

**COASTAL RESOURCES COMMISSION (CRC)
JUNE 16-17, 2005
HILTON GREENVILLE
GREENVILLE, NC**

REVISED

Present CRC Members

Courtney Hackney, Chairman

Chuck Bissett
Renee Cahoon
Bob Emory
Charles Elam
Doug Langford
Jerry Old
Bill Peele

Larry Pittman
Melvin Shepard
Joan Weld
Bob Wilson
Lee Wynns
Joseph Gore (present on 6/16/05)

Present Coastal Resources Advisory Council (CRAC) Members

Robert Shupe, Chairman
Bill Morrison, Co-Chair

Al Hodge
Lee Padrick
Gordon Cashin
Wayne Mobley
Jimmy Johnson
Renee Gledhill-Earley
Ginger Webster
Ray Sturza

Ann Holton
Angie Manning
Lester Simpson
Webb Fuller
Carlton Davenport
Harry Simmons
Dara Royal
Spencer Rogers

Present Attorney General's Office Members

Jill Hickey
Merrie Jo Alcoke
Christy Goebel
Zoë Gamble

CALL TO ORDER/ROLL CALL

Chairman Courtney Hackney called the meeting to order and reminded Commissioners the need to state any conflicts.

Stephanie Bodine called the Roll. Dr. Jim Leutze was absent. Joseph Gore was absent on Friday June 17, 2005.

MINUTES

Doug Langford made a motion, seconded by Joan Weld to approve the April 7-8, 2005 and the May 13, 2005 minutes as written. The motion passed by a unanimous vote. (Bissett, Cahoon, Emory, Elam, Langford, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns, Gore)

EXECUTIVE REPORT

Charles Jones announced that Governor Easley appointed Joseph Gore to the CRC. Mr. Jones stated that Mr. Gore is a Special Assistant to the President of Brunswick Community College. He fills an "at-large" seat, and his term expires June 30, 2008.

Mr. Jones then gave a brief update on the following items:

Hurricane season

One week into hurricane season NC experienced it's first tropical storm, Arlene, that developed off the coast of Cuba. Arlene primarily affected the Gulf Coast, and was not a significant event for North Carolina.

Hurricane expert Dr. William Gray increased his prediction for the number of named tropical storms and hurricanes he expects this summer. Gray now calls for 15 named storms, up from the 13 he predicted in his most recent forecast, issued April 1. He also forecasts eight hurricanes (up from seven) and four intense hurricanes (up from three).

Wetlands Training

DCM will be holding a Coastal Wetlands Training Course for the field and permitting staff in Morehead City. The course is funded by a grant from the Coastal Nonpoint Source Program and will cover wetland ecology, wetland policy, plant identification, and coastal wetland delineation. Staff will spend one day in the classroom and one day in the field, visiting a variety of both lunar and wind tidal coastal wetland systems.

NC Budget proposals

In the NC Senate budget proposal announced last month, DCM's operating budget was reduced by \$16,200, a minor amount compared to the initial forecast and the proposed reductions to other DENR agencies. The House must concur with the Senate's budget or differences must be

reconciled before anything is final, but DCM is hopeful that the budget reduction will remain relatively small.

In the House version of the budget bill, DCM's budget would be decreased by \$320,000 for FY 2005-06. The budget would raise the cap on CAMA permit fees from \$400 to \$800.

NC Legislative Update

Legislative Bills

Several bills affecting the coast have been introduced during this session. They include:

- An Act to Enact the Beach and Coastal Waterways Conservation, Restoration, and Public Access Act
- An Act allowing the construction of temporary porous groin structures on beaches in Brunswick County to slow Beach Erosion
- An Act to Provide for Disclosure of Coastal Natural Hazards to Purchasers of Coastal Properties

In addition, it is hoped that the senate will also pass an enforcement bill that passed the house last year. This bill would increase the maximum civil penalty for CAMA permits to \$1,000 for minor and \$10,000 for major permit violations. Additionally, it would allow for the Division to recoup investigation cost as part of the violation assessment.

Finally, DCM has provided some background material concerning permit fees to legislative staff to provide background material for a potential permit fee increase bill. The most recent draft House budget contains a provision that would raise the cap on CAMA permit fees from \$400 to \$800.

NOAA Appropriations

The House Appropriations Committee has approved a FY06 appropriation of \$3.43 billion for NOAA, which is \$496 million below FY05 and \$152 million below the President's request. Based on initial reports, CZMA grants are slated for a \$2 million cut.

Other key programs subject to the steepest cuts include a 40% cut for the National Marine Sanctuaries program, a 93% cut for the Coastal and Estuarine Land Conservation Program, and no funding for Coastal Nonpoint Improvement Grants.

Federal Marine Legislation

Federal lawmakers last week introduced two bills aimed at ramping up research and support for marine programs. Both bills push for a beefed up role for the National Oceanic and Atmospheric Administration and greater research, investment and protection of ocean resources. And each comes in response to separate calls last year by the nonprofit Pew Oceans Commission and the U.S. Commission on Ocean Policy for better ecosystem-based management.

The House proposal, known as OCEANS-21, would establish a national policy to "protect, maintain and restore the health of marine ecosystems," put ecosystem-based management as a top priority, raise the profile of the National Oceanic and Atmospheric Administration, and create a Cabinet-level committee on ocean policy.

The second bill, introduced by Sen. Barbara Boxer of California, would restructure oceans governance, making NOAA independent and creating a Council on Ocean Stewardship. The bill revamps fishery management, creates coral protection areas, and authorizes funding for grants to reduce water pollution and improve monitoring

New Coastal Group Formed

The N.C. Shore & Beach Preservation Association; the Alliance for North Carolina Inlets; the N.C. Coastal Communities Coalition; and the Congressional Coastal Action and Advisory Committee have combined into a new organization calling itself the N.C. Beach Inlet & Waterway Association. The new group intends to serve as "one effective voice for the North Carolina coast" promoting governmental action, financing, education and advocacy for solutions to threatened beaches, inlets and coastal waterways.

Clean Beaches Week

The Clean Beaches Council is sponsoring National Clean Beaches Week from June 27th – July 3rd, 2005. North Carolina is one of several states to issue proclamations honoring Clean Beaches week this year.

Staff News

Caroline Bellis has moved from her field representative position in Wilmington to the Cumulative and Secondary Impacts analyst position in Raleigh. Caroline is currently on medical leave, but will move to the Raleigh office when she returns to work.

Sharon Madden is our new wetlands restoration intern. Sharon is currently pursuing her Master's of Environmental Management in Wetlands Ecology and Management at Duke University and is working with our Wetland Specialist in the Raleigh office

Our staff attorney, **Merrie Jo Alcock**, has relocated from Raleigh to the Morehead City Office.

Fred Landa is the new District Planner for the Washington Office. Fred comes to us from the State of Maine's Land Use Planning & Coastal Program where he was a senior planner.

David Vogt will be joining DCM beginning July 1. David has been working for the Dept. for many years in a variety of assignments in several different Divisions. Most recently, David has been working in the Dept.'s Budget Office as a GIS and statistician specialist. David will be working out of the Morehead City office.

Aida Khalil has joined the Raleigh office as a summer intern with the Coastal Hazards program. Aida received her Bachelor's degree with honors in Madrid, Spain and presently is finishing her Master's degree in Environmental Monitoring, Modeling and Management at King's College University in London. Aida's summer project will focus on different shoreline interpretation and measurement techniques in addition to the comparison of long and short-term shoreline trends for seven inlets.

Patrick Limber will be joining the Coastal Hazards program in Raleigh as our 2005-2007 NOAA Coastal Services Fellow. Patrick will work on an ambitious project entitled "Assessment of the North Carolina Shoreline Datum: Implications of Evolving Methodologies and Technologies." Patrick is a coastal geologist with a Master's degree from the University of California at Santa Cruz and a Bachelor's degree with honors from the State University of New York at Purchase.

Jason Kahn is the new field representative in the Elizabeth City Office.

The Kitty Hawk Reserve office has three new employees this summer:

- **Wes Stalls** is an intern who will be conducting educational tours on Currituck Banks NERR boardwalk. Wes is a senior at NC State University, working on a degree in botany.
- A second intern, **Sydney Fleming**, just graduated from UNC-W with a degree in Environmental Science. She will be working on projects specific to Kitty Hawk Woods Coastal Reserve.
- **Ann Wunderly** has joined the Reserve as our new environmental technician. Ann has a master's degree in meteorology and a BS in forestry. She is working on *Phragmites australis* removal monitoring, setting up a marsh monitoring program and helping with the day-to-day management of the reserve sites.

ELECTION OF VICE CHAIR

Joan Weld and Doug Langford agreed to fill the Vice Chair position. **By a written ballot Doug Langford was voted the Vice Chair.**

PRESENTATIONS

Nutrient Trading

Rich Gannon, DWQ, gave a presentation on Nutrient Trading stating the extent of trading is in the Neuse and Tar-Pamlico river basins. Mr. Gannon reviewed what formal trading was, stating that the general purpose of trading is providing the most cost effective means of getting a reduction in pollutant loading to meet a goal. He stated that you need an overall performance goal for the water body and you need to provide allocations to individual sources that are contributing to pollutant loading to that water body. He stated at that point you provide a market driven exchange of these allocations and allocation credits among the various polluters so that the most cost effective means of getting to that goal is reached. Mr. Gannon stated this is an individual-to-individual arrangement and all the individuals are under the same set of regulations. He stated that there are also in-lieu fee arrangements, and they are not required to be under the same regulations. He stated that one arrangement setup is for stormwater impacts in the Neuse Basin to be offset; developers have to get a partial reduction onsite and pay for the remainder of the reduction. That money goes to the Ecosystem Enhancement Program. He stated the Ecosystem Enhancement Program finds wetland and riparian buffer restorations within

the basin that get the equivalent nutrient reduction offsite. Mr. Gannon stated that the in-lieu fee approach provides for a more cost effective way of reaching the reduction goals, but perhaps not the most effective because it is not a purely market driven free market system operating cleanly as in trading proper situations.

Mr. Gannon stated that one condition to trading is the pollutant needs to be amenable to trading. He stated it couldn't be a pollutant that would accumulate at the point of discharge or release into the environment that doesn't mix because that would create hotspots and in turn create a local water quality problem. He stated that in NC to date trading systems have been set up for nitrogen and phosphorus. Both of these pollutants are soluble. Mr. Gannon mentioned another condition is that you need to have a differing cost effectiveness of reduction. Mr. Gannon stated potential negatives in trading to include hotspots and impoundments in the stream. The way to address this is to put provisions in the permit and the agreements that recognize the clause to allow hotspots to be addressed.

Status of Current and Proposed Beach Disposal/Nourishment Projects

Jeff Warren gave a presentation on the status of beach disposal projects. He stated that four separate construction projects were completed along NC oceanfront beaches between November 16, 2004 and April 30, 2005. Work is usually limited to the late fall to early spring in order to avoid impacts to nesting sea turtles. However, a fifth project that bypasses sediment from Oregon Inlet to Pea Island National Wildlife Refuge (NWR) routinely occurs in August and September based on a consistency review conducted at the completion of the inlet's terminal groin in 1990. The managers of the Refuge, the National Park Service and the US Fish and Wildlife Service, conduct extensive monitoring of the affected oceanfront, report little to no turtle nesting during late summer, and have the expertise to move nests prior to construction.

Mr. Warren stated that all five of these projects were navigation maintenance or dredged material disposal and not considered as "beach nourishment" per se. DCM staff is considering this distinction during its ongoing evaluation of sediment compatibility standards. The five projects are described below and listed from north to south.

OREGON INLET / PEA ISLAND: Dredging of Oregon Inlet ensures navigability and sand bypass to the downdrift beach and nearshore berm of the Pea Island NWR. During August and September 2004, a pipeline dredge placed almost 470,000 cubic yards onto the beach at a cost of \$3.4 million (100% Federal). During this same timeframe, a hopper dredge placed approximately 150,000 cubic yards on the nearshore berm at a cost of \$780,000 (100% Federal).

BRANDT ISLAND PUMP-OUT: Brandt Island is a confined disposal facility for dredged material associated with navigation maintenance projects associated with the NC State Port in Morehead City (MHC). It is located on the sound side of Ft. Macon and, upon reaching its sediment holding capacity, is routinely pumped out to make room for additional dredged material from ongoing maintenance (the last pump-out of 4.7 million cubic yards occurred in 1994). The most recent pump-out spanned November 2004 to January 2005 and placed approximately 2.9 million cubic yards of sediment on the oceanfront beaches of Ft. Macon and Atlantic Beach at a cost of approximately \$8 million (100% Federal). The State provided an additional \$2 million to

increase the pump-out volume and remove material placed in Brandt Island from smaller projects unrelated to the USACE Morehead City Harbor responsibilities. Additional sand from the dredging of the Morehead City inner harbor was also placed on Ft. Macon.

BOGUE INLET RELOCATION: The relocation of the main ebb channel in Bogue Inlet dredged a new 1.3-mile long ebb tidal channel that yielded 1.4 million cubic yards of sediment. Of this total amount, 715,000 cubic yards was placed on 4.5 miles of oceanfront beach along the westernmost portion of Emerald Isle. The remaining 325,000 cubic yards of sediment was used to construct the dike that blocked flow through the old ebb channel. This project was completed in April 2005 at a cost of \$9.8 million (\$3.8 million State and \$6 million Town of Emerald Isle).

FIGURE EIGHT ISLAND: The maintenance of Mason Inlet was completed in April 2005 and placed approximately 120,000 cubic yards onto the oceanfront beach of Figure Eight Island at an approximate cost of \$650,000 (100% Figure Eight Island). The initial maintenance cycle of Mason Inlet considered one large sediment excavation project every five years, however, smaller projects such as this one at a greater frequency (i.e., every 3 years) are being considered to be more economically beneficial.

BALD HEAD ISLAND: The final construction contract for the lower portion of the Wilmington Harbor Deepening Project dubbed "Clean Sweep." This was the first cycle of dredging in accordance with the project's approved Sand Management Plan that was part of the approved Environmental Impact Statement for the overall project. The Clean Sweep contract removed approximately 1.5 million cubic yards of beach quality sand from the navigation channel adjacent to Bald Head Island (BHI) and placed it on BHI beaches. The cost of this contract was \$7.1 million (25% State and 75% Federal).

Mr. Warren informed the CRC of upcoming projects that are approved for the next fiscal year to include Pine Knoll Shores, Wrightsville Beach, and Ocean Isle Beach. He stated that the Town of Ocean Isle is applying for a permit for an additional project (to be executed in conjunction with the Town's upcoming US Army Corps of Engineers project) to place sand along the island's highly erosive east end at Shallotte Inlet.

Approval of CRC/DCM CHPP Implementation Plan

Steve Underwood reviewed the comments from the MFC and EMC on the CRC/DCM CHPP Implementation Plan. Mr. Underwood also reviewed written comments from the Environmental Defense. Mr. Underwood stated that he attended the April 21, 2005 MFC meeting. The MFC would like to see DCM historical aerial photography data sets georectified together creating a continuous shoreline image that can be placed in a GIS environment for utilization by various state agencies. Mr. Underwood stated that the MFC also expressed interest in documenting and monitoring the small but cumulative impacts to wetlands, and the utilization of DCM's new Coastal Development Activity and Impact Tracking System. Mr. Underwood stated that he also attended the May 21, 2005 EMC meeting and there were several suggestions that the Implementation Plans address global warming impacts on coastal fisheries habitat. EMC members spoke of the effects of on-site storm-water systems within buffer zones of coastal residential areas and the need for a septic tank management plan. Mr. Underwood stated that

EMC members requested that the MFC determine if strategic habitat areas would be protected under the EMC's rules for Outstanding Resource Waters in coastal zones.

Mr. Underwood stated that the Environmental Defense suggested inviting representatives of the development community who have either engaged in environmentally friendly construction/design in the coastal area or are willing to be part of an effort to research and promote techniques, which reduce impacts to water quality. He stated that the Defense also suggested development of education/outreach materials for developers and homeowners. They suggested a brochure be given to a builder's association or homeowners association in order to expand awareness of impacts. Mr. Underwood stated that the Defense encouraged DCM and the other divisions to fund this effort earlier than the grant being donated by NCNERR, as development pressures along NC's coast is not decreasing. The Defense suggested this be a priority.

Bob Emory made a motion, seconded by Lee Wynns to approve the CRC/DCM CHPP Implementation Plan. The motion passed by a unanimous voice vote. (Bissett, Cahoon, Emory, Elam, Langford, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns, Gore)

The Physical Impact of Erosion Management Options on Ocean Beaches

Spencer Rogers, with North Carolina Sea Grant, gave a presentation on the physical impact of erosion management options on ocean beaches. After a brief review of How the Beach Works from the August 2004 CRC meeting and the different types of erosion, Mr. Rogers described the erosion management options: 1) avoid the problem: including no action, shoreline setbacks for new construction and moving threatened buildings; 2) dune management and planting; 3) shoreline hardening with seawalls or revetments; 4) sand traps with groins, jetties and breakwaters; and 5) beach fill. He stated each erosion management option has tradeoffs in effectiveness and impact on the adjacent beaches, which depend on the type of erosion present on a particular shoreline. The tradeoffs can often be severe. For example, using a seawall to harden a shoreline that is already experiencing long-term erosion will inevitably result in the disappearance of the beach. Mr. Rogers stated that groins and breakwaters could effectively trap sand to solve a local problem but do so at the cost of less sand reaching the adjacent beach. He said that beach nourishment benefits adjacent beaches but is expensive and requires regular maintenance by placing more sand to keep up with long-term erosion losses.

North Carolina, by CRC rule and more recently, state law has chosen to prohibit most, but not all, erosion control structures on the ocean beaches. The presentation outlined many of the historical justifications for that policy and why it has worked in this state. Some of the challenges for oceanfront erosion management in the future were outlined. There are choices for managing ocean erosion but no easy solutions.

PUBLIC INPUT AND COMMENT

Mark Brinson, member of the MFC's Habitat and Water Quality Committee, addressed the CRC regarding workshops on coastal habitat restoration NC. Mr. Brinson stated the objective is to provide a framework for compensatory mitigation of activities detrimental to coastal habitat in

estuarine and marine regions of NC. He stated this would provide resource management agencies with tools and guidance to help resolve trends toward deteriorating habitat as described by the CHPP. Mr. Brinson stated two workshops would be held. He stated the first workshop would determine what kinds of mitigation are scientifically feasible, how habitat condition should be evaluated and quantified, and what priorities for habitat restoration should be. The second workshops will produce recommendations for the MFC and other appropriate agencies to implement a program. Mr. Brinson stated that reports summarizing the workshops will be published, and draft recommendations will be developed for consideration and implementation by the appropriate groups. He informed the CRC of his email address if they were interested in attending the workshops.

Michele Duval, Environmental Defense, addressed the CRC regarding an environmental impact statement (EIS) the US Navy is preparing for a proposed submarine training range. This range would be located about 65 miles off the coast of NC near Camp Lejeune Marine Corps base, in Onslow Bay. Ms. Duval stated that the 661 square mile range would be used to train naval crews to use low-frequency sonar in anti-submarine warfare. She stated that this project is moving forward despite increasing evidence that sonar has a negative effect on marine life, including marine mammals and fish. Ms. Duval stated that high intensity sonar could result in death, as in the case of several whale strandings over the years, including one that occurred just this January at Oregon Inlet. She stated that a stranding event in 1996 in the Mediterranean Sea near Greece occurred concurrently with low-frequency trials conducted by NATO. Ms. Duval stated that it is not just the conspicuous deaths of charismatic megafauna that are of concern. Studies done with seismic air guns, a similar low-frequency device, showed significant decline in local abundance and catch rates of cod and haddock. Ms. Duval stated that regardless of whether this decline in abundance was due to flight or physical harm, the results of such low-frequency activity could have potential impact not only to the ecosystem but also the industries that rely on the health and sustainability of the area. She stated even the ambient noise from shipping traffic could cause the masking of biologically important sounds, and intense bursts of sound could have significant impacts on the health of living marine resources.

Ms. Duval stated commercial and recreational fishing, as well as other coastal activities such as scuba diving, is dependent on a healthy marine ecosystem. She urged the Commission to be proactive and to request an appearance by a representative of the Navy to outline the proposed geographic extent of low frequency sonar activities, the times of year when such activities will occur, the physical impacts to the environment, and the economic impacts to coastal municipalities, and the process by which the CRC will be able to provide comments on their project. Ms. Duval stated that although an EIS was originally due to be completed for public comment by the end of April 2005, it is still not forthcoming. She said given the Navy's history with regard to other proposed activities in NC, she believes it would be prudent for the Commission to be as informed as possible before the EIS is issued. Ms. Duval believes if the Navy is granted a permit to proceed, there could be lasting and devastating effects to the ecosystem and the economy.

PUBLIC HEARING

Public Hearings were held for the following three rules. However, no comments were received.

- 15A NCAC 7H .0304(4)(b) – AECS Within Ocean Hazard Areas
- 15A NCAC 7O .0105 – Reserve Components
- 15A NCAC 7H .0309 – Use Standards for Ocean Hazard Areas

PRESENTATION OF THE EURE-GARDNER AWARD

Chairman Courtney Hackney presented the Eure-Gardner Award to former CRC Chairman Eugene Tomlinson. Ruffin Poole, Special Counsel, presented, on behalf of Governor Michael Easley, the Order of the Longleaf Pine Award. Mr. Tomlinson has retired after serving 30 years on the CRC. Following this award ceremony was a reception to honor Mr. Tomlinson and his wife.

VARIANCE REQUESTS

Highfill & Young (CRC-CR-04-26)

Christine Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-04-26 and stated that the Petitioners proposed to construct a 14-foot by 32-foot swimming pool with a deck and a hot tub. The local permit officer denied Petitioner's application because it was inconsistent with the CRC's 30-foot buffer rule in that the pool, excessive decking and hot tub were proposed in the buffer area. Petitioner's subsequent re-designed project also does not meet the 30-foot buffer rule as well. The Petitioners seek a variance from the 30-foot buffer rule in 15A NCAC 7H .0209(d)(10) for most of the pool that will be located in the 30' foot buffer area.

Ms. Goebel stated that strict application of the buffer rule in this case would not cause any hardships that cannot be overcome by further design change. She also stated that staff noted the changes to the design better complied with the spirit of the buffer rule by reducing the decking and directing pool overflow into the existing stormwater system. However, a smaller pool could be proposed, or the pool could be located closer to the house and further out of the buffer area. Ms. Goebel stated that any alleged hardships do not result from conditions peculiar to the property. She stated the shape of the lot does not restrict the use of the property to cause a hardship. Ms. Goebel stated that staff noted that the petitioners did make an effort to redesign the project to meet the CRC's rules. They eliminated the hot tub, reduced the decking, and located the pool closer to the home. However, there is still room to design the pool and deck to meet the rules. Ms. Goebel stated that the petitioner's redesign does meet the spirit, purpose and intent of the rules. She stated that staff felt the project would secure public welfare, and preserve substantial justice because of the petitioner's attempts to reduce impacts.

Bob Emory made a motion, seconded by Doug Langford to grant the variance request. The variance was granted by a hand vote of 11 in favor (Cahoon, Emory, Elam, Langford, Old, Peele, Pittman, Weld, Wilson, Wynns, Bissett) and 1 opposed (Shepard).

Bill Price & Lawrence Sutherland (CRC-VR-05-04)

Ms. Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-05-04, stating the petitioners propose to construct a single-family residence, a guest cottage, a studio, a garage, driveways, walkways, utilities and landscaping. She stated that petitioners were denied a permit because part of the driveway is located in the 30-foot buffer area, and this proposed development is also inconsistent with Morehead City's land use plan. Petitioners seek a variance from the 30-foot buffer in 15A NCAC 7H .0209(d)(10).

Ms. Goebel stated that strict application of the buffer rule in this case would not cause any hardships that cannot be overcome by design change. She stated that there is room on the property outside the 30-foot buffer for most of the proposed development. Ms. Goebel stated petitioners could change the design to not place a driveway to the main house and drive on the grassy neck to access the waterward-most property. Ms. Goebel stated that there are conditions peculiar to the property. The lot contains two large upland areas suitable for development that meet the CRC's rules. However, it is connected by a narrow neck area that is entirely subject to the 30-foot buffer rule and prevents a connection to areas developed waterward of the neck. Ms. Goebel stated that any hardships are caused by petitioner's use and design. She stated petitioners could build the permissible structures as proposed, and drive on the grass for the portion of the driveway in the 30-foot buffer, or could omit the main house from their proposal without a permit. Ms. Goebel stated that petitioners have designed most of their project to meet the rules. She stated that allowing the petitioners to impact the buffer for a 10-foot wide driveway is consistent with the spirit, purpose and intent of the rules.

Bob Emory made a motion, seconded by Bob Wilson to grant the variance request. The variance request was granted by a unanimous voice vote of 10 in favor (Cahoon, Emory, Langford, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns) and 2 recused (Elam, Bissett).

Stephen & Margaret Burch (CRC-VR-05-05)

Ms. Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-05-05, stating that the petitioners propose to construct an 8' by 13' second-story addition to an existing single-family residence. The proposed development does not meet the 60-foot oceanfront erosion setback from the vegetation line. Ms. Goebel stated that approximately 12 feet of the existing home extends into the 60-foot setback area and the area for the proposed addition is landward of the 60-foot setback. The petitioners are seeking a variance from the oceanfront setback in 15A NCAC 7H .0306(a).

Ms. Goebel stated that any hardship in this case is a result of the petitioner's use and design. The petitioners have an existing structure on the property with a footprint of approximately 2000 sq. ft. and can redesign the existing interior space or build a new structure behind the erosion setback line that is cosmetically attached without a variance from the CRC. She stated that any hardship is not a result from condition peculiar to the petitioner's property. Ms. Goebel stated that the hardship in this case is the continuing erosion on the petitioner's lot, and that it is not caused by any actions taken by the petitioners. Ms. Goebel stated that the variance would not be

consistent with the spirit, purpose and intent of the rules in that the proposal does not protect the public safety and welfare and the proposal will not preserve substantial justice.

Doug Langford made a motion, seconded by Renee Cahoon to grant the variance as requested. The variance was granted by a unanimous voice vote of 11 in favor (Cahoon, Emory, Elam, Langford, Old, Peele, Pittman, Shepard, Weld, Wilson, Bissett) and 1 recuse (Wynns).

Paul King (CRC-VR-05-06)

POSTPONED AT PETITIONER'S REQUEST

NC Seafood Industrial Park Authority (CRC-VR-05-07)

Ms. Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-05-07, stating that the petitioners propose to construct three floating piers totaling 700 feet and 52 pilings to create 32 new slips at Broad Creek Marina in Wanchese Harbor. Ms. Goebel stated that the proposed pier, docks, and boat slips extend more than one-fourth of the width of the waters within the improved upland basin, and are about half the width of the basin. She stated that DMF expressed concern about the potential impact to navigation into and out of the harbor, and the US ACE recommended conditions be added to the permit requiring the full and free use by the public of all navigable waters at or adjacent to the project area. Petitioners seek a variance from the one-quarter rule in 15A NCAC 7H .0208(b)(6)(J)(iii) as well as from 15A NCAC 7H .0207(d), .0208(a)(2)(H) and .0208(b)(5)(H) for navigation of public trust area.

Ms. Goebel stated that while staff recognizes that petitioners could have avoided the need for a variance by tailoring their design to meet the rules, staff also recognizes the petitioners' authority to conclude that the proposal meets its legislative mandates and purposes. She stated that there is a hardship because it is a relatively wide basin, there would be a large area that could be used, and strict adherence to the one-quarter rule would prevent this. Ms. Goebel stated that the hardships result from actions taken by the petitioner in that they could have built closer to the 25% rule than the 50% proposed or could have arranged the piers in rows more amenable to public access instead of in a basin formation. She stated that the variance does not appear to be consistent with the spirit, purpose, and intent of the rules and could have negative effects on navigation, rights which the CRC rules aim to protect. Due to possible negative impacts on navigation, staff believes that the variance would not be in the interest of public safety.

Jerry Old made a motion, seconded by Melvin Shepard to grant the variance as requested. The variance was granted by a voice vote of 7 in favor (Emory, Elam, Old, Peele, Pittman, Shepard, Weld), 3 opposed (Wilson, Wynns, Bisette) and 2 recused (Cahoon, Langford).

David Hill (CRC-VR-05-08)

Merrie Jo Alcock reviewed the Stipulated Facts on Attachment B on CRC-VR-05-08 stating that the petitioner proposes to construct a 12' by 25' swimming pool with a deck. She stated that approximately 300 sq. ft. of the existing house is located within the 30 foot buffer area. Ms.

Alcoke stated the proposed pool is irregularly shaped and would measure 246 sq. ft. She stated that the project does not meet the CRC's 30 foot buffer rule and there is also 220 sq. ft of open decking within the buffer around the pool. Ms. Alcoke stated that the request also violates the Town of Ocean Isle Land Use Plan. Petitioner seeks a variance from the 30 foot buffer rule in 15A NCAC 7H .0209(d)(10).

Ms. Alcoke stated that strict application of the buffer rule will not cause any hardship in that pools are an amenity and the inability to build a swimming pool in the buffer does not create unnecessary hardships that would warrant a variance. She stated that any hardship does not result from conditions peculiar to the property, they result from actions taken by petitioner. She stated that the existing conditions were in place at the time the buffer rule was adopted, and the hardship is by petitioner's proposed use of the property. Ms. Alcoke stated petitioner's proposal does not meet the spirit, purpose and intent of the rules. She stated petitioners could remove portions of the existing deck and the concrete pad underneath it to allow the pool to be placed approximately 8 feet landward. Ms. Alcoke stated the project will not secure public welfare because it will increase impervious surface in the buffer.

Bill Peele made a motion, seconded by Bob Wilson to grant the variance request. The variance was granted by a voice vote of 8 in favor (Emory, Elam, Langford, Old, Peele, Pittman, Wilson, Wynns) and 4 opposed (Cahoon, Shepard, Weld, Bissett).

CONTESTED CASES

R&K of Dare County d/b/a/ Tan-a-rama Motel

This case was an appeal from the denial by the Local Permit Officer, of a request for a CAMA permit exemption for an oceanfront structure known as the Tan-a-rama Motel in Kill Devil Hills.

The Petitioners accepted all of the ALJ's findings of fact and conclusions of law. However, Petitioners offered additional findings of fact and conclusions of law to clarify the Judge's decision. The Petitioner's interpreted the decision to conclude that they demolished more of the motel than was permitted under the repair exception under the CAMA 50% rule. They also interpreted the decision as finding that all the parties involved agree that some repairs would have been permissible pursuant to 15A NCAC 7J .0210. The Petitioners requested that the CRC clarify how and to what extent they may repair the Tanarama, and offered proposed additional findings of fact and conclusions of law to clarify that the removal of the asbestos and the treatment of mold were separate from the initial repairs.

The Respondent filed no exceptions to the decision and urged the CRC to adopt the ALJ's decision as the Final Agency Decision. Respondent joined Petitioner in asking the CRC to clarify the ALJ's decision.

Jerry Old made a motion, seconded by Charles Elam to uphold the ALJ Decision and clarified that the Petitioner's shall be allowed to expend up to \$180,118 to repair the hotel in the manner specific in the insurance claim estimate, which states repairs deemed necessary to restore the hotel to its original use as a hotel/motel. The motion passed

unanimously with 10 in favor (Emory, Elam, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns, Bissette) and 2 recused (Cahoon, Langford).

Gregory v. DCM & Swearingen

This case arose out of a third party hearing request in which the Chairman granted a contested case hearing to Terry and Pennie Gregory (Petitioners) to challenge a CAMA Emergency General Permit and exemption issued by DCM (Respondent) to Michael and Linda Swearingen (Intervenor-Respondents). The Emergency General Permit authorized Intervenor-Respondents to replace their pier and platform on the Albemarle Sound destroyed by Hurricane Isabel. DCM also authorized Intervenor-Respondents to repair their non-conforming boathouse without a permit because it qualified as “repair”, an exception to the definition of development under CAMA.

The administrative law judge (ALJ) granted Petitioners’ motion for summary judgment on the grounds that Respondent erred when it failed to obtain pre-storm physical values from the local building inspector before determining that some of the structures covered by the CAMA General Permit could be rebuilt as “Maintenance and repair” as defined in 15A NCAC 7J .0210. The ALJ denied Petitioners’ motion for summary judgment on the grounds that Respondent erred in considering some of the structures covered by the CAMA General Permit as exempt repair work, while considering other structures covered by the Permit as storm replacement work. The ALJ also denied Intervenor-Respondents’ Motion to Dismiss on the basis of standing.

Both the Petitioners and the Respondent filed exceptions in part to the summary judgment decision.

Lee Wynns made a motion, seconded by Doug Langford that the CRC reverse the ALJ’s decision on the issue of DCM failing to consult the building inspector, and to uphold the ALJ’s decision on the issue of DCM considering the pier and boathouse as separate structures. The CRC also upheld the ALJ’s denial of Intervenor-Respondents’ Motion to Dismiss on the basis of standing. The motion passed unanimously (Cahoon, Emory, Elam, Langford, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns, Bissette). The CRC remanded the case back to the ALJ for a determination of whether the cost to repair the boathouse and associated catwalks exceeds 50 percent of the physical value of those structures.

I&S COMMITTEE REPORT

Mr. Emory presented the minutes from the I&S Committee (SEE ATTACHMENT FOR WRITTEN COPY). The CRC took the following action:

Mr. Emory moved that the CRC send 15A NCAC 7H .0308 Specific Use Standards for Ocean Hazard Areas to public hearing. The motion passed unanimously (Emory, Cahoon, Elam, Langford, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns) Bissette was absent during the vote.

Mr. Emory moved that the CRC send 15 A NCAC 7H .0207 Public Trust Areas to public hearing. The motion passed unanimously (Emory, Cahoon, Elam, Langford, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns) Bissette was absent during the vote.

P&SI COMMITTEE REPORT

Bill Peele presented the minutes from the P&SI committee (SEE ATTACHMENT FOR WRITTEN COPY). The CRC took the following action:

Mr. Peele moved that the CRC send 15A NCAC 7B .0801 Public Hearing and Local Adoption Requirement, .0802 Presentation to Coastal Resources Commission for Certification, and .0901 CAMA Land Use Plan Amendments to public hearing. The motion passed unanimously (Emory, Cahoon, Elam, Langford, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns, Bissette)

CRAC REPORT

Bob Shupe presented the minutes from the CRAC (SEE ATTACHMENT FOR WRITTEN COPY)

With no further business, the CRC adjourned.

Respectfully submitted,

Charles S. Jones, Executive Secretary

Stephanie Bodine, Recording Secretary