

NC COASTAL RESOURCES COMMISSION (CRC)

November 19-20, 2008

Crystal Coast Civic Center

Morehead City, NC

Present CRC Members

Bob Emory, Chairman

Joan Weld, Vice-Chair

James Leutze (present 11/20)

Chuck Bissette

Charles Elam

David Webster

Jerry Old

Bill Peele (arrived 3:25 11/19)

Wayland Sermons (arrived 3:35 11/19)

Ed Mitchell

Bob Wilson (present 11/20)

Lee Wynns

Veronica Carter

Present Coastal Resources Advisory Council Members (CRAC)

Dara Royal, Chair

Penny Tysinger, Co-Chair

Bob Shupe

Tim Tabak

Gary McGee

Dave Weaver

Christine Mele

Bill Morrison

Lester Simpson

Joe Beck

Webb Fuller

J. Michael Moore

Frank Rush

Rhett White

Bert Banks

Judy Hills

Eddy Davis

Gary Greene

Spencer Rogers

Joe Lassiter

Lee Padrick

Michelle Duval (for Anne Deaton)

Al Hodge

Phil Harris

Travis Marshall

Present Attorney General's Office Members

Jennie Hauser

Christine Goebel

Amanda Little

Ward Zimmerman

CALL TO ORDER/ROLL CALL

Chairman Emory called the meeting to order and reminded Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act.

Angela Willis called the roll and each Commissioner in attendance reported no conflicts. Melvin Shepard and Renee Cahoon were absent. Based upon this roll call, Chairman Emory declared a quorum.

VARIANCE REQUEST

Town of Ocean Isle Beach Variance Request (CRC-VR-08-51) was withdrawn.

Egland (CRC-VR-08-48) N. Topsail Beach, Oceanfront Setback

Amanda Little of the Attorney General's Office represented Staff. Ms. Little stated the Petitioner applied for a CAMA minor permit to construct a single-family dwelling with a footprint of 1,656 square feet at 1090 New River Inlet Road in North Topsail Beach, Onslow County. Currently there is no development at this location. Most of the proposed development is seaward of the applicable ocean erosion setback. Petitioner applied for this variance seeking relief from strict application of 15A NCAC 07H .0306(a) and .0309(b).

Ms. Little reviewed the stipulated facts of this variance request. Ms. Little noted there is a sixty foot setback on the survey provided by Petitioner and this is improper as the setback at this location is ninety feet from the first line of stable, natural vegetation. She further stated that Staff and Petitioners do not agree on any of the four criteria which must be met in order to grant the variance.

Leland Egland, Petitioner, represented himself. Mr. Egland reviewed the stipulated facts which he contends supports the granting of this variance. Mr. Egland stated that the proposed residence would be ten feet farther away from the CAMA line than the lot directly adjacent. He further stated there were several surveys done initially. At first it was done at ninety feet and then for sixty feet as instructed. Everyone had agreed upon sixty feet, everyone permitted sixty feet and then construction began.

Joan Weld made a motion to support Staff's position that strict application of the applicable development rules, standards, or orders issued by the Commission do not cause the Petitioner unnecessary hardships. David Webster seconded the motion. The motion passed with seven votes (Wynns, Sermons, Old, Peele, Weld, Webster, Carter) and three opposed (Elam, Bisette, Mitchell).

Joan Weld made a motion to support Staff's position that hardships do not result from conditions peculiar to Petitioner's property. David Webster seconded the motion. The motion passed with six votes (Wynns, Sermons, Peele, Weld, Webster, Carter) and four opposed (Elam, Bisette, Old, Mitchell).

Joan Weld made a motion to support Staff's position that hardships result from actions taken by the Petitioner. David Webster seconded the motion. The motion passed with six votes (Wynns, Sermons, Peele, Weld, Webster, Carter) and four opposed (Elam, Bissette, Old, Mitchell).

Joan Weld made a motion to support Staff's position that the variance will not be consistent with the spirit, purpose or intent of the rules, standards or orders issued by the Commission; will not secure the public safety and welfare; and will not preserve substantial justice. David Webster seconded the motion. The motion passed with six votes (Wynns, Sermons, Peele, Weld, Webster, Carter) and four opposed (Elam, Bissette, Old, Mitchell).

The variance was denied.

Bogue Watch, LLC – (CRC-VR 08-52) Carteret County, New Dredging in PNA
Christine Goebel of the Attorney General's Office represented Staff. Ms. Goebel introduced Mack Paul and Charlotte Mitchell, counsel for Petitioners. Ms. Goebel stated that this property is adjacent to Bogue Sound and Sanders Creek and is located on the south side of NC 24 in the Newport area of Carteret County. The proposed development is inconsistent with the Commission's specific use standards for estuarine shorelines which require that navigation channels avoid areas that are designated as primary nursery areas by the Marine Fisheries Commission. Petitioner seeks a variance primarily from CRC rule 15A NCAC 07H .0208(b)(1) in order to dredge a navigation channel.

Ms. Goebel reviewed the stipulated facts for this variance request and stated that the Petitioner is proposing a 287-lot subdivision on 195 acres and a CAMA Major permit was issued for the infrastructure for the subdivision. In 2007, the Petitioner requested a Major modification to add a nine slip upland basin community docking facility. During review, DCM determined the dredging from the endpoint of the channel to the proposed basin would be new dredging and not maintenance dredging. Ms. Goebel further stated that Staff and Petitioners agree on all four variance criteria.

Mack Paul of K&L Gates represented Petitioner. Mr. Paul stated that Petitioners do agree with Staff on the four criteria. He further stated the designation of PNA to this portion of Sanders Creek and the erosion that occurred has caused the need for this variance in triggering the rule for new channels.

Wayland Sermons made a motion to support Staff's position that strict application of the applicable development rules, standards or orders issued by the Commission cause the Petitioner unnecessary hardships. Jerry Old seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter).

Wayland Sermons made a motion to support Staff's position that hardships result from conditions which are peculiar to the property. Jerry Old seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter).

Wayland Sermons made a motion to support Staff's position that hardships do not result from actions taken by the Petitioner. David Webster seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter).

Chuck Bissette made a motion to support Staff's position that the variance will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; secure public safety and welfare; and preserve substantial justice. Wayland Sermons seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter).

The variance was granted.

MINUTES

Charles Elam made a motion to approve the minutes of the September 2008 CRC meeting. Jerry Old seconded the motion. The motion passed unanimously (Weld, Leutze, Bissette, Elam, Webster, Old, Peele, Sermons, Mitchell, Wilson, Wynns, Carter).

Bill Peele made a motion to approve the minutes of the October 9, 2008 CRC conference call. Jerry Old seconded the motion. The motion passed unanimously (Weld, Leutze, Bissette, Elam, Webster, Old, Peele, Sermons, Mitchell, Wilson, Wynns, Carter).

EXECUTIVE SECRETARY'S REPORT

Jim Gregson, DCM Director, read the Ethics Commission's findings of conflict into the record for Veronica Carter, Ed Mitchell, and David Webster.

Dr. David Webster's letter dated May 19, 2008 from Perry Newsome, Executive Director of the State Ethics Commission states, "I did not find an actual conflict of interest, however I did find the potential for a conflict of interest. Dr. Webster is an Associate Dean in the College of Arts and Sciences at UNC Wilmington and will fill the roll of a marine ecology representative on the Commission. In addition he is a board member of the NC Coastal Land Trust and provides environmental consulting in the area of monitoring endangered species. In light of these interests, Dr. Webster should exercise appropriate caution should any of these entities come before the Commission for official action or otherwise seek to conduct business with the Commission. This will include recusing himself to the extent that these interests would influence or reasonably appear to influence his actions."

James E. Mitchell, Jr.'s letter dated September 22, 2008 from Perry Newsome, Executive Director of the State Ethics Commission states, "I did not find an actual conflict of interest, however I did find the potential for a conflict of interest. Mr. Mitchell fills the roll of a coastal land development representative on the Commission. He is the president of River Dunes Corporation, a real estate development company, and he owns real estate located on the coast. As such, he has the potential for a conflict of interest. In light of this interest, Mr. Mitchell should exercise appropriate caution should his properties or its surrounding areas come before the Commission for official action. This would include recusing himself to the extent that this interest could influence or reasonably appear to influence his actions."

Veronica Carter's letter dated September 22, 2008 from Perry Newsome, Executive Director of the State Ethics Commission states, "I did not find an actual conflict of interest, however I did find the potential for a conflict of interest. Ms. Carter fills the roll of an at-large member on the Commission. She owns real estate located on the coast. As such, she has the potential for a conflict of interest. In addition, she is on the board of directors of the NC Coastal Federation, a non-profit organization focused on protecting and restoring North Carolina's coast. In light of these interests, Ms. Carter should exercise appropriate caution should her properties or the Federation come before the Commission for official action. This would include recusing herself to the extent that these interests would influence or could reasonably appear to influence her actions."

Jim Gregson gave the following report.

Sandbags

At the last CRC meeting I informed you that 21 letters had been mailed to property owners requesting removal of sandbag structures that have exceeded their time limits. Nearly all of these individuals have refused delivery of the certified letter sent by DCM. We are working with the property owners' legal counsel to overcome this obstacle in the enforcement process. We do expect the majority of them will submit variance requests.

CELCP

The NC Coastal and Estuarine Land Conservation Program (CELCP) successfully closed its first deal on August 29th. The Division secured a \$3,000,000 CELCP grant that was matched with state funds to purchase 6,449 acres of land along the Chowan River in Gates County. The land is being added to the state's gamelands, and will be managed by the NC Wildlife Resources Commission. The Division submitted another CELCP application in July to support the purchase of approximately 270 acres on Eagles Island in the Cape Fear River, and will find out the result of that application in the coming months.

Coastal Reserve Grants

- The Clean Water Management Trust Fund has awarded DCM \$304,000 for phase 2 of a multi-year hydrologic restoration project at the Emily and Richardson Preyer Buckridge Coastal Reserve site. The funds will be used to purchase and install water control structures to prevent saltwater intrusion into a priority conservation area.
- The National Heritage Trust Fund Board awarded DCM \$85,000 toward the purchase of 16 acres in Kitty Hawk Woods. DCM has an application submitted with the US Fish and Wildlife Service Coastal Wetlands Grant Program for \$285,500 for the balance of the purchase. We should hear something by December.
- DCM has also received a grant from the Division of Water Resources in the amount of \$89,904 for debris removal and estuarine habitat restoration on the Permuda Island Coastal Reserve.

Coastal Training Program Update

On September 23 the Coastal Training Program hosted a Septic System workshop for realtors at Oriental town hall. Twenty-one realtors attended the training and received four continuing education credits.

2009 CRC Meeting Schedule

February 11-13: Morehead City, Crystal Coast Civic Center

April 29-May 1: Sunset Beach, Sea Trail

June 24-26: Greenville, City Hotel and Bistro

August 26-28: Raleigh, Clarion State Capital Hotel

October 28-30: Atlantic Beach, Sheraton Atlantic Beach

Staff News

Jonathan Howell has accepted the position of assistant major permits coordinator in the major permits unit at the Morehead City Office. Jonathan will begin his new job on Dec. 1st.

CHAIRMAN'S COMMENTS

Chairman Emory stated that there is a presentation today regarding the budget constraints. This presentation will show the challenges we are facing and how it will affect how we operate. We will also hear some recommendations from Scott Geis and Dr. Kalo that will lay some major priorities for us to work on for the next few years.

CRAC REPORT

Dara Royal gave the CRAC report.

The CRC took the following actions:

The CRAC unanimously recommends that the CRC approve the Town of Carolina Beach's land use plan amendment. The CRC voted unanimously to approve the Town of Carolina Beach's land use plan amendment (Elam, Wynns, Sermons, Wilson, Bisette, Old, Weld, Webster, Mitchell, Carter, Leutze, Peele).

The CRAC unanimously recommends that the Town of Pine Knoll Shores land use plan be certified by the CRC. The CRC votes unanimously to certify the Town of Pine Knoll Shores land use plan (Elam, Wynns, Sermons, Wilson, Bisette, Old, Peele, Weld, Webster, Mitchell, Carter, Leutze).

ACTION ITEMS

Adopt 15A NCAC 07H .1401, .1402, .1404, .1405 GP for Construction of Groins in Estuarine & Public Trust Waters

Charles Elam made a motion to adopt 15A NCAC 07H .1401, .1402, .1404, and .1405. Bob Wilson seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Wilson, Bisette, Old, Peele, Weld, Webster, Mitchell, Carter, Leutze).

Adopt 15A NCAC 07H .2101, .2102, .2104, .2105 GP for Marsh Enhancement Breakwaters

Joan Weld made a motion to adopt 15A NCAC 07H .2101, .2102, .2104, and .2105. Wayland Sermons seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Wilson, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter, Leutze).

Adopt 15A NCAC 07H .2401, .2402, .2404, .2405 GP for Placement of Riprap for Wetland Protection

Bill Peele made a motion to adopt 15A NCAC 07H .2401, .2402, .2404, and .2405. Ed Mitchell seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Wilson, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter, Leutze).

Adopt 15A NCAC 07J .0701, .0703 Variance Petitions

Wayland Sermons made a motion to adopt 15A NCAC 07J .0701. Joan Weld seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Wilson, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter, Leutze).

Wayland Sermons made a motion to adopt 15A NCAC 07J .0703. Jerry Old seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Wilson, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter, Leutze).

Adopt 15A NCAC 07M .0301, .0302, .0303, .0306, .0307 Shorefront Access Policies

Jerry Old made a motion to adopt 15A NCAC 07M .0301, .0302, .0303, .0306, and .0307. Joan Weld seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Wilson, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter, Leutze).

PRESENTATIONS

Joan Weld, Chair of the CRAC Nominating Committee, reported that pursuant to CAMA the CRC is responsible for 12 appointments to the CRAC. Initial two year terms for six members expired in December 2007 and reappointments should have been done at that time. The nominating committee is leaving it to the Commission as to when to begin these new terms. All of the members whose terms have expired have expressed their interest in being reappointed except for the local health director who has asked to be replaced. Joan Weld, Chuck Bissette and Dara Royal made up the nominating committee and are recommending reappointments and replacements. The committee solicited nominations from local governments and received nominations for seven individuals, four of whom are incumbents. The committee used several criteria in its decision making including the current priorities of the CRC and CRAC, qualifications of the nominees, attendance and participation over the past two years, and geographic representation. The committee recommends the following: William Gardner, Jr. (Town of Edenton – Coastal Cities) reappoint for a four year term; J. Michael Moore (Town of Surf City – Coastal Cities) reappoint for a four year term; Frank Rush (Town of Emerald Isle – Coastal Cities) reappoint for a four year term; Rhett White (Town of Columbia – Coastal Cities) reappoint four year term; Jerry Parks (Elizabeth City – Local Health Director) appoint for a new two year term; and Tracy Skrabal (City of Wilmington – Marine Science and Technology) appointment for a new two year term. The nominating committee recommends beginning these terms December 2007.

Joan Weld made a motion to accept the recommendations of the nominating committee. Charles Elam seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter).

CRC/CRAC Meetings – Financial Constraints for 2009 **Arthur Stadiem**

Arthur Stadiem stated the budget problems have been all over the news and these are not just State problems, they are National as well. I will address the effects on Coastal Management's budget based on the constraints. Mr. Stadiem introduced Melissa Sebastian the accounts payable technician who helped get the figures together. The funding reductions were shown for state appropriated funds and receipts which total around \$310,000.00. Salaries, increases in legal expenses, and motorfleet expenses were shown.

The cost for CRC/CRAC meetings for the first two meetings in this fiscal year was discussed. The meeting in Raleigh had a total cost of about \$18,700. The meeting at Sunset Beach was a little under \$15,000. If you average the two together is it about \$16,800, there are six meetings scheduled for this fiscal year, so the total cost would be about \$100,000 for all of the meetings this year. We have proposed one, two and three-day meetings and found that the cost in Morehead City is less because our headquarters staff will not have to travel. The total cost of a one-day meeting in Morehead City is about \$8,000. If the meeting were held in another location, you could add \$1,000-1,500 to this amount based on our estimations. The two-day meeting held in Morehead City would cost about \$13,000. If it were held somewhere else you would add about \$2,000-\$2,500. The three-day meeting held in Morehead City would cost around \$20,500. If the meeting were held somewhere else you would increase this amount by \$3,000-\$4,000. (The CRC Executive Committee will meet by conference call to discuss the meeting format for future meetings to include a Wednesday/Thursday format, beginning earlier on Wednesday, meeting concurrently with CRAC, and Teleconferencing).

Overview of the Rachel Carson National Estuarine Research Reserve **Paula Gillikin**

Paula Gillikin showed a map of the ten sites of the Coastal Reserve including the four North Carolina National Estuarine Research Reserve sites. The Rachel Carson site is located in Beaufort across from the waterfront. It is approximately 2,600 acres and consists of five small islands. The average water depth around the Reserve is between three and six feet, however there are a couple of deep sloughs that are up to 20 feet deep on the south side of the Reserve.

There is evidence that Native Americans used Middle Marsh for shellfishing. The waters around the entire site have been used for centuries for commercial and recreational fishing as early as 1806. Shellfishing has been a traditional activity around the Reserve, however currently there is no shellfishing in the Reserve except for Middle Marsh because of the waste water outfall from the Town of Beaufort in Taylor's Creek. In 1915, drastic changes began happening to the property when the Army Corps of Engineers started dredging Taylor's Creek and disposing of the spoil material onto the island. In the 1940's another drastic change took place. A local physician put horses on the island to graze. These horses were contained for many years and then were released and became feral. Some of these horses remain today. Efforts to protect the property from development began in 1977 when a businessman had interest in putting condos

onto Carrot Island. Shortly thereafter, the Nature Conservancy purchased approximately 400 acres of land on Carrot Island. The rest of the island was owned by the Episcopal Church in Beaufort, the Town and private owners. In 1985, the site was acquired as part of the N.C. National Estuarine Research Reserve. In 1989, Middle Marsh was added.

The sand and mud flats are habitat for worms and clams. The eel grass is a primary habitat for bay scallops and a nursery area for fish. Dredge material areas are used by nesting birds. The shrub thicket and maritime forest support a number of mammals and birds. There are dunes and sandy beaches only on Bird Shoal and this habitat supports the nesting wilsons plovers and the nesting piping plover. There have been over 200 species of birds documented on the Reserve throughout the year. This is a result of its close proximity to the Atlantic migratory flyaway. This year we have witnessed three white tailed deer and the crystal skipper butterfly.

Rachel Carson visited the U.S. Bureau of Fisheries in Beaufort in the 1940's. She was a writer, scientist and ecologist and the first woman employed by the U.S. Bureau of Fisheries. She spent a lot of time on Piver's Island and the Reserve.

The feral horses are a management problem as they are not a native species. There are currently 38 horses and the population is stable due to the immunocontraceptives administered to them. There is a strong, favorable public sentiment associated with these horses. Some other management challenges the Reserve faces include marine debris (over 3,000 pounds has been removed this year alone), dogs off of the leash (there is no enforcement power) especially during bird nesting season, beached vessels, and dredge spoil deposition.

There are a lot of stewardship and management activities happening on the Reserve. We have started a habitat improvement pilot study on Carrot Island with the North Carolina Aquarium. We are also working with the USGS and NCSU cooperative research unit on monitoring the American oystercatcher. We are collaborating with NOAA on a marine debris project to look at the sources and the affects larger objects are having on the marsh. We are undergoing a biological inventory to update our Natural Heritage program records. These projects are primarily administered by the research sector. There are a number of activities that occur on the Reserve. Seasonally we offer free public field trips, we offer summer camp opportunities to youth of various ages, we have a volunteer Christmas bird count in December, we work with the Wildlife Resources Commission to mark off bird nesting areas, and providing public access to the boardwalks.

Ocean Policy Study Committee Draft Recommendations (CRC 08-50)

Scott Geis

Scott Geis stated the OPSC is charged with the task of looking at emerging issues. The big question we ask when dealing with these emerging issues is, "Are we prepared for the future in terms of a regulatory perspective?" The OPSC has been meeting since May 2008 and has come up with a list of issues and list of recommendations.

The issues that have been identified are sand resource management which includes inlet management, legal rights to sand resources, methods for acquiring sand in state and federal waters, and practices that may result in a loss of sand to the beach communities. We have also

talked about alternative energy, ocean outfalls, mariculture and comprehensive ocean management.

Recommendations have been developed by the OPSC. The first is to develop a comprehensive plan that protects beaches and inlets (enforce what is going on with the BIMP and add approval for the BIMP practices, but also add a mapping component to it). We need to identify compatible sources. The belief by the Committee is that there are significant sources around the Capes which could be large sources for future nourishment efforts. Another recommendation is to establish priority for allocating limited sand resources. A system of legal rights needs to be established (currently it is first come, first served). The next recommendation was the management of ebb and flood tide delta sand sources (restrictions should be placed on the volume of sand removed). The next recommendation deals with activities that could result in a loss of sand to the system. Currently, there are Statutes in place that say that sand that is dredged from the inlets needs to be placed on the beaches. The Army Corps of Engineers can remove sand from the system. Another recommendation was to require a disclosure of natural hazards for real property. Another recommendation was to add a sea level rise component to CAMA land use plans. We have rules in place in 7H .0208 which references dredging around high bottom areas. We should expand this rule to encompass all hard bottom areas. Hard bottom communities provide habitat for reef-associated fishes and the sand around this area is responsible for the primary nutrition of these organisms. We need a worst-case scenario for state-level planning (for multiple storm events, sea level rise, or catastrophic event). A planning document for these events should be put into place.

Ocean based alternative energy could result in visual impairments, user-conflicts, leasing practice structure problems, location and limitations of the technology, and an increased need for these new technologies as we use up our fossil fuels. The recommendations include reviewing existing rules on alternative energy facilities. The CRC, the EMC, and the Utilities Commission should clarify their respective roles for the rules to be put into place for alternative energy projects in state waters.

Ocean outfalls and alternative waste water management were discussed as a result of the drought. Some of the issues were how to deal with the pollution of the coastal waters, increased populations at the beaches, and the need for fresh water. The OPSC supports the recommendations of the CHPP that there should be no new or expanded ocean outfalls and that existing outfalls should be decommissioned. They support increased examination of the potential for alternative waste water treatment practices.

Ocean based mariculture was the next topic. The issues associated with this are that they have been labeled as point sources for pollution, there are concerns about what to do if you have a fish pen in the ocean with non-endemic species and they escape, there is significant maintenance for ocean cages, and the location of these facilities. The Committee recommends that the State conduct a technical assessment of the feasibility of aquaculture facilities.

The last issue is comprehensive ocean management (ocean-zoning). There are sand resources, but the area has commercial, political, and benthic concerns as well as how to protect the sand sources. We will have to look at existing data and what might come in the future and then we can put maps together with an analysis of the conflicts that will be involved as well as how we

might want to preserve these areas. The Committee recommends that we map our ocean resources.

These draft recommendations will be presented at three upcoming public meetings.

BIMP Update

Steve Underwood

Steve Underwood handed out the schedule for the BIMP public meetings. There will be another round of public meetings prior to the April 2009 date when the BIMP is to be completed. The information provided at the meetings will include an overview of the regional concept of the BIMP, discuss what we already know about each region, and some socio-economic information will be provided.

Review of Comprehensive Beach Management Subcommittee Recommendations (CRC 08-54)

Steve Underwood

Steve Underwood stated that at the May 2008 CRC meeting, a list of recommendations was developed for discussion. DCM Staff was asked to provide an update on the progress. The first recommendation was a resolution to the General Assembly supporting additional funding to accelerate the development of the BIMP, request additional resources and personnel to act as a liaison with local governments and to serve on the project delivery team. Due to the downturn of the economy, it may be wise to delay a resolution to the General Assembly. The second recommendation was for a statement or letter to the General Assembly supporting a stable and dedicated source of funding for beach nourishments. The CRAC discussed this. Dara Royal stated in September 2008, a subcommittee (Royal, Simmons, Rush, Morrison, Weaver) was appointed to begin working on this issue and gathering information. One conference call has taken place since September and the direction we decided to take was to expand this beyond beach nourishment and try to capture a project fund "North Carolina Coastal Shorelines and Waterways Project Fund". We would seek to include beach nourishment as one of the expenditures from this fund, but also inlet stabilization projects, inlet relocation, estuarine shoreline stabilization projects, living shoreline projects, waterway navigation dredging, public access to waters, and strategic removal of structures from erosive conditions. Information has been provided to CRC members showing sales tax, prepared meals tax, room occupancy tax, and land transfer tax which are all sources of funding that have been used on a local level and the kind of funds that could be generated. A summary of justification statements from previous legislation that has been introduced in the General Assembly (much of which has died in committee) was provided as an idea of what has been talked about and what some legislators have supported and the reasons for supporting it. We hope to bring a resolution to be sent to the General Assembly in February with supporting documentation and suggestions as we continue to gather more information. Steve Underwood continued with the third recommendation which was the creation of a committee to develop a beach and education plan. There has been no progress to date on this item. The fourth recommendation was a coastal hazard disclosure. This was also a recommendation from the OPSC. We have put the sandbag locations on the DCM website. The fifth recommendation was to condition certain CAMA permits to preclude the use of sandbags. We need to have further discussion on this item. The sixth recommendation was the consideration of amendments to the sandbag rule. The new draft rules will have public hearings in February. The seventh recommendation was consideration of alternative sandbag

structure design. There has been informal discussion on the use of geotextile bags. An Attorney General's opinion has not been received regarding the use of these sandbags. The eighth recommendation was a letter to the Governor endorsing the North Carolina involvement in the Southeastern Alliance. DENR is working on a signing ceremony for all of the Governors of the Alliance prior to the end of the year. The ninth recommendation was a presentation to the CRC on innovative funding strategies for beach nourishment projects. Peter Revella gave a presentation at the July 2008 CRC meeting and CRAC Chair Royal gave an update and provided information today. The tenth recommendation was the consideration of beach management/oceanfront development strategies consistent with the CRC's current authority. The CRC adopted the setback rules at the September 2008 meeting. Draft management strategies are about to go out to the public for their input for the BIMP in December.

OCS Update (CRC 08-46)

Mike Lopazanski

Mike Lopazanski stated OCS stands for Outer Continental Shelf and gave an update to the CRC on what has been going on with the moratoriums. There has been renewed interest in OCS areas of the east and west coast which began in 2005. Hurricane Katrina caused an interruption in oil and gas supplies that caused a sharp rise in gasoline prices in the nation. However, the interest in opening up more areas to energy production started a little before this and manifested itself into the Energy Policy Act of 2005. While there are no calls for drilling, there were provision in the Energy Policy Act for conducting an inventory of oil and gas reserves in the outer continental shelf areas of the United States. It is important to note that under the Energy Policy Act, MMS (Minerals Management Service) received authorization to lease the OCS area for alternative energy producing activities. Between 2005 and now there have been quite a few attempts at legislation which all had varying schemes for royalty sharing as well as options for states to participate in energy exploration and production. The one thing they all had in common was dealing with the moratoriums and lifting them to varying degrees. The moratoriums emerged from a large spill off of the coast of Santa Barbara in 1969 where the blowout of an oil well released approximately three million gallons of oil. Over the next several years oil and gas drilling began to appear as local ballot issues in California communities and often resulted in local ordinances that prevented the location of on-shore support facilities in these communities. The first federal ban came in 1982 with a Congressional moratorium on pre-leasing activities in California waters. This pre-leasing ban was later extended to the North Atlantic in 1983. In 1990, amid concerns for preserving the ocean and coastal environments, the first President Bush signed an Executive Order that banned all leasing activities covered by the Legislative bans until the year 2000. In 1990 the Outer Banks Protection Act passed which specifically prevented drilling off of the North Carolina coast. This Act was later repealed as it resulted in a breach of contract lawsuit between Mobile and the federal government. After being repealed, President Clinton extended the presidential moratorium on leasing activities until 2012. With the expiration of existing leases on the east coast, it resulted in a defacto ban on any oil and gas activities off of the east coast. These bans came under increased scrutiny in the summer of 2008 as gas prices reached four dollars per gallon and there were calls for increasing domestic production. President Bush in July 2008 decided to repeal the presidential ban and lifted the Executive Order and at the same time directed the MMS to begin a new five-year lease program that would include areas that were formerly under the moratorium. This left the congressional ban in place. The congressional ban needed to be reauthorized each year. There was a lot of commotion in Congress with trying to create proposals that maintained some sort of ban, but

none of them made it out of legislation and the congressional ban was allowed to expire on September 30, 2008. It is important to note that the lapse in both the congressional ban and the lifting of the presidential moratorium doesn't do anything about an existing moratorium in the Gulf of Mexico that resulted from the Gulf of Mexico Energy Security Act which prevents leasing and drilling activities within 100 miles of the Florida coast in the eastern Gulf of Mexico until 2022.

The MMS and the Department of Interior oversee all of this. They administer the sand, gravel and energy resources in the nation's OCS area through various leasing programs. Under the Outer Continental Shelf Lands Act, MMS develops lease programs, administers lease sales and lease terms, review plans of exploration, and oversee production of oil and gas in the nation's outer continental shelf. The Energy Policy Act now gives MMS authority to develop leasing programs for alternative energy sources such as wind energy and wave energy. The five-year lease program consists of a schedule of oil and gas lease sales indicating the size, timing, location, and proposed leasing activity that the Department of Interior determines will best meet the nation's energy needs during the five-year period following approval of the plan. Leases are generally for terms of five to ten years. MMS determines fair market value for these leases. Each lease sale is subject to federal consistency review by the affected state. The process for lease program development begins with a request for information from MMS all the way through a draft program and draft environmental documents. It is a complicated process which requires posting notices and collecting comments from the public. As a result of the comment periods and the likelihood of extended comment periods, it takes MMS approximately one and a half to two and a half years to finalize a lease program for a particular area. The current five-year lease program runs from July 2007 until June 30, 2012. Since it was developed under the existing moratoriums, it doesn't include areas under those bans (including North Carolina). The state provided comments during program development and cited concerns regarding fisheries impacts and potential impacts to tourism. It has been posted in the federal registry that there is almost 3 million acres that will be offered for leasing off the coast of Virginia. This is concern to the Governor since it is located only about twenty-five miles north of the North Carolina and Virginia border. Governor Easley objected to the inclusion of it since it included an area that was under an existing ban at the time and also that North Carolina could bare direct adverse impacts without receiving any commensurate benefit of this activity occurring just north of our border. MMS has started the process to move forward with the lease sale by publishing a notice of intent and requests for information in the federal register on November 13, 2008. This is the first comment period involved in the actual lease sale. The comment period ends on December 29. We are able to submit comments; however the state will have to establish a clear nexus between the activity and impacts on our coast in order to participate in commenting on the lease sale.

The new lease program is being developed that could take effect in 2010. This will give the new administration a head start should a decision be made to expand energy production activities in the areas formerly under the moratoria. MMS cites as rationale for this the recent hurricane activities as an example of how the nation relies too heavily on a limited area for a majority of its energy production and we need to spread out our production activities. The initial comment period for this new lease program has closed and North Carolina did provide comments reiterating concerns for fisheries impact and possible impacts on tourism. This expanded drilling did not address the nation's continued dependency on fossil fuels. MMS has received 180,000 comments on this new program. MMS has said that out of the comments received; a little over

fifty percent were in favor of expanding energy production to the formerly banned areas. MMS will use the comments to develop a draft program which they expect to release by January 2009 and have expectation of a proposed program and environmental impact statement available by March 2010. The program could go into effect in 2012 when the current plan expires unless the Administration chooses to implement it in 2010, in which case it would supersede the existing program and any pending lease sales would be rolled into the new lease program. The State has the ability to comment on these projects under several authorities including the Federal Outer Continental Shelf Lands Act, the Coastal Area Management Act, and the Administrative Rules of the Coastal Resources Commission. The OCS Lands Act outlines provisions under which the Governor comments on the plan of exploration (POE), CAMA provides the authority for making consistency determinations, and the CRC rules in 7M .0400 outline the information needs and issues of importance in making the consistency determination. CAMA land use plans cannot be used to block oil and gas activities or OCS proposals. The policies in the land use plans are a useful tool in siting the support facilities.

The focus of attention off of the North Carolina coast is the Manteo unit or lease block. This is approximately forty miles off shore. There are about twenty-one lease blocks in the Manteo unit. A lease block is about nine square miles. In the past Mobil and Chevron have both held lease blocks in this area.

**Agency Comments on Marsh Mowing Rules 7H .0205 Coastal Wetlands (CRC 08-49)
Tancred Miller**

Tancred Miller stated that this rule went to public hearing in September and no comments were received. The comment period closed at the end of September and about two days prior to that, DCM received a flood of comments from research agencies and others challenging and objecting to this rule on the grounds that the CRC doesn't have the authority to adopt these rules, that the staff does not have the expertise to write these rules and administer them in the field, questioned whether there was a need to regulate coastal wetlands, and to say there are already agencies that manage these types of activities. DCM staff discussed the comments and invited stakeholders to come to a meeting on October 31. DCM staff spoke to the stakeholders to explain staff's intent. There were four primary changes which are outlined in CRC 08-49. The first clarifies that state and federal agencies are exempt from this regulation. The second came from Cape Hatteras Electric Coop who pointed out that utilities are not covered in this rule. There is a need to maintain easements. DCM has clarified this in the rule by exempting utility companies from these requirements. Thirdly, DCM staff did not think that burning the marsh is a viable means to alter the marsh and has not been the problem. Fourth, DCM staff removed the provisions for pesticide application and use. This is already regulated by another agency.

Wayland Sermons made a motion to accept staff changes and send 15A NCAC 07H .0205 to public hearing. Veronica Carter seconded the motion. The motion passed unanimously (Elam, Wynn, Sermons, Wilson, Bisette, Old, Peele, Weld, Webster, Mitchell, Carter, Leutze).

Science Panel Update on Inlet Hazard Areas Discussion

Spencer Rogers

Spencer Rogers stated the Science Panel has been looking at better ways to define setbacks in the inlet hazard areas. We do not have a definitive answer on whether we can come up with something better or not. The Science Panel has met three times on this issue and have spent a fair amount of time looking at the Bald Head Inlet Hazard Area. What you will be presented with today is similar to the zone that was proposed to begin with, but is justified on better grounds. The Panel has been looking at a number of ways that we may be able to define setbacks. We are in agreement that what has been opposed in the past is not a very effective method and that there are methods out there that will be better. We have more meetings planned, we will be talking about sediment criteria in December and have another meeting scheduled to look at inlet setbacks prior to the February meeting.

Inlet Hazard Areas Policy Progress Report & Bald Head Island Boundary Recommendation (CRC 08-48)

Jeff Warren

Dr. Leutze recused himself from participation in this vote.

Jeff Warren stated there were three major issues to deal with regarding the inlets. The first one was the Bald Head Issue. In September 2007 the Science Panel made recommendations for the twelve developed inlets along our coast. A brief methodology was described that was used to find the new boundaries. Bald Head Island was included in these recommendations, but after further discussion the Science Panel realized that the geologic and geomorphologic data would take more time. When the methodologies that were used in the other eleven inlets were applied to Bald Head, we found that the methodologies were not strict enough for the Bald Head area. In July 2008, DCM Staff made a recommendation to redraw the box.

The other two issues were broader issues applying to all of the inlet hazard areas. The first issue was how the setback is measured and what the reference point is. On the oceanfront we use the vegetation. The problem is when you get closer to inlets, especially the inlets that are oscillatory in nature, the dynamics of the vegetation line can change in years instead of decades. The second major issue that was applied to all of the proposed twelve inlet hazard areas was the erosion rate and how it is measured. The current erosion rate was updated from 1998 data in 2004. It was never used as you approach the inlet because of the oscillatory nature of the inlet and the fact that it can change. The CRC's current rules say that the adjacent ocean erodible rate will be applied in the inlet. The inlet hazard areas in most cases have gone a mile or more in an oceanward direction. The rule takes the ocean erodible rate and extrapolates through the inlet hazard area. This has been a source of a lot of discussion on how to address this. It is complicated.

Today's focus will be on the Bald Head Island area. The Cape Fear River is the largest tidal delta on the coast. There is a lot of water volume going through here and a lot of dredging going on to maintain depths for the state port. The morphology of the island is not like a typical barrier island. DCM staff looked at the methods that were used in the other inlet hazard areas and applied them on the fringes. We quickly transitioned into a method that used 60 times the erosion rate (the maximum setback factor at the time). After the last meeting when rules were

adopted for the maximum setback factor to be 90, Staff feel we should use this rate and amend staff's recommendation (an illustration was shown reflecting the change).

David Webster made a motion to accept Staff's recommendation of the Bald Head Island inlet hazard area and for Staff to bring back the number of lots that are developed and undeveloped currently and the implications of enforcing this line. Jerry Old seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Wilson, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter).

Amendments to 15A NCAC 07B .0901 CAMA Land Use Plan Amendments and 07B .0801 Public Hearing and Local Adoption Requirements (CRC 08-47)

John Thayer

John Thayer stated that a land use plan amendment had to be denied at the last meeting as a result of technicalities of notice and disclosure. Staff has returned with rule language changes to clarify and strengthen the linkage between the amendment section (.0900) of the 7B guidelines and .0800. Staff has discussed these changes with the CRAC.

Wayland Sermons made a motion to send the changes to the 7B land use plan guidelines to public hearing. Joan Weld seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Wilson, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter, Leutze).

Approval of Town of Holly Ridge Implementation and Enforcement Plan (CRC 08-52)

Ed Brooks

Ed Brooks stated he is the minor permit program coordinator. Mr. Brooks stated that prominent in the Coastal Area Management Act is the implementation of the state/local cooperative role in the regulation of development along our coast. This cooperative state/local initiative is manifested in three of our Division's programs (land use plan, ocean and estuarine access program, and implementation and enforcement program). This program sets up the framework to allow local governments to have the authority to issue minor permits within their jurisdictional boundaries. Currently we have 39 local governments who participate in this program, 41 local government offices, and 120 local permit officers. Minor permits constitute approximately 30% of the number of CAMA permits that are issued annually. There are two programs here today. The Town of Holly Ridge is a new program. The other is an amended plan.

In July the Town of Holly Ridge, as required by CRC rules, submitted to the CRC a letter of intent to adopt an implementation and enforcement plan. The Town has completed the requirements of the public hearing, adopted the plan locally, and made their intention to adopt this plan. Staff recommends approval of this plan.

Charles Elam made a motion to approve the Town of Holly Ridge Implementation and Enforcement Plan. Bob Wilson seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Wilson, Bissette, Old, Peele, Weld, Webster, Mitchell, Carter, Leutze).

The Town of Cape Carteret operated a minor permit program from 1978-1993 at which time, the local government asked to be relieved of this responsibility. Since that time, Carteret County has been issuing permits within this jurisdictional area. In the latter part of 2007, the Town came to the Division and inquired into their ability to reinstate the program. This is allowed in the CRC rules. Because of the age of the Town's ordinance, we felt it needed to be updated and come before the Commission for approval. Staff recommends approval of this plan.

Charles Elam made a motion to approve the Town of Holly Ridge Implementation and Enforcement Plan. Jerry Old seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Wilson, Bisette, Old, Peele, Weld, Webster, Mitchell, Carter, Leutze).

CHPP Annual Report Approval (CRC 08-51)

Scott Geis

Scott Geis stated the 2007-2008 annual report has been provided to the Commission. Approval of the CHPP is a statutory requirement. The three commissions involved in CHPP approval are the EMC, MFC and CRC. A couple of highlights in regards to DCM are CRC rule revisions strengthening the maximum enforcement after successfully seeking legislation to raise maximum penalties to \$1,000 for minor development violations and to \$10,000 for major development violations. DCM's Clean Marina program hosted two workshops in December introducing marine operators to the program. DCM is moving forward with the creation of compliance education coordinator positions. DWQ basin-wide planners are reviewing CAMA land use plan permits. DCM recently completed a methodology for digitizing the estuarine shoreline and has begun setting up contracts with Universities to get digitizing efforts underway. Progress continues to be made in implementing DCM's Coastal Zone Management Act Section 309 five-year program enhancement strategy for 2006-2010, specifically delineating the estuarine shoreline along with shoreline type and shoreline structures. The NERR coastal training program conducted three on-site waste water treatment and disposal systems workshops.

Jerry Old made a motion to approve the CHPP annual report. Joan Weld seconded the motion. The motion passed unanimously (Elam, Wynns, Sermons, Wilson, Bisette, Old, Peele, Weld, Webster, Mitchell, Carter, Leutze).

PUBLIC COMMENT AND INPUT

Dennison Breese, Coastal Coanda Research, stated he is from Atlantic Beach. Mr. Breese stated he would like to request a future meeting with the Commission to outline his fifteen years of research on the causes of beach erosion. His background is nuclear submarines, ocean engineering, salvage diving, commercial diving and deep research diving. What we have learned is that water control is the most essential part of beach erosion. If we can control a zone and can establish a zone of water control along our beach between the high water line and the low water line, we can essentially stop or reduce the cost and necessity of maintaining our beaches. We are running out of sand, we are running out of water, and we are running out of money. We believe that if we work with Mother Nature we can control the sand with water; it is impossible to control water with sand. Right now we have a number of lines on our shoreline to protect us. First is a shoreline that is a private property line. Then we have a three mile offshore limit that is a state line. Then there is a twelve mile line for the federal law. Now we need a water control line which is a very narrow line along our beach that we will stop adding water into it. It is easy to take water out although it is very expensive, but we can manage to stop putting water in there

and prevent the rising water level within the beach itself because that is the cause of the erosion. Storm waves are not the cause of erosion, they can contribute to it, but they are not the cause. The cause is water within the beach. An example on Bogue Bank is we are currently using about twenty-five million gallons of water per day that we are removing from deep aquifers underneath the island. We are running out of that. We are using twenty-five million gallons a day and it is being dumped into the surface water. We are not recycling at this point, we do not have storm sewers, we have septic tanks but do not have proper sewage systems. The water is going into the beach and there are methods available to remove the water but it is far more cost effective to prevent it from getting there in the first place. We can collect the water on the sides of structures, create storm drains and remove the water from the critical 200-300 wide path along the beachfront and that will absolutely control beach erosion in most cases. We are taking the water from deep aquifers and throwing it onto the beach. During the tide change, the water will remove the sand on an outgoing tide. I would like to see us establish a lifeline, a band where we control the water that gets into the beach. It is very narrow and is very inexpensive. We are interrupting a natural cycle of water. We are taking water from deep aquifers and dumping it onto the surface and cannot be recharged. There is a layer of marl between the upper and lower aquifers that cannot be penetrated so our water has to come from deep inland and it is an unknown recharge rate. We know for a fact that we are getting salt water into the wells. We can change this if we modify our use of potable water. I would like to thank Stan Riggs for teaching us to look underground. (written comments provided)

OLD/NEW BUSINESS

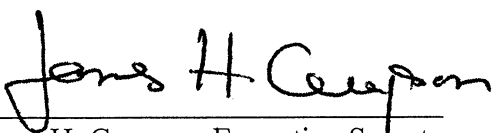
Jim Leutze requested a presentation on terminal groins to hear both sides of the issue. DCM could give a regulatory history of hardened structures in North Carolina.

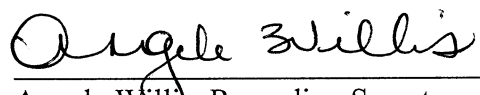
Wayland Sermons requested a summary of the strategic plan done at the January 2008 meeting. He also requested that Robin Smith be invited to give a legislative update.

Chairman Emory stated that inlet hazard areas will be discussed again and we do not know how many variances we may have. He also asked Lee Wynns to ascend to the Chairmanship of the I&S Committee and attend the Executive Committee meetings in that role. The Executive Committee will discuss the possibility of beginning the meeting on Wednesday at 1:00 for February's meeting.

With no further business, the CRC adjourned.

Respectfully submitted,


James H. Gregson, Executive Secretary


Angela Willis, Recording Secretary