

NC COASTAL RESOURCES COMMISSION (CRC)

April 29, 2009

NOAA/NCNERR Administration Building

Beaufort, NC

Present CRC Members

Bob Emory, Chairman

Chuck Bissette

Renee Cahoon

Charles Elam

David Webster (present at 1:45 p.m.)

Bill Peele

Wayland Sermons

Melvin Shepard

Ed Mitchell

Lee Wynns

Veronica Carter

Present Attorney General's Office Members

Jennie Hauser

Christine Goebel

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. Joan Weld, James Leutze, Jerry Old, and Bob Wilson were absent. Based upon this roll call, Chairman Emory declared a quorum.

MINUTES

Melvin Shepard made a motion to approve the minutes of the February 11-12, 2009 Coastal Resources Commission meeting. Veronica Carter seconded the motion. The motion passed unanimously (Bissette, Cahoon, Elam, Peele, Sermons, Shepard, Mitchell, Wynns, Carter) (Webster absent for vote).

EXECUTIVE SECRETARY'S REPORT

Jim Gregson, DCM Director, gave the following report.

Budget Issues

I'm sure everyone is aware of the strict budget climate we are in right now. State agencies have been directed to avoid any unnecessary spending for the remainder of the fiscal year. In response to the budget issues, we have cancelled our contracts for CRC meetings for the rest of 2009. Until further notice each meeting must have prior approval from the State Budget Office.

Gov. Purdue signed Executive Order No. 11 yesterday and then late yesterday an Amended and Reissued Executive Order 11 that would establish and implement a flexible furlough plan for the remainder of the current fiscal year. The plan would reduce all teachers' and state employee compensation by an annualized amount equivalent to 0.5 percent for the remainder of the fiscal year. In return, each employee will receive 10 hours of flexible time off that can be taken between June 1 and December 31.

In addition, the NOAA review of our National Estuarine Reserve Program originally scheduled for last week has been put on hold until staff and other partners are able to travel to meet with reviewers and attend public meetings.

Sandbag Update

As I reported during the last Commission meeting, Notices of Violation (NOVs) requiring sandbag structures to be removed were mailed to 19 property owners in the Town of Nags Head in Dare County. If you recall, these were the highest ranked sandbag structures on our sandbag removal list. Of the 19, seven were accepted by the property owners while twelve were returned to DCM marked either "unclaimed" or "unable to forward." As is DCM protocol, the Division is currently preparing documents to have those NOVs not received by the property owner "served" by local law enforcement officials. This situation is complicated by the fact that five of the property owners are residents of other states (mostly Virginia). Also at this time, the Attorney General's office is communicating with the Petitioners' counsel to address the status of the multiple sandbag variance requests and is discussing which petitioners are electing to proceed with their variance. As these situations progress, I will update the Commission.

Legislative Update

There are a number of bills in this legislative session that directly or indirectly affect the CRC. Each of these must pass either the Senate or House by the crossover deadline of May 14 in order to remain active. You were sent a summary of these bills so I will not go into the detail of each bill.

SB 524: Disapprove Coastal Setback Rule (Sen. Boseman)

Disapproves amendments to NCAC 07H .0306 (increased setbacks for large oceanfront structures) as amended by the CRC in November 2008.

SB 778: Eliminate Overlap Between CAMA and SEPA (Sen. Soles)

Exempts the requirement for a SEPA document for projects that are subject to CAMA major development permits.

SB 832: CRC May Permit Terminal Groin (Sen. Boseman)

Allows the CRC to permit, via variance or through rulemaking, a terminal groin in any suitable area of the N.C. coast. Permit applications must include an environmental impact statement; CRC may require financial assurance to cover the cost of removal should the CRC determine the terminal groin has an adverse impact on other properties. This bill is similar to one introduced during the last session that was approved by the Senate, but not taken up by the House. The bill was referred to the Committee of Agriculture/Environment and Natural Resources on March 25. The Committee met yesterday but did not vote. They are reconvening today.

SB 866 (=HB 1230): APA Rules: Increasing Costs Prohibition (Sen. Hoyle)

Prohibits an agency from adopting a rule that results in additional costs to persons subject to the rule, unless the rule is adopted in response to a serious and unforeseen threat, an act of the General Assembly or Congress, a change in state or federal budgetary policy, a federal regulation, or a court order.

SB 876: Study Consolidated Environmental Commission (Sen. Clodfelter)

Proposes to consolidate the State's environmental commissions into one comprehensive full-time commission modeled after the N.C. Utilities Commission. Versions of this bill have been introduced in previous sessions.

SB 998: Beach Management Study Commission (Sen. Jenkins)

As introduced, this bill imposes a moratorium on sandbag enforcement, prohibiting the CRC from ordering the removal of sandbag structures in communities actively pursuing beach nourishment or inlet relocation projects. The moratorium would end Sept. 1, 2010. The bill also would establish a Legislative Study Commission on Beach Management Issues to study existing laws and policies related to beach management and determine how the State can best develop and implement a comprehensive, long-term beach management strategy. The commission's stated purpose is virtually identical to the CRC's mandate.

SB 1068: Permitting of Wind Energy Facilities (Sen. Albertson)

Establishes a system of permits to be issued by DENR for siting wind energy facilities. Outlines requirements for CAMA permit application for such facilities.

HB 605: Coastal Hazards Disclosure (Reps Harrison and Justice)

Provides for disclosure of coastal hazards to prospective buyers of coastal properties. Directs CRC to make available a form for sellers to make disclosures of coastal hazards, including annual erosion rates, setback requirements, 100-year storm recession estimates, high hazards flood areas, inlet hazard areas, variances and other relevant data, along with a notice of remedies. This bill has been introduced in previous sessions, but has not made it out of committee.

HB 736: Grant Funds/Relocate Condemn Water Structure (Rep. Spear)

Allows Water Resources to award grants to local governments to relocate imminently threatened oceanfront structures.

HB 897: Study Offshore Wind Farming (Reps. Alexander, Stewart, Sutton, Folwell)

Creates a joint legislative study committee on offshore wind farming. The committee would examine the feasibility of offshore wind farms, considering environmental impacts, economic impacts, the impact of hurricanes, and other technical issues.

The federal government last week announced regulations for wind farming in federal waters, more than three miles offshore.

HB 393: Modify Rule-Making Process (Reps. Allred and Owens)

This act would make all permanent rules subject to review by the Legislature. It removes the requirement that the Rules Review Commission receive 10 written objections to a rule before elevating it for legislative review. A rule could be made effective by executive order from the Governor.

SJR 879: Study Offshore Drilling Revenues (Sen. Atwater)

Authorizes the Revenue Laws Study Committee and Environmental Review Commission to study possible sources of revenue, if any, to the State in the event that offshore oil and gas drilling takes place in waters off the N.C. coast.

HB 1378: Clean Marinas/Pumpout Stations (Rep. McComas)

Requires full service marinas (with 10 or more slips) in communities seeking a "no discharge zone" designation to install a pumpout facility by July 1, 2010. Prohibits discharge into coastal waters and requires vessel operators to keep pumpout logs. Directs DENR to establish criteria for pumpout facilities and services.

LPO training

DCM recently conducted two training workshops for local permit officers in the 20 coastal counties. This was the best-attended training session we've ever had, with 75 LPOs attending the workshops in Wilmington and Nags Head. The agenda for the two-day workshops included updates on recent changes to Coastal Resources Commission rules and training in the permit process, as well as monitoring and enforcement. DCM staff also conducted interactive field training in staking Normal High Water and Normal Water Levels and identifying coastal wetlands.

CICEET grant

The Cooperative Institute for Coastal and Estuarine Environmental Technology has awarded a \$717,000 grant to the N.C. National Estuarine Research Reserve and the NOAA Center for Coastal Fisheries and Habitat Research to examine different methods of erosion prevention in sheltered coastlines.

The project is focused on understanding the environmental and economic tradeoffs of alternative erosion control measures in three regions along North Carolina's coast, where researchers from NOAA, NC NERR, UNC -Wilmington, and UNC-Chapel Hill will assess the ecosystem impacts of shoreline stabilization. Also included in the project is the design and construction of a demonstration project based on alternative shoreline stabilization techniques at the Rachel Carson component of the NC NERR. During the two-year project, they will develop an approach to evaluate ecological and socioeconomic costs and benefits of shoreline erosion and protection alternatives. The researchers will work closely with an advisory panel composed of local, state and federal resource managers, contractors, property owners and other stakeholders. The NC NERR will develop outreach and educational products to disseminate the knowledge and tools developed by the research team.

Clean Marina

Cape Fear Marina/Bennett Bros Yachts in Wilmington received their Clean Marina certification from DCM in March.

CWMTF grants

The Division's Clean Water Management Trust Fund Grant - as well as the other 2008 project awards, have been deferred by the Trust Fund because of the budget situation. DCM had been awarded a \$496,000 grant for implementation of the stormwater plan on Pivers Island. We will receive priority consideration during the 2009 funding cycle.

Offshore drilling committee

Commissioners Leutze and Sermons, and DCM's coastal hazards specialist Dr. Jeff Warren, were named to a 24-member legislative task force that is examining the effects of offshore oil and natural gas exploration. The committee has met twice this month, receiving information from Mike Lopazanski about the history of offshore drilling in N.C., and presentations from several other agencies, including the Minerals Management Service, USGS and American Petroleum Institute, among others. It is my understanding that the Committee will likely continue until the first day of the next legislative session (late April) and will also likely submit an interim report this session.

Staff News

Claudia Jones is the newest Field Representative in our Elizabeth City office. A Dare County native, Claudia comes to us with many years of experience in the environmental field working for the State of Maryland Department of Natural Resources' Critical Areas Commission. Claudia filled a position previously held by Holly Snider, who is now working out of the Wilmington Regional Office as a Field Representative.

CHAIRMAN'S COMMENTS

Chairman Emory stated the CRC is reacting to the State Budget office's restraints on meeting expenses. We cannot take a vacation from our work and we will discuss options for future meetings later in the afternoon. There are a number of legislative bills that either specifically or indirectly effect the Commission and/or the Division.

VARIANCES

Riggings – (CRC-VR 06-33) Kure Beach (remand from Superior Court)

Christine Goebel of the Attorney General's Office represented Division of Coastal Management Staff. Mrs. Goebel stated the Petitioner is a homeowners association for The Riggings condominium development in Kure Beach, New Hanover County. Petitioners have sought and been granted four prior variances from the CRC to keep sandbags in front of their property. In January 2008, the CRC denied this current variance request. In January of 2009 at a judicial review hearing in New Hanover Superior Court, Judge Jay Hockenbury remanded the variance request back to the CRC for a rehearing. The Petitioner is seeking a variance to keep the sandbags in place. Ms. Goebel stated Gary Shipman is present and represents the Petitioner. Ms. Goebel reviewed Judge Hockenbury's remand order, the stipulated facts of this variance request, reviewed the history of the previous requests, and the staff positions on the four statutory criteria. Staff and Petitioners do not agree on any of the four statutory criteria.

Gary Shipman of Shipman & Wright, LLP represented Petitioner Riggings Home Owners Association. Mr. Shipman discussed Judge Hockenbury's order and reviewed the stipulated facts which he contends supports the granting of this variance. Mr. Shipman further stated this property is different than any other property in the state of North Carolina and the CRC should look at the property and not the actions of the property owners.

Wayland Sermons made a motion that after considering the stipulated facts and evidence in the record that strict application of the development rules, standards, or orders issued by the Commission do not cause the Petitioner unnecessary hardships. Renee Cahoon seconded the motion. The motion passed with eight votes (Carter, Sermons, Webster, Cahoon, Peele, Shepard, Wynns, Elam) and two opposed (Bissette, Mitchell).

Wayland Sermons made a motion that after reviewing the stipulated facts the hardships are a result of conditions peculiar to the petitioner's property. Melvin Shepard seconded the motion. The motion passed with eight votes (Carter, Sermons, Cahoon, Peele, Shepard, Elam, Bissette, Mitchell) and two opposed (Webster, Wynns).

Wayland Sermons made a motion that based on the stipulated facts, the hardships do not result from actions taken by the Petitioner. Melvin Shepard seconded the motion. The motion passed unanimously (Carter, Sermons, Webster, Cahoon, Peele, Shepard, Wynns, Elam, Bissette, Mitchell).

Wayland Sermons made a motion that based on the stipulated facts this variance request would be inconsistent with the spirit, purpose, and intent of the rules, standards, or orders issued by the Commission; would not secure the public safety and welfare; and would not preserve substantial justice. Lee Wynns seconded the motion. The motion passed with eight votes (Carter, Sermons, Webster, Cahoon, Peele, Shepard, Wynns, Elam) and two opposed (Bissette, Mitchell).

This variance request was denied.

Bald Head Island Ltd. (CRC-VR 09-01) Bald Head Island, 30' Buffer

Christine Goebel of the Attorney General's Office represented Division of Coastal Management Staff. Ms. Goebel stated George Fletcher, Attorney for the Petitioner, is present and will represent the Petitioner. Ms. Goebel stated the Petitioners propose a paved marina access road in Southport, Brunswick County. The proposed project includes the construction of an eight-foot wide paved access road at Deep Point Marina in addition to five wooden landings at the dock entrances off the Cape Fear River. Petitioner's application was denied based on the proposed development's inconsistency with the CRC's thirty foot buffer rule in 15A NCAC 07H .0208(a)(1) and (a)(2)(B). Ms. Goebel reviewed the stipulated facts of this variance request and addressed the four statutory criteria. Staff and Petitioner agree on all four criteria.

Mr. George Fletcher of Fletcher, Ray & Satterfield, LLC represented Petitioner. Mr. Fletcher discussed the stipulated facts of this case which he contends supports the granting of this variance. The two items requested are a roadway and five dock platforms which are staging areas for the docks within the marina. The road will be restricted to the harbormaster and fire/rescue personnel. The road will be slanted to capture stormwater and will address safety concerns for fire and rescue personnel. The five platforms will address handicap issues. Mr. Bruce Marek, Chief Engineer, is present and available to answer questions.

Melvin Shepard made a motion that based on the stipulated facts the strict application of the applicable development rules, standards, or orders issued by the Commission cause the Petitioner unnecessary hardships. Commissioner Shepard added a condition on the permit that the road and turnaround not be used as a parking area and is limited to use by the

harbormaster for daily marina operations and emergency vehicles. Renee Cahoon seconded the motion. The motion passed unanimously (Carter, Sermons, Webster, Peele, Shepard, Wynns, Elam, Bissette, Mitchell, Cahoon).

Melvin Shepard made a motion that based on stipulated facts the hardships result from conditions peculiar to the petitioner's property. David Webster seconded the motion. The motion passed unanimously (Carter, Sermons, Webster, Peele, Shepard, Wynns, Elam, Bissette, Mitchell, Cahoon).

Chuck Bissette made a motion that based on stipulated facts the hardships do not result from actions taken by the Petitioner. Wayland Sermons seconded the motion. The motion passed unanimously (Carter, Sermons, Webster, Peele, Shepard, Wynns, Elam, Bissette, Mitchell, Cahoon).

Veronica Carter made a motion that based on stipulated facts the variance will be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. Bill Peele seconded the motion. The motion passed unanimously (Carter, Sermons, Webster, Peele, Shepard, Wynns, Elam, Bissette, Mitchell, Cahoon).

This variance was granted.

CONTESTED CASES

Stirewalt/Overton v. DCM (08 EHR 1090) Figure Eight Island, Pool in Setback

Christine Goebel of the Attorney General's Office represented Division of Coastal Management Staff. Ms. Goebel stated the Petitioners in this case did not file exceptions to the ALJ's decision and chose not to appear before the Commission to present oral arguments. Ms. Goebel stated this case was heard in August 2008 in the Office of Administrative Hearings. Mr. Stirewalt is the architect for Mr. Overton who owns oceanfront property on Figure Eight Island. They were challenging the denial of a CAMA Minor Permit for a swimming pool that was to be located between the house and the first line of natural vegetation. The rules in this case are in 15A NCAC 07H .0309 which provides exceptions to the oceanfront setback rules. One of the exceptions is for swimming pools. Swimming pools do not have to meet the setback but have to be behind the first line of vegetation. However, 7H .0309 goes on to say that such development is only allowed if all other provisions of the ocean hazard areas and state and local rules are met, and in all cases development shall only be permitted if it involves no alteration or removal of the frontal dune. Ms. Goebel reviewed the findings of fact.

The ALJ agreed with the Division of Coastal Management and the local permit officer's denial of the permit application and found it was proper. Petitioners did not file any exceptions and did not request oral argument. Staff is asking that the CRC uphold the ALJ's decision with three minor changes. The first is Finding of Fact #1 which reads "coastal high hazard area" and change to "ocean hazard areas of environmental concern". Finding of Fact # 3 should be changed to reflect that the LPO denied the Petitioner's application and not the "New Hanover County Inspection Office". Lastly, Conclusion of Law #8 should be eliminated.

Jennie Hauser reminded the Commission that the time for issuing a decision ran out last week, but good cause can be shown since Petitioners requested an extension of time to file exceptions.

An extension of time to issue a final agency decision for the allowable sixty days should be requested.

Wayland Sermons made a motion for an extension of time to issue a final agency decision based upon the good cause which has been stipulated to by the Petitioner. Bill Peele seconded the motion. The motion passed unanimously (Carter, Sermons, Webster, Cahoon, Peele, Shepard, Wynns, Elam, Bissette, Mitchell).

Wayland Sermons made a motion to uphold the ALJ's decision including the exceptions filed by the Respondent and adopt this as the final agency decision. Renee Cahoon seconded the motion. The motion passed unanimously (Carter, Sermons, Webster, Cahoon, Peele, Shepard, Wynns, Elam, Bissette, Mitchell).

ACTION ITEMS

15A NCAC 07H .0308(a)(2) Temporary Erosion Control Structures

Renee Cahoon made a motion to adopt 15A NCAC 07H .0308. Charles Elam seconded the motion. The motion passed unanimously (Carter, Sermons, Cahoon, Peele, Shepard, Wynns, Elam, Bissette, Mitchell) (Webster absent for vote).

15A NCAC 07H .1100 General permit for Construction of Bulkheads and Placement of Riprap for Shoreline Protection in Estuarine and Public Trust Waters and Ocean Hazard Areas

Bill Peele made a motion to adopt 15A NCAC 07H .1100. Charles Elam seconded the motion. The motion passed unanimously (Carter, Sermons, Webster, Cahoon, Peele, Shepard, Wynns, Elam, Bissette, Mitchell).

15A NCAC 07H .1200 General Permit for the Construction of Piers, Docks, and Boat Houses in Estuarine and Public Trust Waters and Ocean Hazard Areas

Charles Elam made a motion to adopt 15A NCAC 07H .1200. Bill Peele seconded the motion. The motion passed unanimously (Carter, Sermons, Webster, Cahoon, Peele, Shepard, Wynns, Elam, Bissette, Mitchell).

OLD/NEW BUSINESS

Chairman Emory stated that he spoke with the Chair of the EMC. They are under the same restrictions as the CRC and are making similar adjustments. Like the CRC, the EMC can only meet if there is a contested case. All of the EMC meetings are in Raleigh as most of their members live in Raleigh. The average cost for an EMC meeting is \$3,000, which is significantly less than the cost of a CRC meeting which typically costs between \$15,000 and \$18,000. Jim Gregson stated he spoke with Louis Daniel about MFC. The MFC is requesting an exception from State Budget to hold a one day meeting (similar to the one the CRC is holding today). Their meeting will not include time for public comment and the agenda will be limited to immediate business only. Chairman Emory requested that each Commissioner save the dates previously set aside for Commission meetings in 2009. We will utilize these dates for conference calls or half-day meetings. June's meeting will be similar to this one if there is a contested case scheduled to be heard by the CRC. If there is no contested case, we will meet by conference call. The contracts have been cancelled for all meeting space and accommodations for the rest of 2009.

Chairman Emory stated options for the future would be conference calls involving both the CRC and CRAC. We need to look at priorities. After we have identified specific issues we could have issue specific subcommittees that will meet by conference call. The subcommittee could then report back to the full Commission.

CRC/CRAC Needs Assessment Survey Results

Whitney Jenkins

Whitney Jenkins stated she is the coastal training program coordinator and had done the needs assessment survey to find out if there were needs the CRC or CRAC had to help them perform their duties. Nine of the 15 CRC members (60%) and 28 of the 45 CRAC (62%) responded. It is surprising that the response rates were not higher, but the results are statistically significant. Most of you wanted to see training during scheduled meetings, but most also said that they were willing to travel up to two hours for training. 78% of the CRC respondents and 82% of the CRAC respondents said they were interested in distance learning to conduct training. Some general observations based on the data indicated that there is an interest in bigger issues including alternative energy, sea level rise, communicating with other Commissions, and encouraging sustainable development within the land use plan. Training on fish habitat, SAV, PNA and wetlands ranked very low amongst member respondents. A follow up discussion with CRC and CRAC members would clarify these responses and create priorities for the next steps.

Chairman Emory asked the CRC to hang on to the survey response results handout provided to address at a future meeting for a more thorough discussion.

CRC Priorities

Mike Lopazanski stated there is a lot of legislation floating around. Some of these items may necessitate the CRC's immediate attention. One of these issues is the EMC's recommendation on wind energy as well as the proposed amendments to CAMA to give the CRC permitting authority on the siting of wind facilities in all of the coastal counties and not just the AEC's. The Ocean Policy Study Committee has completed their report. Draft rule language on the inlet hazard areas will be ready soon. The Executive Committee can look at all of these issues and look at the next steps.

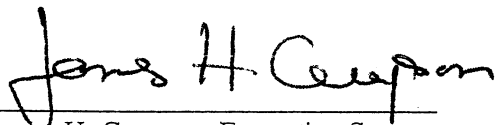
Renee Cahoon stated she attended the recent BIMP meeting and it was wonderful and productive. The Ocean Policy Steering Committee Meeting was just the opposite.

Wayland Sermons reminded Commissioners to be aware of the legislation that could prompt several terminal groin applications and the CRC needs to be prepared to act on these.

Chairman Emory appointed Chuck Bissette as hearing officer for public hearings scheduled for June 16, 2009 at 4:00 p.m. at the Morehead City DCM office for 7H .0205, 7H .0309, and 7B .0901.

With no further business, the CRC adjourned.

Respectfully submitted,


James H. Gregson, Executive Secretary


Angela Wilks, Recording Secretary