

**NC COASTAL RESOURCES COMMISSION (CRC)**

**May 9, 2013**

**NOAA/NCNERR Auditorium**

**Beaufort, NC**

**Present CRC Members**

Bob Emory, Chair

Joan Weld, Vice Chair

Lee Wynns

Pat Joyce

Renee Cahoon

David Webster

Jerry Old

Joseph Hester

Ed Mitchell

Jamin Simmons

Scott Cutler

Larry Baldwin

Gwen Baker

**Present Attorney General's Office Members**

Mary Lucasse

Christine Goebel

**CALL TO ORDER/ROLL CALL**

Bob Emory called the meeting to order reminding the Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called.

Angela Willis called the roll. No conflicts were reported. Bill Peele was absent. Based upon this roll call, Chairman Emory declared a quorum.

Gwen Baker and Scott Cutler read their Evaluations of Statement of Economic Interest from the State Ethics Commission which indicated they did not find an actual conflict, but did find the potential for a conflict of interest. The potential conflicts identified do not prohibit service.

**MINUTES**

**Ed Mitchell made a motion to approve the minutes of the February 2013 Coastal Resources Commission meeting. Renee Cahoon seconded the motion. The motion passed unanimously (Weld, Wynns, Joyce, Cahoon, Hester, Webster, Mitchell, Simmons, Cutler, Baldwin, Baker) (Old abstained).**

## **EXECUTIVE SECRETARY'S REPORT**

DCM Director Braxton Davis gave the following report.

It is good to see all of you again, and welcome to Commissioner Baker. We had the opportunity to meet and discuss the program a few months ago in Washington, DC. Please let us know if we can help you in any way as you get up to speed. You should have before you the DCM Update Memo that covers the Division of Coastal Management's recent permitting, enforcement, rule development, planning and Coastal Reserve activities since the last meeting. As you'll see, permit numbers are up pretty much across the board. We had several notable major permits this quarter, including two significant permits to the DOT to address short and long-term needs for highway 12 on the Outer Banks: an emergency CAMA permit for a temporary renourishment project at the S-turns of NC-12 near Rodanthe; and a CAMA major permit for the DOT to construct a bridge over the breach on Pea Island. Our Policy and Planning Section is continuing to review our CAMA land use planning program, and we recently met with representatives of the Business Alliance for a Sound Economy and the Coastal Federation to begin engaging outside partners in this effort. With their help, we will be planning a regional workshop for late summer to discuss the future of the planning program with local governments and stakeholders down in Wilmington. We will plan to hold a second regional workshop to engage our more northeastern counties later this fall. On another note, planning staff have been reviewing the 33 public shoreline access grant proposals received under this year's RFP, and will be sending out invitations for final proposals soon. We anticipate awarding close to \$1.5M in this cycle.

We worked with the Executive Committee to develop today's agenda, and I will just highlight a few items. First, we are again starting your meeting off with a "Local Issues Forum." We really appreciate today's participation of Mayor Trace Cooper from Atlantic Beach and Greg "Rudi" Rudolph with the Carteret Co. Shore Protection Office, and we look forward to hearing about how the Town and County are approaching coastal issues and interacting with the Division of Coastal Management. We also have Steve Trowell from the Division's Washington District Office here to follow up on the November Commission meeting where we heard about agricultural drainage issues in Hyde County.

This afternoon we will focus on several rule changes that the Commission has discussed in prior meetings. First, Mike Lopazanski will present relatively minor corrections and updates for rules in 7I related to the Minor Permitting program. Next, Ted Tyndall and staff from the Regulatory section will walk you through a series of proposed rule changes that we hope will reduce unnecessary regulatory burdens and improve customer service at DCM. These are ideas that were presented and discussed at the February meeting, and staff have now drafted rule language that we are asking you to approve for public hearings and for the development of draft fiscal analyses. Frank Jennings will also be discussing recent challenges to the Division's interpretation of rules related to beachfront structures, and the Division's resulting change in our interpretation of 7J.0210.

After the break this afternoon, we'll have a follow-up discussion on the Commission's Science Panel on Coastal Hazards. This is something that was discussed at length at the February meeting, and based on your feedback, staff have worked with the Panel to develop a final draft charge and nominations process to help clarify how the Panel should operate, as well as how the Commission appoints members in general and for specific studies in the future. This is especially important as we are proceeding with the various studies under S.L. 2012-202, which requires the Science Panel

to revisit its past sea level rise study and the subject of inlet hazard areas, and to develop new reports for the Administration and General Assembly on these subjects.

Finally, we are planning for the next Commission meeting to be held here in Beaufort again in July for budgetary reasons, but hope to move the September meeting back to Jeanette's Pier in Nags Head.

### **CHAIRMAN'S COMMENTS**

Bob Emory stated the Commission will be reviewing some rule changes and rule interpretations. One of those involves combining houses and septic tanks as one structure for the purpose of placement calculations. There is on-going litigation on this topic and as we discuss it, please refrain from mentioning any specific properties that you may be aware of that might be part of the litigation. There has been some newspaper coverage about the plans for filling Science Panel vacancies. The article gave the impression that decisions had already been made, but the process is in the meeting materials and no decisions have been made.

### **LEGISLATIVE UPDATE**

Braxton Davis gave an overview of legislative bills that have implications for the coast, the Commission and the Division.

HB1011 surfaced yesterday and goes back to SB10. This bill makes changes to several state boards and commissions including the CRC and CRAC. It would end the terms of the current members, reduces the CRC to 13 members, reduces the CRAC membership to 20, and changes the way appointments are done. The House originally passed its version of the bill March 5 and the Senate did not concur. It went to Conference Committee. There is now a new version of the bill. This version keeps four members of the CRC until June 2014 (Wynns, Simmons, Emory, Cahoon).

SB612 has provisions that would require cities and counties to repeal any rule that is stricter than state or federal law. It would require environmental oversight boards and agencies, including the CRC, to repeal or rewrite any state rule that is stricter than a federal regulation. This bill passed the Senate on May 2 and is waiting on a vote in the House.

SB32/HB74 would amend the Administrative Procedures Act and calls for the periodic review and expiration of all environmental rules including those of the CRC unless the rules are readopted prior to December 31, 2017 or within ten years of a rule's most recent amendment. On May 7, the Senate bill received a favorable report. HB74 was originally identical to the Senate Bill, but a substitute was introduced two days ago that changed the House version to require that agency's review their current rules and determine which of three categories they fall into. The analysis has to be published on our website and OAH's website and has to lay out a categorization for every rule and receive public comment on the analysis for 60 days. Agencies then have to prepare a response to the public comments. RRC has the authority to determine the timeline of this process. This bill now goes to the House floor.

SB127 is a study bill that looks at customer service, economic development and transportation and establishes geographical administrative regions for the state that would look at conforming regional divisions of the Department, Department of Transportation, and the Department of Commerce within new regions. This bill has been referred to the Senate Commerce Committee.

SB151 gives local governments the authority to enforce public trust rights on ocean beaches seaward of the mean high water mark. This bill has been referred to the Senate Agriculture/Environment and Natural Resources Committee. HB300 gives cities and towns the right to enforce local ordinances on ocean beaches. This bill has been referred to the House Judiciary Subcommittee.

HB484/SB491 are related to the permitting of wind energy facilities. It establishes a permitting program for the siting and operation of wind energy facilities. This has been passed out of the Senate Agriculture/Environment and Natural Resources Committee. This is a centralized new permitting program within DENR for wind energy facilities which includes provisions which require a CAMA permit.

HB755 relates to the Department's electronic notice. This bill removes the requirement to publish public notices of certain permits, including CAMA Major Permits, in local newspapers. It allows the publication of these notices online on the Department's website or via email to interested parties. This bill was on the House Calendar but has been postponed to May 15. Crossover is May 16. Annually the Division is spending over \$25,000 on newspaper publications for Major Permits. The Division also spends \$7,000 on Minor Permit publications.

SB112 is in Committee today. This bill is something we put together based on one of the six priorities that DCM talked to the CRC about at the February meeting. This would eliminate the requirement for newspaper publication of CAMA Minor Permits. This would help local governments keep the fees associated with Minor Permits and standardize the type of notification for Minor and General Permits. The public notice in the newspaper eats up most of the fee that local governments get for Minor Permits. We also proposed an amendment to the Dredge and Fill law which would allow signed statements of no objection by adjacent property owners to be considered as an acceptable alternative to what is currently required to have a certified mail receipt for adjacent property owner notification and then a 30-day comment period. This will help expedite CAMA Major Permits as well and reduce costs associated with certified mail.

## **PRESENTATIONS**

### **Town of Atlantic Beach – Welcome**

#### **Trace Cooper, Mayor**

Trace Cooper stated public service is not an easy thing. People tend to not like government these days. There is a presumption that if the government is doing something then it must be bad. In Atlantic Beach we have a neighborhood in town that was developed 40-50 years ago and the original developers did not have any kind of stormwater controls in place at the time. There are no outlets, ponds, or swales. This is a low-lying area and it floods a lot. Since Hurricane Irene when it flooded heavily we have looked for a solution to retrofit the neighborhood. Through working with some engineers and a helpful property owner who has given us access to use 30-feet of his soundfront yard we came up with a solution that will address the problem, that is cost-effective and meets all of the applicable and appropriate regulations. Then I got a call from the adjacent property owner who said he had some concerns about what we were doing. I spoke with him to try to address his concerns and he said he didn't need to know what we are trying to do to know that he is against it. The US Congress has a 9% approval rating. Senators send out more negative press releases about their opponents than they do about things they are trying to achieve. They spend more time celebrating their opponent's defeats than working to make solutions that make our country better. I understand the frustrations. At the state and local level we get painted with the

same brush. It is my job to sit down with this citizen and make sure he understands that not everything we are doing is bad. If there are sincere concerns then we will address them and make them work. It is part of the job. Everyone in this room either works for or with government and understands that. I have discovered that there is another group of people who seem not to like government very much, the North Carolina General Assembly. I am not here to lobby against any particular bills and there are a few out there that affect local government. The Regulatory Reform Bill was mentioned and my take on that is the General Assembly thinks that they are in a better position to make decisions that affect the citizens of Atlantic Beach than the citizens of Atlantic Beach are. This will all get worked out. I have a lot more confidence in the General Assembly than I do in the federal government. I want to remind everyone that there are regulatory frameworks that are jointly administered and they work pretty well. It can serve as a model for making these changes. CAMA is state dictated regulation but it is administered both state and locally. From the ground perspective it works very well. If there is significant development then it deserves more scrutiny at the state level and they have the resources to do it. If it is more routine development then our people on the ground can issue permits and enforce them in a way that makes a lot of sense. It is cost efficient and it maintains the protections that we need for the coast and gives great customer service to our citizens. As we are going through a new Administration, I hope that we don't always feel that we have to reinvent the wheel. There are some things that we have been doing for a long time that work and we should keep those in mind as we go forward. I want to thank the Morehead City DCM office for being such good partners and providing good service to our citizens and practicing good government.

**Follow Up from November 2012 Meeting: Hyde County Drainage Issues (CRC 13-10)**  
**Steve Trowell**

Steve Trowell stated there are two issues with agricultural drainage that the Division gets involved with in trying to improve or maintain drainage. The first is clearing of snagging and the other is maintenance excavation. There is a clearing of snags exemption. There are BMPs that were developed through the coordination of different resource agencies within the Department. If the BMPs are followed then the Division of Coastal Management does not require a permit. Clearing of snags is the removal of wooden debris that finds itself in streams or other drainage features that slows the flow and impedes drainage. It entails the removal of blown over trees leaning into the water. The main BMPs that are to be followed are to clear the center half of the stream leaving the other vegetation and habitat that is created by the fallen trees in the banks. There is no bank disturbance allowed under the exemption. You must coordinate with the appropriate fisheries resource agency to make sure that we observe any moratoriums in effect. Clearing of snag work is typically done from small boats using chainsaws or other tools to cut the logs and limbs. The second drainage issue the Division is involved in is maintenance excavation. Maintenance excavation entails the physical removal of sediments from the channelized stream or manmade canal. As long as the project proposal adheres to a certain set of conditions, the main ones being the requirement of high ground disposal of the spoil material and the project cannot exceed one thousand cubic yards. These can be issued through the General Permit process. Along with drainage issues, salt water intrusion was another major issue in Hyde County. Structures, such as electric drainage pumps, are put in place to help drainage. There are low lying lands, relative to sea level, so when you dig a ditch the bottom of the ditch is at or below sea level and then the sound is slightly above sea level. It is difficult to get gravity to flow. Another feature is the flap gate that is placed on the sound side of the pipe to prevent salt water from passing through the pipe and into the ditches and fields upstream. In most cases we work with the farmers to keep them out of a permit situation. If possible, farmers like to use the road since the roadbed is higher than adjacent lands.

The roadbed can serve as a dike. Earthen dikes are another feature that can be used. We have discussed within the Division to get together with Hyde County and Washington County Soil and Water Boards as well as Natural Resource Conservation staff and see what we can do to develop a survey that we can submit to the area farming community to see what their issues are and see how DCM fits in and what we can do to improve the situation.

*\*\*At this time Chairman Emory, on behalf of the Coastal Resources Commission, recognized Allen Jernigan of the Attorney General's Office. Mr. Jernigan retired from state service on May 1, 2013 and has represented the Division of Coastal Management and the Coastal Resources Commission in several major court cases through the years. Chairman Emory presented Mr. Jernigan with the Eure Gardner Award\*\**

### **Carteret County Beach Commission Greg "Rudi" Rudolph, Shore Protection Office**

Rudi Rudolph stated most towns and counties operate through a Town Council and a Town Manager. There are a lot of commissions, boards and authorities. Some of them are purely advisory in nature. About ten years ago the Shore Protection Office and the Beach Commission started an offspring of the County bed tax. It is 5%. Basically the Bill stipulates that two of the five percent is for the sole purpose of beach nourishment. A lot of local bills have a little more breakdown of the bed tax. The Carteret County Tax Bill mandates the members of the Beach Commission. The Beach Commission is advisory but also has a funding source. The Bill says that the County Board must abide by the Beach Commission's decisions. The Beach Commission cannot contract for themselves only the County Board can contract. This brings a lot of people to the table when decisions need to be made. I am a county employee. The County Manager hires and fires my position. The Beach Commission makes the decisions, but the Towns get the phone calls from the public.

The beach shape and location are a function of storm activity. The sand supply changes with sea level. This added with the underlying framework causes erosion or accretion. A lot of the sand that we see on the beaches is re-worked sand from capes and inlets. For a long time we have been concerned about the dredging impacts at the Morehead Harbor because there is no new sand coming into the system. There is a sand deficit. There are also two different types of shorelines. This is important for us because Bogue Banks is a 25 mile long island. We have a large oceanfront and there are inlets. Inlets are more driven by orientation and require a different management approach. There were a lot of sandbags on Bogue Inlet and if those sandbags were not in place it would have looked very different. There is no amount of sand that we could have put in the channel that would have fixed it. Here we needed to move the channel. The resources the Commission and General Assembly have used, such as sandbags and terminal groins, are good tools for the inlet shoreline that would not work on the oceanfront shoreline. In the 1990s we had some major hurricanes. This is when the occupancy tax went into effect to get the dedicated funding needed to get the Beach Commission and Shoreline Protection Office to manage the entire island. We also set up a dense profile network which could quantify what happened to our beaches during these storms. At first, our general philosophy was to take volumetric measurements. When we did that we saw that Atlantic Beach had more sand in the system than other towns. Our nourishment philosophy was to pump the sand to our target and then after a hurricane we will be good. Over the past ten years the total cost has been about 90 million dollars to place about 11 million cubic yards of sand on the 25 miles of beach. Of the 90 million dollars, over half was paid by the federal government, about 35% was paid locally, and the rest was paid by the state. Currently, on the eastern side of the island we

have engaged the Corps of Engineers into some legal action on how they manage the inlet. The Corps agreed to lead how the inlet is dredged and maintained and that document will be called the Dredge Management Plan. The idea is that it will provide the eastern side of the island with the appropriate amount of sand that would mimic the sand budget. The other half of the island would be under our master plan. We are working with DCM on this. We are doing a fifty year plan. Under the static line exception plan, each town had to show the CRC the plan and monetary resources. Our master plan will be similar. With the static line exception we can take advantage of the real vegetation line. The funding aspect is interesting. Our funding model is for the next 25 years of nourishment. It will cost 187 million dollars to do all 25 miles of Bogue Banks. We can use half of the County funds from occupancy tax, 25% will be local (Town) funds, and a state match of 25%. The state match is becoming problematic. This creates a 50 million dollar hole that we are trying to plug.

### **Update on DCM Beach and Inlet Management Activities (CRC 13-12)**

**Matt Slagel**

Today's presentation will be about a couple of different efforts that the Division has been pursuing related to beach and inlet management, specifically sediment management. Sediment compatibility is one of the primary considerations as we are planning and permitting projects. The lack of sediment compatibility can have an effect on the local erosion rate. If the sediment is finer than the native beach then the erosion rate can increase and the quality of the fill plays a role in the longevity of the project which has financial implications. Sediment compatibility is also important for biological communities, recreation and aesthetics. Prior to the current sediment criteria rule (7H .0312), the rules were limited to 7H .0308 which stated that nourishment sediment shall be compatible with existing grain size and type. There was no more information on what compatible meant or any quantifiable measure. In recognizing that potential negative impacts could occur, in 2002 the CRC asked the Science Panel for recommendations. Some of their recommendations led to the existing rule that we have in 7H .0312 which became effective in 2007. The rules took the previous language and provided quantifiable measures, defined compatible, specified the types of data, and the process for collecting the data. There is a two-fold data collection effort. The first is characterizing the native beach where the fill is proposed to be placed. The second part is characterizing sediment in the borrow area. For the recipient beach a beach profile is required which helps calculate volumes. Along those profiles sediment sampling must occur at each profile to characterize the native grain size and mineralogy. In addition to these things, an applicant must calculate the number of sediments and shells that are greater than three inches in diameter. In the borrow areas it gets a little more technical. Swath bathymetry is required. This is data that is collected from a ship that tells you what the depth of the sea floor is. Sidescan sonar is an acoustic image that is collected which will help to know the softness or hardness of the bottom material. Geophysical imaging helps you to know what is beneath the seafloor. Vibracores are cylindrical cores that are sent through the sediment and brought to the surface to perform grain size analysis. All of these data are now specified in the current rule. The goal is to meet the sediment criteria thresholds to ensure that beach material being placed on the beach matches with the native beach. Currently there are a couple of rule changes that are ongoing. Changes in the rule will reduce sampling requirements for Offshore Dredged Material Disposal Sites and all maintained navigation channels. The public comment period for this proposed change ends June 14. A public hearing was held on May 2 and no public comments were received. This rule change has an anticipated effective date of September 1. The Division is also considering additional changes. We want to balance minimizing the risks of incompatible sediment and ensuring that rules are not overly burdensome or expensive for permittees. We have held discussions with coastal engineers,

geologists and local sand managers. These discussions have revealed general support for the sediment criteria rules. They have also revealed a few suggestions. Draft rule language for the Commission's review should be ready for the July meeting. There are four general changes under consideration. The first is to allow single-beam bathymetry with adequate line spacing rather than requiring 100% coverage with swath bathymetry for borrow sites. This would reduce costs. However, for the cost of swath bathymetry the applicant gets more certainty about the resource and the swath allows backscatter data to be collected at the same time. Another change under consideration is to allow more flexibility in vibracore plans, especially for smaller borrow areas. Currently, for each borrow site, the rules require no less than ten evenly spaced cores or one core per 23 acres, whichever is greater. The third change is to expand the granular "native = 5%" criteria to allow slightly more coarse sand sediment to be placed on the beach. The last change being considered is to allow excavation depths to exceed the maximum core depths, only where geophysical sub-bottom data or other information clearly indicates the sediment below the maximum core depth is beach compatible.

There is inconsistent federal and state funding for shallow-draft inlet dredging. Many dredging projects in the state have not been funded in a presidential budget since 2005. Hurricane Sandy provided some federal relief funds for Lockwood's Folly inlet, Carolina Beach inlet and Oregon Inlet. There are uncertainties surrounding the Corp's side-cast dredge "Merritt" which has been used extensively in the state for maintenance of these shallow-draft inlets. The Division has partnered with the Division of Water Resources to draft a request for proposals for a permitting cost study. The goal of the cost study would be to determine the costs in both time and money of obtaining federal and state permits at the local level to dredge to current authorized dimensions or for deeper authorizations. The inlets that would be considered in this cost study would include Bogue, New Topsail, Carolina Beach, Lockwoods Folly, and Shallotte. The Division will assist with identifying existing resource data that are available. The estimated cost for this study is about \$30,000 total which will be split 50/50 between state and local funding. The USACE Regional Sediment Management Program is a national program where the different districts around the country can apply for competitive funding for projects that seek to implement the regional sediment management concept. This option will also be explored.

There are a few bills in the Legislature that have been introduced that pertain to dredging. SB58 would increase vessel registration fees to support shallow-draft inlet dredging. It would also contribute 1/6 of 1% of the gas taxes for dredging. This bill has passed the Senate, passed the first reading in the House, and has been referred to the Committee on Commerce and Job Development. Estimates indicate that this would raise six million dollars annually. HB983 would use 1/2 of 1% of the Highway Fund from gas taxes on shallow-draft inlet dredging. This bill has been referred to the House Committee on Commerce and Job Development. HB707 would require a dredging permitting cost study in line with the study described earlier and require DENR to assist local governments with obtaining USACE dredging permits. This bill has passed the House and has been referred to the Senate Committee on Agriculture/Environment/Natural Resources.

### **PUBLIC INPUT AND COMMENT**

Cliff Ogburn, Town Manager for the Town of Nags Head, stated I am here to speak to you about an item on your afternoon agenda which is of great concern to the Town. The item is the discussion of 15A NCAC .0210, Replacement of Existing Structures. I want to thank Frank Jennings for meeting with the Town on Monday to discuss this issue. What I understand is that DENR's primary mission is to protect North Carolina's environment and natural resources. The Division of Coastal Management works to protect, conserve and manage North Carolina's coastal resources through an



integrative program of planning, permitting, education and research. Coastal Management is part of the Department of Environment and Natural Resources which is responsible for keeping the state's environment healthy. When you choose to build or buy on the oceanfront you take risks. Those risks may come in the form of dramatic storms, nor'easters, or hurricanes that can destroy a home in a matter of hours. The risk may develop more gradually caused by the daily forces of wind, waves and tides. These forces cause North Carolina's beaches to shift and a beach may lose or gain sand. Erosion tends to occur faster in some areas than in others, especially near inlets and capes where sand shifts rapidly. An eroding beach may lose several feet of sand per year. All of this comes from the Department's website. I also understand that under North Carolina's Constitution Article 14 Section 5 that it shall be the policy of the state to conserve and protect its land and waters for the benefits of all its citizenry. To this end it shall be a proper function in the state of North Carolina and its political subdivisions to acquire and preserve park, recreation, scenic areas and to control and limit the pollution of air and water, to control excessive noise as part of the common heritage of this state's forests, wetlands, estuaries, beaches, historical sites, open lands and places of beauty. I also understand that under the Administrative Code 15A NCAC 7H .1705 that an imminently threatened structure may be protected only once regardless of ownership unless the threatened structure is part of an inlet hazard area or community that is actively pursuing nourishment. For the purposes of this rule a building and septic system shall be considered as separate structures. I also know that the Town of Nags Head recently completed a locally funded, 35-million dollar beach nourishment project, but before that we spent nearly 5 years and a million and a half dollars obtaining permits that would ensure that we would not harm the environment in our efforts to protect our shoreline. It was a very long, expensive process. What I don't understand is why now after all these years the rule is being interpreted in direct conflict with everything that I just read to you. How can you allow something seaward of the static line, seaward of the dunes, on the beach to be permitted? How is allowing a structure, in this case a septic tank, seaward of the static vegetation line and on the beach a good idea and in unison with protecting the North Carolina Coast? By treating houses and septic systems as one unit this is exactly what will happen. This is not something that you have to do. The court has not ruled that you have been interpreting the rule wrong since the inception of DCM or CAMA. Let the courts decide. Don't cave from potential threats and challenges. Don't run for legal sake and allow the continuance of these structures. That is in direct conflict with public safety and enjoyment of our state's beaches. This seems to me to reflect a policy decision for political purposes. Unfortunately this policy is not consistent with the purpose of CAMA, the CRC or DENR. It is not consistent with the best interest of the public. I am not sure what action you are being requested to take today, but I hope that it will be one that is taken to protect North Carolina's beaches and coasts. I have a letter prepared from Mayor Bob Oakes that I would like to read for you:

*Members of the Coastal Resources Commission,*

*Sometimes small changes have large implications. The recent Coastal Management decision to change how septic tank replacement and repair costs are calculated has bad consequences for the beach, specifically South Nags Head. The end results of state sandbag policy and septic tank policy are in South Nags Head. It's not a pretty picture. Broken septic tanks were scattered for months on the beach, and private homes continue to block the public beach. Do any of you think it's good for a septic tank to be laid east of the first line of vegetation and the frontal dune line? We've found that these tanks get washed out by the ocean. This happens more slowly if they are armored behind sandbags. But ultimately, the ocean washes over the bags and destroys the tank, frequently leaking sewage. We have had broken septic tanks laying on the public trust land for months at a time. Recently, a state court ruled that the Town had no jurisdiction over the public trust area commonly known as the public beach. We are dependent on the State to protect the beach. I have always considered the NC Division of Coastal Management and the Coastal Resources Commission to be*

*one of the strongest protectors of the coast and the beach. Making it easier to place a septic tank on the public trust area is bad public policy, and that will be the direct result of this change in interpretation. Please consider a rule that prohibits replacement of septic tanks east of the first line of vegetation and the frontal dune. Warm regards, Bob Oakes, Mayor.*

Bill Price stated I have recently seen a copy of the structure of the Science Panel. As I look through it, it appears to me that it is directed towards providing a single consensus opinion for presentations to the Commission. I look back at long ago history and it's like it was in the dark ages. I believe that it might be better to have a variety of opinions or at least all opinions including a minority opinion so the Commission can see the ideas and the facts as they are presented and make a decision based on that. In the February 2011 CRC meeting I asked three questions about sea level rise and I still haven't gotten an answer. I watched a copy of the video of the Science Panel and I don't expect I will get an answer. I guess I was very disappointed with the Science Panel's reaction to questions from the public. The 2011 accretion/erosion report had numerous errors and was misleading. The Director indicated that it would be corrected and I think that is good. There are at least seven theories of what causes beach erosion. DCM produced a report some time ago. We don't have a comprehensive report. We don't have a report of beach erosion of the coast of North Carolina that shows the potential problems of dredging and any evaluation of along-shore current by the latest technology. It is being done elsewhere and I was told by folks in the state of North Carolina that it could be done, but it just never has been. It seems to me that as critical as beach erosion is to the state of North Carolina that at some point somebody will do a comprehensive study. The port at Palm Beach Florida uses sand transfer pipes to move sand across the inlet and I can't understand why the CRC has outlawed them. It is more cost effective and is certainly less environmentally damaging than the dredging process they use.

Rudi Rudolph, Carteret County, stated I want to talk about the US Fish and Wildlife Service's recent critical habitat designation and how it may impact us. The loggerhead turtle was first listed as threatened in 1978. A critical habitat designation has not been proposed until now. It is apparent that this is an off shoot of a bunch of legal decisions that started in 2007. The first area where it came into play, the US Fish and Wildlife Service and the National Marine Fisheries Service had to do a reassessment of the stock. The group of loggerhead turtle that lives near us is still threatened. Further legal proceedings happened. Critical habitat will require another layer of review on all federal actions. For this reason alone, Carteret County is against it. The published rule also disclosed that special management considerations will be necessitated to address 12 threats. I don't know what the special considerations are. What is even more frustrating is a lot is done for turtles already. We are against this. This critical habitat designation has been placed on state beaches so what impact will it have on the CRC's rules?

### **CRAC REPORT**

Ray Sturza stated we discussed the ramifications of what had been known as SB10 and is now HB1011. This is probably the last meeting for this particular composition of the Coastal Resources Commission as it stands. In our discussion of that we touched on a few points that we want to impart to those of you who will remain, based on the proposed legislation. We would like to remind everybody that the Coastal Area Management Act was a partnership between local government and state government. The creation of the Coastal Resources Advisory Council was a compromise that sprung the legislation through the General Assembly in 1974. I hope you and your successors will recognize the regional and geographical balance of the Advisory Council as it pertains to some unique characteristics of the coast. The northern portions of the coast are

significantly different than the central and southern portions. We also want to emphasize the importance of the ancillary agencies that seem to have taken a majority of the hits as far as the re-creation of the Council goes, in particular the Department of Transportation and NC Sea Grant.

### **ACTION ITEMS**

#### **Adopt 15A NCAC 7I .0401 & 7I .0406 – Minor Permit Program**

**Mike Lopazanski**

Mike Lopazanski stated these rules are related to the Minor Permit program which is a local implementation and enforcement program established by CAMA for the expeditious processing of permit applications. Local governments administer these permits for the Division. These rules relate to reimbursement to local governments for participating in training workshops as well as a reference to the Minor Permit fee. Since 1983 we have been reimbursing local governments \$200 per LPO for up to three LPOs from a single local government. In accordance with RMIP we noticed the amount of reimbursement had not been updated in the rule. The Minor Permit fee is \$100 (7J .0204) and it was authorized by the CRC in 2000. However, there was an old reference to the Minor Permit fee in 7I .0406 that states that the fee is \$25. The two actions requested are to adopt these changes to correct the rules. A public hearing was held at the February CRC meeting and no comments were received.

**Jerry Old made a motion to adopt 15A NCAC 07I .0401. Larry Baldwin seconded the motion. The motion passed unanimously (Simmons, Old, Mitchell, Cutler, Webster, Wynns, Weld, Baker, Cahoon, Baldwin, Joyce, Hester).**

**Scott Cutler made a motion to adopt 15A NCAC 07I .0406. Renee Cahoon seconded the motion. The motion passed unanimously (Simmons, Old, Mitchell, Cutler, Webster, Wynns, Weld, Baker, Cahoon, Baldwin, Joyce, Hester).**

#### **Rule Change Overview, Proposed Changes to CAMA, Dredge & Fill Regarding Notifications (CRC 13-13) Ted Tyndall**

Ted Tyndall stated Braxton discussed at the February meeting the Division's initiative to perform a comprehensive review of its rules. We have prioritized several rules. The first is to provide greater flexibility in the use of the General Permit for docks and piers. The staff has looked at this and we are still working on rule language. The second priority was to simplify the use and lower the cost of the General Permit for boat ramps and associated structures. David Moye will present the proposed changes today. The third is to expand the use of the General Permit for wetland, stream and buffer mitigation. This is on the agenda today for the Commission to review draft rule language. The fourth is to reduce the regulatory burden related to beachfill projects. This was presented by Matt Slagel today and there is some good dialogue going on with stakeholders and we are moving in the right direction to have proposed rule changes in the near future. The fifth priority is to streamline the public notice and adjacent property owner notifications. Braxton talked about this in his opening remarks. One of the goals is to expedite the Minor Permitting while allowing the local government to keep more of the fee that they get. The public notice publication can eat up the entire fee.

**Amendments to 7H .2600 Wetland, Stream and Buffer Mitigation Permit (CRC 13-14)**  
**Doug Huggett**

**\*\*Bob Emory stated his employer is attempting to get into the mitigation bank business in North Carolina and already is in other states. There may not be a real conflict, but recused himself from the discussion and turned the meeting over to Vice-Chair Joan Weld.\*\***

Doug Huggett stated during 2003-2004 DCM staff brought the CRC a new General Permit to allow for mitigation sites that were under the authority of the Ecosystem Enhancement Program (EEP). The EEP was formed to try and reinvent the way North Carolina was dealing with compensatory wetland mitigation projects. Its goal was to try to do mitigation more on an ecosystem basis rather than small mitigation sites. Another benefit to the EEP model would be that applicants that may need compensatory wetland mitigation could utilize the EEP's mitigation and take the mitigation out of the permit process. If DOT was building a new road that needed mitigation, part of the plan and permit would have to include the wetland mitigation component which leads to delays in permit acquisition. The EEP concept takes the mitigation out of the individual permit stage and puts it in the hands of a DENR agency with assurances that it will be done in the proper way. There is a large amount of oversight that was built into the EEP mitigation process. Between 2004 and today quite a bit has happened in the compensatory mitigation world. In 2008, the EPA developed a new set of standards that deal with mitigation banks. Staff is recommending that we modify the General Permit language to broaden its scope and allow it to apply to all mitigation banks.

**Jerry Old made a motion to approve the proposed amendments to 15A NCAC 07H .2600 for public hearing. Ed Mitchell seconded the motion. The motion passed unanimously (Simmons, Old, Mitchell, Cutler, Webster, Wynns, Simmons, Cahoon, Baldwin, Joyce, Hester).**

**Amendments to 7H .1300**  
**GP to Maintain, Repair and Construct Boat Ramps – Expanded Activities (CRC 13-15)**  
**David Moye**

David Moye stated over the years when an applicant asks for a boat ramp permit two things accompany that. The first is that they want a small access dock to go along with it. The second is a way to stabilize the sides of the ramp to keep it from scouring over time. Routinely we have seen small groins constructed on either side of the boat ramp to keep it in place. Within the CRC's rules there are General Permits for docks/piers, a General Permit for boat ramps, and a General Permit for groins. These are all independent General Permits. Currently an applicant would have to have three permits for the dock, boat ramp, and groins. There is a \$200 fee for each and this costs the applicant \$600 for a relatively simple project that does not have a large impact. In an effort to streamline the process, DCM staff is recommending approving proposed amendments to revise 7H.1300.

**Jamin Simmons made a motion to approve the proposed amendments to 15A NCAC 07H .1300 for public hearing. Pat Joyce seconded the motion. The motion passed unanimously (Simmons, Mitchell, Cutler, Webster, Wynns, Weld, Baker, Cahoon, Baldwin, Joyce, Hester) (Old absent for vote).**

## **Discussion of 15A NCAC 7J .0210 Replacement of Existing Structures (CRC 13-20)**

### **Frank Jennings**

**\*\*Renee Cahoon** stated she spoke with the Town attorney to see if she could participate in this discussion. He issued his opinion which Commissioner Cahoon shared with the CRC Chair and counsel. Commissioner Cahoon made the following statement, "As Commissioner for the Town of Nags Head I am aware that there is currently litigation pending between the Town and some homeowners relating to DCM's interpretation of this rule. I have requested an opinion from Nags Head's attorney and Commission counsel on whether I should abstain or be recused from consideration from CRC 13-20. Neither attorney advised me to abstain based on the facts. The facts are that I do not reasonably foresee in the foreseeable future to have a financial benefit from the matter under consideration, it does not appear that the Town or any person with whom I am associated will incur a reasonably foreseeable benefit from a change in how the rule is interpreted, the rule interpretation was not requested by the Town and will not single out the Town of Nags Head for special treatment, the interpretation of this rule will be applied to all the CAMA counties. I have consulted with counsel and been advised that there is no reason for me to abstain and it is my intention to participate in this discussion.\*\*"

Frank Jennings stated the Commission's rules for the repair of existing structures within an AEC allows repairs to be made without a permit if the cost to do the work does not exceed 50% of the market value of the structure immediately prior to the time of the damage or the time of the request. DCM regulatory staff have been applying this rule in such a manner that septic systems servicing oceanfront structures were viewed as individual or separate structures; that is, a damaged septic system could not be repaired without a permit if the cost of the repairs exceeded 50% of its market value. Recently, the Division was challenged after determining that a damaged septic system could not be repaired because the estimated costs to repair the system exceeded 50% of the value of the system. As a result, the Division, Department, and members of the Attorney General's staff undertook a review of the Commission's rules and the Division's policies on this matter. The Division, the Department, and the members of the Attorney General's staff agree that the Commission's rules regarding repair/replacement, and the Ocean Hazard Areas of Environmental Concern, do not clearly state whether septic systems and houses should be treated as one structure for the purpose of the repair/replacement rule, or as separate structures. As a result of this review, the Division will now consider an oceanfront structure and its septic system as a single structure for the purposes of repair vs. replacement determinations.

Joan Weld stated that if the rule does not clearly state whether the septic system is separate then we need to clarify the rule. Lee Wynns stated he is opposed to having septic tanks on the public beach and wants to clarify the rule language so the Division can continue to enforce this rule as it has in the past. Renee Cahoon compared placing septic tanks on the beach to swimming in sewage and asked Commissioners how they would feel if a child fell into an open septic tank that has been there for months. We don't know that staff's interpretation for the past 14 years has been wrong and the courts have not ruled on this. This new interpretation is not the way we need to go.

**After discussion, Joan Weld made a motion for staff to bring back rule language examples showing proposed options and rationale for each that clarifies whether a house and its associated septic tank should be considered as one structure or separate structures. Structures on the beach should be addressed. Consequences, even unintended, should be shown for these options. David Webster seconded the motion. The motion passed unanimously (Simmons,**

**Mitchell, Cutler, Webster, Wynns, Weld, Baker, Cahoon, Baldwin, Joyce, Hester) (Old absent for vote).**

## **LAND USE PLAN CERTIFICATIONS AND AMENDMENTS**

### **Town of Swansboro Land Use Plan Amendment (CRC 13-16)**

**John Thayer**

John Thayer stated there are two items on the agenda, but only one is an action item. An updated memo was provided today at the meeting for the Town of Swansboro Land Use Plan Amendment. This is the third amendment by the Town and it is a simple change from one designation to another on the Future Land Use Plan Map. There is an associated change in a chart related to acreages. Staff has reviewed the request and found that it has met the substantive requirements of the 7B guidelines and there are no conflicts with the State's rules. Staff recommends certification.

**Pat Joyce made a motion to certify the Town of Swansboro Land Use Plan Amendment. Joan Weld seconded the motion. The motion passed unanimously (Simmons, Cutler, Wynns, Weld, Baker, Cahoon, Baldwin, Joyce, Hester) (Old, Mitchell, Webster absent for vote).**

The second item listed on the agenda is the Town of Nags Head's Land Use Plan Implementation Status Report. The Plans that are prepared or updated for using state grant money are required to provide the CRC with Implementation Status Reports which note the progress of their plan.

## **CRC SCIENCE PANEL UPDATES**

### **Draft Science Panel Charge from CRC (CRC 13-18)**

**Mike Lopazanski**

Mike Lopazanski stated at the February meeting the CRC saw a revised charge to the Science Panel that attempted to establish more formality and structure in terms of how they operate, how information comes back to the CRC, and how Panel members are chosen. There was also a presentation on the origin of the Science Panel. As part of the discussion, there was discussion about science and its role in policy as well as how science has been a part of the Commission's proceedings and factoring into decision making. The Commission reiterated their support for what the Science Panel brings to the Commission's discussions, particularly the more technical aspects of coastal processes and considerations for coastal hazards. The focus of the discussion about the draft charge was primarily on the membership of the Panel. We also talked about the use of ad hoc members to fill specific needs as they relate to a deficiency in a certain field. When we talked about the nominations of new members, the CRC wanted to see that the CRC, CRAC, DCM and Science Panel members would make nominations at the CRC meetings. There was discussion about the review of expertise and credentials and having that done in consultation with the Science Panel. There was some preference given towards peer-reviewed publications as a possible criteria used in determining the expertise and credentials of nominees. The CRC was interested in seeing staggered four-year terms. In order to have staggered terms it would necessitate splitting the current Science Panel into two and four-year terms to start. We have worked this into the charge. There was discussion about the replacement of Science Panel members due to non-participation at the discretion of the CRC Chair. These are all aspects that we have worked into the charge since February. There was some question about how information would be disseminated. The CRC wants to see documents before they are distributed for public comment and we have made that change. The CRC also wanted to add two additional members. There are 11 current members and

there will be four open seats. The new members' terms will be for four years. We took the CRC's suggestions to the Science Panel to get their feedback. They agreed that there needs to be a basis for evaluating credentials of nominees. The members felt that there are a lot of practicing coastal geologists and engineers that may not be published and should not be disqualified from being members on the Panel. They recommended not focusing on peer-reviewed publication, but a better way to evaluate potential nominees would be to look at their expertise and experience related to coastal hazards. They also felt that it was important to maintain a balance between coastal engineers and coastal geologists. There was some discussion about whether or not an economist would be useful on the Panel as a permanent member. They felt that the degree to which their assignments from the CRC and the context for those assignments that if there were a need for an economist then they could bring one in on an ad hoc basis rather than as a standing member. They also talked about the report format. In the current charge it is a more formal report format, but there are some aspects of their assignments where they would be looking at engineering technologies that would be more suitable as a memo to the Commission. They want to have the option of shorter recommendations for simpler assignments. In order to initiate staggered terms we polled the Panel members on who would be willing to start with a two year or four year term. It worked out evenly.

**Joe Hester made a motion to adopt the Charge to the Science Panel. Joan Weld seconded the motion. The motion passed unanimously (Simmons, Mitchell, Cutler, Wynns, Weld, Baker, Cahoon, Baldwin, Joyce, Hester) (Old, Webster absent for vote).**

#### **Science Panel Member Nominations Process**

**-Reappointments, Vacancies, Ad Hoc Committee, Nominations Committee (CRC 13-19)**

**Mike Lopazanski**

Mike Lopazanski stated nominations will come from the Advisory Council, the Commission, and the Science Panel. Once nominations come in they would be reviewed for relevant expertise and credentials by the CRC Subcommittee. The CRC Chair will then appoint them for a four year term. Ad hoc members may be added to extend the expertise of the Panel if a specific study calls for it. In order to handle nominations we anticipate having two calls for nominations. The first will be to fill Science Panel vacancies and the second will be for an ad hoc membership for the Sea Level Rise Assessment Report. Our intention is to do it shortly after this meeting. Letters will go out to the CRC, CRAC, and Science Panel asking for nominations for a specific seat. We would request that the nominator approach the nominee to be sure that they are interested in serving on the Panel. The nomination packet will be sent to the Division Director that would include a resume or CV that demonstrates the relevant expertise or credentials in coastal hazard processes. Nominations will be accepted for at least 30 days. We propose that the subcommittee review the nominations made up of the CRC Executive Committee and Science Panel Chair. This subcommittee will make recommendations to the CRC Chair for appointment. The Science Panel will also look at the nominees and make their recommendation to the Science Panel Chair. We could then have the CRC Chair announce the appointments at the July meeting. We would like to reappoint the existing Science Panel members at this meeting.

**Jamin Simmons made a motion to approve the Science Panel nomination process. Joe Hester seconded the motion. The motion passed unanimously (Simmons, Mitchell, Cutler, Wynns, Weld, Baker, Cahoon, Baldwin, Joyce, Hester) (Old, Webster absent for vote).**



Joan Weld made a motion to reappoint the current Science Panel members. Joe Hester seconded the motion. The motion failed with three votes in favor (Cutler, Weld, Hester) and seven opposed (Simmons, Mitchell, Wynns, Baker, Cahoon, Baldwin, Joyce) (Old, Webster absent for vote).

Ed Mitchell made a motion that the CRC Chair meet with the Executive Committee and the CRC Chair can reappoint the current members of the Science Panel. Renee Cahoon seconded the motion. The motion passed with seven votes (Simmons, Mitchell, Wynns, Baker, Cahoon, Baldwin, Joyce) and three opposed (Cutler, Weld, Hester) (Old, Webster absent for vote).

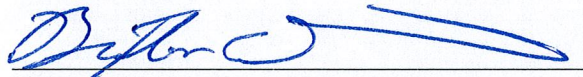
#### **OLD/NEW BUSINESS**

Ed Mitchell asked for clarification on the public comment period for the Critical Habitat Designation. Braxton Davis stated that comments have been requested from other state agencies with experience with the sea turtle issue. A letter will be drafted from the Secretary of the Department and the Department will likely express concerns about the lack of federal consistency review. There are also some concerns about the implications of the designation. The letter will highlight the programs and policies that are currently in place in North Carolina related to sea turtle conservation. The public comment period ends May 24.

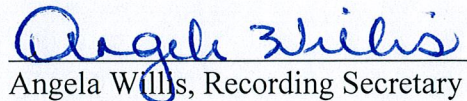
Larry Baldwin made a motion to approve the CRC Chair to formulate a letter of concern about the Sea Turtle Critical Habitat Designation. Ed Mitchell seconded the motion. The motion passed unanimously (Simmons, Mitchell, Cutler, Wynns, Baker, Cahoon, Baldwin, Joyce, Hester) (Weld abstained) (Old, Webster absent for vote).

With no further business, the CRC adjourned.

Respectfully submitted,

A blue ink signature of Braxton Davis, written in a cursive style.

Braxton Davis, Executive Secretary

A blue ink signature of Angela Wills, written in a cursive style.

Angela Wills, Recording Secretary