeting, there was concern by the public on establishing the Science Panel. An expanded Science Panel may be an alternative. Chairman Hackney wanted the Commission to consider expanding this panel.

Update on CHPP – Stated that CHPP meetings enable each Commission to know what the others are doing and what progress is being made. Chairman Hackney reported that CHPP has forced a lot of issues to be looked at and they are coming up with solutions. He stated that he has a copy of a House Bill which addresses basin funding. EMC has also been looking at basin management. This House Bill would provide funding for basin management.

Sandbags – In May 2008 enforcement of time limits on permits, which had been delayed, will need to be addressed. Chairman Hackney recommended to the Commission to start thinking about this issue. There will be a presentation at the May meeting on the history and issues of sandbags.

### **VARIANCE REQUEST**

#### **Maxwell (CRC-VR-06-37) Driveway in the Buffer - Manteo**

Christy Goebel stated the Petitioners are William and Heather Maxwell. Slides were shown showing aerial and ground photography of the property. Ms. Goebel stated the property line is on the South side of the lot and is separated from the canal by a ten to fifteen foot wide strip. Petitioners have owned the property since June 2005. There is a narrow access area to the property. The North side is bordered by a canal, the South and East sides are not directly bordered by the canal but have a ten to fifteen foot wide strip of property which is owned by a different owner. The South and East sides are subject to the thirty-foot buffer. The canals are rated as SC-HQW waters and they are closed to the harvest of shellfish. The canal is a tributary of Scarborough Creek which is designated as a primary nursery area. On November 17, 2006, Petitioners applied for a CAMA minor permit to build a 20 x 900 foot concrete driveway for their residence and boat building business. On November 21, the LPO denied the permit application due to the inconsistencies with the thirty foot buffer rule. Dare County zoning ordinance requires a minimum twelve-foot driveway for emergency service access. Ms. Goebel stated that the property is zoned as industrial by Dare County. The Commission heard this variance in January, but it was postponed and Petitioners decided to hire an engineer. Petitioners now have an engineered storm water system (plans were provided to the Commissioners). Some of the features include treating and storing a minimum of one inch of runoff generated by the proposed impervious surface within the thirty-foot buffer. Petitioners also reduced the size of their driveway from twenty to eighteen feet wide. They changed

from concrete pavement to gravel and include a six-foot wide swale and will grade the driveway towards the swale and away from the canal. The average encroachment into the buffer is 13 ½ feet.

Staff states there is an unnecessary hardship. The building envelope has a driveway outside the buffer which is ten to fifteen feet wide. This wouldn't accommodate the twelve-foot wide county-required driveway for access by emergency vehicles. This property is zoned industrial and Petitioners have a boat building business which necessitates that large boats and trailers have access to the property.

Staff agrees that conditions are peculiar to the property. The main area for this lot is connected to the State Road by a thirty-foot wide access, much of which is subject to the thirty-foot buffer. The portion outside the buffer could not support the twelve-foot wide driveway required access by the County, nor a wider driveway for industrial uses.

Staff states the hardships result from the Petitioners' actions, disagreeing with Petitioners. The Petitioners failed to address this issue prior to purchasing the property in 2005. The property was divided in 1990 prior to the buffer rule, and Petitioners should have discovered the buffer rule before purchasing the property and understanding the limitations to their plans.

Ms. Goebel stated that staff agrees that the variance will be consistent with the spirit, purpose and intent of the rule. Petitioners have proposed a smaller (eighteen-foot wide) sloped gravel driveway and swale, the engineered storm water plan to reduce impact and by reducing impervious surfaces it will reduce runoff into the marine environment. Substantial justice will be preserved by allowing the Petitioners to use the access for a driveway which was the expectation when the prior owners created the access before the buffer rule.

Heather Maxwell stated that since the January meeting she and her husband, Billy, have worked with an engineering firm to create a storm water runoff plan which exceeds the requirement of N.C. Administrative Code. The driveway has been narrowed and will use alternative surface material as agreed upon at the January meeting.

Strict application of the thirty-foot buffer rule would cause an unnecessary hardship, as agreed by Staff and the Commission at the January meeting. A variance would be required for any access to the land and secondly, the desire to use this land as industrial.

Petitioners also agree with Staff that the hardship does result from the pre-existing, unusual character of this land.

Mrs. Maxwell stated that the hardships do not result from actions taken on their part. She stated the only action they took was purchasing the land. She further stated that there is no other land to develop for this driveway. Ms. Maxwell stated that Staff's recommendation on actions they should have taken; they are a hard working family who

purchased land that fit all of their needs. The land is zoned industrial, is close to town and provided enough property for their home and business.

Petitioners agree with Staff that the commitment to control runoff and willingness to reduce the impact by narrowing the driveway and adjusting the surface material have met the spirit and intent of the rule. Substantial justice would be preserved by allowing use of the deeded access, as it was intended when it was subdivided years ago.

**Jerry Old made a motion, seconded by Doug Langford to support Staff's position that strict application of the applicable development rules, standards or orders issued by the CRC does cause the Petitioner unnecessary hardships. The motion passed unanimously (Weld, Elam, Old, Sermons, Bissett, Peele, Emory, Langford, Shepard, Gore, Wynns, Wilson, Cahoon).**

**Jerry Old made a motion, seconded by Charles Elam to support Petitioners' position that difficulties and hardships result from conditions which are peculiar to the property. The motion passed unanimously (Weld, Elam, Old, Sermons, Bissett, Peele, Emory, Langford, Shepard, Gore, Wynns, Wilson, Cahoon).**

**Doug Langford made a motion to approve the third criteria that hardships did not result from action taken by the Petitioners, but added a condition that the site plan for the driveway and all elements therein dated February 27, 2007. Jerry Old seconded the motion. Wayland Sermons added that certification be provided to the Commission after the driveway has been built in accordance with the approved stormwater plans. Doug Langford accepted this as a friendly amendment. This motion passed with 12 votes (Weld, Elam, Old, Sermons, Bissett, Peele, Langford, Shepard, Gore, Wynns, Wilson, Cahoon) and one against (Emory).**

**Doug Langford made a motion to adopt the Staff's position that the variance would be consistent with the spirit, purpose and intent of the rules, standards, or orders issued by the CRC; secure the public safety and welfare; and preserve substantial justice. Jerry Old seconded the motion. The motion passed unanimously (Weld, Elam, Old, Sermons, Bissett, Peele, Emory, Langford, Shepard, Gore, Wynns, Wilson, Cahoon).**

**The variance was granted.**

**Circa Development, Inc. – (CRC-VR-06-38) – Static Vegetation Line – Oak Island**

Merrie Jo Alcock stated that Circa Development owns property on the east end of Oak Island. Several slides were shown of both ground and aerial photography. Exhibits were shown of the property in 2002 with the static line marked. Ms. Alcock stated that this case is about a request to construct a beach access way over the frontal dune. Petitioner owns an eighteen lot subdivision on the east end of Oak Island in Brunswick County. This is an area which has been subject to a large-scale beach nourishment (spoil deposition) project under the CRC's rules. The project was completed in 2002. The

long-term annual erosion rate is three feet per year. In July 2006, DCM issued a CAMA major permit authorizing the eighteen lot subdivision development. This request is for a variance from one of the permit conditions. Petitioners wanted to extend a beach boardwalk over the frontal dune and the new man-made berm. The CRC's rules would not allow Petitioners to take the access way that far and through the permit condition, Petitioners were limited to pulling the access way back to the pre-project vegetation line. Section .0309(a) of CRC rules provide exceptions to the ocean setback, structures (such as a boardwalk) can be in the setback but cannot be seaward of the vegetation line. Petitioners made a significant modification to their plans. Their original plan was to go over the frontal dune, through the trough and over the man-made berm. They have pulled the project back and now it goes just over the frontal dune. The access way would terminate 45 feet seaward of the pre-project line as opposed to 112 feet as originally proposed. With this significant modification, Staff was able to support the variance. Petitioners agreed, in a stipulation, to remove any portion of the beach access way should it become threatened in any way upon the request of Division of Coastal Management. Ms. Alcoke requested that the CRC include this condition if they grant the variance.

Ms. Amy Wang, attorney representing Circa Development, reiterated the modifications made by Petitioners to the proposed access way. She stated she agrees with Ms. Alcoke and Staff's position on the four criteria. The strict application of the rules in this case restrict what her clients would like to do and causes a hardship to the residents and public and will potentially damage the frontal dune. The hardship is peculiar to the property because of the size of the spoil deposition project. She further stated that Circa Development had not done anything to contribute to this hardship; it is a result of the requirement to use the pre-project vegetation line due to the size of the spoil deposition project. This variance would be consistent with the spirit and purpose of the rules, secure public safety and welfare, preserve substantial justice and preserve the environment. Ms. Wang referenced the CAMA handbook which states beach walkways make it easier to get to the beach without damaging dunes which play a vital role in maintaining the structure and safety of North Carolina's barrier islands and beaches. She stated this variance would protect the beach and provide enjoyment for citizens.

Wayland Sermons asked Ms. Wang about stipulated fact #19 which indicates that the boardwalks will be public, however, should Petitioner wish to close the boardwalks to the general public, it may be necessary to apply for a permit modification. Ms. Wang stated that there would be gates on the boardwalk, however they would not be locked or coded in any way. She said that there is no plan to cut the public off from the boardwalk. Commissioner Sermons asked if signs would be visible which indicate that this is a public beach access and if it would tie into the established public beach access program. Ms. Alcoke stated that they were not able to stipulate to extensive commitments from Petitioner about the nature of this public access. She asked Commissioners to limit their considerations to stipulated facts. Ms. Alcoke stated there are no agreed upon stipulations regarding signage. Commissioner Sermons stated that as it applies to hearing the variance, what is not stipulated is as important as what was stipulated.



It was asked if Petitioners would be willing to make the entire access a Public CAMA beach access. Ms. Wang stated that at the present time it is not in the plans to do that. She requested that if the CRC should grant the variance, it could be added as a condition.

Doug Langford made a motion to accept Staff's position that strict application of the rules, standards, or orders issued by the Commission will cause the petitioner unnecessary hardship. Commissioner Langford added the stipulation that the four front lot connections will connect with the boardwalk and that this boardwalk be open for public use. Joseph Gore seconded this motion. This motion passed with twelve votes (Old, Sermons, Bissett, Peele, Emory, Langford, Shepard, Gore, Wynns, Wilson, Cahoon, Weld) and one against (Elam).

Jerry Old made a motion seconded by Bill Peele to support Staff's position that hardships result from conditions peculiar to the property. This motion passed with eleven votes (Old, Sermons, Bissette, Peele, Emory, Langford, Shepard, Gore, Wynns, Cahoon, Weld) and two opposed (Elam, Wilson).

Doug Langford made a motion to accept Staff's position that the hardships do not result from actions taken by the Petitioner. He added that stipulated fact #44 would be added as a condition to the variance (Petitioner will accept a permit condition requiring it or its successor to remove any portion of the beach access way upon the request of the Division of Coastal Management should the access way become unnecessary or should it intrude on the public beach as a result of future erosion). Motion with amendment was seconded by Jerry Old. Motion passed with eleven votes (Old, Sermons, Bissett, Peele, Emory, Langford, Shepard, Gore, Wynns, Wilson, Cahoon) and two opposed (Elam, Weld).

Doug Langford made a motion to adopt Staff's position that the variance would be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission, will secure public safety and welfare and preserve substantial justice. Motion seconded by Joseph Gore. Motion passed with twelve votes (Old, Sermons, Bissett, Peele, Emory, Langford, Shepard, Gore, Wynns, Wilson, Cahoon, Weld) and one opposed (Elam).

**The variance was granted.**

Dunlap Forestry, LLC – (CRC-VR-06-39) – Buffer –Ocean Isle Beach

Christy Goebel stated that Petitioner is Dunlap Forestry, LLC. Petitioners filed this variance request in December seeking a variance to build their house as designed. Without a variance Petitioners have a 1484 square foot footprint and adding second story would provide them with a nearly three thousand square foot residence. Another option Petitioners chose not to use was the "small house exception" which uses smaller setbacks. Ocean Isle Beach does have a storm water management ordinance requiring that the first inch and a half of rain be contained and also requiring a maintenance agreement be signed and recorded. While there are other two-canal lots in Ocean Isle Beach, it has

been stipulated, that all other variances were based on separate sets of site-specific facts which the Commission determined met the four statutory criteria.

Ms. Goebel stated that Staff's position is there is not an unnecessary hardship. The buffer rule does not severely limit development. There is a 28' x 53' building area without a variance, which would allow a 2986 square foot two-story house. Because Petitioners can make reasonable use of their property there is no unnecessary hardship.

Ms. Goebel stated that any alleged hardships do not result from conditions peculiar to the property. There are several other two-canal lots both in Ocean Isle Beach and other finger canal systems along the coast. Neither the size, location nor topography of this lot is peculiar. Petitioner argues that fifty percent of the "available" lot space is unusable due to the buffers; however, this representation ignores the fact that this space is not available due to the buffers which apply.

Staff's position on criteria three is that hardships are a result of actions taken by Petitioners. Petitioners purchased this property prior to the buffer rule, however, their design and use is what is causing the hardship. They could get a permit for a nearly 3000 square foot home without a variance or could use the small house exception.

Ms. Goebel further stated that due to the Town's requirement for a storm water management system, if the Commission feels this system would perform the same or similar function as the natural buffer, then Staff agrees the variance would be consistent with the spirit, purpose and intent of the rules. While the staff feels the variance will preserve substantial justice, because the CRC has granted similar variances, substantial justice also requires that the other three criteria must be met to grant the variance.

Amy Wang, counsel for Petitioners, stated the buffer is applied twice to this corner lot and the Town setbacks of seven feet also apply. Petitioners have tried to design the house consistent with scale and other features that other properties in Ocean Isle Beach have. The lot is bordered on two sides (by canals), and while not peculiar in the sense that it is not the only lot bordered on two sides, it is peculiar in that there are only a couple of these lots left in Ocean Isle Beach which are not built on.

Ms. Wang cited previous variances granted by the CRC. Several exhibits were shown of these variances which had been granted. Ms. Wang stated that the Dunlap's property would not be developed inconsistently against other properties in this area.

Ms. Wang stated that Petitioners differ with Staff on the variance criteria. She stated that without a variance from the buffer rule, the Dunlaps would not be able to make reasonable use of their property to build a residence that is designed to be consistent with the structures and views of the other limited waterfront properties bordered by two canals in the Town. The inability to receive a CAMA permit without a variance is peculiar to the property. This peculiarity is not to limit it to being the only lot that is subject to the peculiarity, but it is a double-canal lot and is peculiar to the site because the buffer is applied twice. Even though there are other lots, which are bordered by two canals, they

have already been granted variances and permits. The hardship the Dunlap property faces is they acquired the property prior to the buffer rule, but the buffer rules and Town setbacks restrict what they are able to build. Petitioners believe that granting the variance will be consistent with the spirit, purpose and intent of the CRC rules. The purpose of the buffer rule is to ensure that shoreline development is compatible with the estuarine and ocean system. The shoreline buffer protects water quality in those systems by separating the water body from the impervious surfaces that lead to increased runoff. There are already impervious surfaces there in the form of concrete bulkheads and were not caused by the Dunlaps. Ocean Isle Beach has a unique, local storm water management ordinance which the Dunlaps would be required to comply with by implementing engineering structures which would control an inch and a half of rain (this plan has been submitted to the Town).

**Doug Langford made a motion to adopt the Staff's position that strict application of the rules, standards or orders issued by the Commission will not cause Petitioner unnecessary hardships. Renee Cahoon seconded the motion. Motion passed with twelve votes (Elam, Old, Sermons, Bissett, Peele, Emory, Langford, Shepard, Gore, Wynns, Cahoon, Weld) and one opposed (Wilson).**

**Joan Weld made a motion to support Staff's position that hardships do not result from conditions which are peculiar to the property. Renee Cahoon seconded the motion. The motion passed with twelve votes (Elam, Old, Sermons, Bissett, Peele, Emory, Langford, Shepard, Gore, Wynns, Cahoon, Joan) and one opposed (Wilson).**

**Doug Langford made a motion to adopt the Staff's position that hardships are a result of the Petitioners actions. Motion seconded by Joseph Gore. The motion passed unanimously (Elam, Old, Sermons, Bissett, Peele, Emory, Langford, Shepard, Gore, Wynns, Wilson, Cahoon, Weld).**

**Bob Emory made a motion to accept the Staff's position that the variance will be consistent with the spirit, purpose and intent of the rules; will secure public safety and welfare; and preserves substantial justice. Motion seconded by Melvin Shepard. Wayland Sermons stated that he believes that any prior variance granted by any prior Commission has no bearing on the present Commission's consideration on this variance. After discussion, this motion failed with five votes in favor (Emory, Shepard, Wilson, Peele, Bissett,) and eight opposed (Cahoon, Weld, Wynns, Gore, Langford, Sermons, Elam, Old).**

**Wayland Sermons made a motion that this variance is not consistent with the spirit, purpose and intent of the rules, standards and orders issued by the Commission, would not secure the public safety and welfare, and would not preserve substantial justice. Motion seconded by Joan Weld. This motion passed with ten in favor (Cahoon, Weld, Wynns, Gore, Langford, Peele, Bissett, Sermons, Elam, Old) and three opposed (Shepard, Emory, Wilson).**

**This variance was denied.**

Nags Head Inn - (CRC-VR-07-02) – Ocean Erosion Setback – Nags Head

Renee Cahoon stated that she would like to be recused from participating in this variance request as she has already sat in on a quasi-judicial hearing on this case. Wayland Sermons stated that he is the property owner immediately north of Nags Head Inn; he would also recuse himself due to this conflict. Chairman Hackney stated that there were still enough Commissioners to participate to give this due deliberation.

Merrie Jo Alcocke stated that this variance was filed by Nags Head Inn Limited Partnership. The partnership is represented by one of their general partners, John Norkus, who is in attendance today. Ms. Alcocke showed pictures of the line of stable natural vegetation, the setback (105 feet) and the large structure setback. This variance is about the installation of a proposed balcony system on the back side of the hotel.

Ms. Alcocke stated that Petitioner owns a four-story, one hundred room oceanfront hotel in Nags Head. It was constructed and opened for business in 1988. The structure is considered a large structure under CRC rules, because it is larger five thousand square feet and is subject to a higher setback from the first line of vegetation. The annual erosion rate at this location is 3 ½ feet per year; therefore the large structure setback is 210 feet from the first line of stable, natural vegetation. Due to erosion over time at this location, the first line of vegetation has migrated landward and now the structure is non-conforming (does not meet the 210 feet setback). In October 2006, the local permit officer for Nags Head issued the Petitioner a CAMA minor permit for a number of improvements to the structure. Petitioners were able to do upgrades and improvements with new wastewater systems and other items which were consistent with the rules. The new balcony system would be about five feet deep for the length of the building (182 feet long). The balcony was proposed to be supported on its own pilings and made of reinforced concrete and was proposed and approved under the CAMA minor permit as a separate, cosmetically detached structure. After the CAMA minor permit was issued, the Petitioner sought to modify the permit to construct the balconies in a different manner. They wanted to use the cantilever rather than construct the balconies as a separate structure (the building would support the new balcony system) maintaining the same size and material. The local permit officer denied this modification request. CRC rules require that new development landward of the setback may be cosmetically but shall not be structurally attached to the existing structure that does not conform with current setback requirements.

Staff finds that Petitioners do not have an unnecessary hardship. They were approved for the development which they sought during the minor permit process. Any alleged hardship did not result from conditions peculiar to the property. Staff knows of no conditions related to the location, size or topography that would be unique to this property. Staff does not assert that Petitioners have contributed to their own hardship. Relating to the fourth criteria, whether the development would be consistent with the spirit, purpose and intent of CRC rules, Ms. Alcocke stated that the purpose of the rule is

to protect life and property. Although Petitioners' plans are inconsistent with the rule regarding expansion of a non-conforming structure, in this case the expansion is for open balconies. There is the issue that later they could seek to enclose the balconies, which would be exempted from the rules. Petitioners have stipulated that if they receive the variance, they would not seek to do that. Therefore, granting the variance would not result in an expansion of the living area of this structure. The location of the balconies on the landward side of the building will not contribute to the building's vulnerability to the hazards of the Atlantic Ocean.

John Norkus spoke on behalf of Petitioners, Nags Head Inn. He asked that Commissioners look at stipulated fact #10, which states there is a permit to construct the balconies. In reference to fact #11, after the permit was received, the structural engineer made the recommendation that a more efficient construction system would be to utilize the original manner of construction which would eliminate ground support. Mr. Norkus stated that fact #17 summarized why Petitioners feel the modification is a better solution and more in line with the intent and interests of CAMA rules. Mr. Norkus stated that this is not the first time in the development history of the property that they have sought to do things which are in compliance with the intent of the rules. For example, the building was elevated off of the ground (which was not a regulation at that time) and a sprinkler system was installed, again, without regulations, and a treatment system was used as opposed to a septic system.

Mr. Norkus stated that Staff and Petitioners positions vary on two elements. The basic hardship more damage would be incurred from ocean over wash with more piers in the ground. History has demonstrated that if there are more piers, the ocean wash comes over and causes more damage. Since the facility was built, there hasn't been any ocean over wash. The main hardship would be the additional cost of the structured balconies versus the cantilever.

Doug Langford stated that he does live in Nags Head, has never stayed at this hotel, does not know the owners and did not recuse himself because he does not feel that he has a conflict or a perception of conflict on this issue.

Lee Wynns stated that he lives just North of Nags Head Inn and perceives no conflict on this issue.

Bob Wilson stated that he likes the cantilevered plans and does not base his ideas on the issue that it will save the Petitioners money. He further stated that this is a non-compliant structure and under today's rules it would not be permitted to be built. Commissioner Wilson stated that he thought the CRC should allow cantilevering of the porches for the landward side of the hotel.

Chairman Hackney stated that the CRC is bound by statute with high standards. He further stated that if the Commission believes that a hardship would occur, then the criteria would address this.

Bob Wilson made a motion to uphold the Petitioner's position for the first criteria. Bill Peele seconded the motion. The motion passed with nine votes (Elam, Old, Bissett, Peele, Langford, Gore, Wynns, Wilson, Weld) and two against (Emory, Shepard). (Sermons and Cahoon did not participate in vote).

Bob Wilson made a motion to support the Petitioner's position for criteria two. Doug Langford seconded the motion. The motion passed with eight votes for (Elam, Old, Bissett, Peele, Langford, Wynns, Wilson, Weld) and three against (Emory, Shepard, Gore). (Sermons and Cahoon did not participate in vote).

Doug Langford made a motion to adopt the Staff's position on criteria three conditioned upon stipulated fact #18 (porches could never be enclosed at a later date). Joseph Gore seconded the motion. The motion passed unanimously (Elam, Old, Bissett, Peele, Emory, Langford, Shepard, Gore, Wynns, Wilson, Weld). (Sermons and Cahoon did not participate in vote).

Bob Emory made a motion to adopt the Staff's position on the fourth criteria. Bill Peele seconded this motion. The motion passed unanimously (Elam, Old, Bissett, Peele, Emory, Langford, Shepard, Gore, Wynns, Wilson, Weld). (Sermons and Cahoon did not participate in vote).

This variance was granted.

#### **Update on Attorney General's Advisory Opinion Concerning Mowing/Cutting Marsh Vegetation**

Jill Hickey gave an update on the Attorney General's advisory opinion concerning mowing/cutting of marsh vegetation (I&S 07-08). She stated that the CRC had asked a similar question in 1998, but it only addressed this issue within the context of permitting. The opinion stated that a permit could be required if the wetland clearing is an adjunct of construction or if the mowing (or burning) of the wetlands would alter the shore bank or bottom of the adjoining water body.

In the current 2007 opinion, this 1998 opinion is reaffirmed but also looks at the ability to adopt rules. Coastal wetlands are designated as an area of environmental concern. The CAMA statute lists wetlands as one of the most important coastal resources, and there are existing rules that currently mention suitable land uses. The current rules state that suitable land uses are those to be consistent with the management objective with the highest priority being the conservation of existing coastal wetlands. The CRC has the ability to specify that mowing, burning or other alterations of coastal wetlands are prohibited.

After discussion, Chairman Hackney stated that when the CRC meets in Wilmington, a field trip could be planned to introduce these species of vegetation to the Commission.

## **PETITION FOR RULEMAKING**

The petition for rulemaking by N.C. Floating Docks and Lifts, LLC – 7H .0208(b)(6)(H) Docks and Piers was withdrawn.

## **PUBLIC HEARINGS**

### **15A NCAC 7J .0210 – Replacement of Existing Structures**

Written Comments received by Brooks, Pierce, McLendon, Humphry, & Leonard, L.L.P., environmental counsel for the Village of Bald Head Island. Each Commissioner was provided a copy of these comments for review. (attached)

Steve Coggins of Rountree, Losee and Balwin, Representative for the Village of Bald Head Island – Stated that there are groin fields on Bald Head Island at the mouth of the Cape Fear River. The current proposed language states “certain structures shall be permitted” Mr. Coggins suggested that it read for clarity “non-water dependent structures shall be permitted”. Mr. Coggins also suggested that language be used that allows replacement to the extent an existing structure is already permitted. Mr. Coggins showed photos of the groins and groin fields.

### **15A NCAC 7K .0209 – Exemption/Accessory Uses/Maintenance Repair/Replacement**

No Comments Received

### **15A NCAC 7M .0303, .0306, .0307 - Public Access Guidelines; Local and State Involvement**

No Comments Received

### **15A NCAC 7H .1102, .1202, .1302, .1402, .2002, .2102, .2202, .2402, .2702 Increase Time Allowance for Construction Under General Permits**

No Comments Received

## **COMMITTEE REPORTS**

### **CRAC Report**

Bill Morrison presented the minutes from the CRAC meeting. (SEE ATTACHMENT FOR WRITTEN REPORT).

### **P & SI Committee Report**

Bill Peele presented the minutes from the P & SI Committee meeting. (SEE ATTACHMENT FOR WRITTEN REPORT).

The CRC took the following action:

**Wayland Sermons made a motion to have Staff bring back alternatives to the proposed pier lengths and square footage maximums [GP 7H .1200 and 7H .0208(b)(6)]. Bill Peele seconded this motion. This motion passed unanimously. (Elam, Sermons, Bissett, Peele, Emory, Langford, Gore, Shepard, Wynns, Wilson, Weld, Cahoon).**

Chairman Hackney stated that if this could be prepared prior to the mailout, please send it early as a separate mailing.

#### I & S Report

Bob Emory presented the minutes from the I & S Committee meeting. (SEE ATTACHMENT FOR WRITTEN REPORT).

The CRC took the following action:

**Bob Emory made a motion to send the final draft of 15A NCAC 7J .0409 (Civil Penalties) to public hearing. The motion passed unanimously (Elam, Sermons, Bissett, Peele, Emory, Langford, Gore, Shepard, Wilson, Weld, Cahoon) (Wynns absent for vote).**

#### PUBLIC COMMENT AND INPUT

1. Tom Wilson, Planning Director of Town of Nags Head, addressed the Commission on behalf of the Town. Asked the Commission to reevaluate the thirty-day time period for the "beach push" permit. Currently these permits are valid for thirty days to the property owner and this has caused a tremendous increase in the permitting load in Nags Head. Also, there have been several complaints from the property owners who have to come back and do multiple permitting. It is not uncommon for property owners to conduct three or four pushes in a season and as a result it is tripling the permitting load. Mr. Wilson suggested that this permitting period be from November to the beginning of May.

The second request the Town has is for the reimbursement rates that counties and municipalities have under the CAMA LPO program. These rates, which are in the contract and are not subject to negotiation, have not been modified since May 1990. Mr. Wilson respectfully requested that the Commission take a look at these fees.

Doug Langford commented that this second request is based on statute and the General Assembly will have to handle. This is a part of the original CAMA legislation and amendments thereto.



2. Michelle Farr, (operating manager) representing the Comfort Inn South in Nags Head. Stated that she recently established a repair for a deck with a less than fifty percent value to the appraised value. She requested the Commission take a look at the field guide (which she provided to the Commission at this time). Christy Goebel asked Ms. Farr if this issue was in active litigation and she replied no. She stated that she has gone through the process successfully, however, stated there were some discrepancies and information that is unclear which created a loss of time and additional costs for the project. She requested that the Commission provide some clarification. She stated there was a problem with the interpretation with concrete and how it could be used. The field guide was used as a guideline. This field guide was provided to the engineer and appraiser on this project. The field guide defines physical value, but the clarity of what is included and excluded is causing problems for the "appraised value". She asked that the Commission consider clarification.

## **PRESENTATIONS**

### **Alternatives to Static Line (CRC 07-01) Spencer Rogers**

Spencer Rogers began his presentation by stating that one of the most important issues when looking at Static Line is why do we need a vegetation line definition? The most important reason is the use of it to establish setback lines in areas not affected by beach fill projects. There are several states which cannot use setback lines and wonder why North Carolina can use it. The reason it works for N.C. is the vegetation line normally represents the landward limit of wave-induced erosion. It is an effective storm-induced moratorium. When there is a fixed line that is surveyed in, it is out of date after the first big event. Following a big event the vegetation line is immediately changed and can be implemented instantly. Looking at the science of dune erosion models, they are a good guideline on the volume loss and degree of erosion in the dunes. No science has been developed to accurately predict the recovery of a dune.

There are long-term erosion problems and seasonal fluctuations, what happens when there is a beach fill project? The vegetation line ceases to become a feature of seasonal beach fluctuations and becomes a design decision. Once the beach fill goes in, the vegetation line is no longer functioning as we use it in other places. Our perception of the success of a beach fill project often depends on where you put it. If you put it farther back on the beach, versus farther seaward, it is not obvious how much of the outer shoreline is eroding but the vegetation is more stable and more useful over a long-term period.

There are three vegetation lines: the stable, static, and alternate line. The stable line is working pretty well, with a few exceptions. The static line is not working well. The alternative line not only isn't working well, but there is no feasible science to make it work well. The only reason we need an alternative line is because the static line is not functioning the way we want, it is not successfully establishing good setbacks.

Therefore, the best way to fix the alternative line is to do away with it completely and replace it with an alternative approach.

There are three major problems with the static line. It is not restrictive enough in being defined and applied. Wording is a big problem; the line is not being applied to projects where it needs to be. There are multi-million cubic yard projects at 50 cubic yards per foot that were not present before the definition was set. One of the things the CRC is charged to do with variances is to look at the spirit of the rule. One thing to point out in the definition of "big and large" there are two important issues that were in the spirit of the rule when it was originally proposed and passed. (1) Does it exempt the inlet crossing dredging projects that put sand back on the beach? (2) Is the beach fill large enough to have affected the vegetation line? The spirit is to get the sand on the beach without causing other problems. Spencer showed Oak Island in 1998 and compared it with 2004. Although there have been discussions over 50.08 cubic yards and whether it is close enough to fifty or not, this was not the spirit of the rule. The spirit of the rule is whether it has affected the vegetation line. Did the natural processes change?

The second reason the static line is not working is because the large beach fill projects are being overly regulated in building sites. Some of the projects are functioning as the equivalent of the setback requirements. We have 42 years of experience with well designed beach fill projects in Wrightsville Beach and Carolina Beach and if we are going to look at the future impact on these other projects that come later, we can look at these two projects and see what would have happened if our regulations had been implemented on these communities. This is twelve years longer than the small building setback. Maps were shown of Wrightsville Beach and Carolina Beach. The nourishment project was not maintained and the whole project practically disappeared (Wrightsville Beach).

The third reason the static line is not working is because it is encouraging poor design (cantilevers). The location is not the problem; it is what the setback requirement led the engineer to design and the property owner to demand.

How do we fix this? Credit beach fill projects that meet the goals of the original building setback. We adopted a setback for specific purposes. If we are going to change it because of a beach fill project, then let's see what goals that we have already set for the setback have been accomplished. We need to establish a post project setback line while maintaining the vegetation line. Continue to use the static vegetation line for smaller projects.

If you look at the rules, there are three big reasons to establish ocean setbacks. (1) Keep the buildings off of the beach, (2) storm protection of the buildings, and (3) to avoid the cost of erosion control. For a beach fill project, number three will not be accomplished. There are houses sitting on the beach that we do not want there. There are buildings that have fallen down. If you look at storm damage, the closer you get to the water the higher the level of damage. A setback functions in part to keep buildings farther away from the highest hazard areas, where losses would be highest.

Which beach fill projects should consider altering the static vegetation line? Spencer suggested that there should be four conditions. (1) The projects are designed for long-term erosion protection, (2) storm protection (3) hurricane protection and (4) they have components that are planned for long term maintenance and funding.

Why retain the static line on other projects? The vegetation line is no longer established by seasonal beach fluctuation. The beach fill generally erodes much faster in beach fill projects than on the original shoreline. The emphasis on erosion has shifted from the owner to the community's responsibility. The owner has to rely on the community to do the beach fill maintenance as it takes a mile or more of beach to be effective.

Which communities would qualify as hurricane protection projects? Wrightsville Beach, Carolina Beach, Kure Beach, Ocean Isle (some sections), Oak Island (turtle project) and Bogue Banks (may not be big enough). With maintenance and reconstruction they could bring them up to these standards relatively easy.

Spencer stated that we would continue to struggle if we look at it from the vegetation line and the ocean point of view. The vegetation line doesn't mean much because it is all man made and we have drastically altered the erosion rate conditions that threaten it.

The best way is to start at the road. For typical building limits, there are side setbacks, street setbacks and an oceanfront vegetation line that leaves the footprint that the owner can work with. The real problem in the beach fill is we are in eroded conditions where the static vegetation line is, at its worst case, landward of the buildings and the setback may be at the oceanfront road. One way to treat that is to define the beach fill requirements that are the equivalent of the setbacks or better, ensure there is maintenance and funding, define a maximum street setback and side setback. A maximum feasible setback on the property should be determined and the vegetation line would still apply if it were not maintained.

Spencer said that he likes incentives and setting up programs that encourage a property owner or builder to move in the right direction. We have the opportunity to do that by looking at the minimum floor area. A minimum footprint would have to be set. The incentives would be the ability to increase the floor area. The farther back the location of the building, the option of the bigger building size. This will reduce the cost to the community because it is a lot easier to maintain the beach fill if there is extra space landward of it. The basic premise is the beach fill, if properly designed, has proven to be as effective as the setbacks are in other places.

Static Line Discussion (CRC 07-02)  
Jeff Warren

Jeff gave a brief history of the static line. The vegetation line has been used in North Carolina to define the setback since February 1979. Early on "natural" was used to

replace "established vegetation" in the rules due to concern of artificially pushing dunes oceanward and sprigging them with vegetation. Wrightsville Beach's hurricane project raised the concern of the creation of new dunes that were created oceanward. DCM and the CRC were concerned that the public would consider the constructed dunes as stable and want the setback measured from there. There were unbuildable lots in Wrightsville and Carolina Beach because of this interpretation by DCM, which was upheld by the CRC. In 1995 there was a contested case in Wrightsville Beach. The ALJ recommended codifying the use of the pre-project vegetation. So, in 1995, the rules were put into place which defined using the pre-project line of vegetation to measure setback and not where vegetation was sprigged, planted, or moved.

The draft rules were based on three major factors. (1) There was evidence that engineered beaches erode faster than the natural beach, (2) there is no assurance of future funding and (3) the development tied to a forced line could be in a more hazardous location (could be further oceanward). Currently there are static lines in Ocean Isle Beach, Oak Island, Carolina Beach, Kure Beach, Wrightsville and most of Bogue Banks. Bald Head Island is in the process of receiving a static vegetation line due to their receipt of large-scale volume coming from operation clean sweep of the Wilmington shipping channel.

Currently there are two methods for dealing with erosion on the oceanfront, retreat and beach fill. There are passive benefits from beach fill (storm mitigation and delays erosion) but it is temporary. There are no active benefits to beach fill. Development cannot move landward based on the vegetation line moving landward. It is held at the pre-project vegetation position.

Originally the rules of the CRC were based on three objectives. (1) Reduce unreasonable risk to life and property, (2) to minimize public cost (3) maintain an open, uncluttered beach for all the citizens of North Carolina. There is also CAMA policy which says to protect, preserve and conserve coastal resources, but in CAMA you have to protect the economic development of the coastal zone. CAMA is a balance between development and conservation. To allow development to move oceanward from engineered beach fill, in 1998 NOAA did a survey of all of the coastal states to include the Great Lakes and of all of the 28 states only one state allowed oceanward movement of development under artificial conditions (South Carolina). In North Carolina, it is tough to measure the performance of the artificial beaches because the data is aerial photos and can be misleading. Beach fill is a relatively new approach to erosion control and storm mitigation in this state and we are still learning. Beach fill does mitigate storm damage.

Development constructed with new materials to current building code is safer. To preserve life and property, you have to ask if we are better off looking at older structures and doing repairs to them or is it better to replace them with current building codes and materials? If beach fill occurs and the town or municipality embraces beach fill as a storm mitigation attempt or to offset erosion, should the incentive be for beach fill to be a larger project than a smaller one? The current policy is an incentive for a small project, the Commission needs to reflect on this and state if beach fill is going to occur, should we

be pushing for large projects which perform better over time? There is more storm mitigation, better erosion control and is better for economics (ten year versus every four year dredging).

Does the Commission want to explore a new policy that allows oceanward position of development to benefit from large-scale projects that are maintained? The current rule does not allow for this. (Draft rule language was provided to the Commissioners). Emerald Isle, Ocean Isle and Oak Island have asked for the policy to be changed because it is not working. Pine Knoll Shores and Atlantic Beach would like for it to stay as it is.

Slides were shown and discussed as follows: The vegetation line was shown prior to a beach fill project. Sand is put in and the static line becomes the location of the vegetation. If the vegetation moves out naturally, the setback is still measured from the static line. In other cases, Towns put in a berm. Then questions are raised by property owners because they consider this vegetation stable. The property owners then want the setback marked from there. But does that put structures in harms way? In some cases, the line would be oceanward of where the shoreline was prior to the project.

Does there need to be an incentive for large-scale projects? Staff recommends that the definition of "large scale" be changed to say "any Corps storm protection project or any project greater than 300,000 cubic yards. Staff would also recommend eliminating the alternative vegetation line. The alternative line was a result of storm damage from hurricanes Bonnie and Floyd which effected the location of the vegetation in 1998 and 1999. In 2000, Oak Island and Ocean Isle both had their surveys put in for their static lines. The location was landward of where the static line would have been if the storms had not hit them. A rule was put into place to try to mitigate the effect. Instead of trying to write a rule that defines mitigating for storms that haven't occurred yet, staff suggests that the 1998 line should be used as the static line for Ocean Isle and Oak Island. This could easily be done by putting a provision in the rule which states their static line will be the vegetation line from the 1998 digital photos.

Does there need to be a different way to look at the static line and allow development adjacent to beach fill under limitations? Should there be oceanward movement of setbacks? We should look at Towns that have large-scale projects, which are actively maintained, and allow them to put in something on a limited scale. Then if the shoreline retreats back, the structures would be moveable (limit the square footage of the structure). If the vegetation line ever goes landward of the static vegetation line, then the static line ceases to be looked at because the conditions would be more restrictive due to the occurrence of erosion.

There is data showing that there are benefits to large-scale beach fill projects, to protection of life and property, and protection for redevelopment for aging structures. Does this fall on the spirit of CAMA? If so, do we need to take a policy shift and come up with a policy that enables limited development behind large-scale, maintained projects? The staff proposal tried to roadmap how such a policy might look.

Chairman Hackney stated there are two issues that were brought by both Jeff and Spencer. (1) The concept of limited development behind beach fill nourishment projects and (2) the definition of beach fill.

**Renee Cahoon made a motion to have Staff bring back a definition of beach fill and develop guideline language for development behind static lines in concert with local governments and the Science Panel. Charles Elam seconded this motion. This motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Gore, Shepard, Langford, Emory, Sermons, Elam) (Bissett absent for vote).**

### **ACTION ITEMS**

Recommendation for CRAC Coastal Cities Vacancy

**Joan Weld made a motion to appoint Frank Rush to the CRAC. Motion seconded by Doug Langford. Motion passed unanimously (Elam, Sermons, Peele, Emory, Langford, Shepard, Wynns, Wilson, Weld, Cahoon) (Bissett and Gore absent for vote).**

### **OLD/NEW BUSINESS**

Amendment to CRC Internal Operating Procedures

**Wayland Sermons made a motion to table this issue until the May meeting. Charles Elam seconded this motion. Motion passed unanimously (Weld, Cahoon, Wilson, Wynns, Shepard, Langford, Emory, Peele, Sermons, Elam) (Bissett and Gore absent for vote).**

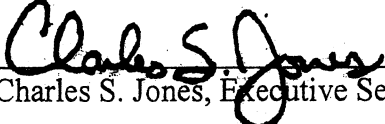
Chairman Hackney stated that during the last meeting the CRC approved a variance for Sandy Point, LLC. Under CHHP, there is a provision that allows the Marine Fisheries Commission to request from the CRC information related to variances which they disagree with. Dr. Hackney stated that he had received a letter asking for an explanation as to why the CRC granted the variance to dredge through submerged aquatic vegetation (SAV). He requested of the Commission permission to respond to this letter. The Commissioners agreed.

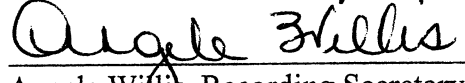
Bill Peele stated that he would like the CRC to make a statement expressing their concerns and stating their opposition to the OLF (Outlying Landing Field). Bob Emory stated that he needed to recuse himself, as he is an employee of the largest landowner in North Carolina with most of the land being east of I-95. Bill Peele read a letter he had drafted to the Commission. After discussion, it was decided that Wayland Sermons would draft a resolution which would state opposition to the OLF in the proposed location on behalf of the CRC.

**Joan Weld made a motion to send a letter from the Chairman, drafted by Commissioner Sermons, and to send to all federal and state elected officials. Motion was seconded by Renee Cahoon. The motion passed unanimously. (Weld, Elam, Peele, Sermons, Langford, Shepard, Gore, Wynns, Wilson, Cahoon) (Emory did not participate in vote) (Bissett absent for vote).**

With no further business, the CRC adjourned.

Respectfully submitted,

  
Charles S. Jones, Executive Secretary

  
Angela Willis, Recording Secretary

**NC Coastal Resources Advisory Council  
Ramada Inn  
Kill Devil Hills, NC  
March 21-22, 2007  
Meeting Summary**

**Attendance**

William Morrison, Chair	Y	J. Michael Moore	Y
Dara Royal, Vice Chair	Y	Elwood Padrick	
Frank Alexander	Y	W. Burch Perry	Y
Deborah Anderson	Y	Spencer Rogers	Y
Eugene Balance		Brandon Shoaf	
Joe Beck	Y	Robert Shupe	Y
Harold Blizzard		Harry Simmons	
Randy Cahoon	Y	Lester Simpson	Y
Carlton Davenport	Y	Steve Sizemore	Y
Eddy Davis	Y	Jimmy Spain	
Paul Delamar		Paul Spruill	
Webb Fuller	Y	Michael Street	Y
William Gardner, Jr.		Ray Sturza	Y
Renee Gledhill-Earley		Penny Tysinger	Y
Gary Greene		Beans Weatherly	Y
Judy Hills	Y	David Weaver	Y
Al Hodge	Y	Ginger Webster	Y
Maximilian Merrill	Y	William Wescott	Y
Joe Lassiter	Y	Tracie White	Y
Travis Marshall (Phil Harris)	Y	Rhett White	Y
Gary Mercer	Y	Don Yousey (David Stanley)	
Wayne Mobley	Y		

**Wetland Bank Field Trip**

Bud Needham of Needham Environmental Inc. led a field trip for CRC and CRAC members at a wetlands restoration site in Tyrrell County. The site is being restored from agricultural use and will be used as a mitigation bank. Along with replanting native wetland species and cypress trees, Needham is restoring the hydrology and replacing old culverts with new ones that will facilitate fish passage. Mitigation credits have already been sold for the portions of the site that have been fully restored.

**Stormwater Retrofitting Seminar**

The CRAC-sponsored Stormwater Retrofitting Seminar got underway at the NC Aquarium at Roanoke Island at 3 pm. Approximately 70 attendees, including CRAC members, local elected officials, and municipal staff were present to learn about some of the technical and practical issues associated with retrofitting existing facilities for better stormwater control. Following introductions by Eddy Davis, Al Hodge briefed attendees on DWQ's current and proposed permitting standards.



NSCU Assistant Professor Bill Hunt gave a presentation on some of the technical aspects of retrofitting, focusing on his 16 broad criteria for designing a project. More information on Bill Hunt's work is available at [www.bae.ncsu.edu/stormwater](http://www.bae.ncsu.edu/stormwater). Charlie Humphrey, an Area Specialized Agent with the North Carolina Extension Office in Craven County, spoke about retrofit projects that the Extension Office has been involved with, and the services that it offers to assist local governments that wish to undertake projects. More information about the Extension Office is available at <http://craven.ces.ncsu.edu/>. Steve Miller, Water Resources Manager for the City of Kinston, gave attendees a first-hand look at the experiences of one local government that has completed several retrofitting projects. Steve discussed the technical, operational, and financial aspects of Kinston's projects, and considered the projects to be very successful. In closing, the presenters invited attendees to inspect the stormwater BMPs that had been installed at the aquarium, including a rain garden and cistern. The seminar ended at 5 pm.

The seminar was organized by CRAC members Eddy Davis, Judy Hills, and Penny Tysinger, together with DCM and Coastal Reserves staff.

### **Council Call to Order**

Bill Morrison reconvened the meeting at 9 am on the 22<sup>nd</sup>, with 31 members in attendance. The Council approved the January 2007 minutes with one amendment from Mike Street.

### **Seminar Debrief**

The Council was very satisfied with the turnout of local government officials and staff. The Council noted that there seemed to be more municipal staff than elected representatives present, and that this was expected. The Council thought the seminar itself was very well organized and focused, and had an appropriate mix of outstanding speakers. Due to this success, the Council decided to repeat the seminar later this year in Greenville and Wilmington. Bill Morrison asked that planning board chairs and planning staff be invited to the next seminars. The Council would also like to see a Resources section added to the DCM website that would contain these and similar presentations, or links to such.

The Council decided to produce a short, 5-10 minute presentation that members could take on the road to present at county commission and town council meetings along the coast. The presentation would be customized by location and should include information on grants available for retrofitting. Approximately 15 of the members present indicated their willingness to give the presentation to their local elected bodies.

Gloria Putnam of Sea Grant offered herself, at members' requests, to visit local commission and council meetings to educate officials about stormwater management, retrofitting, and other water quality issues.

Gary Mercer mentioned what he calls disconnects in messages from regulatory agencies, saying that the problems need to be fixed, and challenging the CRAC to work to find solutions to coastal water quality problems. Mercer suggested that using filter-feeding shellfish and ultraviolet radiation could be innovative ways to treat impaired waters.

Wayne Mobley said that the agencies through their regulations are charged to protect the public trust, which cannot be uncontrollably sacrificed for the sake of development. Mobley said that depuration plants are common in other states, e.g. New Jersey, and while North Carolina's shellfish harvest rules may be more stringent, the state has not seen any public health issues related to shellfish consumption since the rules were enacted.

Gary Mercer stated that he thinks the state's current stormwater rules are sufficient. Mercer would like to see a moratorium on new regulations, and see the agencies work instead on improving the current regulations and compliance among the regulated community.

Dave Weaver said he would like to see a nuts and bolts presentation for local governments that compares the current coastal stormwater regulations, the proposed Phase II regulations, and the Universal Stormwater Management Program. Al Hodge noted that extending the Phase II regulations to all 20 coastal counties is still in the conceptual stage at DWQ, it has not yet been formally proposed to the EMC for consideration or adoption. Al stressed that none of the current or proposed regulations currently under consideration would achieve water quality improvements, their intent is to prevent further degradation. Al questioned whether that was sufficient. Al conceded that it is not fair for the entire burden to fall on new development when much of the adverse impacts comes from existing development, e.g. failing septic systems, and this is why retrofitting is important. Al added that while he recognizes that much of the pollution problem comes from wildlife DWQ can only regulate human activity because he does not know how to keep a duck from pooping.

Deborah Anderson suggested a look at the Jordan Lake watershed rules which require all development, new and existing, to manage and treat their stormwater. Wayne Mobley reiterated that while only a very small percentage of state waters are closed to shellfishing, 99 percent of remaining clam waters (i.e. waters from Morehead City southward) are at risk of closure following every heavy rainfall. The state relies on management plans to keep the waters conditionally open.

Al Hodge said that the NC Coastal Management Program could assist with inspections and maintenance. Agencies should work cooperatively to share reports with each other and with local governments. Mike Street added that it would be good for DWQ to be given dedicated compliance and enforcement staff.

Max Merrill asked whether the Council could initiate a program to regulate coastal buffers. Max said that DENR's Soil and Water Conservation Division will be making grants available later this year to assist with installing stormwater BMPs on individual lots.

Gary Mercer asked whether the Council could recommend that CAMA land use plans be required to address stormwater retrofitting.

### **Priorities**

The Council briefly revisited their list of priority issues. Bob Shupe and Mike Street emphasized the need to act on sandbags. Staff reassured them that the issue would be taken up in a committee of the whole at the May meeting in Greenville.

### **Wrightsville Beach Access #33**

Bill Morrison pointed to the response from the mayor of Wrightsville Beach to the joint CRC/CRAC letter that was sent in regards to access #33. The mayor gave a lengthy explanation of the town's reasons for returning title of the access parcel to private ownership, and of the town's decision not to pursue legal action to secure prescriptive access. Bill stated that he didn't see the need for any further action by the CRAC.

### **New Business/Old Business**

With no further business the Council adjourned at 11:30 am.

##

07J . 0210

**BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.**

[illegible][illegible]

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**March 20, 2007**

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**Mr. Charles Jones, Director  
Division of Coastal Management  
400 Commerce Avenue  
Morehead City, N.C. 28557**

**Re: Comments on the proposed amendment to 15A NCAC 07J.0210, "Replacement of Existing Structures"**

**We are environmental counsel for the Village of Bald Head Island and on behalf of the Village, we request that the proposed amendment to 15A NCAC 071.0210, "Replacement of Existing Structures" be clarified to avoid unintended consequences to future Village of Bald Head Island ("VBHI") groin field repair or replacement work under its existing CAMA Permit.**

## **I. Current Regulation Governing Repair of Existing Structures**

The current CAMA regulation regarding repair and replacement of existing CAMA-permitted structures, such as the VBHI groin field, is 15A NCAC 07J.0210, "Replacement of Existing Structures" which provides:

**Replacement of existing structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and will require CAMA permits. The proposed work will be considered replacement if the cost of the proposed work exceeds 50 percent of the physical value of the structure at the time of damage. The physical value of the structure shall be determined by the**

local building inspection office. Replacement structures can be allowed if they are found to be consistent with current CRC rules.

## **II. Proposed Amendment to Regulation**

At its June 2006 meeting, the North Carolina Coastal Resources Commission ("CRC") adopted for public hearing the following proposed amendment to 15A NCAC 07J.0210, (the "Proposed Amendment"), which strikes the entirety of the current text, and inserts in lieu thereof the following, relevant to the VBHI groin field:

(a) **NON WATER DEPENDENT STRUCTURES.** Replacement of non water dependent structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and shall require CAMA permits. Replacement of structures shall be permitted if the replacement is consistent with current CRC rules.

...

(b) **WATER DEPENDENT STRUCTURES.** Replacement of water dependent structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and shall require CAMA permits. The proposed work will be considered replacement if it enlarges the existing structure. The proposed work shall also be considered replacement if:

...

(3) in the case of bulkheads, seawalls, groins, breakwaters, and revetments, more than 50 percent of the linear footage of the structure must be rebuilt in order to restore the structure to its pre-damaged condition.

## **III. Analysis**

The Proposed Amendment is vague and somewhat poorly worded, its construction and implementation is uncertain, and potentially much more restrictive than the current regulation.

For example:

- The provision in paragraph (a) "Replacement of structures shall be permitted if the replacement is consistent with current CRC rules" appears to mandate such permitting of water independent structures, but not water dependent structures, such as the VBHI groin field, as there is not a similar provision in paragraph (b).

- It should be noted that the provision "Replacement of structures shall be permitted if the replacement is consistent with current CRC rules," does not prohibit replacement if the work is not consistent with current CRC rules, but rather only mandates that a CAMA permit be granted if the replacement work is consistent with current CRC rules.

- The provision in paragraph (a) "The proposed work will be considered replacement if it enlarges the existing structure." is overly restrictive as the reference to "existing structure" appears to mean the structure as it then exists (in a deteriorated or partially destroyed state) at the time the work is proposed, rather than the structure as it was permitted. Thus it could be interpreted to mean that a new CAMA permit would be required for almost any repair of a deteriorated groin field (such as even minor replenishment of sand lost from the longard tubes) which would technically "enlarge" the structure from its then-existing state.

- The Proposed Amendment provision "more than 50 percent of the linear footage of the structure must be rebuilt in order to restore the structure to its pre-damage condition" is vague and it is uncertain how it would be applied in the context of a groin field (e.g., whether the groin field would be deemed one "structure" for the purposes of determining linear footage or each groin deemed a separate structure, as well as how "linear footage" would be measured given the various dimensions of the groin field).

This language would conflict with the existing VBHI CAMA permit (which allows for "rehabilitation" of the groin field), and the applicable variance and statutory language of N.C. Gen. Stat. § 113A-115.1 (which collectively exempt the VBHI groin field from CRC rules that would otherwise prevent permitting, and provide for renewal of such permits granted pursuant to a variance). The current CAMA Permit for the VBHI groin field, which expires on December

31, 2009, allows for the "rehabilitation" of the groin field to its current configuration. Thus, it appears that the current permit allows for rehabilitation work that would be deemed "replacement" under the Proposed Amendment and otherwise require a new permit. Because the current permit already allows such work, no new permit would be required for such repairs (even if deemed "replacement" under the Proposed Amendment) until after the expiration of the current permit at the end of 2009.

### III. Conclusions

The Proposed Amendment is vague, and its interpretation and application uncertain. It may be construed to severely limit any repair or restoration work on CAMA-permitted water dependent structures (such as the VBHI groin field) without a new permit.

### IV. Recommendations

Because of the uncertainties associated with the interpretation and application of the Proposed Amendment, its inherent vagueness, and its potential for overly restrictive application to the groin field. Draft text edits to address shortcomings of the Proposed Amendment are attached as an *Exhibit*.


Sincerely,



George W. House

GWH/bbh

Enclosure



(a) **NON WATER DEPENDENT STRUCTURES.** Replacement of non water dependent structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and shall require CAMA permits. Replacement of non water dependent structures shall be permitted if the replacement is consistent with current CRC rules.

1. The proposed work shall be considered replacement if the cost to do the work exceeds 50 percent of the market value of the structure immediately prior to the time of damage or the time of request. Market value of the structure does not include the value of the land, value resulting from the location of the property, value of accessory structures, or value of other improvements located on the property. Market value of the structure shall be determined by the Division based upon information provided by the applicant using any of the following methods:

- A. independent certified professional appraisal;
- B. replacement cost with depreciation for age of the structure and quality of construction; or
- C. tax assessed value.

2. The cost to repair the structure is the cost for complete repair to the structure's pre-damage condition, using qualified labor and materials obtained at current market prices, regardless of the actual cost incurred by the owner to repair the structure. It shall include the costs of construction necessary to comply with local and state building codes and any improvements that the owner chooses to construct. The cost to repair shall be determined by the Division utilizing any or all of the following:

- A. an estimate provided by a North Carolina licensed contractor qualified by license to provide an estimate or bid with respect to the proposed repairs;
- B. an insurance company's report itemizing the cost of repairs to the structure excluding contents and accessory structures; or
- C. an estimate provided by the local building inspections office.

(b) **WATER DEPENDENT STRUCTURES.** Replacement of water dependent structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and shall require CAMA permits. The proposed work will be considered replacement if it enlarges the existing structure beyond the dimensions set out in the permit(s) (including any renewal or modification thereto) allowing for its construction. The proposed work shall also be considered replacement if:

1. in the case of fixed docks, piers, platforms, boathouses, boatlifts, and free standing moorings, more than 50 percent of the framing and structural components (beams, girders,

joists, stringers, or pilings) must be rebuilt in order to restore the structure to its pre-damage condition. Water dependent structures that are structurally independent from the principal pier or dock, such as boatlifts or boathouses, shall be considered as separate structures for the purpose of this rule;

2. in the case of boat ramps and floating structures such as docks, piers, platforms, and modular floating systems, more than 50 percent of the square feet area of the structure must be rebuilt in order to restore the structure to its pre-damage condition;
3. in the case of bulkheads, seawalls, groins and groin fields, breakwaters, and revetments, more than 50 percent of the linear footage of the entire permitted structure must be rebuilt in order to restore the structure to its pre-damage condition, permitted condition, according to dimensions set out in the permit(s) (including any renewal or modification thereto) allowing for its construction.



**BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.**

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**DRAFT**  
**Planning and Special Issues Committee**  
Meeting Summary  
March 22, 2007

Committee Chair Bill Peele called the meeting to order at 1:15 p.m.

**Draft Amendments to GP 7H.1200 & 7H.0208(b)(6) Docks & Piers (P&SI-07-10)**

David Moye, DCM Express Permitting Coordinator for the Washington District, again presented proposed Pier Rule changes for 7H .1200 General Permits and .0208 Use Standards. He reported on a series of four workshops for local contractors covering the 20 coastal counties on policy and proposed rule changes. The 84 contractors that attended were unanimous in their objection to the portion on reducing pier width from 6 feet to 4 feet. Their concerns with the reduced width included stability, safety and a perceived lack of evidence that the width has had a negative impact on the resources. Another issue they raised was that the 4' width restriction had the potential to eliminate the construction of concrete piers that, as currently constructed have a minimum 5' collective width that includes protective wooden edging. Lastly, they felt that the 4' width would present safety issues with the inability to walk side by side, including potential difficulties for handicap accessibility.

Moye then presented proposed language changes as charged by the CRC at the January 2007 CRC meeting for 7H .1200 General Permits and .0208 Use Standards. One related question was whether the proposed changes to specific conditions applied to rented commercial facilities, which they do not.

A Motion was made by Charles Elam and seconded by Jerry Old, to recommend forwarding of staff's recommended language to the Coastal Resources Commission. The Motion carried Unanimously.

**Duck LUP Implementation Status Report (P&SI-07-09)**

Sue Cotellessa, Director of Community Development with the Town of Duck, presented the Town's implementation report, highlighting items that have been addressed since the LUP was certified on April 8, 2005. These items included institution of a minor permit program, completion of a vegetation and tree protection ordinance for adoption, and adoption of an ordinance regulating fill to address stormwater management issues.

**Urban Waterfront Development– Columbia, Beaufort, & Elizabeth City (P&SI-07-07)**

Steve Underwood, DCM, gave a brief overview of previous committee discussion and provided an introduction for the presentations, each of which highlighted considerations being made for redevelopment, vertical expansion, and use of non-water dependant structures located over the Public Trust waters.

Charlan Owens, DCM Elizabeth City District Planner, addressed four (4) locations and a total of six (6) structures within Elizabeth City. These included an existing marina with a primary and secondary single-story structure, an under-utilized platform historically used to support fuel tanks, a restaurant deck, a multi-story brick structure partially located

over the Public Trust, and a single-story metal "shell" structure. The structures are located within various zoning districts. The marina and platform are located within a district with a three-story height limit, with the remaining structures being located within districts with no maximum height requirement. Multi-family residential development is allowed within these districts. Redevelopment potential was discussed, and it was acknowledged that while available land area associated with the structures may be limited and reduce use options, development requirements, such as parking, might not preclude the potential for increased development intensity.

Rhett White, Manager of the Town of Columbia and CRAC Member, addressed one (1) structure within Columbia. The historic structure has housed many uses and is located within an historic district. Given its historic status, as long as the building is in place and not totally destroyed, it must be maintained at historic standards. If, however, it is totally destroyed, the use and height would be open. The Town currently has a 50-foot height limit, but a developer may solicit the Town to change the requirement in order to make any future development economically feasible.

Rob Will, Planner for the Town of Beaufort, addressed six (6) structures within Beaufort. These structures are in close proximity within the same zoning district and included a mixed-use three-story structure converted from a public use to a private use through a "loop-hole" in the Town zoning ordinance, a two-story structure with a restaurant on the first floor and apartments on the second floor, two (2) single-story restaurants, a boat building center, and dock bathhouse. Residential uses are not allowed within the zoning district and a maximum building height of 35 feet is allowed.

Discussion focused on the vertical expansion of structures and whether or not such expansion should be regulated by CRC Rules or determined by local governments. A policy to consider such structures as non-conforming, thereby working toward their eventual removal over time, would suggest allowing them to be re-built only within the existing footprint and within the same density/volume. Limiting uses or excluding specific uses, such as parking decks, were also discussed. Other discussion included concerns with the loss of water-views and it was noted that protection of scenic resources was also a charge per the CAMA Act. Staff noted that DWQ does not regulate stormwater related to structures over the water. Relative to water quality concerns, the Division of Water Quality (DWQ) does not require a stormwater permit for development over the water, therefore the responsibility falls on the Division of Coastal Management.

A Motion was made by Charles Elam and seconded by Jerry Old, to recommend that the CRC address height, use, and water quality issues related to stormwater management of non-water dependant structures over the Public Trust Waters, and then provide direction for staff to propose Rule changes for review; with the understanding that an option for local governments to provide an Urban Waterfront Plan to address issues will be included in any proposed Rule changes for consideration. The Motion carried Unanimously.

A Second Motion was made by Jerry Old and seconded by W. H. Weatherly, to request that the CRC consider the viability of a moratorium on Major Permits issued under Urban Waterfront Rules specific to non-water dependant structures over the Public Trust Waters. The Motion carried twelve (12) to three (3), but was later rescinded by agreement of the Committee based on discussion with Christy Goebel, DCM Attorney, concerning the lack of CRC authority to institute a moratorium.

### **Alternative Format for LUP Presentations/Process (P&SI-07-11)**

Steve Underwood noted that at the request of Courtney Hackney, DCM staff has provided a short memo on some alternative formats for presentations by staff and local governments during the Land Use Plan (LUP) certification process. He pointed out that in the 7B rules is a requirement by the local government to present their plan to the P&SI. Staff provided the following options:

1. Discontinue DCM staff's recommendation and just call on the local official to present for an overview. (Since the recommendation is already provided in the mail out.)
2. Adjust the agenda whereby it is possible to have LUP certification recommendations as consent agenda items. As such, any presentation or discussion would be based on a P&SI members request or if there are questions. Requires amending 7B rules.
3. Limit the time available for presentations by Local governments.

After extensive discussion including how language in the rules may be adjusted, the Committee by consensus directed staff to draft language to include the following approach:

- a. Adjust the rules to not require presentations but provide for submission of written reports which are already done; and,
- b. Ensure the rules still allow for a presentation by the local government if they wish subject to the time limits established by the Committee or CRC.

### **Amendments to 7M.0300 Shorefront Access Policies (P&SI-07-01)**

Steve Underwood DCM's Assistant Director for Policy Planning explained some of the changes staff has been considering to the CRC guidelines governing the Public Beach and Coastal Waterfront Access Program (15A NCAC 7M .0300 Shorefront Access Policies).

After the November 2006 CRC meeting, staff was asked to do some research as to what other states were doing regarding access standards for non-federally funded beach nourishment projects. In general, of the 18 states surveyed, access requirements are part of a more comprehensive shoreline or beach management plan that is required to be developed and accepted by the state in order for the local government to receive or use public funds. However, staff has recommended this issue be set aside until the legislative Waterfront Access Committee recommendations are available and further work is completed on the State's Beach and Inlet Management Plan.

Staff then reviewed the entire 7M rules towards suggesting amendments to the Access Policies and requirements. The changes to 7M .0300 being contemplated can be characterized as follows:

- Clarifying statutory authority.
- Clarifying the definitions of the types of access as well as the types of access sites (local, neighborhood, regional).

- Expanding the definition of "improvements to include facilities such as boat ramps and canoe-kayak launches. Establish accountability and reporting requirement for user fees collected at state-funded access sites.
- Ability to construct access facilities on state-owned lands, particularly Coastal Reserve sites.
- Provisions to utilize funds outside the usual funding cycle to take advantage of unique or time-sensitive opportunities.

Steve then suggested that staff would bring another version back to the P&SI at the May meeting for further discussion.

The meeting was adjourned at 4:38 p.m.

## **Implementation and Standards Committee**

**March 22 – 23, 2007**

**Ramada Inn, Kill Devil Hills, NC**

**Bob Emory, Chair**

### **Civil Penalties Revisions – Final Draft (I&S-07-02)**

Roy Brownlow presented a final draft of the proposed changes to 15A NCAC 7J .0409 Civil Penalties to the I & S Committee. He reminded the Committee that the changes are necessary to implement the revised General Statute 113A-126(d) that increased the maximum amount of civil penalties that may be assessed for CAMA violations. The statute increases penalties for minor development violations from a maximum of \$250 to \$1,000 and from \$2,500 to \$10,000 for major development violations.

The presentation highlighted the revisions to the first draft presented at the January CRC meeting after consultation with the Attorney General's staff, interagency discussion, and DCM staff. Roy reported that the changes included:

- Adding language that specifies additional penalties for violations involving critical habitats within AECs will be "stacked" onto the base penalties;
- Removing the first time exemption from penalty assessment for contractors who have no previous record;
- Specifying the starting time to begin a continuing notice of violation;
- Removal of section (g) Remission and Mitigation and using section (k) to address settlements; and
- Modifying Schedule A to account for non-permittable violations involving open shellfish waters by maximizing and widening the range of the penalty assessments.

After some discussion, two minor changes were made to section (c) addressing the definition of a "person" or ensuring that the defined term "Respondent" is used consistently throughout the rule; and adding language to clarify that civil penalty assessments issued by the Division shall follow the issuance of notices of violation.

Joan Weld made a motion to recommend sending the final draft with the two changes to the full CRC for public hearing followed by a second by Wayland Sermons. The vote was unanimous.

### **Stakeholder Input on Draft Oceanfront Setback Rule (I&S-07-04)**

Jeff Warren reported the DCM staff initiatives being taken to gather stakeholder input on the I&S Committee's setback proposal as discussed at the January meeting. He reminded the Committee that, at present, no rule language was being considered for adoption. Five major issues were outlined in the current proposal: 1) Development setbacks shall be based on size and not use, 2) no setback relief shall be provided for larger development adjacent to erosion rates greater than 3.5 feet per year, 3) increased setbacks for structures greater between 10,000 and 100,000 square feet shall increase incrementally between 60 and 90 times the erosion rate, 4) infrastructure shall be excluded from any setback greater than 60 times the erosion rate, and 5) no cantilevering shall be allowed oceanward of the oceanfront setback.

Warren explained that staff had developed an online resource for stakeholders that explains the proposal and provides access to historical documents that address setback issues (URL: [www.nccoastalmanagement.net/setbacks.htm](http://www.nccoastalmanagement.net/setbacks.htm)). Letters were sent to 110 stakeholders, including CRC and CRAC members; mayors and commission chairs of all oceanfront municipalities and counties, respectively; environmental organizations; and numerous groups representing realtors, builders, and councils of government. CRC Science Panel members received a copy via email. Finally, Warren stated that he also gave a formal presentation on the setback proposal at the February NC Beach, Inlet and Waterway Association (NCBIWA) at which time he requested attendees to review the proposal and provide their input. At present, only two formal responses, provided by the towns of Oak Island and Surf City, addressing the setback proposal had been received by DCM. Warren summarized both.

Doug Langford expressed a concern for single-family structures between 5,000 and 10,000 square feet and suggested a stepped setback between 30 and 60. Warren commented that DCM staff had considered this graduated setback approach and presented an example at the September 2006 CRC meeting. However, in doing so, commercial and multi-family setback factors for structures between 5,000 and 9,999 square feet are relaxed to less than their current setback of 60 times the erosion rate. Lee Wynns felt that he considered single-family structures greater than 5,000 square feet "large." Joan Weld asked about the mailout list to ensure the correct contacts for each organization received the letter (a mailing list was passed out by Warren later in the meeting). Bob Wilson felt a definition was needed for "total square footage" for determination of setbacks and gave examples of attached, ground-floor garages and carports. Spencer Rogers presented one slide for the Committee to address structural risk and pointed out the inadequately low nature of a 30-year setback factor (compared to years versus risk with other natural hazards including flood, fire and wind). Rogers also added that, although most development follows the minimum setback, much of this development could have been farther landward on the same lot. Wayland Sermons asked Rogers if square footage should be the major factor when determining setback to which Rogers agreed, although it was one of many, it was the major factor. It was determined that May 31<sup>st</sup> would be the closure date for stakeholder input, and DCM staff would bring forth another progress report and potential draft rule language to the Committee at their July meeting. Melvin Shepherd wanted to ensure that stakeholders be notified of public hearings if and when draft rules were accepted.

#### **Update on AG's Advisory Opinion Concerning Mowing/Cutting of Marsh Vegetation (I&S-07-08)**

The Committee briefly discussed the AG Opinion on the ability of the CRC to regulate the mowing/burning (or altering) of coastal wetlands presented by Jill Hickey to the full Commission during the morning session. Guidance was given to staff to bring the issue back to the Committee at the next meeting with either overall concepts or draft rule language for further discussion.

#### **Draft Exception to Buffer Rule Along Canals (I&S-07-06)**

Mike Lopazanski reviewed the Committee's continuing effort to develop an exception to the buffer rule for development incorporating stormwater infiltration system. Mike reminded the Committee of the interest in paralleling the EMC's efforts at stormwater treatment however, the uncertainty regarding final EMC action has caused the I&S to move forward with an exception

for development along man-made canals. This was the one case in which the CRC showed a pattern in granting variances to the buffer rule.

Mike advised that the draft language incorporates some of the USMP standards for treatment of stormwater, standard CRC language regarding design of the stormwater system by a licensed professional, alignment with existing development on adjacent lots and an overall limitation of 30% impervious coverage for the buffer area. The draft exception also includes standard CRC language attached to buffer variances that utilize stormwater systems.

The Committee discussed the location of the stormwater system on the lot, provisions for handling adjoining lot at the ends of canals and considered restricting the size of structure taking advantage of the exception. There was some discussion of the definition of a man-made canal and the implication of drainage ditches in rural areas and the unintended consequences of creating a buffer exception for these areas.

Bob Emory explained his reasoning for pursuing an exception to the buffer was intended to address the increasing number of buffer variances considered by the Commission since the inception of the buffer rule. Bob also explained that the rationale of focusing on residential development along man-made canals considered that, given the intensity of development in these areas, a stormwater system might be more effective than a highly impacted buffer.

The Committee discussed the fact that over the past two years, there has been a decrease in the number of buffer variances and questioned the need to continue development of an exception. Representatives of the Town Ocean Isle Beach advised that there were only five or six canal lots remaining in its jurisdiction that could possibly utilize the proposed exception. Bob Emory asked the Committee if there was any further interest in moving forward with an exception and there was unanimous agreement to ending the effort.

### **Access to Islands (I&S-07-09)**

Doug Huggett explained that legislation has recently become effective in South Carolina that sets regulatory requirements for individuals seeking to gain access to privately owned coastal islands. It was further stated that given the increased development pressures currently being experienced in North Carolina's coastal zone, staff was asked by the CRC to prepare a presentation that outlines the South Carolina regulations, and compares and contrasts those with how North Carolina deals with these types of projects. South Carolina's regulations, which took effect in June of 2006, prohibit private bridges to private islands unless the island is at least 2 acres in size. Exemptions may be made for bridges to islands greater than 1 acre in size provided the bridge would provide for an overriding public benefit, for example a project that will provide for a significant increase in public access to public trust waters. In no case does South Carolina allow for private bridges to be constructed to private islands less than 1 acre in size. Doug closed out his review of South Carolina's program by listing environmental issues that are specifically examined during the review of a private bridge permit application, issues such as buffers, stormwater and protection of public trust rights.

Doug stated that in North Carolina, there are no specific rules that deal with private bridges to private islands, although such structures are not prohibited under current CRC rules. And although no specific use standards currently exist that deal with private bridges, numerous general use standards do exist that allow for North Carolina to adequately deal with most of the



environmental issues that South Carolina considers. Additionally, a significant amount of inter-agency coordination takes place during the major permit review process to further assess environmental impacts. After showing some examples of practical difficulties of projects that may be candidates for private bridges, Doug closed by stating that staff did not believe at this time that this issue was serious enough in North Carolina to warrant rule-making initiatives at this time.

Melvin Shepherd stated that while we may not yet currently be under the same pressures as South Carolina, he did think that now might be the proper time to start looking at this issue proactively, perhaps with added buffer requirements for private islands. Melvin also stated that the CRC might want to look into density and island ownership issues as well. Chairman Hackney further stated that he had concerns about allowing public trust areas to be lost for private island access projects. The discussion shifted to the need to know how many of these private islands actually exist in coastal North Carolina. After a discussion into how to best come up with such an island inventory, staff was tasked with coming back to the Committee with a plan on how such an inventory could be produced. Such a plan should provide for an inventory of private islands in all portions of the 20 coastal counties, and should also provide for a mechanism on how to grade these islands by size. Staff agreed to come back with a preliminary report at the next CRC meeting.

#### **CRC Science Panel on Coastal Hazards (I&S-07-07)**

Jeff Warren reminded the Committee that his presentation was placed on the agenda, in part, by public comments during the January CRC meeting. Jeff quickly reviewed the history and the original charge of the CRC Science Panel on Coastal Hazards initially created in 1997. Examples of issues that the Panel has advised include sediment criteria, erosion rate calculation methods, digital mapping techniques and, most recently, re-delineation of the State's inlet hazard AECs. Warren commented that the Panel, currently nine members (four geologists, four engineers, one marine biologist), represents the State's foremost experts on coastal processes and hazards. The agenda and membership of the Panel has always been an informal collaboration between its members, DCM staff and the CRC. Warren felt that these efforts were better left informal and not defined through bylaws or rules. Spencer Rogers underscored the need for Panel members to be NC-specific experts. Numerous people agreed that the Science Panel had provided critical technical input over the past decade, and Joan Weld felt it was critical that the Science Panel need to feel as important part of the coastal management process. Warren suggested a motion to fill the current two vacancies (one geologist and one coastal engineer). Weld made the motion and added that a list of critical technical issues be developed by both the Panel and the I&S Committee. Bob Wilson seconded and it passed unanimously 13 to 0.

#### **Amendments to 7H .0208 General and Specific Use Standards (I&S-07-10)**

Mike Lopazanski reminded the Committee that the Planning & Special Issues Committee has been considering changes to the Commission's rules regarding Dock and Piers in both the General Permit (7H .1200) and the Estuarine and Ocean System AEC Use Specific Standards (7H .0208(b)(6)). Mike advised that since the Specific Use Standards are part of the much broader use standards for the AEC, the NC Administrative Procedures Act (APA) requires that the entire rule be subjected to the scrutiny of the Rules Review Commission. This has necessitated a review of 7H .0208 to correct vague or ambiguous language in accordance with APA guidelines.

Mike reviewed staff's attempt to clarify specifics of the rule and to remove outdated provisions. He noted that the full Commission would hear the changes to the pier rules tomorrow and that the Estuarine Shoreline Subcommittee will have draft stabilization rules ready for the May meeting. Mike further stated that if the Committee concurred with the changes thus far, staff would bring final draft language to the next meeting. The Committee noted that the Marine Fisheries Commission was revising the definition of SAV and it should be incorporated in the CRC rule. The Committee also noted the provisions under 7H .0208(b)(4) Nonagricultural Drainage needed to be considered in light of water flow restrictions and diversions that may affect migratory fish. Staff agreed to give the provision further consideration by the next meeting. The Committee then directed staff to continue to move the draft changes forward.