

NC COASTAL RESOURCES COMMISSION (CRC)

May 19, 2010

NOAA/NCNERR Auditorium

Beaufort, NC

Present CRC Members

Bob Emory, Chairman

Joan Weld, Vice-Chair

Chuck Bissette

Renee Cahoon

Charles Elam

David Webster

Bill Peele

Jamin Simmons

Veronica Carter

Melvin Shepard

Ed Mitchell

Bob Wilson

Lee Wynns

Jerry Old (present at 10:10)

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. Jim Leutze was absent. There were no conflicts or appearances of conflict declared by Commissioners. Based upon this roll call, Chairman Emory declared a quorum.

MINUTES

Melvin Shepard made a motion to approve the minutes of the March 24-26 Coastal Resources Commission meeting. Renee Cahoon seconded the motion. The motion passed unanimously (Weld, Cahoon, Elam, Webster, Peele, Carter, Shepard, Mitchell, Wilson, Wynns, Simmons) (Bissette abstained) (Old absent for vote).

EXECUTIVE SECRETARY'S REPORT

DCM Director Jim Gregson gave the following report.

General Assembly/Budget

The General Assembly reconvened for the short session last week, and is hard at work on the budget. Governor Perdue released her proposed adjustments to the biennial budget on April 20. Both the governor's budget and the May 14 Natural and Economic Resources Senate subcommittee draft money report recommended that one half of DCM's Washington district manager position be shifted to receipts. The governor's budget also recommended that the Division eliminate one vacant position, which would be the Washington district planner, and that various operating accounts be reduced by seven percent which is approximately \$85,000.00.

The Senate appropriations subcommittee has also recommended a reduction of one million dollars in Department Information and Technology funds, and consolidates some smaller DENR divisions into one. DENR is currently in the process of a reorganization that will enact the recommendations of these budget proposals.

CZM Program Changes

As required by law, the Division has recently notified NOAA of a proposed routine program change to the state's Coastal Management Program. The notification is required by federal Coastal Zone Management Act regulations. The Coastal Zone Management Act requires state Coastal Zone Management Programs to formally incorporate changes made to the laws, rules and policies that are used for federal consistency purposes. These changes have already been made to each regulation, and the purpose of this action is to incorporate these changes into the N.C. Coastal Management Program.

The CRC has updated the following rules and considers this action a routine change to the state's approved coastal management program. The CRC is requesting concurrence with this finding from NOAA's Office of Ocean and Coastal Resource Management.

1. 15A NCAC 7H.0306 General Use Standards for Ocean Hazard Areas

Ties oceanfront setbacks to the size of the structure and not the use of the structure. The revisions include graduated setback factors for buildings greater than 5,000 square feet and precludes oceanward cantilevering.

2. 15A NCAC 7J.1200 Static Vegetation Line Exception Procedures

Creates procedures for local jurisdictions to apply to the CRC for static line exceptions in conjunction with long-term beach fill projects.

The public comment period for this change is between May 1 and May 21. Comments on these proposed changes should be submitted in writing directly to the National Oceanic and Atmospheric Administration by May 21, 2010. Contact information for public comments is available on DCM's website.

Hurricane Season

Next week is National Hurricane preparedness week, and hurricane season officially begins June 1. N.C. State University researchers predict that this year's Atlantic hurricane season will be an unusually active one, with 15 to 18 named storms forming in the Atlantic basin and as many as 11 of them becoming hurricanes. The National Hurricane Center recently announced that it will begin issuing storm watches and warnings about half a day sooner than previously issued. When a storm is approaching land, forecasters will now send watches advising that tropical storm conditions can be expected in 48 hours, instead of 36 hours. Warnings of tropical storm or hurricane conditions will be issued 36 hours ahead, instead of 24 hours.

Rachel Carson Cleanup

DCM staff and volunteers spent Earth Day cleaning up the Rachel Carson National Estuarine Research Reserve in Beaufort. Several hundred pounds of trash were collected and removed from the Reserve, including plastics, old nets, foam, glass bottles, cans and tires. Some unusual items found were an old wetsuit, radio speakers, a kayak paddle, and a homemade porta-potty. I'd like to thank all the staff and other volunteers who helped out.

Invasive Plants Workshop

On May 22 in Wilmington, the Coastal Training Program will sponsor a workshop aimed at training resource managers on the Early Detection and Rapid Response System (EDRR) for invasive plants. This workshop, held in partnership with the N.C. Exotic Pest Plant Control Council and the Cape Fear Arch Coalition, will be the first step in developing a Coastal Early Detection and Reporting Network in North Carolina. Workshop presentations will include Rapid Response efforts already being conducted on witchweed, giant salvinia and beach vitex, as well as an overview of additional species that are targeted for early detection in North Carolina.

Summer Camps at Rachel Carson Reserve

This summer the Rachel Carson Reserve will again host educational programs for students of all ages, in partnership with the North Carolina Maritime Museum. The Reserve will also be assisting the Museum with their Coastal Adventures program by offering nature hikes to the Rachel Carson Reserve, fish seining and plankton viewing.

Programs include:

- **Preschool Storytime and Crafts**, which includes a story, estuarine critter observation, and a related craft.
- **Seashore Life 1**, where students will investigate coastal marine life through field-based classes that will include a ferry ride, barrier island hiking, and animal identification.
- **Saltwater Science**, which includes investigating wildlife and water quality while exploring the coastal waters and ecosystems of the Rachel Carson Reserve.

For more information about these programs, please contact Lori Davis, Division Education Specialist, at the Reserve.

Staff News

Robb Mairs has rejoined the Wilmington office as our field representative for New Hanover County. Robb left DCM in 2008 for a position in private industry, but lucky for us, he has since decided to return to the Division. David Moye is the new district manager in the Washington district. David joined the DCM Washington office in 1990, working as a field representative for 14 years, and then as the express permit coordinator for five years. He has been the acting district manager in Washington for the last eight months. While performing the duties of acting district manager he has continued to perform the duties of the express permit coordinator. He has agreed to do both of those jobs. Washington field rep Mike Thomas has left DCM for a position with

the Division of Water Quality. Reserve education specialist Lori Davis recently earned her Environmental Educator certification. To earn the certification, program participants are required to complete 200 hours of professional development, which includes instructional workshops, 50 hours of outdoor experiences, knowledge of environmental education resources and facilities, a teaching component, and a community environmental stewardship project. Finally, there is some very sad news to report within the Division. Our Minor Permits Coordinator, Ed Brooks, who had been with the Division for almost 23 years passed away at Duke Medical Center last month following a double lung transplant. He will be greatly missed by all of us.

CHAIRMAN'S COMMENTS

Chairman Emory stated this is a short meeting. We have had several eventful meetings over the past eight to twelve months dealing with terminal groins, so a low-key meeting is due. You have received the schedule for our future meetings through February. They are all one-day meetings located at the NOAA/NCNERR Auditorium in Beaufort. This is in recognition of the budget situation in the state. In the Executive Committee meeting we talked about the need to make the most efficient use of that time and we will give this some thought as we plan our next meeting. We will also be thinking about the best way to make sure that the Coastal Resources Advisory Council is incorporated. We reported our terminal groin recommendations to the Environmental Review Commission of the Legislature as required by the House Bill. We were to make those recommendations by April 1 and we met that deadline. We submitted the report and it was also sent to the leadership in the Legislature. At this point we have not heard any response from the ERC.

CONTESTED CASES

McDaniel Kirchner v. DCM (09 EHR 4153) Morehead City, Water Depth

Christine Goebel of the Attorney General's Office stated Mr. McDaniel and Ms. Kirchner are not present and did not indicate that they planned to be here. Ms. Goebel stated in this contested case we are asking the Commission to uphold and adopt the Administrative Law Judge's decision in this case. There was a one-day hearing back in February. At the conclusion of the hearing the ALJ, Beecher Gray, ruled from the bench in favor of DCM Staff.

There are two adjacent lots on Calico Creek in Morehead City. Calico Creek at this location is a primary nursery area. The field report in this case indicates that normal low water is between zero and negative six inches with a tidal range of about 2 ½ feet. Petitioners have proposed a 4'x194' pier that was a joint pier for these two lots. They also proposed a 10'x40' platform and two 13'x13' boatlifts. During the Major Permit process there were objections received from DCM field staff. They noted that the ingress and egress at these shallow depths has the potential to cause new excavation through prop dredging. Field staff recommended against granting the permit. The Division of Marine Fisheries also submitted their objections. They recommended denial due to significant adverse impacts to shallow bottom habitat and shell habitat by prop dredging. The Wildlife Resources Commission also had objected to the permit reiterating DMF's concerns. The Division of Water Quality indicated that they were headed toward a denial in their 401 permit process due to the significant impacts to the primary nursery area

habitat. Based on these comments, the Division of Coastal Management denied the permit application due to inconsistencies with two rules. The owners had also received a permit in 2008 for the pier and platform without the boatlift access. Potentially they could get a permit for that again. At the end of the hearing the ALJ found in favor of DCM's permit denial and the judge agreed that the proposed project would cause significant adverse impacts to the PNA habitat. We are asking the CRC to uphold the Administrative Law Judge's decision and DCM's denial of the permit.

Melvin Shepard made a motion to adopt the Administrative Law Judge's decision in its entirety and find that DCM acted correctly. Jamin Simmons seconded the motion. The motion passed unanimously (Mitchell, Webster, Simmons, Wynns, Bissette, Peele, Weld, Shepard, Carter, Cahoon, Old, Wilson, Elam).

VARIANCES

Bennett Brothers Yachts, Inc. (CRC-VR-10-01) Wilmington, Dredging depth

Christine Goebel of the Attorney General's Office, representing the Division of Coastal Management, stated Petitioner owns an existing marina in Wilmington just north of the Isabelle Holmes Bridge crossing the Northeast Cape Fear River. Bennett Brothers Yachts, Inc. was issued a CAMA permit in 1997 for construction of a marina and the upland boat repair facility. Ms. Goebel reviewed some of the stipulated facts of this variance request. On June 10, 2009, Petitioners submitted an application for a major modification of the earlier permit proposing to dredge an area of about 87,000 square feet within the footprint of the existing docks to remove sediment that had accumulated since the marina was constructed without dredging in 1997. In December of 2009, DCM denied Petitioner's application for the Major Permit. The primary issue was the proposed new dredging in a primary nursery area which is prohibited by CRC rules. All of the area of the proposed dredging is within a primary nursery area and this area was designated a primary nursery area when the property was purchased. No dredging was proposed or authorized in the 1997 permit. Staff would note that stipulated fact #23 talks about the condition of the property in 1997, but a lot of time has passed since then.

Ms. Goebel reviewed the four statutory criteria that must be met in order to grant the variance. Staff and Petitioners disagree on all four criteria. Staff feels strict application of the rules will not cause the Petitioner unnecessary hardship. In fact, Staff believes that the rules cause hardships which are necessary for new dredging because this area is classified as a PNA. Staff does not believe that hardships result from conditions which are peculiar to the petitioner's property since siltation in marinas is common and a predictable occurrence. This site has long been designated as a PNA and this area has the characteristics of a PNA. Staff believe that Petitioners have caused their own hardships in this case. It has been a PNA for a long time, it is a functioning primary nursery area, siltation in a marina is a typical occurrence, and all of these things could have been anticipated and designed around in 1997. Staff finds it would not be consistent with the spirit of the rules to grant a variance in this case. A variance would allow new dredging at this location which was and continues to be a functioning PNA. Staff also notes that the mitigation measures that are now proposed by Petitioner were not evaluated by DCM and the other resource agencies during the permit process so Staff are not comfortable making any conclusions about mitigation measures at this time. To allow new dredging in a functioning,

designated primary nursery area over the specific objections of DMF would not help to secure the public's safety and welfare. Granting a variance would not preserve substantial justice. Dredging in this functioning primary nursery area was never allowed in the past and to allow dredging at this time would not preserve substantial justice as there is no fairness in changing the rules for one marina but not all the marinas located in a primary nursery area along the coast.

William Raney, Jr. of Wessell & Raney LLP, represented Petitioners. Mr. Raney stated Patricia Bennett, owner of Bennett Brothers, as well as Bruce Marek, consulting engineer of the project, are both present. Mr. Raney stated there was a misunderstanding with the permit application and the review by the agencies. You will note in the materials that you have been provided that the staff report for this project indicates that there would be dredging to minus twelve feet throughout the footprint of the proposed dredging. The actual application indicates that the dredging under the docks was to be to minus six feet tapered down to a natural contour at minus twelve feet as it gets out further into the marina. You will also note that some of the comments from the agencies indicated that they believed that the dredging requested was to minus twelve feet. In addition to that, the request that we are making today is to not go the full six feet that was originally requested, but just to the minus 4.5 feet. That will float the docks and will be more or less equivalent to the depths when the original construction occurred.

Jerry Old made a motion that strict application of the rules cause the Petitioner unnecessary hardships. Renee Cahoon seconded the motion. The motion passed with twelve votes (Mitchell, Webster, Simmons, Wynns, Bissette, Peele, Weld, Veronica, Cahoon, Old, Wilson, Elam) (Shepard abstained).

Jerry Old made a motion that hardships result from conditions peculiar to the Petitioner's property. Renee Cahoon seconded the motion. The motion passed with nine votes in favor (Mitchell, Simmons, Wynns, Bissette, Peele, Weld, Old, Wilson, Elam) and four against (Webster, Shepard, Carter, Cahoon).

Bill Peele made a motion that the hardships do not result from actions taken by the Petitioner. Charles Elam seconded the motion. The motion passed unanimously (Mitchell, Webster, Simmons, Wynns, Bissette, Peele, Weld, Shepard, Carter, Cahoon, Old, Wilson, Elam).

Bob Wilson made a motion that the variance will be consistent with the spirit, purpose and intent of the rules; secure public safety and welfare; and preserve substantial justice. Bob Wilson added the condition that Petitioners be permitted to dredge to -4.5 MLW plus allow another half a foot to ensure they reach their 4.5 foot depth. Jerry Old seconded the motion. The motion passed with nine votes in favor (Mitchell, Simmons, Wynns, Bissette, Peele, Cahoon, Old, Wilson, Elam) and four against (Webster, Weld, Shepard, Carter).

This variance was granted.

Lawing (CRC-VR-10-02) Chowan County, Boathouse

***Lee Wynns stated he has a business on the Chowan River, but it will in no way effect deliberations on this variance request. ***

Christine Goebel of the Attorney General's office represented Staff. Ms. Goebel stated Petitioner proposes to construct a 14' x 28' boathouse by building a roof over an existing boatlift attached to an existing pier and platform in Edenton, along the Chowan River in Chowan County. The Petitioner's property has approximately 50 linear feet of shoreline. DCM denied Petitioner's application based upon inconsistency between the requirements set forth in 15A NCAC 7H .0208(b)(6)(G) which states that boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Ms. Goebel reviewed the stipulated facts in this variance and addressed the four statutory criteria. Staff does not believe that strict application of the rules cause the Petitioner unnecessary hardship. From the existing pier, boatlift and platform Petitioners have been able to utilize their pontoon boat. Staff do not believe that hardships are a result of conditions peculiar to Petitioner's property as all of the lots within the subdivision also have 50 linear feet of shoreline. Staff and Petitioner agree that none of the hardships result from actions taken by the Petitioner. Staff does not believe that this variance request would be consistent with the spirit, purpose or intent of the rule. Petitioners raise some takings claims; however Staff does not believe that these claims are right. Staff feel that substantial justice is preserved if the variance is denied as 50 feet of shoreline is not close to 75 feet of shoreline. This policy is a statewide policy and the minimum shoreline requirement must be applied consistently.

Pierce Lawing, Petitioner, stated I am a scientist and an engineer and spent 36 years with NASA but I am not instructed in matters of law. This is an objective situation. This rule usurps the power of riparian neighbors who have already approved what I want to do. I am in tune with the environment, both preservation and intelligent use. I object to some of the verbiage used in Staff's position including the preservation of aesthetic value of our coastal resources by preventing clutter and excessive structures.

Melvin Shepard made a motion to support Staff's position that strict application of the applicable development rules, standards or orders issued by the Commission will not cause the Petitioner unnecessary hardships. Joan Weld seconded the motion. The motion passed with twelve votes in favor (Mitchell, Webster, Simmons, Wynns, Bissette, Peele, Weld, Shepard, Carter, Cahoon, Wilson, Elam) and one opposed (Old).

Veronica Carter made a motion to support Staff's position that hardships do not result from conditions peculiar to the Petitioner's property as all the lots are 50 feet in width. Lee Wynns seconded the motion. The motion passed unanimously (Mitchell, Webster, Simmons, Wynns, Bissette, Peele, Weld, Shepard, Carter, Cahoon, Old, Wilson, Elam).

Veronica Carter made a motion that hardships do not result from actions taken by the Petitioner. Lee Wynns seconded the motion. The motion passed unanimously (Mitchell, Webster, Simmons, Wynns, Bissette, Peele, Weld, Shepard, Carter, Cahoon, Old, Wilson, Elam).

Joan Weld made a motion to support Staff's position that the variance would not be consistent with the spirit, purpose, or intent of the rules; would not secure public safety; and would not preserve substantial justice. Melvin Shepard seconded the motion. The motion passed with twelve votes (Mitchell, Webster, Simmons, Wynns, Bissette, Peele, Weld, Shepard, Carter, Cahoon, Old, Elam) and one opposed (Wilson).

This variance was denied.

SPECIAL PRESENTATION

Jim Gregson stated Ed Brooks passed away last month after a double lung transplant at Duke University. Brenda McDonald, Ed's wife is present at the meeting today. Jim presented the Order of the Longleaf Pine for Ed Brooks to Brenda on behalf of Governor Perdue.

Bob Emory presented the Eure Gardner award for Ed Brooks to Brenda on behalf of the Coastal Resources Commission.

PUBLIC COMMENT

There were no public comments.

PRESENTATIONS

Legislative Advisory Subcommittee on Offshore Energy Exploration – Recommendations
Doug Rader, Co-Chair Legislative Subcommittee

Doug Rader stated this is the first public presentation of the findings and recommendations of the Legislative Subcommittee on Offshore Energy Exploration following the presentation to the President Pro-Tem and the Speaker of the House. We spent a year after the initial authorization by Mr. Hackney and Mr. Basnight in exploring the implications, both cost and benefit, associated with oil and gas related exploration and development. After our charge was expanded in April 2009, it included other alternative energy opportunities in the coast and offshore waters of North Carolina. We presented an interim report in May 2009. In the intervening time we had a total of eleven meetings during twelve active months. We listed to more than 30 professional witnesses, held public hearings in each region of the coast and inland at most of our meetings. We also assembled a very large web-based information portal on both environmental, economic, and governance related material related to offshore energy exploration. The membership on the panel was 24 citizens. There was excellent work by Dr. Jeff Warren of the Division of Coastal Management as well as a wide array of other stakeholders.

We were asked initially to look at the way the federal governance mosaic interacts with North Carolina's and the opportunities that this created for North Carolina to engage in federal decision making related to the offshore waters off of North Carolina. We were asked to examine the relevant federal legal authority related to this area and the implications on the nation's energy supply including the best estimates available for what oil and natural gas lie there, the likely financial impacts including the cascading economic impacts of any development that might occur, the likely environmental impacts of exploration and development with a variety of specifics, and the likely impacts mediated through environmental impacts and the support infrastructure on the people and citizens of North Carolina. The charge was expanded to do all

of these things for other energy sources. We approved our final report on April 13. One week later the Deepwater Horizon drilling rig in the Gulf of Mexico blew out. This changed some of the premise on which we were working. One of the main tasks of the committee was to begin assembling the historical and current information that is available related to the task with which we were charged. The second thing that happened during the time that we were meeting was the UNC Consolidated Universities completed their wind study off coastal North Carolina with a spectacular amount of highly technical investigation and analysis to a strong recommendation for where and how North Carolina might consider moving forward with wind. Wind could provide most if not all of North Carolina's net power needs.

The first finding of the Subcommittee is that the energy resources offshore North Carolina are in fact significant, both in terms of both potential oil and gas and also alternative energy sources. With each of those there are significant risk and significant benefits. The ongoing federal activities in the outer continental shelf off of North Carolina have the potential to significantly affect North Carolina. North Carolina has a significant opportunity to shape the ways in which federal decision making goes forward. At the time the report was approved and as of today, the current revenue and royalty sharing programs in the United States do not allow for North Carolina to benefit directly from payments associated with offshore energy, although there are some limited opportunities for alternative energy development. The coast is in fact changing. The anticipated rise in mean sea levels and perhaps the increase in intensity or frequency of tropical cyclones and extra-tropical storms have to be built into the development patterns. There is significant opportunity for energy to be produced in coastal and offshore North Carolina should North Carolina be able to rise to the challenges from these obstacles.

The first recommendation is that it is time for North Carolina to begin investing in understanding in much more detail the outcomes and implications of each of these likely scenarios. The scenarios that are likely include (1) that nothing at all happens here; (2) that it happens but it happens because people in Virginia are far ahead of us and more progressive; (3) there is leasing off of North Carolina, but no exploration occurs; (4) that drilling occurs, but no commercial deposits are found; (5) development drilling occurs and a commercial resource is found, but existing shoreside support facilities in Virginia or South Carolina end up providing the servicing and landing the product; (6) production occurs in North Carolina, only gas comes ashore, and (7) commercial resource is found, the production occurs, both liquids and natural gas come ashore in North Carolina. All of the likely alternative energy alternatives should be analyzed. We believe strongly that any of these alternatives, including fossil fuel and wind, need to be accompanied by the development and implementation of strong and adequate programs and practices that protect North Carolina's environment, communities and people and the state's economic well being as we build a new energy industry. It remains a strong feeling of the Subcommittee, as was memorialized in our interim report, that revenue sharing and fair treatment for the state of North Carolina is a necessary condition for pursuing either renewable or nonrenewable energy industries in the state. We also suggested strongly that the General Assembly look for opportunities to compete with our neighbors, but also coordinate opportunities. North Carolina needs a mechanism to make choices between these alternatives. We believe that a comprehensive advisory body on marine, coastal, and estuarine issues ought to be reinstituted to provide for coordination among different stakeholders and interest areas in terms of North Carolina's ocean future. We recommend strongly that these recommendations be taken seriously

and be adopted and handed off to the Governor's Scientific Advisory Panel on Offshore Energy so that the work that we were unable to get done can be continued. Funds should be made available from a variety of sources to be able to develop the information that is necessary to make reasonable choices among these opportunities. Finally, the State's agency staff be empowered by resources and staffing to be able to be a major player in representing all of us as citizens and the state of North Carolina in moving forward with this process.

By April 13, we were able to accommodate a variety of last minute changes including the fact that Secretary Salazar had abandoned his self imposed moratorium on offshore new oil and gas leasing in the outer continental shelf in the United States. He had proposed a focusing of effort in the western part of the eastern Gulf and in the U.S. southeast from Delaware down to north Florida as a new area for exploration. That hasn't changed. That is still the intent of that Department, but we were able to get this integrated into the report. A week later changes in policy are already beginning. MMS's job of managing the revenues and royalties from this asset and serving as the watchdog has already been announced to be ready to be adjusted. The report remains a solid foundation for North Carolina moving forward. But it makes the work of the Governor's Scientific Advisory Panel more imperative in ensuring the needs of North Carolina are fully protected moving forward.

Inlet Hazard Area Update (CRC 10-26)

Jeff Warren

Margery Overton

Jeff Warren stated the first rule is 7H .0304 which defines the boundaries of the inlet hazard areas. The development use standards inside of the boxes will also be discussed. These are the most studied pieces of sand and beach on the coast. There is nothing arbitrary about these boxes. In September 1978 the Priddy and Carraway inlet document, which is referenced in 7H .0304, came out. At the time the statistics that Priddy and Carraway used were the best that they could come up with. This report only projected ten years into the future. In 1988 the boxes, which are the current boxes, became inadequate. We have to develop some new methodologies to come up with new boundaries. This is a very scientific approach. This is well thought out and there are some really good methods that have gone to classify the hazard related inlet processes. This report that we are proposing is not saying that the inlets have greater hazards than the oceanfront; it just says that they have different hazards. These boxes are not exclusion zones for development, but they are zones inside of which it is a stand alone AEC. Inside of this box you can put use standards of what you will and will not allow when it comes to development. The current development standard is there is no commercial or multi-family greater than 5,000 square feet. No lots platted after 1981 can have a greater density of one unit per 15,000 square feet. There is no single family exception. The erosion rate in the current boxes uses the erosion rate in the adjacent ocean erodible area. We do have a new set of erosion rates and later this summer we are going to start with the erosion rate update for the entire oceanfront including the inlets. This inlet project is also working in tandem with what we are doing on the oceanfront and we expect to have actual inlet erosion rates and not the adjacent OEA rate. There is a need to update the inlet hazard areas. The report is out of date, we have new technology, we have new data, we have a new understanding, and we have new software that helps us get a better spatial feel for

what is happening. The report provided to you includes new methods and new analysis on our twelve developed inlets. It also includes the remaining inlets and keeps those boxes the same. That is not to say that those boxes should remain the same forever. If we do have the ability in the future with Staff and money to gather data, we should potentially look at those. However, they are the non-developed inlets and are the inlets that are a lower priority. We wanted to focus on the twelve developed inlets. We looked at shorelines and looked at what the shoreline was doing moving oceanward to landward and we also looked at what the shorelines were doing in the throat of the inlet and moving back and forth. We can say that for the most part, ten of the twelve inlets are oscillating inlets. As one side of the inlet erodes back, the other side has drumsticked out and is accreting. Dredging of the inlets and dredged disposal along there can overprint the natural signal. Two inlets are migrating inlets, Tubbs and New Topsail. There are two things we look at when we are dividing these inlet hazard boxes. One is the point along the shoreline as you step away from the inlet where the shoreline is no longer controlled by the inlet itself. The first part of the strategy was to walk along the shoreline figuratively and look in space and time and see at what point that you step away from the inlet do you start to move toward the oceanfront processes driving a majority of shoreline change. The first part of defining these boxes is the oceanward beach. Beach width was looked at also. Beach width is defined by mean high water and measured back to the first line of stable and natural vegetation. We also looked at things like historic inlet pathways, topography and geomorphology. There was a suite of data that we looked at and the Science Panel then used this information to decide how to draw the line. DCM was involved in crunching the numbers, but this report has the blessing of the Science Panel. We looked at bathymetry and the shoal system and how it affects the hydrodynamics. We also looked at where the inlet had been in its worst case scenario.

This is the first step in a two step process. The boundaries for each inlet were reviewed. This report has the boundaries from the Science Panel and are the Staff's recommendations for the new inlet hazard boundaries. This will be an expansion of the existing IHA AEC. This is considered a final report and a final set of recommendations. We also feel that this report and the change to 7H .0304 is only part of the issue. Now we have to talk about what you can do inside of the boxes. When we last looked at these boundaries, Staff came before the CRC with some draft policies to revise the existing language for development inside the new boxes. There were three major issues that the Science Panel was uncomfortable with. The first was the erosion rate. They did not want to use the adjacent ocean erodible area to determine the erosion rate for the inlets. DCM agrees. As we update the erosion rate for the entire oceanfront, it will include the inlets. The second issue was the setback. The Science Panel believed there was a better way to calculate setbacks in an inlet hazard area. Maybe the vegetation line is not the best point from which to measure the setback in an IHA. Maybe there is a better way to determine the setback.

Margery Overton stated the boxes are data driven and very scientific. The Science Panel strived to have consistency as we went through data analysis. There are a few places that other factors were used to modify the lines, but in most cases it is a straight mathematical projection. We calculated the rate and the standard error, multiplied by 30, and that gave us the 30-year risk line. This line shows the potential shoreline in thirty years. This line is an indicator of risk more than an absolute indicator of the shoreline in thirty years.

Spencer Rogers stated the Science Panel looked very hard at continuing to use the vegetation line as a measurement point but we couldn't come up with a way that would work on both sides of the inlet. What the Science Panel is trying to do with the inlet hazard area boxes is to identify an area where it is just as important to look at the inlet as it is to look at hurricanes and other ocean hazard definitions. The risk line is an attempt to give the CRC an equivalent of a 30-year setback based on the inlet oscillations not on hurricane oscillations. One distinct difference in the way those 30-year lines come out is in long-term erosion you expect the endpoint to be the worst point. That is not the case in the inlets. Margery Overton stated there are four things to keep in mind. The 30-factor is the same. A hybrid vegetation line is used instead of the vegetation line you would find on the lot today. Use a linear rate. There is an additional factor to improve the estimate of the projection of the linear rate. This would be the new setbacks and not the setbacks as they exist today.

Jeff Warren stated there are two things to consider. The first is the boxes. DCM and the Science Panel are very comfortable with the proposed inlet hazard area expansion. The next question is how to address development inside of those boxes. The Science Panel had some concerns about the erosion rate and using the actual updated rate. We agree and are going to incorporate that into the update. The other issues will be policy issues that we would like to get some direction from the Commission. How would the Commission like to see setbacks addressed inside of the inlet hazard area? Do you want to continue to use the first line of stable and natural vegetation, which can move very quickly? Do you want to use the current line of vegetation with a different setback factor? Do you want to incorporate where the adjacent structures are to make sure nothing goes further oceanward? Would you like to consider incorporating some of the risk lines? There are a couple of things you could do with a risk line. The first is it could be used as a static line which could be the setback. Another option would be to look at it as a zonation of the inlet hazard area. It is safe to say that not everything inside the box is at the same level of risk. The Science Panel has done an excellent job of identifying the areas of higher risk. Inside the boxes there could be two different risk zones that are identified by where the line is. Another way to apply this would be to put these maps on the website for public education. We are confident with the boxes but we need to wait to see what the Commission wants to do inside the boxes.

David Webster stated that he is concerned about using a street as a line. It seems arbitrary and may be hard to defend in a court of law.

Jeff Warren stated that Staff would come back with some GIS analysis, some lot counts, and try the zoned approach to begin discussion at the next meeting.

2010 Draft CHPP Recommendations (CRC 10-27) Jimmy Johnson, DENR

Jimmy Johnson stated the Coastal Habitat Protection Plan was voted upon in 2004 by the EMC, CRC, and MFC and approved. It was later signed by the three Commission chairs in the spring of 2005. As part of the enabling legislation, it is required that the CHPP be reviewed and updated at least once every five years. The DMF staff is the primary staff responsible for

revising and rewriting the CHPP with consultation from other DENR agencies, the CHPP team and the CHPP steering committee. Bob Emory and Joan Weld are the CRC's members of the steering committee. Mike Lopazanski, Scott Geis and Tancred Miller are on the CHPP team. These chapters of the CHPP have all been through review by the steering committee, the team, as well as a number of outside agencies. What I am seeking today is your authorization to go before the public in a series of public meetings to present this draft revised CHPP.

Back in the late 1980's or early 1990's it was observed that we were experiencing a decrease in our coastal fisheries recreational and commercial fisheries and notice of habitat issues. The CHPP came about as part of the Fisheries Reform Act of 1997. The Fisheries Reform Act completely changed the way that we manage North Carolina fisheries as well as the habitats that support the fisheries of North Carolina. Two of the primary changes are that we now manage fisheries through fisheries management plans and the CHPP. The goal of the CHPP is the long-term enhancement of coastal fisheries which are associated with each of the habitats. The CHPP is a document that we use as a reference and a guide for activities within the Department. It includes the latest scientific studies on requirements needed for the habitats as well as ecological value and threats to the specific habitats. It also includes scientific justification for recommended management changes. The recommendations you have before you have been agreed upon by the members of the CHPP team as well as the members of the steering committee. Every two years we will bring implementation plans before you. The CRC will vote on the implementation plans which are specific to the Division of Coastal Management. We have three public meetings set up for June 8, June 14 and June 17. We will incorporate the changes in July. We hope to have the final draft to the Commissions for their approval in September. This version of the CHPP has about fifty percent new and reorganized information. Some of the new issues that are included in this revision include sea level rise and climate change, invasive species information, pharmaceutical and chemical affects on habitats and fisheries, as well as updated mapping. As part of the Executive Summary we have included what we consider to be six major accomplishments over the past five years. The water column is the media where all fish live. It connects and it affects all other coastal habitats. All species utilize this significant habitat. Status and trends are new issues that are showing up in this revision of the CHPP. We need a comprehensive water quality monitoring coverage for our estuaries. You will see some of the accomplishments in the revised chapter. The oyster shell recycling program has been a tremendous accomplishment as well as the increase in the number and size of oyster sanctuaries. Submerged aquatic vegetation is often considered to be an indicator of healthy ecosystems. This is primarily due to its stringent water quality needs. We have seen a global and national decline in submerged aquatic vegetation. In North Carolina we have seen some increase in SAV, but how long we continue to see the increase will depend on the amount of rainfall over the next couple of years. We have had aerial imagery taken of the entire North Carolina Coast. We are still working to delineate those images. The adoption of the coastal stormwater rules has helped. The modified definition of submerged aquatic vegetation has been incorporated into the revised CHPP. Wetlands are the habitats that border the transition from water to land. Approximately 95% of our commercial and recreational fisheries are dependent on wetlands. We continue to track losses of wetlands and continue to work towards alternative shoreline stabilization techniques. Sediment criteria rules were an accomplishment. The modification of the CRC's dock and pier rules was another accomplishment. We need to continue to update our bathymetric maps. We need to continue to work to make alternatives to

hardened structures more attractive. We also need to continue to implement sand management strategies as that resource becomes more and more valuable. The hard bottom chapter has changed very little. This has to do with structures on our ocean floor such as coral colonies or wrecks in order to enhance fisheries or habitat in specific areas. It is a refuge for our fisheries and a secondary nursery area. A couple of new habitat areas of particular concern have been proposed off of Cape Lookout and Cape Fear. We need to continue to monitor these habitats and monitor the effect of beach nourishment on our fisheries. One of the chapters deals with ecosystem base management as well as strategic habitat areas. This chapter discusses the interaction among habitats and fisheries due to the diversity of the habitats here in coastal North Carolina. Many of the habitats overlap one another. One of the things that we see is that all habitats are affected by more than one threat. All threats affect more than one habitat. Also included in this chapter are strategic habitat areas. The CRC has been provided a chart of recommendations. These are the new recommendations that have been added to this final chapter. Each goal has a couple of new recommendations. One of the new issues the CHPP talks about is invasive species and we need to enhance control of these invasive species. Some of the habitat restoration activities and plans are a couple of new recommendations. An energy component has also been added. Another new recommendation was to be able to maintain adequate water quality for the support of present and future aquaculture activities. The state is on record in support of mariculture and aquaculture. We need to be sure that we have an adequate supply of good water and water quality to ensure that this activity maintains viability.

Joan Weld made a motion to recommend sending the CHPP Update to public hearing. Bill Peele seconded the motion. The motion passed unanimously (Mitchell, Webster, Simmons, Wynns, Bisette, Peele, Weld, Shepard, Carter, Cahoon, Old, Wilson, Elam).

ACTION ITEMS

Land Use Plans

John Thayer stated he wants to start with an update on the 7B Land Use Plan Review Committee. The Committee had its first meeting via conference call and the consensus was that Frank Rush would be the chairman of that committee and meetings would be held on the third Tuesday of the month in opposite months of CRC meetings. The committee scheduled four meetings. June will be the first face-to-face meeting and the committee will review the rules and the process. The members of the Committee are Charles Elam, Christine Mele, Ed Mitchell, Lee Padrick, Bill Peele, Dara Royal, and Tim Tabak. All committee meetings will take place in Morehead City. The meeting schedule is June 15, August 17, October 19, and December 14.

Mr. Thayer stated there are two plans for certification and one land use plan amendment. Staff has no issues with either of the two land use plan certifications. Staff also recommends certification as each land use plan has met the substantive requirements of the guidelines and there are no conflicts evident with state and federal laws.

Melvin Shepard stated he has not been receiving a copy of the land use plans in advance of the meetings. John Thayer stated the link to the full land use plan is provided in the Staff's report

that is provided in the mailout materials, but in the future will provide the link to the CRC members prior to the agenda packets being mailed.

Town of Caswell Beach LUP Certification (CRC 10-18)

Charles Elam made a motion to certify the Town of Caswell Beach Land Use Plan. Jerry Old seconded the motion. The motion passed unanimously (Mitchell, Webster, Simmons, Wynns, Bissette, Peele, Weld, Shepard, Carter, Cahoon, Old, Elam) (Wilson absent for vote).

Town of Oak Island LUP Certification (CRC 10-19)

Jerry Old made a motion to certify the Town of Oak Island Land Use Plan. Renee Cahoon seconded the motion. The motion passed unanimously (Mitchell, Webster, Simmons, Wynns, Bissette, Peele, Weld, Shepard, Carter, Cahoon, Old, Elam) (Wilson absent for vote).

Town of Navassa LUP Amendment (CRC 10-20)

John Thayer stated this is an amendment to an existing land use plan for the Town of Navassa. The Town of Navassa's plan was certified in 1999. Per our guidelines, when a document that was certified prior to 2002 is amended, they are not required to meet the new rules unless they amend more than half of the document. The Town of Navassa is in the process of updating their land use plan. They are amending policy per the provisions in our guidelines under .0901 that does not require meeting the management topic requirements. Their amendment is to clarify their provisions related to marinas. Their existing policy prohibits marinas. Marinas are still prohibited, but upland marinas may be permissible provided the appropriate standards are met. Staff does recommend the certification of the amendment and that it meets the substantive requirements as outlined in the 2002 guidelines section 7B .0901(a)(1) and (4) of the land use plan amendment guidelines. There are no conflicts with either state or federal law.

Jerry Old made a motion to certify the Town of Navassa Land Use Plan Amendment. Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Webster, Simmons, Wynns, Bissette, Peele, Weld, Shepard, Carter, Cahoon, Old, Wilson, Elam).

Rule Adoptions

NCAC 07H .0104 Application of Erosion Setback Factors (CRC 10-21)

Jeff Warren stated there are two grandfather clauses for oceanfront setbacks. There is a pre-CAMA, which is everything platted before June 1, 1979 falls under the exceptions under .0309(b). 7H .0104 is the post-CAMA grandfather that are any lots platted after June 1, 1979 to present can qualify for this exception. You have sent this rule to public hearing and there was one comment made at the last Commission meeting by Mr. Ferriss. He also submitted a comment in writing. The comment focused on the oceanfront setbacks regarding the static line specific to Oak Island. I spoke with Mr. Ferriss during the last meeting about some of his concerns and explained that his concerns were not related to this rule. There was also a set of comments that were sent to the Governor from the Town of Kill Devil Hills after the comment period closed that expressed concerns about 7H .0104. The Secretary's office asked Coastal

Management to respond to these comments. The comment was a misunderstanding of what this grandfather clause is. Staff recommends adoption of 7H .0104 which is a revision of the current rule. We are not adding or removing a grandfather clause. We are clarifying an existing rule. This rule revision says that if the erosion rate drops and the current rate is lower than the rate when the lot was platted, if platted after June 1, 1979, then you can use the lower rate. The current rule does not allow use of the lower rate if it is the most current rate. If you use the lower rate then you are limited in total floor area to 2,000 square feet and it can be no further oceanward than the landward most adjacent structure. The new rule says that if you can't meet the current rate, you can look at a lower rate in the past but we have some restrictions.

Charles Elam made a motion to adopt 15A NCAC 07H .0104. Jerry Old seconded the motion. The motion passed unanimously (Mitchell, Simmons, Wynns, Bissette, Peele, Weld, Shepard, Carter, Cahoon, Old, Wilson, Elam) (Webster absent for vote).

OLD/NEW Business

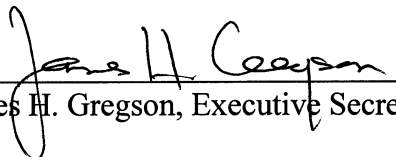
Chairman Emory stated he would like to talk about the reappointment process. There are seven Commissioners whose terms are expiring in June. Bob Wilson has indicated that he does not wish to be reappointed and this will be his last official meeting. Bob Wilson stated it has been his pleasure to serve the State and work with each of the Commission members over the past eight years. Jim Gregson stated the Governor's office has contacted the seven members whose terms are expiring and let them know who they need to contact if they wish to be reappointed. The Governor's office has also sent letters to the nominating Boards in the counties and the municipalities notifying them of the vacancies and the categories that need to be filled. The approach is a little different. The Statute says that the Governor decides which categories should be sent to each county and sends four of the vacancies to each of the counties for nomination. It looks like what they did this year is sent all the vacancies and told the Boards to nominate four people of their choosing. Joan Weld stated this year there is a nomination form that must be filled out by the Commissioner who wishes to be reappointed and this has not had to be done in the past. Chairman Emory stated nominations to the Governor's office are due by June 1.

Chairman Emory stated there are several items that have come up that need to be addressed at future meetings. The first is what to do when the sandbag moratorium expires. The groin Bill placed a moratorium on enforcement of sandbag removals. The moratorium will expire in September. Jim Gregson stated we should give a brief history of the sandbag rules and how we got to where we are with the extensions of sandbags and the Bill that extended the removal date. Mr. Gregson stated Spencer Rogers could give the history of past Science Panel recommendations as they relate to sandbags including the issue that came up about the potential for permitting larger tubes. Chairman Emory stated the second item is continuing the inlet hazard area discussion. We also need to talk about excavated marinas out of uplands and their interaction with primary nursery areas. There was also a desire to talk about marinas in primary nursery areas in general. It would also be helpful for the Commission to get an update on primary nursery areas and how they are designated and what criteria has to be met to be designated. Renee Cahoon stated she would like to see the Commission become more proactive. Our rules allow for innovative technologies and she would like to have the Science Panel take a look at things that are going on around the world and bring them to the Commission to look at.

Bill Peele stated he would like to form a subcommittee to meet with David Moye at his office about agriculture drainage. Vernon Cox, CRAC Department of Agriculture, should be involved. Jamin Simmons stated some innovation in agriculture is happening in eastern North Carolina and staff could research tailwater recovery.

With no further business, the CRC adjourned.

Respectfully submitted,


James H. Gregson, Executive Secretary


Angela Willis, Recording Secretary