

NC COASTAL RESOURCES COMMISSION (CRC)
JANUARY 25-26, 2007
CRYSTAL COAST CIVIC CENTER
MOREHEAD CITY, NC

Present CRC Members

Courtney Hackney, Chairman
Doug Langford, Vice Chair

Charles Elam
Bob Emory (Absent 01/26/07)
Jim Leutze
Joan Weld
Bob Wilson
Jerry Old

Bill Peele
Wayland Sermons
Chuck Bissette
Joseph Gore
Lee Wynns

Present Coastal Resources Advisory Council Members (CRAC)

Bill Morrison, Chair
Dara Royal, Co-Chair

Frank Alexander
Deborah Anderson
Joe Beck
Carlton Davenport
Eddy Davis
Webb Fuller
William Gardner, Jr.
Renee Gledhill-Earley
Judy Hills
Al Hodge
Gary Mercer
Wayne Mobley
Phil Harris (Travis Marshall)

J. Michael Moore
Elwood Padrick
Spencer Rogers
Robert Shupe
Harry Simmons
Steve Sizemore
Michael Street
Penny Tysinger
Beans Weatherly
David Weaver
Ginger Webster
Rhett White
David Stanley (Don Yousey)

Present Attorney General's Office Members

Jill Hickey
Merrie Jo Alcock
Christine Goebel

CALL TO ORDER/ROLL CALL

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

Stephanie Bowling called the roll. Melvin Shepard was absent. Bob Emory stated that he had a potential conflict on the Diello Case, and therefore would not participate in the vote.

MINUTES

Charles Bissette, Jr. made a motion seconded by Joseph Gore to approve the minutes with no corrections noted. The motion passed by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissette, Gore, Langford, Old, Peele, Sermons, Weld, Wilson, Wynns)

EXECUTIVE SECRETARY'S REPORT

Sediment Criteria rules

The Rules Review Commission approved the new sediment criteria rules (15A NCAC 7H .0312) last Thursday. The technical standards for beach fill will become effective on February 1, 2007. All projects seeking a permit after that date will have to follow these new standards.

New Major Permits forms

Following an extensive development effort, DCM has recently implemented new major permits forms. The new forms are a cleaner design and should be easier to use, and also will help DCM staff collect more comprehensive environmental data, which in turn will help us make better informed policy and resource management decisions. DCM has also combined the old "Structures" and "marina" forms into one. This was a recommendation of the Multi-slip Docking Facility Advisory Committee in keeping with our CHPP implementation strategy. The new forms are available for download on our web site in both Word and PDF formats.

Waterfront committee public meetings

Dates and locations are set for three meetings designed to solicit public input on waterfront access and diversity of use along the North Carolina coast.

The meetings will be held from 6:30-8:30 p.m. in the following locations:

- Tuesday, Jan. 30, 2007, North Carolina Aquarium at Roanoke Island
- Wednesday, Jan. 31, 2007, Joslyn Hall in the McGee Building, Carteret Community College
- Thursday, Feb. 1, 2007, 114 Deloach Hall, UNCW main campus

Marine contractor workshops

The Coastal Reserve and DCM's Regulatory Branch will be hosting 4 workshops for marine contractors in February. This workshop aims to provide marine contractors with up-to-date information on the North Carolina Division of Coastal Management's rules for coastal development. This includes an overview of general permit fees, construction of bulkheads, placement of riprap, and construction of piers. Coastal Management's shoreline stabilization and pier and dock development initiatives will also be discussed.

New DMF director

Dr. Louis Daniel has agreed to become the new director for the N.C. Division of Marine Fisheries beginning Feb. 1. Louis will replace Preston Pate, who will retire after serving as the division's director since 1997.

Louis has worked with the N.C. Division of Marine Fisheries since 1995. For the past nine years, he has worked extensively with the South Atlantic Fisheries Management Council, and also serves on numerous management boards for the Atlantic States Marine Fisheries Commission. Louis also has had oversight of the division's fishery management plan process, coordinating development of long-term management strategies for North Carolina's most economically significant fisheries.

Dempsey Benton

DENR's assistant secretary, Dempsey Benton, has announced that he will be leaving DENR effective Feb. 1.

Staff news

Mr. Jones stated that he was happy to announce that Angela Willis has accepted the Administrative Secretary position and will begin work with DCM on Feb. 1st. Angela is presently the Assistant to the Superintendent of the Carteret Correctional Facility (the Newport Prison) and brings a lot of good experience to the Division and the CRC.

Angela will be replacing Stephanie Bowling who has been the Director's Administrative Secretary for the last 3 years. Stephanie and her family will be on their way to California when Wilson returns to the states from Iraq.

Daniel Govoni will join DCM Feb. 5 as an assistant major permits coordinator in Morehead City. Daniel comes to us from the Division of Water Quality's Neuse River Response Team.

Caroline Bell has left DCM to go on long-term disability. Caroline was with DCM for 14 years.

Ann Wunderly has joined DCM as the Reserve's Northern Sites Manager. Ann will be responsible for managing the Currituck Banks component of the NC National Estuarine Research Reserve, Kitty Hawk Woods Coastal Reserve, and Buxton Woods Coastal Reserve.

Melissa Sebastian has joined the Morehead City office as our new AP Clerk. She comes from a similar position with the Division of Marine Fisheries.

Our NOAA Coastal Fellow, Patrick Limber, was highlighted in the January 2007 issue of Fellow News, which is published by the NOAA Coastal Services Center.

VARIANCE REQUEST

Sandy Point, Chowan County, Dredging in SAV (CRC-VR-06-35)

Merrie Jo Alcock stated that Petitioner is The Fund for Sandy Point, LLC, (FSP) owner of a 930-acre tract of land in Chowan County near Edenton, North Carolina, adjacent to the Albemarle Sound. FSP applied for a CAMA major permit to construct two upland harbors, three channels connecting the harbors to the Sound, 511 boat slips, approximately 1600 residential units and a variety of retail, commercial and recreational facilities. A key component of the project is that it does not include individual docks and piers.

Ms. Alcock stated in 2004, the N.C. General Assembly passed Senate Bill 732, authorizing implementation of a single new urban waterfront pilot project by the CRC. The Senate Bill provided any new urban waterfront development must satisfy certain criteria including that it could not be located adjacent to waters classified by the EMC as SA waters, outstanding resource waters, nor adjacent to waters that served as a primary or secondary nursery area as classified by the Marine Fisheries Commission, nor adjacent to critical habitat area. This legislation essentially waives the 30-foot buffer rule within the new urban waterfront area; otherwise the project must comply with CRC's development standards.

The legislation paved the way for the Fund for Sandy Point to begin the permitting process. It also paved the way for the Town of Edenton and Chowan County to amend their joint land use plan to designate this new urban waterfront area. That land use plan amendment was certified by the CRC in October 2004.

Petitioner conducted two studies during the environmental assessment process and a third study was funded by the Department to review the presence of SAV in this area. The first two studies did not find a significant presence, but the third study did find more SAV. The Petitioner realigned the channels and otherwise modified the project to try to address these concerns. The State Environmental Policy Act (SEPA) process concluded with a finding of No Significant Impact, which was issued by the Division of Coastal Management. In May 2006, Petitioner applied for a CAMA major permit and began working on the mitigation plan. CRC rules provide that new navigation channels shall avoid beds of SAV. During the CAMA major permit review process, DMF issued conditional approval of the project only if certain modifications were made. These modifications were satisfied by the Petitioner. In July 2006, during a routine aerial

surveillance flight, DCM observed extensive SAV in the near shore waters of the Sound including the area where the proposed channels were to be located. DMF then amended its earlier position and provided new comments, which objected to the proposed development taking place. They objected to any in-water or water-based components of the development due to the presence of SAV documented during the surveillance flight. DCM found that it would result in a significant adverse impact on habitat and resources in the area. At the conclusion of the CAMA major permit process, DCM issued the major permit but conditioned out all of the water based components of the project including the navigation channels and all docks and piers associated therewith. A contested case has been filed, the contested case has been stayed pending CRC disposition of the variance request.

Ms. Alcocke stated that ultimately, after numerous revisions to the mitigation plan, they gained approval from Division of Marine Fisheries. Staff finds that Petitioners were able to satisfy the fourth criteria regarding spirit, purpose and intent. Staff also agrees with the Petitioners on the other criteria.

Steve Levitas, representative for the Fund for Sandy Point, LLC gave a description and overview of the project.

Mr. Levitas stated that following the passage of SB 732, the Fund for Sandy Point diligently pursued all regulatory requirements, which are necessary to build a project of this sort. The SEPA process resulted in a finding of No Significant Impact by the Division of Coastal Management. A non-discharge permit was obtained for the disposal and treatment of waste water, a coastal storm water permit, and NPDES (stormwater) permit as required by the legislation which is unprecedented for private development, a 401 water quality certification from DWQ, and an approved erosion and sedimentation control plan. In July 2006, a DCM fly-over revealed extensive growth of SAV, which led to the objection from DMF to the permitting of the channels.

Without a variance, Sandy Point will suffer an unnecessary hardship, which is unique to this property and was in no way caused by Sandy Point. Without a variance to construct the channels, Sandy Point will not be able to develop a new urban waterfront development pilot project as authorized by the General Assembly and will lose the approximately three million dollars that is invested in designing this project and obtaining all of the regulatory approvals. Sandy Point would have to sell this property, but it has already been rezoned by Chowan County as a new urban waterfront development and is not available for any other purpose.

Mr. Levitas stated that Sandy Point's variance request is consistent with the spirit, purpose and intent of CAMA and CRC regulations. In particular, they have worked closely with Marine Fisheries and the Corps of Engineers to develop a comprehensive, compensatory mitigation plan to offset the impacts to SAV and SAV habitat to include building a breakwater on the east side to enhance SAV habitat, planting SAV behind the breakwater, establishing an emergent wetland fringe and are required to achieve a twenty-five percent greater performance in SAV growth in this area. Both the Division of Marine Fisheries and the Division of Coastal Management have stipulated as a result of this mitigation plan the project will not have a significant adverse impact on estuarine resources.

Wayland Sermons asked Ms. Alcock about the legislation that created the new urbanism potential provides there are limitations on the sites. How does this site comply with section 3(A) restrictions on 500 acres or less of urban waterfront and 1.6 miles in excess of the one mile limit? Ms. Alcock answered that only the west side has been designated as urban waterfront.

Since this is special legislation and requires any development to follow CRC rules, Wayland Sermons asked Ms. Alcock if the CRC has the authority to grant a variance to allow FSP to not comply with .0208(B)? She stated that the CRC always has the authority to vary its own rules.

Bob Emory made a motion seconded by Charles Elam in favor of the Petitioner that that strict application of the applicable development rules, standards, or orders issued by the CRC would cause the Petitioner unnecessary hardship. The motion passed unanimously (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Sermons, Peele, Old, Weld, Wilson, Wynns).

Doug Langford made a motion seconded by Wayland Sermons supporting Staff's position that difficulties and hardships were a result from conditions, which are peculiar to the property. The motion passed unanimously (Elam, Cahoon, Emory, Bissett, Gore, Langford, Sermons, Peele, Old, Weld, Wilson, Wynns) (Jim Leutze was absent for vote).

Doug Langford made a motion seconded by Wayland Sermons supporting Staff's position that the hardships did not result from actions taken by the Petitioner. The motion passed unanimously (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Sermons, Peele, Old, Weld, Wilson, Wynns).

Doug Langford made a motion seconded by Charles Elam supporting Staff's position that the variance requested 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. The motion passed with 12 votes (Elam, Cahoon, Emory, Emory, Leutze, Bissett, Gore, Langford, Peele, Old, Weld, Wilson, Wynn) and one against (Sermons).

Wilson Lots 5 & 6, Oak Island, Static Vegetation Line (CRC-VR-06-28) (CRC-VR-06-29)

Merrie Jo Alcock stated that this is a variance request to construct two single-family residences on Oak Island on property which is subject to the static vegetation line rule. The proposed development does not meet the minimum sixty-foot set back from the static vegetation line. Petitioners own two adjacent, oceanfront lots on West Beach Drive in the Town of Oak Island. These lots were purchased in 1998 and at that time the CAMA setback was sixty feet and the Town's street setback was thirty feet. Applying these setbacks, Petitioners had approximately eight feet of buildable area. In 2000 (following Hurricane Floyd), the vegetation line moved approximately 46 feet landward. In 2002, the Army Corps of Engineers completed a 933-spoil deposition project at this location. Therefore, according to CRC rules the vegetation line that existed prior to the onset of project construction must be used for setback purposes after the

project was complete. The pre-project vegetation line on these lots is so far landward that the sixty-foot setback from that line is landward of the property line and within the road right of way. Without a variance, these lots cannot be utilized for a single-family residence.

Petitioner proposes to use the 1998 vegetation line. While use of the 1998 line would provide these houses with good protection, Staff does not believe that the variance request meets all four criteria the CRC must find to grant a variance. Ms. Alcock stated that there is no unnecessary hardship in this case. The facts show the Petitioners purchased these lots for \$4000.00 each. This was after the static line rule came into effect in 1996. As reflected by the purchase price, there was only eight feet of buildable area on the lot at that time.

In conclusion, Ms. Alcock addressed the fourth criteria. Petitioners have reduced the size of the house from 40 feet deep to 18 feet deep. It will also be set sixty feet behind the pre-Floyd vegetation line. Therefore, Staff found that this aspect of it would be within the spirit, purpose and intent of CRC rules. The proposed variance would secure public safety and welfare because the small footprint of the house would minimize the threat to life and property. However, the fourth criteria also requires that substantial justice would be preserved. Staff does not believe it would be fair, reasonable and just to grant a variance in light of the background facts.

Slides were shown by Glenn Dunn, representative for Keith and Elizabeth Wilson, notating footprint and surrounding houses. Mr. Dunn agreed with the facts of this variance, but does not agree with the staff's position that this proposal does not meet the four criteria. The house will have a small footprint and is where they could have built when they bought the property in 1998. Mr. Dunn stated that the Staff's opposition is based on the fact that the Wilson's paid a small amount for the lot after the setback rule was in place and therefore the purchase was speculative is an unfair characterization. Mr. Dunn stated that the purchase price is a moral judgment and is irrelevant. The case *Lee v. Rocky Mount* was cited which said value is not a consideration. If the irrelevant judgment of price is eliminated, the four criteria are met. Mr. Dunn stated that staff agrees there are hardships, which are peculiar to the property, which meets criteria two. Staff disagrees that there is an unnecessary hardship. Staff also stated that a residence would be an unreasonable use. Staff stated that it is inconsistent with criteria four; however, he points out the size of the proposed structures are small.

Bob Emory made a motion, seconded by Charles Elam that strict application of the applicable development rules, standards, or orders issued by the CRC would cause the Petitioner unnecessary hardship. The motion passed with 11 members for (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Sermons, Peele, Wilson, Wynns) and 2 against (Old, Weld).

Lee Wynns made a motion, seconded by William Peele to support the Petitioner that difficulties and hardships were a result from conditions, which are peculiar to the property. The motion passed with 10 votes (Elam, Cahoon, Emory, Bissett, Gore, Sermons, Peele, Old, Wilson, Wynns) and 3 against (Leutze, Langford, Weld).

Wayland Sermons made a motion, seconded by Lee Wynns to support the Petitioner stating that the hardships did not result from actions taken by the Petitioner. The motion passed with 9 votes (Elam, Cahoon, Emory, Bissett, Gore, Sermons, Peele, Wilson, Wynns) and 4 against (Leutze, Langford, Old, Weld).

Lee Wynns made a motion, seconded by Joseph Gore to support the Petitioner's position that the variance requested 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. Mr. Wynns added a stipulation that the footprint of the house not exceed 18x32 feet, exclusive of decking, and that no cantilever would be in excess of six feet. The motion passed with 9 votes (Elam, Emory, Bissett, Gore, Sermons, Peele, Old, Wilson, Wynns) and 4 against (Cahoon, Leutze, Langford, Weld).

William and Heather Maxwell, Manteo; Variance of 30-Foot Buffer Rule (CRC-VR-06-37)

Christy Goebel stated that the prior owners had divided this property among family members and the plat for that division was recorded on March 7, 1990. Petitioners have owned this property since June of last year. There is a narrow thirty foot wide access area that is separated from the canal by a thin strip about 10 to 15 foot wide, and is owned by another individual. Much of the access area is subject to the thirty-foot buffer. The waters of the canal are SC-HQW and are closed to the harvest of shellfish; this is a tributary of Scarborough Creek, which is a primary nursery area.

On November 17, Petitioners applied for a CAMA minor permit to construct a concrete driveway. On November 21, their permit was denied. Dare County zoning ordinance for this type of lot requires a minimum of 12-foot wide width that should be improved for access by emergency vehicle. This property is zoned as industrial.

Staff does not agree there is an unnecessary hardship. A twenty-foot driveway goes beyond what is needed for a residential use of the property. Staff and Petitioners agree on the peculiarity of the property. There is a thirty-foot wide access, most of which is within the thirty-foot buffer and would prevent residential development on the property. Ms. Goebel stated that the proposed use and failure to address this issue prior to purchase has caused hardship, which was caused by the Petitioner. The property was not suitable for their intended use. Petitioners have not proposed measures to reduce impacts, but had Petitioners done this or if the CRC places conditions on the variance to reduce impacts, the project could more closely meet the spirit, purpose and intent of the rules. Staff acknowledges and supports maritime industry, such as boat building, but substantial justice requires that such industry must locate itself on property which better accommodates its needs.

Heather Maxwell responded to Staff's position with regards to criteria one. The staff contends the unnecessary hardship is due to the desire to use this land for the boat building business. However, they agree that strict application of the thirty-foot buffer rule would prevent even residential development because of Dare County's twelve-foot wide access right of way. This in and of itself will cause us unnecessary hardship. This land is inaccessible regardless of its use without a variance. Ms. Maxwell stated that while the requested twenty foot paved driveway

does go beyond what is needed for residential use, it is in keeping with Dare County's vision for this property, which was industrial use. In regards to criteria two, Petitioners agree with Staff. Ms. Maxwell stated that the only action they took in regards to criteria three, was purchasing the property. The thirty foot buffer rule is intended that development should occur outside of the buffer, however, there is no other land to develop for the driveway. While the staff's recommendations on what actions should have been taken, Petitioners feel the land fit their needs perfectly. Ms. Maxwell stated that substantial justice is not preserved in Dare County. In an effort to be fair and reasonable, options have been discussed to reduce the impact to better preserve the public welfare and safety. She stated they would be willing to give up the concrete surface and go to something less impervious. The existing ditch could be used for stormwater runoff and reduce the size of the driveway to seventeen feet.

Jerry Old made a motion, seconded by Charles Elam to support the Petitioner'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 with 11 votes (Elam, Cahoon, Leutze, Bissett, Gore, Langford, Sermons, Peele, Old, Weld, Wynns) and one against (Emory). Bob Wilson abstained from the vote.

Jerry Old made a motion to support the Petitioner's position that difficulties and hardships result from conditions, which are peculiar to the property and added that the material used for this driveway would be required to be of a composite material in which water will flow through it. This motion was seconded by Wayland Sermons with the request to add to the motion that the width be no greater than 18 feet and that a pervious surface (as defined by DWQ) would be used. After discussion, the motion and second were withdrawn. Doug Langford made a motion to table this issue until the March meeting; motion was seconded by Jim Leutze. Vote passed unanimously to table the variance until the March meeting.

CONTESTED CASE

Diello v. DCM (05 HER 0788)

Christy Goebel briefly summarized the events of the case for the CRC. Mr. Diello lives on Turtle Creek, part of the Trent River in New Bern. In April of 2005, his permit was denied. He was seeking to convert an existing deck on the back to his house to a sunroom. He could have built the project if he had agreed to install an engineered stormwater system and have it certified by an Engineer per the rules, however he chose not to do this. In January 2006, he was denied a variance by the CRC. Ms. Goebel moved for summary judgment. The ALJ did grant summary judgment in favor of staff, and staff is asking that the CRC adopt and uphold the ALJ's decision in this case.

Chairman Hackney asked Ms. Goebel if Mr. Diello had responded. Ms. Goebel stated that Ms. Hickey had notified both Mr. Diello and herself that they both had the opportunity to speak but that he did not respond by the deadline that Ms. Hickey had imposed.

Doug Langford made a motion to uphold and adopt the findings in full of the Administrative Law Judge. Motion was seconded by Jerry Old. Motion passed unanimously: (Elam, Cahoon, Leutze, Bissette, Gore, Langford, Old, Peele, Sermons, Weld, Wilson, Wynns) (Bob Emory abstained from this vote).

PETITION FOR RULEMAKING

N.C. Floating Docks and Lifts, LLC – 7H .0208(b)(6)(H) Docks and Piers
This issue was postponed until the March 2007 meeting.

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:

Motion was made by Bill Peele to approve the Town of Beaufort Land Use Plan Certification. The vote was unanimous (Elam, Cahoon, Leutze, Bissette, Gore, Langford, Old, Peele, Sermons, Weld, Wilson, Wynns) (Emory was absent from the vote).

Motion was made by Bill Peele to approve the Town of Emerald Isle Land Use Plan Amendment. The vote was unanimous (Elam, Cahoon, Leutze, Bissette, Gore, Langford, Old, Peele, Sermons, Weld, Wilson, Wynns) (Emory was absent from the vote).

I & S Report

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

PUBLIC COMMENT AND INPUT

Michelle Duvall, Cape Fear Chapter of the Surfrider Foundation – Surfrider Foundation is a national, non-profit, grassroots group dedicated to the protection and enjoyment of oceans, waves and beaches for all people. One of Surfrider Foundation's major initiatives is the enhancement and protection of public beach access opportunities. As such, we are very concerned about the closure of beach access #33 on Wrightsville Beach. Due to an error in county property tax records, it was discovered in fall 2006 that the property on which beach access #33 is located, belonged to a private owner rather than the Town of Wrightsville Beach. The owner informed the Town of its intent to close the access shortly after being contacted by the County. Rather than exploring options and tools available for maintaining the public's right to the access, the Wrightsville Beach Board of Alderman voted 3-2 not to pursue the issue. Given that DCM receives approximately One to 1.5 million dollars per year for its public beach and coastal waterfront access program from the parks and recreation trust fund to aid local governments in developing public beach access opportunities, the Cape Fear Chapter of Surfriders respectfully asks the CRC to request the Town of Wrightsville Beach to work with DCM staff to explore options for maintaining this traditional access. We understand the CRAC drafted a letter to this effort and would like to thank the CRAC for taking up this issue and encourage the CRC to also send that letter.

Rudi Rudolph, Carteret County Shore Protection Office – Mr. Rudolph stated that he was directing this information to the Science Panel on Coastal Hazards. The Panel needs to be a robust group, especially considering some of the major issues that are being placed before the Panel lately either directly or indirectly (i.e. setbacks, vegetation lines, inlet hazard areas, etc.) and argued that the Panel is far from robust at the present time. Dr. John Wells and Dr. John Fisher resigned from the Panel well over a year ago and there seems to be very little interest in finding suitable replacements. He implored the CRC to appoint replacements to these vacancies as soon as possible and added there are plenty of young, talented geologists and engineers in the State that would serve the CRC and public well.

He then pointed out the appointment process itself for the Panel. He stated that he has inquired to DCM staff on numerous occasions in regards to the appointment process for the Science Panel and has questioned if the stimulus for appointments comes from staff only to receive nebulous answers. The bulk of the appointment decision process appears to rest with the Panel themselves; and it is never healthy to have a panel, commission, agency, and etc. decide who can and can't be a member. That makes the Science Panel more like a science club.

He asked the CRC to please consider appointing two replacements for Drs. Fisher and Wells and in the long-term, it would behoove the CRC and public to codify the Science Panel membership (qualifications, areas of expertise, etc.) and to contemplate adding new members in general.

Eric Braun, Town of Oak Island – Attorney representing Town of Oak Island. He thanked Merrie Jo Alcoke and Jeff Warren for their time and effort in offering information regarding the Town's problems with static vegetation line. Mr. Braun stated that he was at the meeting to

initiate and pursue the Town's concerns. He stated that he hoped to work with the staff to resolve these issues and asked for information on how the static vegetation line was determined. This issue has been discussed for years and the Town has asked his firm to assist them in facilitating a resolution. Mr. Braun stated that maybe the spoil deposition could be reclassified which occurred in 2000-2001; or allow the use of the vegetation line, which is there today. The Town is asking the CRC to direct staff to work with them.

***Chairman Hackney left the meeting at this time and Doug Langford chaired the meeting from this point until its conclusion.*

PRESENTATIONS

1. Darlene Kucken (DWQ) – Water Quality Improvement Effort in Coastal Riverbasins.

Ms. Kucken stated that the basinwide planning program applies to all 17 river basins in North Carolina. She stated the basinwide planning goals included identifying water quality problems and restoring impaired waters, identify and protect high value resource waters, protect unimpaired waters and support responsible economic growth. There will be public input opportunities throughout the five-year planning cycle to define critical issues and identify problem areas as well as develop and implement pollution control strategies. She covered the revision to the basinwide water quality plan schedule, and stated that final basin plans contain specific management strategies for point sources, general recommendations for non-point sources, collaboration by resource agencies, local governments and citizens, guidance for obtaining funds for projects and assessment of designated uses (which are based on NC Surface Water Classifications) She further stated that Management strategies come out of watershed planning processes and watershed plans result in on-the-ground actions. Total mass daily loading (TMDL) is required for waters on the impaired waters list and must be developed for each problem parameter on the list and account for all potential pollution sources. TMDL's address watersheds or entire river basins. She listed actions currently being taken to address issues to include TMDL development, CHHP implementation, new stormwater focus, Neuse and Tar NSW (nutrient sensitive water) strategies, and increased coordination and collaboration with agencies and watershed groups. In closing she listed all TMDL's scheduled for submittal in 2008, DWQ's CHPP implementation, stormwater management and EMC's efforts to address the loss of use of shellfishing waters and extend phase 2 stormwater controls to all 20 coastal counties.

2. Judy Hills (Eastern Carolina COG) – Abandoned/Derelict Vessels and Debris Study.

Ms. Hills discussed data and research regarding the study of derelict and abandoned vessels in waters of coastal North Carolina. She stated that there were three objectives: (1) gather GPS coordinates, photographs and basic data for solid waste debris and derelict, abandoned vessels in or on the banks of public trust waters in coastal North Carolina, (2) research the issue of solid wasted debris and derelict, abandoned vessels to determine what laws address this issue, what agencies are involved, what has been done in the past and what other states are doing and (3) issue a report of findings with recommendations to relevant agencies and interested local governments. The geographic parameters of this study would include coastal North Carolina from the Virginia to the South Carolina borders, from the line of Demarcation inward, and in

alignment with USCG Marine Safety Team's area of responsibility. The USCG auxiliary will take the GPS coordinates, photographs (land, water, and air), and collect basic data for solid waste debris and derelict, abandoned vessels in or on the banks. Ms. Hills stated that there is a lot of confusion with the issue of definitions for "abandoned" she cited several different versions of this definition and provided examples of abandoned and derelict vessels in Manteo, New Bern, and Beaufort. She stated that public dock slips are dwindling in number as a result of developers purchasing marinas and building condos on the land and selling the boat slips with the units. She gave several examples of issues which may contribute to future abandonment from private, commercial, and barge owners. Ms. Hills addressed the issues which result from these abandoned vessels. Besides the fact that they are unsightly, fiberglass boats will not decay and will remain for sometime, they take up space which could be used by vessels still in use, engine fluids seep into the water as they deteriorate, they are a potential dumping ground for waste, and this issue is costly to resolve. She stated that the USCG can evaluate the problem if pollution is involved or if the vessel is blocking the boat channel. The U.S. Army Corps of Engineers can remove it if it is impairing boat traffic. But with the exception of what the USCG and Army Corps can do, virtually nothing can be done in North Carolina. She will provide data from this study to NC Division of Water Quality, USCG, U.S. Army Corps of Engineers, NOAA, concerned county and municipal governments, and legislators with the hopes that one of the following options could be implemented: give this issue to a state-level committee; encourage counties and municipalities to form local water safety committees to develop rules for local waterways; encourage counties and municipalities to complete Harbor Plans or Surface Water Management Plans. She stated that CAMA planning funds could pay for Harbor or Surface Water Plans, DCM staff could develop model ordinances and model plans, and for the sake of transient boaters, the rules should be consistent in coastal North Carolina.

3. Ann Deaton (DMF) – Strategic Habitat Areas (SHA).

Ms. Deaton discussed the recommended process for identification of strategic habitat areas developed by MFC's strategic area advisory committee. An advisory committee was established to assist DMF in developing a standard process and criteria to identify and designate SHA's. The draft process was completed in the fall of 2006. This identification and designation process used ecologically based criteria, analyzing existing rules, and enacting measures needed to protect SHA's. She stated the definition of a SHA is a "specific location of individual fish habitats or systems of fish habitats that have been identified to provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity."

She described the process to begin with data preparation. DMF/MFC will determine the geographic area of focus based on fishery or habitat concerns of the MFC. Preliminary input is gathered from a regional expert panel regarding data to include specific parameters for ecological analysis and known areas of importance. Criteria (natural resource targets and alteration factors) are identified by the regional expert panel and are compiled in geospatial format. Then a computerized evaluation conducted by staff's ecological evaluation of the natural resource targets using a GIS database to select draft sites. MARXAN or other scientific method that assigns quantitative value to natural resource targets and alteration factors are used. Results are then modified when staff and regional expert panel review "computer selected" areas and the panel corroborates it with existing habitat condition and ecological designations, supporting fish data and other local knowledge of the experts. The next step is stakeholder input. A post-

analysis workshop is held to discuss the expert-modified results, identify gaps and make refinements to SHA nominations based on professional knowledge and socio-economic factors. Staff will then complete a written report documenting and justifying methodology. This report classifies the SHA type (protection, enhancement or restoration). This report is then made available to the public. Public input is received on proposed designations and specific management actions needed. CHPP Steering Committee provides information to their commissioners to gain support for designations. DMF Staff revises their report based on input received and final SHA boundaries are recommended for designation by the MFC or WRC. Final public comments on designations are received, and ultimately MFC and WRC designate SHA's in rule with commitment to work toward Department-wide implementation of needed actions. Implementation steps begin with the SHA Management Committee determining the management action needed for SHA's. The designated SHA's are re-evaluated periodically to assess condition and modify management strategies accordingly (if a site has deteriorated from "exceptional" to "at risk". Strategies shift from primarily protection to include restoration). The final product is a map of strategically located priority areas for protection and enhancement.

ACTION ITEMS

1. General Use Standards for Ocean Hazard Areas: 15A NCAC 07H .0306 -

Doug Langford made a motion to adopt General Use Standards for Ocean Hazard Areas (15A NCAC 07H .0306) as amended. This motion was seconded by Joseph Gore. Vote passed unanimously (Elam, Cahoon, Leutze, Bissette, Gore, Langford, Old, Peele, Weld, Wilson, Wynns) (Wayland Sermons abstained).

OLD/NEW BUSINESS

1. Jill Hickey discussed a memo she distributed earlier in reference to Variance Rule Changes.

Doug Langford made a motion to send this Variance Rule Change as presented by staff attorney to public hearing. Renee Cahoon seconded this motion. Motion passed unanimously. (Elam, Cahoon, Emory, Leutze, Bissette, Gore, Langford, Old, Peele, Sermons, Weld, Wilson, Wynns).

2. Letter drafted by CRAC to Town of Wrightsville Beach from Bill Morrison and Chairman Courtney Hackney in regards to public beach access #33.

Joan Weld made a motion to accept draft letter as written and send to Town of Wrightsville Beach. Motion seconded by Charles Elam. Motion passed unanimously. (Elam, Cahoon, Bissette, Gore, Old, Peele, Sermons, Weld, Wynns) (Emory, Leutze, Wilson absent from vote).

3. Letter drafted to Waterfront Access Committee (Dr. Voiland, Chair of Waterfront Access Committee).

Wayland Sermons made a motion to accept letter as drafted to Dr. Voiland. Motion seconded by Jerry Old. Renee Cahoon made a comment to add text to the letter which indicated "that unless this trend is reversed". The amendment was accepted by Wayland Sermons. Motion passed unanimously (Elam, Cahoon, Bissette, Gore, Old, Peele, Sermons, Weld, Wynns) (Emory, Leutze, Wilson absent from vote).

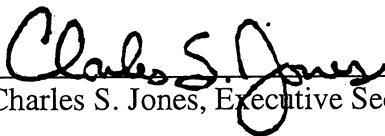
4. Charles Jones informed the Commission that letters were recently sent to local municipalities soliciting CRAC nominations to replace David Nash who had recently resigned. In looking at the CRC's internal operation procedures for CRAC appointments (Article XV), Charles suggested an additional option that could be used in appointing an individual CRAC replacement and by-pass the mass mailings. In this proposal, the CRC could use the list of names generated from the previous nominations cycle to select a replacement. After some discussion, it was agreed that this would be appropriate if the nominations were recent (less than one year). Charles also asked if the CRC wanted to amend the Standard Order of Business under Article VII to specify that comments from the public would be allowed on matters not under consideration by the Commission. Wayland Sermons suggested that the CRC follow the same public comment period process that local governments follow which allows for an open public comment period irrespective if a particular subject matter is on the agenda. There should also be some reasonable limit on the time allowed for comment. It was agreed to bring this subject back for discussion at the March meeting.

5. Renee Cahoon stated that she would like to schedule a meeting South of Wilmington. Charles Jones stated that meetings are already booked for 2007, but it will be noted for scheduling in 2008.

Motion was made by Lee Wynns to adjourn. Motion seconded by Bill Peele. Motion passed unanimously.

With no further business, the CRC adjourned.

Respectfully submitted,


Charles S. Jones, Executive Secretary


Angela Willis, Recording Secretary

DRAFT*NC Coastal Resources Commission***Planning and Special Issues Committee**

Meeting Summary
January 25, 2007

Committee Chair Bill Peele called the meeting to order at 1:18 p.m.

Discussion of Variance Fact Finding Committee

Jill Hickey reminded the committee that this discussion involved the fact-finding rules for variances. She noted that if the applicant and DCM's counsel did not agree on the facts then per the rules it is forwarded to the Office of Administrative Hearings (OAH). The OAH does not just make a determination on the facts by also renders a decision or a recommended one if you will. Then it comes back to the Commission. This was not the original intent of the process. Normally OAH hears such a request after an agency makes a decision. In our rules it does not.

The committee discussed the issue of where does the commission wish to spend its time? A large part of our agenda is taken up with the legal and technical issues associated with variances rather than the focusing on some of the bigger issues facing the coast.

Robin Smith, with the Secretaries Office, noted that there are other examples or approaches such as the Environmental Management Commission which delegates to a sub-committee certain decision after the regular meeting. Further discussion noted that such an approach did not work in the past due to some committee members still wanting to re-review the facts, not just the recommendations.

Draft Amendments to 7H Docks and Piers (P&SI-07-06)

David Moye, Express Permits Coordinator, continued discussion on potential rule modification, per direction from the November 2006 P&SI Meeting. The presentation focused on potential changes to 7H 1200 General Permit that will be followed by discussion on 7H .0208(b)(6) Docks and Piers at the March meeting.

He again provided a visual representation of allowable development under current rule compared with DCM's proposed changes, noting one significant addition to the November '06 presentation regarding proposed calculations of square footage that exclude access piers from area calculations.

Proposed changes to the current rule take into account issues that have arisen over time and address changes in technology in floating/drive-on docks and

boatlifts, as well as other issues including water depth, location, and size of structures. Proposed rule changes would give homeowners flexibility in the type and square footage of pier structures, while at the same time providing more protection to the marine habitat.

The overview provided a comparison that demonstrated the inflexibility and lack of options characteristic of the current rules, and how the proposed changes for square footage development parameters for 50' lots, 75' lots and 100' lots would address such limitations while reducing shading and overall impact.

Mr. Moyer addressed the question as to whether federal ADA requirements had been part of the consideration. Staff research found that ADA required 3 feet for walkways and only pertained to public facilities, whereas the proposed changes would require a minimum width of 4 feet.

Comments pointed out that for 50' lots more shading could result if built to the maximum allowed. Mr. Moyer indicated this would be revisited. There was also discussion of the merits of the proposed reduction of the 6' width of access piers to 4' width. Mr. Moyer indicated that construction exceeding the proposed 4' width would require a major permit. Confusion was also pointed regarding proposed language pertaining to the minimum height of floating docks that will be revisited and addressed at the next meeting.

The Committee agreed to accept the staff's recommendation to return next meeting with proposed changes to 7H .0208(b)(6) to reflect changes the proposed changes to 7H 1200.

Town of Beaufort LUP Certification (P&SI-07-02)

Maureen Meehan Will, District Planner for the Morehead City District, presented the Town of Beaufort's Core Land Use Plan for consideration of CRC Certification.

The Town of Beaufort is the County Seat of Carteret County and is surrounded by estuarine waters. The plan's policy, which is graphically depicted on the Future Land Use Map meets all of the policy requirements outlined by the six (6) Management Topics. The plan meets the substantive requirements of the 7B Land Use Planning guidelines and there are no conflicts with other State or Federal rules or the State Coastal Management Program. Staff recommended that the plan be brought forward to the full CRC for certification.

Maureen then turned the presentation over to Robert Will, Beaufort Town Planner to further summarize the plan. Mr. Will reviewed key components of the plan and then offered to answer any questions that the committee may have about the plan.

A Motion was made by Renee Cahoon, Seconded by James Leutze, to

recommend certification of the Town of Beaufort Core Land Use Plan. The Motion carried Unanimously.

Town of Emerald Isle LUP Amendment (P&SI-07-03)

Kevin Reed, Planning Director for the Town of Emerald Isle presented three (3) proposed Future Land Use Map amendments. Two of the amendments were brought forward due to recommendations from design workshops and the third amendment was considered a mapping oversight that was found during map review during the design workshops.

The amendments revise the boundaries of the existing Village East and Village West Redevelopment Districts and change two parcels across from one another on Highway 58. (maps illustrating the amendments are included in P&SI-07-03)

A Motion was made by Charles Elam, Seconded by James Leutze, to recommend certification of the amendments to the Town of Emerald Isle Land Use Plan. The Motion carried Unanimously.

Town of Emerald Isle Implementation Status Report (P&SI 07-04)

Kevin Reed, Planning Director for the Town of Emerald Isle outlined and discussed how the Town has implemented their Advanced Core Land Use Plan in the past two (2) years.

He indicated that the plan is used for planning purposes on a day-to-day basis, and that the plan does not simply sit on the shelf. Because the plan is used daily and acts as a "living and breathing" document, the Town has requested two amendments to the Land Use Plan to date. The Town feels it is very important to keep the plan up to date through the amendment process to reflect ever changes issues within the community.

The Town has identified twenty-eight (28) implementation actions that have been successfully undertaken within the six (6) management topics noted in the plan. Because of the Town's willingness to amend the plan as conditions warrant within the community and the Town's commitment in carrying out implementation actions within the plan, the Town has shown a significant level of commitment to it's CAMA Land Use Plan as an important planning tool within the community. The CAMA Land Use Plan serves not only as a general planning document in Emerald Isle, but as an important guiding force in local decision-making within the community.

Continued Urban Waterfront Rule Discussion (P&SI-07-05)

Mike Lopazanski reminded the committee that this item was continued from the November 2006 meeting. Previous meeting discussions of Urban Waterfront

Rule 7H .0209(g), centered on the provision for vertical expansion of non-conforming structures over Public Trust Waters. Questions have been raised regarding the connections between the expansion provisions of 7H .0209, the 50% rule (7J .210) and the replacement of non-conforming structures (7J .0211). Likewise concerns were raised about the size and uses being proposed for structures that could be redeveloped under the rules.

Mike then provided a background summary of staff's review of CRC meeting minutes and understanding of the original intent expressed during the early Rule's development. Some of the main points are as follows:

- As evident in meeting minutes from the initial discussions in 1995 through the adoption of the current rules, the preservation of the historical and aesthetic values while enhancing the local economy and public access to coastal waters has been the primary aim of the rule.
- During earlier discussions of allowing non-water dependent uses of structures over Public Trust Waters it is clear that the intent was to allow infill development and revitalization of urban areas and still be consistent with the Commission's management objectives for Public Trust Areas.
- Regarding Non-Water Dependent Uses: It was noted that while it is not mentioned specifically in earlier CRC minutes, the majority of the references regarding non-water dependent uses of structures built over Public Trust Waters refer to restaurants. This includes references to the 2000 legislative action (HB 1218) extending the CAMA amendment (§ 113A-120.2. Permits for urban waterfront redevelopment in historically urban areas) which made allowances that any structure extending over public trust waters prior to July 1, 2000 could operate as a restaurant.
- Regarding the concept of vertical expansion, it was not part of the original discussions in 1997. When the issue did come up in (1997), the Commission believed that heights of existing structures would be controlled and limited by local ordinances. The primary concern over vertical expansion was focused on the height of new structures, which the Commission limited to a single story unenclosed decks.

Mike then noted that recently the CRC has been confronted with redevelopment of non-conforming structures over Public Trust Waters that have caused some to question the intent and application of the rule. In common with other regulating authorities, exiting structures over Public Trust Waters are considered "grand-fathered" not only to continue their existence in these areas, but also to the point that they could be replaced in accordance with 7J .0211 (Non-Conforming Development provisions).

The Urban Waterfront Rule deviates from other common non-conforming approaches by allowing expansion of the structure beyond its original dimensions (vertically) and by allowing a non-water dependent use.

Staff expects the pressure to redevelop and build skyward along urban waterfronts will only increase in the future. Recent declaratory rulings and recent proposals for significant expansion of structures as well as the proposed uses of these structures has caused staff to seek guidance from the Commission regarding the intent for the Urban Waterfront Rule.

Mr. Lopazanski was asked what was the intent of these discussions? He responded to find out if the P&SI and CRC have an interest in:

- Consider limiting or excluding specific uses over public trust waters; and
- Considering limitations on the vertical expansion of structures.

Several committee members stated yes! Extensive discussion then followed concerning height issues and the changing character of some local waterfronts. Many members expressed concern regarding any consideration of limiting use and that it was best left to the local government.

Linda Staube, with Morehead City, expressed concern that these discussions were occurring without the participation of local communities that may be affected.

Discussion ended with the request that staff invite local communities that may qualify as having urban waterfronts to future P&SI meetings. Focus should be on inviting those communities in close proximity to our meetings. Additionally consider arranging part of the meetings time to visit local urban waterfronts.

Coastal Reserve Special Activity Use 7O.0202 (P&SI-07-08)

Anthony Snider, Southern Sites Manager for the North Carolina Coastal Reserve (NCCR), discussed efforts being taken to manage large group gatherings at Reserve sites, citing recent activities on Masonboro Island.

Negative impacts resulting from large group gatherings have demonstrated the need to establish a mechanism for minimizing impacts while providing a framework for acceptable activities. Lack of enforcement mechanisms is the primary issue to be addressed. Enforcement options are being investigated and once enforcement mechanisms are in place, draft rule language amendments and a draft authorization for a *Reserve Special Activity Authorization* will be submitted for consideration. It is anticipated that establishing enforcement mechanisms may require legislative involvement.

Education efforts, including discussions with user groups, on-site posting of rules,

and placement of rules on the Reserve website, were identified as parallel strategies. NCCR staff will continue to work with user groups, local communities, and enforcement agencies to provide proactive solutions for large group use until a more formal management system is in place.

The meeting was adjourned at 4:59 p.m.

Implementation and Standards Committee
January 25, 2007
Crystal Coast Civic Center
Morehead City, NC

Bob Emory, Chair

Draft Civil Penalties Revisions (I&S-07-01)

Roy Brownlow presented a draft of the proposed changes to 15A NCAC 7J.0409 Civil Penalties to the I & S Committee. He reported that changes are necessary to implement the revised General Statute 113A-126(d) that increases 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. Roy reported that civil penalties have not increased since 1983. The state law became effective on December 01, 2006.

The presentation highlighted the significant changes and revisions to the rule. Roy reported the significant changes include:

- improved rule language by cleaning up ambiguous and redundant rule language;
- including a rule that will allow for recovering of investigative costs;
- revising the existing Schedule A civil penalty matrix to reflect the range of the new civil penalties authorized by statute for major development violations; and
- adding a new Schedule B civil penalty matrix to address the new civil penalty authorized for minor development violations.

The presentation provided examples of the application of the proposed new penalties in comparison to the current rules penalty amount for commonly occurring violations. The Committee was asked to provide comment and input in preparing a final draft to present to the CRC for approval and to send to public hearing.

After much discussion, the Committee approved to include in Schedule A, "Open Shellfish Waters" at the top of the schedule in affected areas with Primary Nursery Areas. The Committee further decided to insert language to clarify that multiple penalties shall apply when more than one Area of Environmental Concern is affected. It was decided to submit the final draft for review by the Committee at the March meeting after Counsel has reviewed.

Alternative Vegetation Line Draft Rule Language (I&S-07-03)

Jeff Warren presented draft rule language to amend the existing alternative vegetation line (AVL) rule. After reviewing the concept that the AVL was intended to mitigate storm-affected static vegetation lines, he identified Oak Island and Ocean Isle Beach as the only towns currently eligible for the AVL. He explained that the existing beach width template method used to determine the AVL, as outlined in the current rule, provided questionable results. The example of

Oak Island was used to illustrate that the AVL in many cases was even more restrictive than the existing static line. Spencer Rogers felt that the overall AVL concept, although approved by the Science Panel, was inaccurate because the recovery of stable vegetation after storms and nourishment was too complex to estimate. Rogers felt that the larger issue of the static line should be discussed instead. Warren reminded the Committee that staff was working on static line concepts which are to be presented at the March meeting, but was hoping to provide an immediate fix for the existing rule. Harry Simmons commented that there was no immediate need to fix the AVL rule when the earliest towns could receive an AVL, under current policy, was early 2009. Debbie Smith, the mayor of Ocean Isle Beach, stated that the AVL was important to their community.

Amendments to the definition of vegetation line were also included in the draft language. Numerous comments were made that changing the definition was a major issue that should receive additional discussion. Rogers made a motion to table the AVL discussions and focus instead on the larger issue of the static line. Simmons seconded and the motion passed unanimously.

Oceanfront Setback Draft Rule Language (I&S-07-05)

Jeff Warren reminded the Committee that they had instructed staff to bring back draft setback concepts that incorporated basing setback on size and not use (e.g., single-family versus multi-family versus commercial) as well as increasing the setback for extremely large structures such as hotels and condo towers. Warren stated that the draft rule language presented was a concept and staff was not requesting that the language be approved for public hearing. Rather, he was hoping that the Committee would allow staff to take the concept out for stakeholder input. Summarily, increased setbacks were proposed for all structures greater than 10,000 square feet, and applying a setback of 60 to single-family homes greater than 5,000 square feet with setbacks increasing gradually to a maximum factor of 90 times the annual erosion rate for structures greater than 100,000 square feet. In addition to these setback concepts, Warren requested that staff could also address placing limits on structures that cantilever into the setback no more than six feet. Spencer Rogers supported increasing setback factors to a minimum of 70 and possibly as much as 100 to reflect the true useable life of a structure. With this option, Rogers also stated that minimum erosion rates of one foot per year could offset these increased setbacks instead of the default value of two feet per year (used for all values less than two as well as accreting beaches). Rogers also commented that numerous additional exemptions would also have to be considered. Cantilevered structures, Rogers explained, should be eliminated completely. Charles Jones commented that staff had been allowing cantilevering by practice so any changes needed to be put into rule language. Commissioner Sermons made a motion for staff to take the concept outlined in the memo to stakeholders for input. Commissioner Weld seconded and the motion passed 14 to 1. Sermons made a second motion that staff include the exclusion of all cantilevers into the setback. Ms. Weld seconded and the motion passed 13 to 2.

Draft Exception to Buffer Rule for Stormwater Ordinance (I&S-06-23a)

Mike Lopazanski reviewed the Committee's effort to develop an exception to the buffer rule for projects located in municipalities with stormwater ordinances meeting specific conditions. Final development of the rule has been delayed as the staff and Committee attempted to coordinate the effort with the actions of the Environmental Management Commission in implementing the Universal Stormwater Management Program. He advised that the USMP was finally adopted by the EMC in November 2006 and now currently in effect. Mike reviewed the changes that had been made to the program including a maximum impervious surface limit of 36%, raising the threshold for requiring stormwater controls from 5,000 square feet to 10,000 square feet and a provision for the Division of Water Quality to implement the program in the coastal counties.

Mike also advised that the EMC was now considering incorporation of the recently adopted Phase II Stormwater rules into the Coastal Stormwater Rules that could have implications for the buffer exception being developed by the Committee. The EMC is proposal include reducing impervious surfaces for low density development along SA waters from 25% to 12% and the high density development requirement to control stormwater from the 1 year 24 hour storm. Mike advised that the EMC was considering a 10,000 square foot land disturbance threshold to replace the current one-acre of disturbance as well as a proposal to prohibit the counting of Coastal Wetlands in impervious surface calculations.

Mike advised that the Committee had discussed the development of a buffer exception for residential development along man-made canals since this was an area that the CRC demonstrated some consistency in the granting of buffer variances. The Committee discussed some of the limitation of such an exception including a limit on how much buffer intrusion would be tolerated as well as the CRAC interest in prohibiting pools from the buffer.

Given that these proposed amendments to the Coastal Stormwater Rules could affect a potential buffer exception, the Committee chose to move ahead with the development of exception to the buffer for residential structures incorporating stormwater infiltration systems along man-made canals and postponing a wider exception base on local stormwater ordinances. Staff agreed to bring proposed language to the March 2007 meeting.

Update on AG's Advisory Opinion Concerning Mowing/Cutting of Marsh Vegetation

Ted Tyndall reported that this issue is now in the hands of staff at the Attorney Generals' Office and that the Advisory Opinion should be available for the March meeting and should be in the packet of material that will be mailed to the Commission.

The meeting adjourned at 5:00 PM.

Draft

NC Coastal Resources Advisory Council Crystal Coast Civic Center Morehead City, NC January 24-25, 2007 Meeting Summary

Attendance

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

Council Call to Order

Bill Morrison called the meeting to order with 36 members in attendance. The Council approved the November 2006 minutes without amendment.

Election of Officers

Frank Alexander, on behalf for the nominations committee, nominated Bill Morrison and Dara Royal to serve as CRAC Chair and Vice Chair, respectively, for calendar year 2007. Bill and Dara were elected by unanimous vote.

Status of the CRAC's Priority Recommendations to the CRC

Bill Morrison updated the Council on the status of the seven priority recommendations that they had submitted to the CRC in June 2006.

Draft

1. Shellfish closures, stormwater, buffers:
The CRC acted by sending a letter to the Environmental Management Commission supporting their efforts to strengthen their coastal stormwater rules.
2. General permit for local government waterway maintenance:
The CRC acted by directing staff to develop a draft GP. After considerable effort and extensive consultation with other regulatory and commenting agencies, and the Corps of Engineers, Division staff determined that a GP is not a viable option. Instead, the Division will accept local government applications through the express permitting program for expedited review.
3. Improve enforcement of existing regulations:
Through the CRC's involvement with the CHPP, DCM has received funding for four additional compliance and enforcement officers, to be hired by spring 2007.
4. Sandbags:
At the November 2007 CRAC meeting, Chairman Hackney re-emphasized for the CRAC how sandbag heights are measured and what maintenance is allowed. Bob Shupe stated that the CRC needs to adhere to its own regulatory time limits for sandbags on the beach.
5. Community Conservation Assistance Program:
The CRC acted by adopting and distributing a resolution in support of the program.
6. Public Access:
The Division did a special request for funding applications in January 2007, and is in the process of revising its Subchapter 7M policies to encourage more funding applications – particularly from economically distressed communities.
Webb Fuller asked whether there has been any progress with securing accesses associated with NCDOT bridges. Mike Street has recently begun a scoping process on the issue. Spencer Rogers noted that the Town of Wrightsville Beach had just closed an accessway adjacent to the Blockade Runner Resort. The Town had recently discovered that the land is privately owned and had returned it to the owners. Spencer said that the Town had decided not to pursue a prescriptive easement to keep the accessway open to the public. Harry Simmons made a motion that the CRAC ask the CRC to send a letter to the Town asking them to pursue a prescriptive easement. Courtney Hackney cautioned that the Council was broaching a touchy subject that is likely to keep coming up. Webb Fuller suggested that the CRAC send the letter themselves. Joan Weld indicated her support for that option, and added that there could be a joint letter from both bodies. Webb asked what should be included in the letter, noting that the CRC and CRAC had shied away from making this type of request in the past. Webb added his reservation that the Town had already made their decision, and could the CRC and CRAC provide any new information to justify asking the Town to reconsider. Al Hodge and Harry Simmons said there would be no new information, just the request from the bodies. Spencer recommended that the letter specifically request action on the Town's Public Access #33, and said that the NC Coastal Land Trust has offered to get involved if the property owners voluntarily decide to provide for public access at the site. Bob Shupe said he would not like to be party to an effort to secure an easement against the property owner's wishes. The Council asked staff to draft a letter for Discussion on Thursday.
7. Variance Procedures:
The CRC responded by changing the way in which it considers whether petitioners meet the four variance criteria. The CRC is also in the process of amending its variance rules to make them clearer and more efficient.

Harry Simmons stated he had learned that the federal government recognizes Florida and Georgia's laws regarding the beneficial use of dredged material, and asked why they do not recognize North Carolina's law. Charles Jones responded that the CRC had tried years ago to get the federal government to recognize North Carolina's law, but was unsuccessful. Harry asked if the

Draft

CRC would revisit that request and Charles replied that we can do so. Courtney asked Harry to provide documentation of the Florida and Georgia program acceptance to himself and to Charles.

Strategic Habitat Areas

Mike Street presented a summary of the Marine Fisheries Commission's SHA Advisory Commission's work as it had been presented to the MFC. Using the MARXAN model, the committee had developed a system by which the MFC could compare habitat values of different areas in order to select the best areas for SHA designation. The Division of Marine Fisheries plans to present draft rule language to the MFC in February 2007. Courtney Hackney asked whether the MFC would ask the CRC to amend its rules to prohibit development in SHAs. Mike answered that the MFC probably would not ask the CRC to prohibit development, but to provide additional protections, similar to those provided in designated primary nursery areas. Courtney asked if the additional protections might include restrictions on piers, for example. Mike answered that they might, but it may have to be decided on a site-by-site basis. Deborah Anderson asked whether ORWs would automatically become SHAs. Mike responded that ORWs would be a data layer used in combination with other layers to identify the most valuable area, but ORW designation alone is not sufficient to justify SHA designation.

Education & Outreach

Education & Outreach committee members Eddy Davis, Judy Hills and Penny Tysinger presented their ideas for a series of educational seminars on various subjects, to be offered to local governments and other interest groups in conjunction with CRAC meetings. The Council provided the committee with ideas for seminar speakers and content. The Council tasked the committee to organize a stormwater education seminar to be offered at the CRAC's March 2007 meeting in Kill Devil Hills.

Retrofitting for Stormwater Control—a Developer's Perspective

Gary Mercer recognized Whitney Jenkins and Lori Davis with the NC Coastal Reserve Education Program for getting him educated about stormwater management. Gary praised Bill Hunt's work through NC State University in getting stormwater BMPs disseminated. Gary said that Carteret County where he operates is 50 percent water, and much of the high ground is under federal control as national protected or restricted areas. Gary said that the county has a high water table that further limits areas suitable for development. Gary showed slides of areas within the county that he plans to develop using BMPs that he is now familiar with, and slides of retrofitted BMPs that he has installed in one of his existing housing developments. Gary's BMPs included vegetated buffers, infiltration rain gardens, tree plantings, grading, and retention pond maintenance. Gary said that from his perspective stormwater control is a win-win situation—residents have been pleased with the improved esthetics, which translates into higher property values, and they have been relatively inexpensive to install. Gary showed examples of existing developments that would likely have installed better stormwater controls had they been educated beforehand.

Webb Fuller commented that town regulations generally focus on stormwater quantity, whereas state agency regulations generally focus on water quality. Gary said that his main message is that he is fully supportive of the intent behind the state implementing stronger stormwater rules, but that it is wrong to put the entire burden on the development community, and on new development in particular. Al Hodge pointed out the state law allows for stormwater retrofitting controls on existing development only if an acre or more of land is disturbed and the controls are deemed "reasonable." Gary concluded by saying that wildlife is a big part of the water quality problem. Gary would like North Carolina to look at how Virginia and Maryland handle wildlife waste and pursue changes in federal regulations to allow North Carolina to do the same.

Draft

Consistency-Equivalent GP for Local Governments

Doug Huggett explained that the authorization the state gives the Corps of Engineers (USACE) for dredging and maintenance is not a permit, but a consistency determination. Non-federal operators would need permits, as consistency determinations would not apply to them and are therefore not transferable. Doug noted that USACE does not always have to adhere strictly to state regulations, but non-federal operators do. Doug explained that attempting to develop a general permit for these activities is effectively trying to force a major permit process into a general permit timeframe, and is not feasible with the required interagency coordination and review. Doug proposed to expand the Department's express permitting program to include maintenance dredging and disposal. Doug cautioned that only the relatively smaller projects would be appropriate for express permitting; larger, more complex projects would be elevated to the major permit process. Doug said that he and Ted Tyndall are committed to remain involved in each decision. The target turnaround time for express permit applications would be 30 days, similar to the typical GP turnaround time. Webb Fuller asked what might impede local government takeover of a routine project. Doug answered that timing and state regulations could do so. USACE does not have to adhere to the same timing and regulatory requirements (e.g. sediment compatibility) that non-federal operators face. Steve Underwood interjected that the state's sediment criteria are a non-issue because in maintenance dredging the sediment is coming from navigation channels. Spencer Rogers said that the express permit option sounds like a reasonable compromise, but a 30-day review period seems long. Doug replied that the express permit program has a mandatory 30-day public comment period that DCM cannot violate or circumvent. Doug said that, at least initially, the express permit option will be available only to municipal and state government applicants.

Wrightsville Beach Access #33

Mike Lopazanski distributed a draft of the letter that the Council wanted to send regarding the Town of Wrightsville Beach's Access #33. Harry Simmons noted that all facts in the letter would need to be confirmed before the letter was sent. Dave Weaver said that the proper distribution would be to send the letter to the town and copy the county. The town controls the access, whereas the county simply administers the tax code and has no role in the decision making unless they hold an easement. A motion was made and approved to send the letter, subject to Bill Morrison's satisfaction with the final content (see attachment). Webb Fuller asked whether the Council should, if necessary, ask DCM and the Attorney General's Office to pursue a prescriptive easement in the event the town decides not to do so. The Council decided to table further discussion until receiving a response from the town.

Buffer Vegetation

Jack Spruill of PenderWatch addressed the Council on the subject of buffer vegetation. Jack said that PenderWatch is a small, member-funded organization focused on water quality protection. Jack said that while the county planning board always requires developers to provide a written statement that they will comply with all relevant CAMA regulations, PenderWatch recently learned that CAMA does not provide for the CRC to regulate buffer vegetation. PenderWatch is concerned with the effects of replacing natural buffer vegetation with lawns, such as loss of ecological function, loss of sediment stability, and the use of fertilizers and herbicides. Jack asked for the following action by the CRAC:

1. Ask the CRC to amend its rules to provide reasonable protection for natural vegetation. PenderWatch, and hopefully other organizations, would support the necessary legislative action;
2. Ask DCM to include an educational handout with all approved permits on the value of native vegetation; and
3. Be personal advocates for preserving natural vegetation in the buffer.

Draft

Webb Fuller asked whether PenderWatch had approached the county seeking local ordinances to protect natural vegetation. Jack replied that they had, but the county defers to CAMA.

New Business/Old Business

With no further business the Council adjourned.

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**North Carolina
Coastal Resources Commission**

January 26, 2007



MICHAEL F. EASLEY
GOVERNOR

COURTNEY T. HACKNEY
CHAIRMAN

CHARLES B. BISSETTE JR.

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MELVIN M. SHEPARD, JR.

JOAN L. WELD

ROBERT O. "BOB" WILSON

LEE WYNNIS

CHARLES S. JONES
EXECUTIVE SECRETARY



The Honorable Robert O. Quinn
Town of Wrightsville Beach
PO Box 626
Wrightsville Beach, NC 28480

Dear Mayor Quinn:

As you are aware, the public has traditionally and customarily had access to enjoy and freely use the beaches and coastal waters of the state. There is also been a long-standing policy of the North Carolina Coastal Resources Commission to foster, improve, enhance and ensure optimum access to the public beaches and waters of the 20 coastal counties. However, public access to beaches and coastal waters in North Carolina is becoming severely limited in some areas.

While the Town of Wrightsville Beach has been recognized as a leader in the state in providing public access, it has recently come to our attention that an access area within the Town (Access #33) adjacent to the Blockade Runner Hotel has been closed. We have also been told that the possible loss of this access area would result in the largest gap between access sites along this particular stretch of beach. The Coastal Resources Commission and members of the Coastal Resources Advisory Council are concerned with the general loss of access sites, however, when such a leader as Wrightsville Beach declines to pursue an access opportunity it is of particular concern.

Through its Public Beach and Coastal Waterfront Access Program as well as its Land Use Planning Program, the Coastal Resources Commission has encouraged local governments to plan for and develop access areas that provide convenient access opportunities along the entire length of the shoreline within its jurisdiction. It is with that intent that we encourage the Town to seek a solution to this situation that will maintain a site for public access in this area.

Please feel free to contact us if we could provide any assistance in this matter.

Sincerely,

Professor Courtney T. Hackney
Chair, North Carolina Coastal Resources Commission

William P. Morrison
Chair, North Carolina Coastal Resources Advisory Council

cc: William A. Caster
Chair, New Hanover County Board of Commissioners

Division of Coastal Management
Department of Environment and Natural Resources
400 Commerce Ave., Morehead City, N.C. 28557
Phone 252-808-2808 Fax 252-264-3723

Amended

NC Coastal Resources Advisory Council Sheraton Atlantic Beach, NC November 15-16, 2006 Meeting Summary

Attendance

Bill Morrison (Chair)
Dara Royal (Vice Chair)
Frank Alexander
Déborah Anderson
Joseph Beck
Carlton Davenport
Eddy Davis
Webb Fuller
Gary Greene
Judy Hills
Al Hodge
Joe Lassiter
Travis Marshall
Gary Mercer
Wayne Mobley
J. Michael Moore

Lee Padrick
W. Burch Perry
Spencer Rogers
Robert Shupe
Harry Simmons
Lester Simpson
Steve Sizemore
Michael Street
Penny Tysinger
David Weaver
Ginger Webster
William Wescott
Traci White
David Stanley (for Don Yousey)
John Wood (for Renee Gledhill-Early)

Charles Elam (CRC)

Lee Wynns (CRC)

Council Call to Order

Bill Morrison called the meeting to order with 31 members in attendance. The Council approved the September 2006 minutes without amendment, and approved an amended version of the June 2006 minutes.

Field Discussion: Vegetation Lines, Setbacks, Large Structures

Jeff Warren led a field discussion on the subject of natural and static vegetation lines, and building setbacks for large and small structures. The Council was able to gain a hands-on perspective of how DCM and local permit officers mark vegetation lines and measure building setbacks. Jeff used the Sheraton hotel as an example of a large structure that was built using the large structure setback from the natural vegetation line. The Council was able to compare, on the ground and on maps prepared by DCM, how static lines in Atlantic Beach and Pine Knoll Shores converge and affect building setbacks.

Sandbag Heights

Justin Whiteside, Planning Director for the town of Ocean Isle Beach, addressed the Council to propose an alternative method for measuring the height of approved sandbag structures. Mr. Whiteside explained that in Ocean Isle Beach there are portions of a roadway that, because of

Amended

erosion, are now level with the tops of installed sandbag structures, which themselves are occasionally overwashed at high tide. Mr. Whiteside also noted that the sandbags are alternately buried by sand and exposed as a result of tidal action. The combined result is that the roadway is occasionally overwashed and covered with sand. The town would like the ability to modify their sandbag structure to raise the top elevation one foot above the roadway. Mr. Whiteside said he hopes the CRC would reconsider the way sandbag heights are measured. Gary Mercer asked how far the affected area is from Shallotte Inlet. Mr. Whiteside said that the area is approximately 750 feet from the inlet. Mr. Mercer questioned what the harm would be in allowing shoreline hardening within a mile or two of inlets and providing public access in other areas. The Council did not take any action following this discussion.

EMC Action on MFC Stormwater Letter

Mike Lopazanski informed the Council that the EMC had recently discussed a letter from the MFC calling for the EMC to implement several measures to strengthen stormwater management rules in the coastal zone. Currently, only three coastal counties are covered by Phase II stormwater rules, and DWQ estimates it could be up to 10 years before most coastal towns would grow large enough to be covered by the rules. The EMC decided to amend its existing rules to fit Phase II requirements, and plans to consider draft rules in January 2007. Bill Morrison said that he would like to see the CRC adopt a resolution in support of stronger coastal stormwater rules. Mr. Morrison said that the Council would need to convince the CRC to act at this meeting otherwise the resolution would not get to the EMC until after the new rules were considered. Mr. Morrison asked whether the Council was prepared to act immediately on the draft resolution that was provided to them (attached). A motion was made and seconded to ask the CRC to adopt the resolution and forward it to the EMC. The Council decided to finalize the wording after hearing from DWQ's Tom Reeder.

DWQ Studies on Stormwater Program Effectiveness

DWQ's Tom Reeder said that stormwater runoff is the number one water quality problem in the state, and that pollution associated with stormwater runoff is a result of development. Industrial runoff is more tightly regulated than residential runoff. Shellfish waters are the most sensitive receptors in the state, which is why they are used as an important indicator of water quality. 1,157 acres of outstanding resource waters (ORW) have been closed to shellfishing since 1990. Wayne Mobley said that stormwater runoff has been implicated as the primary cause of contamination in more than 90 percent of the areas sampled.

Tom Reeder went through a presentation on the existing regulatory programs, and a recent DWQ study that evaluated the performance of the programs in a sample watershed in New Hanover County. The study revealed that existing regulatory programs do not appear to have been effective in protecting waters from pollution. Existing programs rely on low density development, which do not require engineered stormwater controls. DWQ did not find any evidence that the existing programs would become any more effective in the future. The study pointed to the need to modify existing programs and/or adopt new programs to deal with the problem.

NC Session Law 2006-246 requires the EMC to amend its rules to meet Phase II stormwater requirements. The EMC must begin implementation by July 2007 and DWQ was beginning to draft rules to implement the legislation.

DWQ has also developed its Universal Stormwater Management Program (USMP). The USMP is a voluntary program that, if adopted by a local government, would replace all other applicable state regulations. The program would become effective in early 2007.

Amended

CRC Stormwater Resolution to EMC

Following Tom Reeder's presentation, the Council discussed the final language of the resolution. The Council's NCDOT representatives indicated that they could not support a resolution that did not explicitly acknowledge that NCDOT's stormwater controls are not failing, and that NCDOT does not want to be subject to the new regulations instead of their existing agreements with DWQ. The Council voted to send the resolution to the CRC as discussed at the November meeting; in its current form.

At the January 2007 CRAC meeting, the Council's NCDOT representatives elaborated their position by adding the following comments:

- DOT believes that there is a lack of compliance data to support reducing the impervious area to 10,000 square feet, and does not believe that DWQ has data to determine whether the one acre limit is working.
- DOT would encourage the CRC to support a recommendation to increase enforcement before reducing the impervious area, in order to see whether improved compliance might be a solution.
- DOT stated that none of their facilities were included in the DWQ study. DOT would like DWQ to study waters adjacent to properly designed, constructed and maintained stormwater facilities, including all BMPs (municipal, private and state operated).

Public Education through Local Governments

Whitney Jenkins, NC Coastal Reserves (NCCR), led a discussion around the Council's priority of public education on coastal issues, working through local governments. Whitney said that the NCCR administers a Coastal Training Program (CTP) to local governments to promote informed decision-making through science-based education. Whitney presented several outreach ideas, including offering education seminars at CRAC meetings, hosting a web-based clearinghouse, and advertising educational resources through CRAC county representatives, emails, and websites. Webb Fuller noted that while counties have representatives on the Council, most municipalities do not. Al Hodge responded that the CRAC will have to approach local governments and not wait for them to come to the Council for the information. Al suggested that the CRAC develop a standard presentation and take it on the road to local governments. Judy Hills said that the Councils of Governments have 205J money available that can help with the outreach costs. The CRAC would have to apply for grants. Eddy Davis stressed that the presentation has to focus on the relevant regulations, and what the local governments have to do and why; emphasize the practical requirements, not the science. Wayne Mobley suggested that the presentation should go beyond the regulations and educate local governments on the value of going beyond the minimum requirements. Mike Street recommended that the Council start with retrofitting for stormwater management as its first outreach topic.

Eddy Davis, Judy Hills and Penny Tysinger volunteered to serve on an Education & Outreach Subcommittee, to work with NCCR and DCM staff to devise an outreach plan for discussion at the January meeting.

Refinement of September Recommendations to CRC

30' Buffer

Bill Morrison asked how the Council wanted to approach the recommendation of expanding the 30' buffer. Mike Street responded that it is part and parcel of the stormwater discussion, and may be difficult to approach in isolation. Al Hodge asked what regulatory intent is behind the CRC rule. Mike Lopazanski said that the intent is not well codified. Several reasons were embraced during rule development, but the primary purpose since adoption has become water quality protection. Al asked whether the problem with the buffer is that it is not large enough or that it is poorly managed. Spencer replied that both are problems, plus DCM's lack of statutory authority to regulate

Amended

vegetation within the buffer. Wayne Mobley added that a 30' buffer is not sufficient unless it is supplemented with a properly maintained engineered system.

Al Hodge said he would like the Council to push the CRC to request more regulatory control over vegetation. Terry Moore said that DCM has asked the Attorney General's office whether DCM has the authority under CAMA to regulate marsh alteration as development. The Council decided to wait for the AG's response before considering further action.

Retrofitting

Gary Mercer said that as a developer he is doing work and research on the subject of retrofitting. Bill Hunt and his program at NCSU has had money available for retrofitting and has a lot of information about it on his website. The Council decided to work with Bill Hunt for help in creating and disseminating local government tools. Webb Fuller said that this would be a good local government initiative, as opposed to a handed down state regulation.

Tax Credits

Webb Fuller advised the Council not to pursue tax credits as they would require changes in state law. Webb said it would be more efficient to work on giving credits against permit fees instead. Judy Hills said the Council could also look into stormwater utility fees. The Council did not take any action.

Strategic Habitat Areas

Mike Street said that the Division of Marine Fisheries would be presenting its proposed SHA designation process to the Marine Fisheries Commission on November 30th, and he could report to the Council in January on what the MFC decided to do. The Council agreed to hear Mike's report in January before further discussion.

New Business/Old Business

With no further business the Council adjourned.

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DRAFT DRAFT DRAFT

**North Carolina Coastal Resources Commission Resolution
Supporting The Environmental Management Commission Effort To Incorporate
Phase II Stormwater Requirements In The Coastal Stormwater Program**

WHEREAS, North Carolina's coastal fisheries are among the most productive in the United States because of the wide variety of habitats available, the largest estuarine system of any single Atlantic coast state, and the location of North Carolina at the transition between mid-Atlantic and south Atlantic regions, and;

WHEREAS, approximately 60,000 acres of highly productive oyster harvest area is permanently closed to shellfish harvest, temporary shellfishing closures encompassing most of the southern coastal area of the state now restrict shellfish harvest on a regular basis, and permanent shellfishing closures are increasing and spreading into previously unaffected areas, and;

WHEREAS, bacterial contamination of shellfishing waters by stormwater runoff from land development near those waters has been identified as the primary cause for recent harvest closures in North Carolina's shellfishing waters, and;

WHEREAS, the N.C. Division of Water Quality has recently completed a comprehensive study on the effectiveness of its stormwater programs in protecting five small watersheds in New Hanover County, all with significant shellfish resources formerly available for harvest, and;

WHEREAS, the N.C. Division of Water Quality has determined that approximately 70 percent of all development on the coast has been low density in accordance with current coastal stormwater rules utilizing swales for treatment of stormwater runoff, and;

WHEREAS, the N.C. Division of Water Quality study found that swales can add pollution to stormwater runoff making the low density option of the current stormwater rules one of the primary causes for recent harvest closures of shellfish waters in North Carolina, and;

WHEREAS, the recently adopted Phase II Stormwater Rules and Universal Stormwater Management Program do not cover all coastal areas or shellfishing waters (surface waters rated SA and SB), depend at least in part, on voluntary participation, and are not designed to include rural areas potentially targeted for development, and;

WHEREAS, the Environmental Management Commission has directed the N.C. Division of Water Quality to develop draft language to incorporate Phase II Stormwater Program requirements into the coastal stormwater rules for the 17 coastal counties not currently part of the program.

THEREFORE, IT IS HEREBY RESOLVED THAT, the North Carolina Coastal Resources Commission (CRC) supports the Environmental Management Commission's (EMC) effort to amend the coastal stormwater rules to incorporate all new Phase II Stormwater requirements into the Coastal Stormwater Program. The CRC also requests that the EMC remove the distinction between Shellfish Resource Waters (SR) and Shellfish Waters (SA) and lower the requirement threshold to 10,000 square feet of land disturbance.

Dr. Courtney Hackney
Chair, N.C. Coastal Resources Commission

Date