

NC COASTAL RESOURCES COMMISSION (CRC)

May 21-23, 2008

Washington Civic Center

Washington, NC

Present CRC Members

Bob Emory, Chairman
Doug Langford, Vice Chair

Chuck Bissette	Wayland Sermons
Renee Cahoon (absent 5/21/08)	Melvin Shepard
Charles Elam	Joan Weld
James Leutze	Bob Wilson (absent 5/23/08)
Jerry Old (absent 5/21/08)	Lee Wynns
Bill Peele	

Present Coastal Resources Advisory Council Members (CRAC)

Dara Royal, Chair
Penny Tysinger, Co-Chair

Paul Spruill	Morgan Jethro (for Bert Banks)
Bob Shupe	Judy Hills
William Wescott	Eddy Davis
Tim Tabak	Spencer Rogers
Ray Sturza	Joy Wayman
Randy Cahoon	Charles Halsall (for Lee Padrick)
Dave Weaver	Renee Gledhill-Earley
Christine Mele	Anne Deaton
W.H Weatherly	Phil Harris
Bill Morrison	Travis Marshall
Lester Simpson	Wayne Mobley
Joe Beck	
Rhett White	
Frank Rush	
Carlton Davenport	
Webb Fuller	
Harry Simmons	

Present Attorney General's Office Members

Jennie Wilhelm Hauser
Allen Jernigan
Amanda Little
Tom Moffitt

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. Chuck Bissette stated he was concerned about the appearance of a conflict on one issue, but would discuss it further with CRC Counsel.

Angela Willis called the roll. Joseph Gore was absent. Based upon this roll call, Chairman Emory declared a Quorum.

VARIANCE REQUEST

Stern (CRC-VR 08-12 and CRC-VR 08-13) New Hanover County Piers

Tom Moffitt of the Attorney General's Office, representing staff, stated that there are two variance requests filed by Petitioner Susan Stern which will be combined into one request. Petitioner is represented by Attorney Bill Raney of Wessell & Raney, L.L.P. These are two lots which are side-by-side and both are owned by the Petitioner. These two lots are undeveloped, waterfront lots located at 934 and 938 Santa Maria Avenue in Wilmington, NC. These lots are located on the north side of Pages Creek. Petitioner applied for a general permit to construct a private pier, platform, floating dock, and boatlift for each lot. These applications were denied because the length of the proposed piers were unable to meet the one-fourth width of the water body requirement. Petitioner seeks a variance from 15A NCAC 07H .1205(n), 07H .0208(b)(6)(J)(iii) and 07H .0601.

Mr. Moffitt reviewed the stipulated facts for this variance request and stated that Staff is not opposed to the granting of this variance request. Staff and Petitioners agree on all four statutory criteria required to be satisfied in order to grant the variance.

Bill Raney, representing Petitioner, reviewed the stipulated facts which he contends supports the granting of this variance. Mr. Raney stated that the materials in both variance request packages are the same with the exception of the sketches of the piers. Mr. Raney further stated that Petitioners concur with the Staff that all four criteria are met and findings can be made based upon the materials presented.

Doug Langford 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. Charles Elam seconded the motion. The motion passed unanimously (Elam, Weld, Wilson, Bissette, Langford, Peele, Sermons, Wynns, Shepard) (Leutze absent for vote).

Wayland Sermons made a motion to support Staff's position that hardships result from conditions which are peculiar to the property. Bob Wilson seconded the motion. The motion passed unanimously (Elam, Weld, Wilson, Bissette, Langford, Peele, Sermons, Wynns, Shepard) (Leutze absent for vote).

Bob Wilson made a motion to support Staff's position that hardships do not result from actions taken by the Petitioner. Joan Weld seconded the motion. The motion passed unanimously (Elam, Weld, Wilson, Bissette, Langford, Peele, Sermons, Wynns, Shepard) (Leutze absent for vote).

Charles Elam made a motion to support Staff's position that the proposed development is consistent with the spirit, purpose and intent of the rules, standards, or orders issued by the Commission; secure the public safety and welfare; and preserve substantial justice. Doug Langford seconded the motion. The motion passed unanimously (Elam, Weld, Wilson, Bissette, Langford, Peele, Sermons, Wynns, Shepard) (Leutze absent for vote).

These motions included both lots A and B.

This variance was granted.

Town of Atlantic Beach (CRC-VR 08-10) Atlantic Beach, Oceanfront Setback

***Chuck Bissette and Charles Elam recused themselves from this variance request.*

Bob Wilson stated the Town of Atlantic Beach is a former client of his company. Dredging service was provided for the Town this past year. Commissioner Wilson further stated his company is not currently working for the Town, is not bidding on any work for the Town and neither himself nor his company have any personal relationships in the Town and therefore there is not a conflict.

Amanda Little of the Attorney General's Office, representing Staff, stated the Petitioner is the Town of Atlantic Beach. The Petitioner is represented by Derek Taylor the Town's attorney. The Town of Atlantic Beach applied for a Minor Permit to construct a beach access site with parking and a bathhouse with septic system at the Tom Doe Beach Access Site. This site is located on Ocean Boulevard in Atlantic Beach, Carteret County. Part of the proposed development, including the bathhouse and septic system, is seaward of the applicable ocean erosion setback which at this location is sixty feet from the first line of stable natural vegetation. Petitioner seeks relief from 15A NCAC 07H .0306(a) and 7H .0309.

Ms. Little reviewed the stipulated facts of this variance request. Staff and Petitioner do not agree on any of the four criteria which must be satisfied in order to grant the variance. Staff's position in this request is that a variance is not warranted.

Derek Taylor, Atlantic Beach Town Attorney representing Petitioners, reviewed the stipulated facts which he contends support the granting of this variance. Mr. Taylor discussed the four statutory criteria emphasizing a public hardship due to the absence of public restrooms and handicap facilities.

Doug Langford made a motion to support Petitioner's position that strict application of the applicable development rules, standards, or orders issued by the Commission cause the Petitioner unnecessary hardships. Bob Wilson seconded the motion. The motion passed with six votes (Wilson, Langford, Peele, Sermons, Wynns, Shepard) and one opposed (Weld) (Leutze abstained).

Wayland Sermons made a motion to support Petitioner's position that hardships result from conditions peculiar to the Petitioner's property. Doug Langford seconded the motion. The motion passed with six votes (Wilson, Langford, Peele, Sermons, Wynns, Shepard) and one opposed (Weld) (Leutze abstained).

Doug Langford made a motion to support Petitioner's position that hardships do not result from actions taken by the Petitioner. Bill Peele seconded the motion. The motion passed with six votes (Wilson, Langford, Peele, Sermons, Wynns, Shepard) and one opposed (Weld) (Leutze abstained).

Wayland Sermons made a motion to support Petitioner'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 the public safety and welfare; and preserve substantial justice. Doug Langford seconded the motion. The motion passed with six votes (Wilson, Langford, Peele, Sermons, Wynns, Shepard) and one opposed (Weld) (Leutze abstained).

The variance was granted.

MINUTES

Doug Langford made a motion to approve the minutes of the March 27-28, 2008 Coastal Resources Commission meeting. Wayland Sermons seconded the motion. The motion passed unanimously (Langford, Leutze, Elam, Old, Peele, Sermons, Shepard, Weld, Wilson, Wynns) (Bissette, Cahoon absent for vote).

EXECUTIVE SECRETARY'S REPORT

Jim Gregson, DCM Director, gave the following report.

Sandbag Update

DCM staff is completing an inventory of sandbag structures to determine which are subject to the May 2008 deadline, and of those structures, which are uncovered and must be removed. We will prioritize removal based on the condition of the bags, length of time, etc., and will notify homeowners by mail if sandbags must be removed.

Oceanfront Setback Public Hearings

We are planning to hold a series of public hearings in July for changes to 7H .0306 General Use Standards for Ocean Hazard Areas, which govern oceanfront setbacks. All of the public hearings will begin with a presentation at 5 p.m., followed by a public comment period at 6 p.m. The tentative dates are:

- July 7 at the Surf City Community Center
- July 8 at Carolina Beach Town Hall
- July 14 at the Brunswick County Association of Realtors Meeting Facility in Supply NC
- July 15 at the NOAA/NC Coastal Reserve Auditorium, on Pivers Island in Beaufort, NC

- July 16 at the Kill Devil Hills Town Hall
- and July 24, at the next regularly scheduled CRC meeting in Raleigh.

These dates are not set in stone until approved by the Department. Any changes will be announced via press release and on our web site.

LPO Workshops

DCM staff conducted two training workshops last month for Local Permit Officers in the 20 coastal counties. The agenda for the two-day workshops included updates on recent changes to CRC 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.

Clean Vessel Act Grant

DCM will receive \$251,440 to install 15 new pumpout facilities throughout the state's coastal waters this year. These funds are part of more than \$13.6 million in grants funding from U.S. Fish and Wildlife Service that will be awarded to 27 states under the Clean Vessel Act grant program in 2008. The grants can be used to fund the construction and installation of sewage pumpout facilities and floating restrooms, to purchase pumpout boats and for educational programs for recreational boaters.

Reserve Site News

- The Reserve Education staff hosted the Environmental Educators Community Outreach meeting on May 5. Eighteen environmental educators from across the state attended the meeting to learn more about the N.C. Coastal Reserve Program, to network with other educators, and to see the Reserve's new facility on Pivers Island. Following the business portion of the meeting, participants took a boat ride over to the Rachel Carson Reserve's new boardwalk on the east end of Carrot Island.
- The Wilmington Reserve office will be moving into its new quarters next week at the new building on the UNCW CMS campus- includes 4 offices, lab, storage, and meeting space.
- The Coastal Estuarine Reserve Foundation will host its annual 8K run on June 14 in Kitty Hawk Woods.
- Local Advisory Committee memberships for the Reserve sites have been approved by the DENR Secretary and invitations to new members were distributed. The Kitty Hawk Woods LAC will meet June 11, and the Buxton Woods LAC will meet June 12. Other Reserve LACs will meet in Fall 2008.
- Earlier this week, the Coastal Training Program hosted a session on the Habitat Priority Planner in conjunction with SC and GA Reserves and the NOAA Coastal Services Center. The planner is a NOAA tool that can be used for managing natural resources.
- The Rachel Carson Reserve is partnering with researchers from the Center for Coastal Fisheries and Habitat Research as a part of a project funded by NOAA's Marine Debris Program. Research on the Rachel Carson Reserve is addressing sources, types, and amount of debris found in marsh habitats. The grant-based program supports local habitat restoration projects in marine, estuarine, and riparian areas, funding projects that

offer educational and social benefits for communities, and provide long-term ecological benefits for fishery resources.

WAMI Projects

The N.C. Division of Marine Fisheries has announced 13 sites selected for funding from the Waterfront Access and Marine Industry Fund. The sites were selected to provide waterfront access to a variety of user groups, including commercial and recreational fishermen, pier fishermen, recreational boaters and marine industry. In addition, several sites are in strategic locations for important state research and habitat enhancement efforts. The available funding was \$20 million. A total of 24 projects were submitted to DMF for the WAMI funds, requesting \$85 million.

Staff News

Byron Toothman has joined the Wilmington Reserve staff as a research associate. Byron comes to us from the UNCW-Center for Marine Science. He takes over the vacancy left by Paula Murray. Byron has a Bachelors and Masters Degree from UNCW. He started with the Coastal Reserve on 4-21-08.

Andrea Hale, a junior at UNC Chapel Hill, will be working this summer at the Rachel Carson National Estuarine Research Reserve in Beaufort as a Marine Science Education Intern. Andrea will assist the Reserve Education staff with summer marine science camps, field trips and classroom activities. This position is funded through the State Government Internship Program. The internship begins on May 27, 2008 and ends on August 1, 2008. Interns work full-time (40 hours per week) during this 10-week period.

Two of our staff members were married last weekend. Woody Webster, site manager for the Buckridge coastal reserve, was married to Katie on May 17. Robb Mairs, field representative in Wilmington, married Jessica, also on May 17.

Josh Shepard and wife Wendy welcomed a baby girl, Addison, on May 21.

CHAIRMAN'S COMMENTS

Chairman Emory recognized Mayor Judy Jennette who was present at the meeting. Mayor Jennette greeted the Commission and welcomed the CRC to Washington. She requested that the CRC encourage small communities and coastal counties to embrace planned growth, but also through practical and equitable regulations remain mindful of everyone who impacts our river basins.

Chairman Emory stated we are still involved with sandbags. There will be time on the agenda later to discuss the beach subcommittee report. Representing the Attorney General's office as counsel to the Commission is Jennie Hauser. Dr. Joseph Gore is gravely ill and before the adjournment of the meeting a card will be available for the Commission to sign.

CRAC REPORT

CRAC meeting minutes attached.

The CRC took the following action:

****Jim Leutze** recused himself from this vote.

Doug Langford made a motion to accept the recommendation of the CRAC and certify the Bald Head Island Land Use Plan. Wayland Sermons seconded the motion. The motion passed unanimously (Old, Shepard, Wynns, Sermons, Peele, Langford, Wilson, Weld, Cahoon, Elam) (Bissette absent for vote).

PRESENTATIONS

Coastal Reserve Education Program and Division Education Plan (CRC 08-25)

Jill Fegley and Whitney Jenkins

Jill Fegley, education coordinator, gave an overview of the North Carolina Coastal Reserve Education Program. The NC Coastal Reserve has an active education program comprised of four major focus areas: K-12 student education, teacher professional development, community outreach and the Coastal Training Program. The goal of the NC Coastal Reserve Education Program is to promote environment literacy by increasing our understanding of natural systems, our connections to them, and the benefits derived from them. Ms. Fegley also gave an overview of the draft DCM Education Plan.

Whitney Jenkins, coastal training program coordinator, gave an overview of the Coastal Training Program. This program is also administered at 24 other Reserves across the country. The programs goal is promote informed coastal decisions through science-based training for professionals.

Inlet Hazard Areas Update (CRC 08-18)

Jeff Warren

Jeff Warren stated that he and Dr. Margery Overton presented the results of the efforts of the science panel to revise the inlet hazard boundaries last September. There are 19 active inlets. The current inlet hazard boundaries are 20 years out of date. There was a motion by the CRC in September 2007 to adopt the new proposed boundaries and Staff cautioned on moving too fast. There are two rules (1) which actually defines the AEC of the inlet hazard area 07H .0304 and (2) 07H .0308 which defines the use standards within the hazard areas. Staff believes it is appropriate to take these rules in tandem. There are a couple of major goals. One is to limit size and density. The second is to limit oceanward encroachment. The inlets have a different shoreline trajectory than the oceanfront. We need to make sure that homes and businesses do not follow the vegetation line when we know that in 20-30 years it is going to come back landward.

Staff is still working with stakeholders and trying to get through some of the complications. We are working on developing a policy recommendation and actually codify a policy recommendation. Staff will come before the CRC with draft rule language which will be a starting point. This will be a slow, thorough, methodical process.

Draft Amendments to 07H .0309 Pier House Rules and Single Family Exception (CRC 08-19)
Tancred Miller

Tancred Miller stated that rule 7H .0309 has two sets of changes. This rule is ready for final discussion and then onto public hearing. The first change is with the pier house provisions. The second looks at consistency with setback requirements in 7H .0306.

7H .0309 is the exceptions rule for ocean hazard areas. This rule provides for limited development oceanward of the applicable setbacks or for water dependent uses such as piers and pier houses. The waterfront access study committee recommended the State own and operate three public fishing piers and pierhouses. The NC Aquarium is in the process of converting piers for public use. One is Jeanette's Pier which Commissioner Cahoon asked about in January and requested rule changes. Currently Jeanette's Pier needs to be rebuilt. The CRC rules do not allow the rebuilding the Aquarium would like to do. They would like to add a second story for research. The current CRC rules also do not allow new pier houses to be located oceanward of the applicable setback. Changes to 7H .0306 have been sent to public hearing. Related changes to 7H .0309 are needed for consistency. These changes were reviewed in the mailout document CRC 08-19.

Spencer Rogers requested that the footprint be limited to 1,000 square feet but a two-story limit be added to the rule instead of the 2,000 square-foot total floor area in the single-family exception.

Doug Langford made a motion to amend 7H .0309 to include in (B) the footprint of the structure shall be no more than 1,000 square feet, the structure shall be no greater than two-stories, and the total floor area shall not exceed 2,000 square feet. Bill Peele seconded the motion. The motion was withdrawn.

Doug Langford made a motion to send the changes to the single-family exception in 7H .0309 to public hearing as proposed by Staff. Jerry Old seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Peele, Langford, Bisette, Wilson, Weld, Cahoon, Elam).

Mr. Miller stated that David Griffin, Director of the NC Aquarium, is present to answer questions about the proposed Jeanette's Pier project. The changes to the pierhouse portion of the rule are meant to allow the rules to give the flexibility for pierhouses to expand (either rebuilt existing or new pierhouses) to provide public access. The changes proposed begin with section (d)(1). The changes were discussed as outlined in CRC 08-19.

Jim Gregson added that another change to the language has been made in (e)(4). A provision has been added which allows replacement of pierhouses to the original footprint. Staff believes we should not restrict pierhouses that were being replaced to 5,000 square feet if they were larger. Staff proposes a limit of 5,000 square feet for new pierhouses. Replacement of existing pierhouses would be limited to the existing footprint.

Spencer Rogers stated he agrees that fishing piers should be preserved. However, he cautioned the CRC to be careful what they allow. An example was shown of the Oceanic Fishing Pier in Wrightsville Beach. The beachfill project in the 1930's established State ownership in alignment with the building to the right. It was expanded from a restaurant with a one-story fishing pier to later be enlarged to three stories. The pier is in disrepair as it has been damaged by several hurricanes. It has been closed off to most of its length. The only part left is restaurant space. Mr. Rogers further stated that he has one major concern with the proposed language. Post-storm building around the country indicates that fishing piers are always of one the first things to go down in big hurricanes. There have been a scattered number of successes in pier survival, which have all relied on break away floor panels. However, with pier buildings you cannot have break away floors. The safest way to deal with these buildings is to get them as far back on the property as possible.

Charles Elam made a motion to accept the changes to pierhouse language in 7H .0309 as proposed by Staff and send this rule to public hearing. Renee Cahoon seconded the motion. Action was postponed on the motion.

Tancred Miller brought back changes, as requested by the Commission. The changes to language indicate that replacement or construction of a new pier house would not be required to meet the setback. A new pier house would have to be located landward of mean high water. An existing pier house could be replaced in its existing footprint or landward. Size would be limited for new pier houses to 5,000 square feet. A replacement pier house could be built to 5,000 square feet, or its existing footprint whichever is greater. Pier houses would be limited to two-stories.

Wayland Sermons made a motion to accept these changes to the pierhouse language in 7H .0309 and send it to public hearing. Melvin Shepard seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Peele, Langford, Wilson, Weld, Cahoon, Elam).

Dara Royal requested that language be inserted to require public fishing to be a requirement with public retail services to serve the fishing public. Wording was changed to accommodate the fishing requirement, but not detail what had to be sold in the retail sections.

Charles Elam made a motion to adopt this change and send it to public hearing. Wayland Sermons seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Peele, Langford, Wilson, Weld, Cahoon, Elam).

PETITION FOR RULEMAKING

Kennedy Covington – 15A NCAC 07H .0308(a)(2) Temporary Erosion Control Structures (CRC 08-24)

Mack Paul of Kennedy Covington Lodbell & Hickman, L.L.P. representing property owners from Figure Eight Island, Nags Head and Ocean Isle Beach. Mr. Paul stated, we are facing removing sandbags at potentially 150 properties. Only about 370 permits have been issued since the inception of the sandbag rules. The time limits have been a subject of discussion through much of the history of the sandbag rules. In 1999, the Science Panel recommended there be no time limits for sandbags, but to instead apply a size limit. In 2000 there were changes made to

address the time limit, but it largely postponed the issue to a fixed date which is where we are now with the May 2008 deadline. The conditions at the coast have changed dramatically since the hardened structure rule was changed in the mid 1980's. The availability of lots has become very scarce and property values have skyrocketed at the coast. Ownership of property along the coast has become a significant investment for many owners which has made relocation of imminently threatened structures not practicable. The removal of sandbags will not necessarily enhance public access at the beach. Conditions can change quickly at the coast and it is a good time to engage in full discussion about sandbags. Before removing a property owner's protection, it makes sense to make sure that our policies are correct.

Mr. Paul pointed out the main points of the petition. There is a disconnect that exists between the time frames in the rule and the times required for communities to obtain permits to do projects. The second disconnect is the property owner's perceptions about the reason they are getting sandbags to protect their property and the real purpose behind the sandbag rules. When the sandbag rules were amended back in 2000 it was believed there would be sufficient time until 2008. We would like to clarify one point that was mentioned in the Staff report about the petition regarding the indefiniteness. We would still want sandbags to come out once a project had been implemented and completed. Some of the Commissioners have pointed out the inequity that exists when one property's sandbag permit expires, yet the property next door can receive a sandbag permit. If both properties are in a community that is implementing a long-term management, they should both be afforded the same opportunity for protection. If they are not in this type of community, they should understand that sandbags only provide enough time to move their structure because there is no long-term solution. The petition seeks to bring greater alignment between owner expectations and the underlying purpose behind the sandbag rule. The underlying premise behind the sandbag rules are sound, the modifications that have been proposed in the petition seek to provide property owners and the public clearer expectations about the purpose and the time frames for sandbags. We are not asking that the CRC approve the petition today, we would like to have an opportunity to work more closely with Staff to build on the consensus that we are starting to achieve.

Mike Lopazanski, representing Staff, gave an overview of the temporary erosion control structures rule 07H .0308(a)(2). The petitioner wants to amend the rules to remove the time limits on sandbags and change the "actively pursuing beach nourishment" provision to a long-term erosion response plan that is modeled after the proposed static line exception. This petition would also create a new sandbag management strategy for the inlet hazard areas where the maintenance of sandbags would be tied to an inlet relocation plan or an inlet-monitoring plan. DCM is opposed to the petition as the static line exception criteria is more restrictive than the current beach nourishment criteria and the reliance on the implementation of a long-term erosion response plan as described in the petition could result in the maintenance of sandbags along the oceanfront for thirty years. Managing oceanfront development for the protection of life and property has been central to the Commission's policy that development adapt to changes in shoreline configuration. The expectations regarding sandbag use as a temporary measure has been clear since 1995 when the Commission amended the rule to include the two and five year time limits. Sandbag permits include a removal date that is also acknowledged in the sandbag removal notice signed by the applicant. Since 1993 the Commission has required that permits for oceanfront development include the condition for relocating or dismantling the structure

within two years of the imminently threatened designation. This policy, in addition to the 30-year erosion rate, clearly indicates the Commission recognized and anticipated that oceanfront structures might need to be moved or demolished. Throughout the history of the sandbag rule, there has never been an indication that the sandbags would be a long-term solution to chronic erosion problems.

DCM is supportive of the petitioner's request to create a new strategy inside inlet hazard areas. While beach nourishment has limited effectiveness, channel maintenance and channel relocation have added some stability in these highly dynamic areas. A provision providing an extended time period for sandbags in connection with a community pursuing an inlet relocation project would be consistent with the Commission's extended time period associated with beach nourishment on the oceanfront. Such a strategy is also consistent with recent Commission action in terms of the willingness to allow exceptions to sandbag time periods for the completion of inlet relocation projects. While the details of such a strategy would need to be worked out at a future meeting, the Division would support an eight year time period. There must also be a stipulation that as soon as the structure is no longer threatened, as defined in .0308(a)(2)(b), the sandbags would need to be removed regardless of the initial time frame unless they are covered with sand and stable, natural vegetation. This is necessary to comply with the long-standing, temporary nature of sandbag use on the oceanfront. The Division cannot support the provision of the petition relating to the optimal position of the inlet dictating the continued presence of the sandbags. The Division is also opposed to removing the limitation that a structure in an inlet hazard area may only be protected once.

Melvin Shepard made a motion to deny the Petition for Rulemaking filed by Kennedy Covington. Doug Langford seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Peele, Langford, Bisette, Wilson, Weld, Cahoon, Elam).

Doug Langford made a motion directing Staff to work with Kennedy Covington to incorporate the comments they feel would be an improvement to current rule language and bring these changes back to the Commission for input at the July meeting. Bill Peele seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Peele, Langford, Bisette, Wilson, Weld, Cahoon, Elam).

PRESENTATIONS

**** Chairman Emory recognized Colleen Sullins, Director of Division of Water Quality, and Louis Daniel, Director of Division of Marine Fisheries, in attendance for the meeting.**

Interagency Coordination

Robin Smith, Assistant Secretary for Environment

Robin Smith stated that she has been following the issues the CRC has been wrestling with for the past couple of years and she sees there is some concern and frustration about how the relationships work between the Coastal Resources Commission, the Marine Fisheries

Commission and the Environmental Management Commission. Some of the tension is not entirely by accident. The General Assembly has created the three Commissions which have overlapping interests in the coastal area. All three Commissions have different authority. The submerged aquatic vegetation habitat discussion that will take place at this meeting is one example of all the Commissions having an interest, but not the authority to address the subject. The MFC has an interest in fisheries and fisheries habitat and regulating impacts to fisheries habitat by fishing gear, but have no ability to regulate development impacts on fishing habitat. The MFC must advocate for decisions on permits or rulemaking before the CRC to take the steps necessary to address development impacts on habitats. The CRC then has to decide what the correct resolution of the problem should be. The same kind of issues are present on the water quality side. The CRC and MFC have significant concerns about coastal water quality and maintaining water quality, but the EMC has the primary authority to directly regulate stormwater and wastewater discharges. Therefore, the CRC and MFC must advocate for, or against, certain policies the EMC may be considering. The General Assembly recognizes there are overlapping interests. CAMA is the perfect example of this. The provisions of CAMA provide several places in the Act that tell the CRC and its Staff to provide an opportunity for comment on both rules and on permit applications from other interested State agencies. The law requires the CRC to provide notice to the other agencies of proposed rules and pending permit applications for major development. The comments received from the other agencies are received during the permitting process. The comments are fed into the permitting process which is defined by the parameters of the CRC's rules and the standards set out in CAMA. Ultimately, the decision of whether a comment requires denial of a permit or the conditioning of a permit is up to the Division of Coastal Management. DCM Staff make the decision of whether the comment is supported by sufficient fact in science and then must link the comment back to either a development standard in the rules or a standard in the Statute for denial of the permit. CAMA gives the CRC, in rulemaking and in permit decision-making, a mandate that it can consider impacts to fish and wildlife in estuarine systems. Some of the tension comes from how to manage all of the interacting and coordinating that is comfortable for everyone. Regulatory Staff see things differently than natural resource agencies that do not have regulatory responsibilities. We may not be there yet, but it can work under the umbrella of the CHPP. The roles of each Commission are well defined. The CHPP Steering Committee has provided a forum for the three Commissions to send representatives along with their Staffs to take a shot at resolving common concerns and conflict. At the Department level, we are trying to make sure that the fundamental decisions (like the SAV habitat definition) achieve common ground.

Ms. Smith also gave a legislative update. The legislature has convened and are on a fast track with the budget. They plan to adjourn in July. The big proposal on the Department's side and on behalf of the Governor's office is the drought legislation. Also, the coastal stormwater rules are up for legislative review. There was a bill introduced to disapprove the coastal stormwater rules. This bill has led to a legislatively managed stakeholder process. The expectation is that legislation that will approve a set of coastal stormwater standards that address some of the concerns that are being voiced by a number of people across the coastal area, but will also maintain the goal of the rules which is to provide better protection for shellfish waters. Senate Bill 599 is eligible for consideration this year and is pending in the House.

Proposed MFC SAV Definition & Application to CAMA Permits
Anne Deaton and Ted Tyndall

Anne Deaton gave an update on the SAV definition. The update given at the March 2008 CRC was not the final version of the language. Since that meeting, the draft language has been discussed with the Department. Additional changes have been made to the definition following a conference call with the Department, DMF Director and Asst. Director, DCM Director and Asst. Director as well as most of the DENR workgroup that has worked on this definition.

Ms. Deaton stated the Marine Fisheries Commission is charged to protect the marine and estuarine resources. As part of the CHPP implementation, we saw the existing definition of SAV had some flaws. In many states and agencies, SAV is considered one of the most valuable of the estuarine habitats. Photos of high salinity species were shown. Habitat is more than just plants. These plants are underwater plants that flower and have a true root system. They are a perennial species in North Carolina and come back in relatively the same place. The runners can make it spread, but it does not migrate like a fish. Examples of low salinity species were also given. To determine if the area is SAV habitat there are several conditions to make it grow. For SAV to grow, certain species need a certain salinity, a certain temperature, certain water depth, sediment type, not too windy with too many waves, there needs to be a certain clarity in the water to get the required amount of light in shallow water. The major causes of loss of SAV habitat are dredging, nutrification, sea level rise, vessel groundings, boat and dock shading. In 1990, the Division realized SAV is an important habitat and needs more protection and tried to develop rule language to define the habitat. In 1992, the CRC adopted a definition for SAV before the MFC did. In 1994, the MFC adopted a very similar definition. The MFC adopted a policy for SAV habitat protection in 2004. In 2005, the CHPP was approved and it calls for improved protection of such habitats.

DMF drafted a revised definition of the current rule language and took it to the MFC. The MFC approved the draft to go to public hearing. Then DCM and DWQ raised their concerns with how this would work. Then the DENR workgroup began working on it and modifications were made to the definition. We believe this definition is the best biologically based definition that the group could develop.

Ted Tyndall gave an update on how this definition would affect the CRC's development rules. This document was put together as a technical guidance document for the protection of SAV habitat and how it ties into the CAMA permitting process. It offers specific guidelines that should be followed during the permit process. It also lists the rules of the CRC, EMC, and MFC that are impacted or affected by the change in this definition.

The General Permit (GP) is an expedited permit. These permits are designed for projects that are carried out on a frequent basis. It requires minimal on-site overview and little public review and comment. These will have a minimal impact in the AEC. GP's are typically issued within a few days of the request by the applicant, most of these permits are written on-site. General Permits contain specific criteria about the proposed structures (size, alignment, length, location). If the proposed development exceeds these narrowly defined criteria then it needs to be elevated to a major permit. The most common GP that effects SAV habitat is the GP 1200 for docks and piers

in estuarine waters and public trust areas. The CRC has asked that this GP rule amendment be placed on hold pending the SAV definition.

Several examples were given using the application of the revised SAV definition. For a fixed pier without docking facilities, if SAV is absent Staff has been directed to issue the General Permit. If SAV is present, criteria (such as water depth) are looked at. If the water depth is greater than 2 ½ feet at the end of the pier, the GP could be issued. If the water depth were less than 2 ½ feet, the next criteria would be to see if there is more than 50% coverage. If it is less than 50% coverage of SAV, the GP could be issued. There are also criteria for floating structures, fixed docking facilities, and floating docking facilities. When proposed development cannot meet the criteria for a General Permit, it is elevated to the Major Permit review process.

Draft Amendments to 15A NCAC 7H .0308(a)(2)
Temporary Erosion Control Structures (CRC 08-21)
Mike Lopazanski

An alternative management strategy for sandbags in inlet areas needs to be considered. Beach nourishment in the inlet areas has had a limited effectiveness; however some of the inlet relocation projects have had the potential to provide more stability. It would be consistent with the policies already in place, if the CRC wants to extend the sandbag time period sandbags could remain for inlet relocation projects just like beach nourishment. Staff would request that a finite time period (8 years) and bags would need to come out when they are no longer needed. Changes will also be made to the rule following the CRC's March interpretive ruling. Draft rule language will be brought back before the CRC for consideration.

Shellfish Waters
Melvin Shepard

Melvin Shepard proposed the CRC take a look at our rules and determine if we need to improve our protection of shellfish waters. In the past the CRC has approved permits in closed shellfish waters that we would not have approved if the permit had been in open shellfish waters. A permit for an activity that would negatively affect shellfish waters would clearly make restoration of these shellfish waters more difficult. Closed shellfish waters are as valuable as open shellfish waters. Shellfish Sanitation has closed these waters to the harvesting of shellfish for the purpose of human consumption. These closed waters are highly productive shellfish areas. These areas can be restored unless we continue to knowingly add more obstacles to recovery. There are recovery success stories all over the State. The closed shellfish waters are a valuable source of shellfish stock that once they are moved to clean water will need only two to four weeks to clean themselves of bacteria. The CRC should review our practices to see how we might have a positive affect on shellfish waters.

***At this time, Bob Emory announced that Doug Langford, CRC Vice-Chairman, would not be seeking reappointment to the Coastal Resources Commission when his term expires on June 30. Doug Langford thanked the members of the Commission, the CRAC, and DCM Staff for the past 10 years. Chairman Emory presented a plaque to Doug on behalf of the Commission in appreciation of the leadership and dedication to the N.C. Coastal Resources Commission.*

Comprehensive Beach Management Task Force Subcommittee Report (CRC 08-20)

Bob Emory

Bob Emory reviewed the meeting of the subcommittee that met on May 9 in Beaufort. This subcommittee focused the conversation on the CRC's authority and did not discuss groins. Following an update from Steve Underwood on the Beach and Inlet Management Plan (BIMP), the subcommittee recommends a resolution to the General Assembly supporting additional funding to accelerate development of the Beach and Inlet Management Plan, to request additional sources and personnel and act as a liaison with local governments to serve on the project delivery team. The subcommittee also recommends a statement or letter to the General Assembly supporting a stable and dedicated source of funding for beach nourishment. The third recommendation was to form a committee to develop a beach education plan to target coastal and inlet communities. Coastal hazard disclosure efforts were also discussed. A few ideas to accomplish this were (1) utilize the DCM beach access signs, (2) additional data on the DCM website, (3) utilize the coastal reserve education program to hold realtor workshops, (4) update SEAGRANT publication "Answers on Purchasing Coastal Real Estate in North Carolina" and (5) engage coastal realtors in a discussion of the benefits of disclosing these hazards, (6) condition certain CAMA permits to preclude the use of sandbags under the single-family exceptions, (7) consideration of alternative sandbag structure design, (8) a letter to Governor endorsing North Carolina involvement in the Southeast Alliance, (9) a presentation to the CRC on innovative funding strategies for beach nourishment projects, and (10) consideration of beach management and oceanfront development strategies consistent with the CRC's current authority.

Jim Leutze made a motion to accept and endorse the recommendations of the Beach Management Subcommittee. Bill Peele seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Peele, Langford, Bissette, Weld, Cahoon, Elam).

Chairman Emory stated the next step would be to obtain a copy of the outcome of the previous Legislative Study Commission and a copy of the legislation. We also need to schedule Peter Revella of Texas to talk about the innovative funding strategies for beach nourishment.

Bulkhead Rules Update and Draft Amendments to 15A NCAC 07H .1100 Bulkhead GP (CRC 08-23)

Bonnie Bendell

Bonnie Bendell gave an update on the bulkhead rules. These rules have been to the CHPP Steering Committee and let them give some direction on where to go with these rules. For almost three years we have been working on shoreline stabilization and bulkhead rules to get them updated. An ad hoc committee was formed. This committee will evaluate what to do for the long-term.

In the meantime, changes need to be made to the General Permit .1100. These rules were last seen at the September 2007 CRC meeting. Ms. Bendell covered the changes to be made to these rules as outlined in CRC 08-23. These rules will protect public trust rights and shallow water habitat and encourage riprap revetments as an alternative to the vertical structure.

Wayland Sermons had concerns about the increase of the permit fee for bulkheads above normal high water. He stated permit fee increases should be subtly used. Jim Gregson stated there is currently a \$400.00 fee for a bulkhead permit if it is located in the water and \$200.00 to place the bulkhead above mean high water. He stated that in addition to the loss of revenue, the amount of staff time it takes to permit a bulkhead for either above or below mean high water is the same. Therefore, the fee should be the same for all bulkhead permits. Spencer Rogers stated the reason for the difference in the fees is because the location of structure is more important than the type of structure. The difference in fees was an incentive to get structures out of the water. Chuck Bissette stated he did not like the disincentive nature of the permit fee increase. Mr. Bissette stated that after working with the ad hoc group, he might be more willing to go along with the increase. Bonnie Bendell stated that Staff is proposing to send these rules to public hearing (with or without the change to the permit fees).

Jim Leutze made a motion to take 7H .1100 rules to public hearing. Melvin Shepard seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Langford, Bissette, Weld, Cahoon, Elam) (Peele absent for vote).

Review of CRC Priority Issues **Bob Emory**

A list of top priority issues was read from the January strategic planning session. After discussion, it was determined the CRAC would begin to work on the issue of public access.

ACTION ITEMS

***At this time Jennie Hauser, CRC Counsel, advised the Commission that the Sutton v. DCM (07 HER 1316) record has been received in the Attorney General's office from OAH. There is not sufficient time to hear the case and receive exceptions from counsel, as the next scheduled CRC meeting is July 23.*

Doug Langford made a motion that the CRC find there is good cause to extend the time for making its final agency decision in Sutton v. DCM 07 HER 1316 for an additional sixty day period as allowed by G.S. 150B-44. Jim Leutze seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Langford, Bissette, Weld, Cahoon) (Sermons, Peele, Elam absent for vote).

Bob Emory discussed the letter sent to the Commission regarding Ethics training. Chairman Emory stated that each member should have had Ethics training and this has not happened. Some Commissioners have been able to attend since receiving the letter. Other opportunities will be held and it is required. Commissioners Shepard, Wynns, Elam, Sermons, and Bissette

acknowledged they had completed the training. Commissioner Langford stated that the Ethics Commission had advised him that he is still required to attend the training even though he does not seek reappointment.

Bob Emory stated that Wayland Sermons has agreed to serve as the second representative on the CHPP Steering Committee.

Bob Emory put together a nominating committee for the Vice-Chairman position on the CRC. The Committee will consist of Wayland Sermons, Renee Cahoon, and Melvin Shepard. Election will take place at the July CRC meeting.

PUBLIC COMMENT AND INPUT

Christine Mele, Pamlico County CRAC representative, stated she is speaking on behalf of Rhett White the Town Manager of Columbia. Ms. Mele stated there are unanswered questions regarding the potential impacts of the coastal stormwater rules on small coastal riverfront towns. Redevelopment of shoreline and near shore lots in the downtown business districts may be severely limited and therefore economically prohibited. This is even more complex and problematic when "historic" district requirements of full lot-size coverage requirements and old lot lines conflict with lot coverage restrictions of coastal stormwater rules. This may effect only two or three properties but for economically strapped small towns in tier I counties even one or two properties that are rendered impractical for building severely impact the tax base, negatively impacts downtown redevelopment efforts and thwarts long range planning efforts. Secondly, small towns have existing stormwater systems that are designed to move stormwater from downtown business districts that are up to 100% covered by impervious surfaces. Functioning rain gardens may not be possible or practical in small districts and if required would provide no real water quality value. Third, redevelopment of shoreline and near shore lots in residential districts may be equally limited and financially prohibitive particularly when historic district overlay requirements are in place. This critically impacts the small town tax base. The coastal stormwater rules are not as objectionable in new subdivisions, however the lack of clear answers to questions, the misinformation and incomplete information and general public alarm that exists strongly suggests that implementation be delayed until these and other issues are adequately addressed.

Douglas Mercer, Mayor pro-tem of Washington and Chairman of the Beaufort County Planning Board, stated he has a double interest in the proposed stormwater rules. Mr. Mercer stated that he was here for the start of the CRC meeting on Wednesday and the Mayor was here to greet the Commission. He stated he hopes the Commission has enjoyed their stay in Washington and that they have done everything they can to make the CRC's stay pleasant and hopes the CRC will not wait so long to come back. The CRC is going to be discussing the proposed resolution endorsing the EMC's stormwater regulations today. I would strongly recommend that the CRC table this matter at the present time. The 20 coastal counties will be effected by this rule. There is not a single citizen in those counties that is opposed to improved water quality, but we firmly believe that all rules that apply to the coastal counties should be equitable to what is applied to the other counties that impact the water qualities in our rivers. Mr. Mercer gave an example of two lots, one on the Pitt county side and one on the Beaufort county side. The Pitt county side can be

built upon. The Beaufort county lot will be able to build but will require a number of control devices which is a considerable economic burden to an individual. All this water runs into the Pamlico/Tar River but there is an unequal rule being applied to these two entities.

Charles Baldwin, Village of Bald Head Island Attorney, stated he wanted to thank the CRC, the comprehensive beach management subcommittee, the BIMP committee and Staff for the excellent work that has been done in thoroughly identifying the issues and steps to take in regional sand planning. However, the Corps of Engineers involvement is going to be critical in that process. Mr. Baldwin mentioned that the Corps is presently on the way to developing a dredged material management plan in the Brunswick County area. That plan is presently contemplating taking up to 3.3 million cubic yards of beach quality sand and putting it in the old shipping channel alignment. That is a lot of sand to be going off shore. They are also contemplating alternative or near shore sand disposal of less than 100,000 cubic yards. If it is done incrementally, a lot of sand could be going off shore. Our environmental engineer, Eric Olson, tells us that is not the proper way to handle sand. The dredged material management plan is a 20-year plan. The Corps operates under strict criteria and guidelines that are set by Congress and by Headquarters and they cannot just revisit these issues anytime they want to. It would literally take an act of Congress unless we collectively get ahead of the curve on the dredged material management plan. It will probably conflict with regional sand planning issues that we are currently coming up with. I wish to offer six recommendations and observations. (1) DCM Staff member should attend the DMMP meetings (2) May 15 meeting at district headquarters, the Corps recommended that we seek to put language in the dredged material management plan that near shore or alternative disposal are only done in emergency circumstances such as a storm event or to keep the channel open (3) the Corps emphasized that a plan for local long-term funding would go a long way towards the Corps meeting its economic criteria. The Corps is required to do least cost disposal. (4) We need to emphasize and educate to government, the public and agencies about the importance of sand as a valuable and limited resource. (5) Try to get a Corp representative involved in the BIMP process. (6) The Village of Bald Head recently hired Peter Revella and would be delighted to have him meet with the CRC and DCM staff while he is here.

David Peoples, County Manager for Washington County, stated he came today to tell the CRC about Washington County. We are a socio-economically challenged county that has high poverty rates; high unemployment rates and continues to struggle. There are many inland counties in the 20 CAMA counties that mirror us. There are a lot of wetlands in our county, there are a lot of areas that cannot be developed and the proposed stormwater rules have a very tremendous impact on our county. We appreciate the water; we wish to have clean and safe water. We market our county as a recreation and retirement haven, so water and the importance of it is extremely important to our future. For several years we have worked very judiciously in ensuring that our zoning and our ordinances support clean water and the improvement of water quality in our county. We believe the urban Phase II stormwater rules are sufficient. We do not wish to be held to a higher standard or set of rules. You are familiar that there has been a legislative stakeholders group that has been meeting and has been looking at the stormwater rules and their implementation. I see Robin Smith, the Asst. Secretary of DENR is in attendance today and I want to personally thank her and her staff for working with this stakeholders group. They are working with us to see if there are ways that we can ensure that these rules are

appropriate or that they can be improved upon. I would suggest to the Commission that you wait before you pass this resolution. Allow this legislative stakeholders group committee to finish their work and ensure that whatever is to be implemented is appropriate and it addresses the quality improvement in the future and that it doesn't have extreme economic impacts on a 20 county area of the state when a majority of this area is already struggling economically. I recall in 2001-2002 there was an agency in State government that passed mental health reform. We saw that in that process of passage there were many unanswered questions. We have seen excessive costs come from that effort, there were people who were drastically underserved and we have now seen over 400 million dollars in questionable expenditures. I would suggest that you wait and see what the final product of the legislative stakeholders committee is before you pass a resolution to ensure you are passing a good quality resolution.

OLD/NEW BUSINESS

Mike Lopazanski presented a resolution from the CRC based on a recommendation from the waterfront access study committee to help increase opportunities for public access as well as preserving working waterfronts in the coastal area. The study committee delivered a range of recommendations to the joint legislative subcommittee on seafood and aquaculture. These recommendations ranged from extending the work of the access study committee to forming a working waterfront trust fund. In response to this, the legislature appropriated 20 million dollars for the waterfront access and marine industry fund that was created to acquire waterfront properties or develop facilities to provide, improve, or develop public and commercial waterfront access. The DMF administered this fund over the past year and they received a total of 24 project applications requesting 85 million dollars. These projects were reviewed by several DENR agencies. They selected 13 sites for funding with the intention of providing waterfront access to a variety of user groups. The sites were distributed evenly along the coast.

Jim Leutze made a motion to accept the Resolution. Doug Langford seconded the motion. Dara Royal requested an amendment to include the CRAC on the Resolution. Jim Leutze accepted the amendment to the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Langford, Bissette, Weld, Cahoon, Elam) (Peele absent for vote).

Bob Emory stated that the Coastal Stormwater Rules have become very contentious. The CRC's partnership with local governments is a key element of the CAMA program, however, I think we want to support efforts to improve stormwater management. We are on record from 2006 when the CRC adopted a Resolution. In response to a request from Pete Peterson, Chairman of the CHPP Steering Committee, he asked the Commissions to weigh in on stormwater rules. Chairman Emory suggested the CRC reaffirm the Resolution adopted in 2006.

Jerry Old made a motion to reaffirm the 2006 Resolution regarding EMC stormwater rules. Joan Weld seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Langford, Bissette, Weld, Cahoon, Elam) (Peele absent for vote).

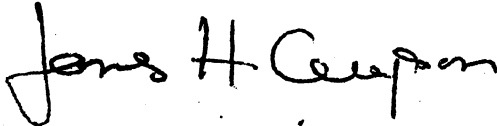
Public hearings are set for the oceanfront setback rules. The dates and locations were provided. Hearing officers were assigned for each public hearing date.

Charles Elam asked about the number of sandbag variances which have been received and how they would be handled. Jim Gregson stated we have 29 variances that will have to be heard at the July meeting. If all of these stay on the agenda, we will be faced with two or possibly three days of variance hearings. We also have a contested case that will be heard and the public hearings for the oceanfront setback rules.

A replacement has been named for the marine ecology seat held formerly by Courtney Hackney. This new Commission member will be Dr. David Webster. Dr. Webster is faculty at UNCW.

With no further business, the CRC adjourned.

Respectfully submitted,



James H. Gregson, Executive Secretary



Angela Willis, Recording Secretary

DRAFT

NC Coastal Resources Advisory Council Washington Civic Center Washington, NC May 21, 2008 Meeting Summary

Attendance

Dara Royal, Chair	Y	Christine Mele	Y
Penny Tysinger, Vice Chair	Y	Gary Mercer	
Eugene Ballance		Wayne Mobley	Y
Bert Banks (Morgan Jethro)	Y	J. Michael Moore	
Joe Beck	Y	William Morrison	Y
Randy Cahoon	Y	Elwood Padrick (Charles Halsall)	Y
Carlton Davenport	Y	W. Burch Perry	
Eddy Davis	Y	Spencer Rogers	Y
Anne Deaton	Y	Frank Rush	Y
Christine Mele	Y	Robert Shupe	Y
Webb Fuller	Y	Harry Simmons	Y
William Gardner, Jr.		Lester Simpson	Y
Renee Gledhill-Earley	Y	Paul Spruill	Y
Gary Greene		Ray Sturza	Y
Phil Harris	Y	Tim Tabak	Y
Judy Hills	Y	Joy Wayman	Y
Al Hodge		Beans Weatherly	Y
Maximilian Merrill		David Weaver	Y
Joe Lassiter		William Wescott	Y
Travis Marshall	Y	Traci White	
Lyman Mayo		Rhett White	Y
Gary McGee		Don Yousey	

Wednesday 21st

Call to Order

Dara Royal called the meeting to order at 1 pm and the Council approved the March 2008 minutes. Royal announced that Doug Huggett would not be at this meeting and his presentation on wind energy permitting issues would have to be postponed until July. Royal requested and received consent to add a discussion of the Environmental Management Commission's proposed coastal stormwater rules to the agenda.

Village of Bald Head Island Land Use Plan

Michael Christenbury, Wilmington District Planner gave a brief overview of the Village of Bald Head Island's Land Use Plan. Mr. Christenbury noted that this is the first Land Use Plan written and adopted for Bald Head Island. In the past, Bald Head Island has relied on Brunswick County's Land Use Plan for policy and permitting purposes.

DRAFT

Christenbury said that the Village of Bald Head Island Village Council adopted the land use plan at a public hearing on April 11, 2008. The public had the opportunity to provide written comments to DCM up to fifteen (15) business days prior to the CRAC meeting and no comments were received.

Christenbury said that DCM Staff determined that the Village of Bald Head Island has met the substantive requirements outlined within the 2002 Land Use Plan Guidelines and that there are no conflicts evident with either state or federal law or the State's Coastal Management Program.

Christenbury recommended that the CRAC forward the Village of Bald Head Island Land Use Plan to the CRC for certification, and it did so unanimously.

Waterfront Access and Marine Industry Fund Resolution

Mike Lopazanski noted that the NC General Assembly established the Waterfront Access and Marine Industry (WAMI) fund as one of the recommendations from the Waterfront Access Study Committee. The General Assembly appropriated \$20 million to the WAMI fund in 2008, and the fund received over 150 grant applications totaling almost \$90 million. 13 projects were selected for funding. Lopazanski said that there is no guarantee of future funding and that the draft resolution in support of continued funding would be sent to state legislative leaders. Lopazanski suggested that the CRC might sign on and make it a joint resolution. The Advisory Council unanimously approved the resolution and a recommendation that the CRC consider signing on.

Clean Marina Program Resolution

Mike Lopazanski gave the Advisory Council an overview of the Clean Marina program, noting its use of interagency cooperation and a best management practices manual. Lopazanski said that the program is a partnership among several state and federal agency partners, and that participation from marina owners and operators is voluntary. Lopazanski said that the NC program started in 2000 with a small budget, and now receives funding from the coastal nonpoint program and the NC Estuarine Research Reserves. Lopazanski said that incentives for marina owners and operators to participate include publicity, the ability to attract "Clean Boaters," and improved regulatory compliance.

Lopazanski said that the certification process includes a self-evaluation and assessment, BMP implementation, an application for certification, and a site visit by a Clean Marina representative. Once certified, marinas receive a Clean Marina flag, electronic logos, a web link from the main Clean Marina site, technical assistance, discounts on merchandise, and other incentives. NC had a Clean Marina coordinator for about a year, and in that time held a series of workshops that were very well received. NC at this time has 16 certified marinas.

Lopazanski said that the coastal nonpoint program lost NOAA funding this year, and as a result DCM could not retain its Clean Marina coordinator. Lopazanski said that NC Rep. Alice Underhill is supportive of the program, and is willing to help seek state funding.

The Advisory Council reviewed a draft resolution to the state legislature in support of funding of the Clean Marina program. The Advisory Council asked for a clause to be inserted related to insurance, tax incentives, and interest from out of state boaters, and unanimously approved the resolution with those changes.

CRAC Guidebook Revisions

Dara Royal reviewed the recommended revisions to the CRAC Guidebook. The Advisory Council made additional revisions and approved the updated version. The Guidebook will be posted on the DCM website.

Estuarine Public Access through CAMA Permitting

DCM staff reopened the discussion on ways that public access could be preserved or enhanced through CAMA permit conditions, specifically along estuarine shorelines. Members asked whether additional permit conditions will discourage entrepreneurship, and whether staff had talked to private marina owners about possible implications. Staff had not yet because ideas were too new and early in discussions. Staff said that the trend towards “dockominiums” was providing much of the impetus to begin these discussions since those facilities often converted public access to private access. Staff suggested that the permitting process could include incentives such as additional slips and setback relaxation.

Judy Hills said that the state is shooting itself in the foot by attracting boaters to the area without providing adequate transient slips and access facilities. Hills said that service costs are increasing beyond what many boaters can afford, and the problem is compounded by the loss of fueling and pumpout facilities. Lopazanski said that Boating Infrastructure Grant Program (BIG-P) money is still available, and NC is guaranteed to receive about \$100K per year to subsidize the construction of new facilities. Spencer Rogers asked what other states have done on this issue.

Frank Rush suggested that the state could collect leasing fees from all pier owners and put it into an access fund (e.g. the WAMI fund). Rush said that Emerald Isle has a private marina that provides some public access thanks to an incentive program with the town. Rush said that the community is considering a new drystack facility with forklift service. Dara Royal suggested that local governments could look into providing incentives in their subdivision and zoning ordinances. Rush responded that Emerald Isle is offering incentives through its land use and zoning ordinances—the town allows more density if public access is provided. Rush said that DCM can help by facilitating discussions among communities about how to craft incentives through ordinances. Mike Christenbury said that New Hanover County and the City of Wilmington are working with developers to ensure public access and transient slips.

Eddy Davis suggested that developers could be given the option to provide offsite access.

Staff asked who Council members thought should be responsible for maintenance and liability insurance for the public access portion of private marina or dockominium. Frank Rush suggested the local government should be responsible. Dara Royal recommended looking into the legal aspects before going further.

Council and staff agreed to resume discussions at a later meeting, after staff has had time to research other states’ practices and to develop some more concrete recommendations.

Stormwater Rules

Dara Royal recalled that the Advisory Council had asked the CRC to adopt a resolution in support of the EMC strengthening the state’s coastal stormwater regulations, which the CRC did in November 2006. Royal said that some coastal counties and towns do not support the EMC’s proposed rules.

Wayland Sermons said that the proposed rules have been very controversial in Beaufort County, and he wanted the CRAC and CRC to hear the reasons why. Sermons asked CRAC member and Beaufort County Manager Paul Spruill to explain the county’s objections.

Spruill said that 19 counties have expressed reservations about the proposed rules, and 18 have expressed strong opposition. The objection is based on the published rationale for the rules, “to offset further degradation to shellfish waters.” Spruill said that 12 of the 20 coastal counties have little to no shellfish waters, therefore it is inappropriate to use the published rationale to justify the

DRAFT

rules in these counties. Spruill said that the lack of grandfathering provisions creates a problem, but noted that DWQ said it is willing to be flexible.

Spruill said that the General Assembly took great effort to find a compromise on implementation of the Phase 2 stormwater regulations, and that the EMC expanded the rules' coverage before evaluating whether they worked in the three legislated counties.

Sermons asked Spruill if he and others wished to see the General Assembly void the proposed rules and direct the EMC to start over. Spruill replied that it is difficult for rural and urbanizing counties to conceptualize and argue about the volumetric requirements, but that the land disturbance threshold change is the most severe and objectionable part of the proposed rules.

Webb Fuller asked if the objecting counties believe that upstream pollution has no effect on coastal shellfish waters. Spruill replied that economics need to be taken into account. The state needs to look at all pollutants, sources, and BMPs; do the solutions to these problems in the southeast part of the state translate into regulations for the entire coast? Spruill said that the objectors are motivated by the higher cost of compliance that the rules would bring, and also feel a sense of property rights infringement.

Anne Deaton noted that there is a lot of misinformation about the proposed rules on the internet, and that people need to review DWQ's factsheets.

Joy Wayman said that in here opinion the proposed rules are anti-development.

Rhett White said that the Town of Columbia has not been able to get answers on how the proposed rules would impact infill and redevelopment.

Dara Royal advised members to express their concerns to Commission members in advance of their Friday agenda item.

New Business/Old Business

The Council adjourned at 2:50 pm in order to join the CRC meeting at 3 pm.

Thursday 22nd & Friday 23rd

Advisory Council met in session with CRC.

##