

NC COASTAL RESOURCES COMMISSION (CRC)
September 24-26, 2008
Sea Trail Resort and Convention Center
Sunset Beach, NC

Present CRC Members

Bob Emory, Chairman (absent 9/24/08)
Joan Weld, Vice-Chair

Chuck Bissette	Melvin Shepard
Charles Elam	Bob Wilson
David Webster	Lee Wynns (absent 9/26/08)
Bill Peele	Veronica Carter
Wayland Sermons	Ed Mitchell (absent 9/24/08 and 9/26/08)

Present Coastal Resources Advisory Council Members (CRAC)

Dara Royal, Chair
Penny Tysinger, Co-Chair

Bob Shupe	Judy Hills
William Wescott	Eddy Davis
Tim Tabak	Spencer Rogers
Randy Cahoon	Joe Lassiter
Dave Weaver	Joy Wayman
Nick Santoro (for Chris Mele)	Maximilian Merrill
W.H. Weatherly	Lee Padrick
Bill Morrison	Renee Gledhill-Earley
Joe Beck	Anne Deaton
Webb Fuller	Al Hodge
J. Michael Moore	Phil Harris
Frank Rush	Travis Marshall
Harry Simmons	David Stanley (for Don Yousey)
Bert Banks	

Present Attorney General's Office Members

Jennie Hauser
Allen Jernigan
Christine Goebel
Amanda Little
Ward Zimmerman

CALL TO ORDER/ROLL CALL

Vice-Chair Joan Weld called the meeting to order and reminded Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act.

Angela Willis called the roll. Melvin Shepard and Veronica Carter both indicated conflicts. Based upon this roll call, Vice-Chair Weld declared a Quorum.

Joan Weld announced that two Commissioners have been appointed and the CRC is now full. She introduced Veronica Carter and announced that Ed Mitchell would be in attendance tomorrow.

On Thursday, Bob Emory stated he is a friend with one of the attorneys that will be presenting today, but does not feel there is a conflict. Joan Weld stated she would recuse herself on one issue.

VARIANCE REQUEST

Town of Kure Beach – (CRC-VR 08-45) Kure Beach, Oceanfront Setback

Amanda Little of the Attorney General's Office represented Staff. Ms. Little stated the Petitioners applied for a CAMA minor permit to construct a dune infiltration system to treat stormwater at the existing ocean outfall at K Avenue and Atlantic Avenue in Kure Beach, New Hanover County. All of the proposed development is landward of the static vegetation line within the oceanfront setback. Petitioner has applied for a variance seeking relief from strict application of the Commission's ocean hazard rules 15A NCAC 07H .0306(a), 07H .0309(b) and 07H .0601.

Ms. Little stated there were no representatives present on behalf of the Town of Kure Beach, but there were representatives present from the Department of Transportation (authorized agent for the Petitioner).

Ms. Little reviewed the stipulated facts of this variance request. Staff and Petitioners agree on all four of the statutory criteria which must be met in order to grant the variance. Ms. Little further stated the NC Dept. of Transportation and the Town of Kure Beach are working to reduce the impacts to water quality and the restrictions of the use of the beach for swimming through this innovative dune infiltration system.

Charles Elam made a motion to support Staff's position that strict application of the applicable development rules, standards, or orders issued by the Commission cause the Petitioner unnecessary hardships. Lee Wynns seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Sermons, Shepard, Carter, Bissette, Webster).

Melvin Shepard made a motion to support the Staff's position that hardships result from conditions peculiar to the Petitioner's property. Lee Wynns seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Sermons, Shepard, Carter, Bissette, Webster).

Melvin Shepard made a motion to support Staff's position that hardships do not result from actions taken by the Petitioner. Charles Elam seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Sermons, Shepard, Carter, Bissette, Webster).

Chuck Bissette made a motion to support Staff's position that the variance request will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure public safety and welfare; and preserve substantial justice. Bob Wilson seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Sermons, Shepard, Carter, Bissette, Webster).

This variance was granted.

Wilmington Light Infantry Beach Club-(CRC-VR 08-47) Wrightsville Beach, Combined finger piers, T's and decks exceeding 4 sq.ft. per linear foot of shoreline

Amanda Little of the Attorney General's Office represented Staff. Ms. Little stated the Petitioners applied for a CAMA major permit to replace an existing docking facility with a new fixed pier, gazebo, and floating docks in Banks Channel in Wrightsville Beach, New Hanover County. The proposed development exceeds the combined total area of four square feet per linear foot of shoreline. Petitioner applied for this variance seeking relief from strict application of the Commission's ocean hazard rules 15A NCAC 07H .0208(b)(6)(D).

Ms. Little reviewed the stipulated facts of this variance request. She further stated that Staff and Petitioners do not agree on any of the four criteria which must be met in order to grant the variance. She introduced Ralph Mullis, WLIBC President, who represents Petitioner.

Jennie Hauser of the Attorney General's Office advised Mr. Mullis that if he speaks on behalf of the organization, the NC State Bar considers this to be the unlicensed practice of law. This is a relatively recent Bar ruling. After discussion, the CRC decided to hear from Mr. Mullis.

Ralph Mullis, President of Wilmington Light Infantry Beach Club, spoke on behalf of Petitioners. He stated that he had been authorized by the Club to pursue the variance request. He stated the intent of the club (43 members) is to provide a safe facility for the WLI Club and that is the only position that he has. Mr. Mullis reviewed the stipulated facts which he contends supports the granting of the variance.

Melvin Shepard made a motion to support Staff's position that strict application of the development rules, standards, or orders issued by the Commission do not cause the Petitioner unnecessary hardships. David Webster seconded the motion. The motion failed with three votes in favor (Wynns, Shepard, Webster) and six opposed (Wilson, Elam, Wayland, Carter, Bissette, Peele).

Charles Elam made a motion to support Petitioner's position that strict application of the development rules, standards, or orders issued by the Commission cause the Petitioner unnecessary hardships. Bob Wilson seconded the motion. The motion passed with six votes (Wilson, Elam, Sermons, Shepard, Carter, Peele) and three opposed (Wynns, Bissette, Webster).

Bill Peele made a motion to support Petitioner's position that hardships result from conditions peculiar to the property. Charles Elam seconded the motion. The motion passed with five votes (Wilson, Elam, Sermons, Bisette, Peele) and four opposed (Wynns, Shepard, Carter, Webster).

Melvin Shepard made a motion to support Staff's position that hardships result from actions taken by the Petitioner. Veronica Carter seconded the motion. The motion failed with three votes (Shepard, Carter, Webster) and six opposed (Wynns, Wilson, Elam, Peele, Sermons, Bisette).

Wayland Sermons made a motion to support Petitioner's position that hardships do not result from actions taken by the Petitioner. Charles Elam seconded the motion. The motion passed with six votes (Wynns, Wilson, Elam, Peele, Sermons, Bisette) and three opposed (Shepard, Carter, Webster).

Wayland Sermons made a motion to support Petitioner's position that the variance will be consistent with the spirit, purpose, and intent of the rules, standards, or orders issued by the Commission; will secure the public safety and welfare; and will preserve substantial justice. Bob Wilson seconded the motion. The motion passed with six votes (Wynns, Wilson, Elam, Peele, Sermons, Bisette) and three opposed (Shepard, Carter, Webster).

This variance was granted.

NC Aquarium (CRC-VR 08-50) – Nags Head, Pier House in Oceanfront Setback

Christine Goebel of the Attorney General's Office represented Staff. Ms. Goebel introduced Anita LeVeaux of the Attorney General's Office who represents the Petitioner and David Griffin the Director of NC Aquariums. Ms. Goebel stated that the Petitioner owns property located on the oceanfront near the intersection of NC 12 and NC 158 in Nags Head, Dare County. Petitioner applied for a CAMA major permit to construct an ocean fishing pier and educational public pier facility on the oceanfront at the site of the old Janette's Pier. The permit was denied for many reasons. The pier house, pump house and bathhouse do not meet applicable oceanfront setbacks. The proposed 2.5-story pier house exceeds the existing height limit in the CRC's rules. Lastly, at the time of the permit decision, the project did not meet local zoning however the zoning has been amended. Petitioner seeks relief from strict application of 15A NCAC 07H .0306, 07H .0309 and 07H .0601.

Ms. Goebel reviewed the stipulated facts of this variance request. Ms. Goebel stated that Staff and Petitioners agree on all four statutory criteria which must be met in order to grant the variance.

Anita LeVeaux of the Attorney General's Office represented the Petitioner. Ms. LeVeaux reviewed the stipulated facts that she contends support the granting of the variance. She further stated that strict application of the CAMA rules will result in the failure of this project and the citizens of the State will reap the benefits.

Melvin Shepard made a motion to support Staff's position that difficulties or unnecessary hardships result from strict application of the guidelines, rules, standards or restrictions

applicable to the property. Wayland Sermons seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Peele, Sermons, Shepard, Carter, Bissette, Webster).

Melvin Shepard made a motion to support Staff's position that difficulties or hardships result from conditions which are peculiar to the property. Bill Peele seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Peele, Sermons, Shepard, Carter, Bissette, Webster).

Melvin Shepard made a motion to support Staff's position that hardships do not result from actions taken by the Petitioner. Charles Elam has seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Peele, Sermons, Shepard, Carter, Bissette, Webster).

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

This variance was granted.

MINUTES

Lee Wynns made a motion to approve the minutes of the July 2008 CRC meeting. Melvin Shepard seconded the motion. The motion passed with eleven votes (Weld, Bissette, Elam, Webster, Peele, Sermons, Shepard, Wilson, Wynns, Carter) (Mitchell abstained).

EXECUTIVE SECRETARY'S REPORT

Jim Gregson, DCM Director, welcomed Veronica Carter and Ed Mitchell to the Commission on behalf of the DCM Staff and gave the following report.

Sandbag Enforcement Update

After a short delay due to Tropical Storm Hanna, last Friday DCM mailed 21 letters to property owners requesting removal of sandbag structures that have exceeded their time limits. Staff will continue to follow standard enforcement procedures in this endeavor and take all appropriate action as required. In addition, the sandbag map we showed you at our July meeting is now available on our web site, under What's New.

Storm Damage

Tropical Storm Hanna mostly spared our coast any significant damage. However, some of the Cape Fear region, including Carolina Beach, Bald Head Island, Caswell Beach, Ocean Isle Beach, and Holden Beach did experience some erosion and ocean overwash that damaged roads and buildings. A damage assessment team from the Federal Emergency Management Agency was in Brunswick County on Tuesday to reassess damages from Hanna in Holden Beach, Ocean Isle Beach and other beach communities.

Cape Carteret Enforcement Plan

On Sept. 17, the Town of Cape Carteret submitted their letter of intent to amend and update its local implementation and enforcement plan, which is required for the Town to re-institute their CAMA minor development permit program. The Town held a public hearing regarding the plan at the April 21 meeting of the Board of Commissioners, and will present their proposed plan to the Commission for review at the November meeting.

Coastal Training Program Update

The Coastal Training Program will host three workshops in October on grant writing, coastal community planning and development, and public issues and conflict management training.

Staff News

Ward Zimmerman has been hired as an Assistant Attorney General, and will be representing DCM staff in our legal matters. Wilmington Office field representative Robb Mairs has left DCM for a position with a private company. Rich Weaver, Assistant major permits coordinator in the Morehead City office, has also left DCM for a position with the Environmental Affairs Department at Marine Corps Air Station, Cherry Point.

SC Visitors

I want to welcome several visitors from the South Carolina Office of Ocean and Coastal Resource Management who are with us today. Marvin Pontiff, Assistant Deputy Commissioner of S.C. Dept. of Health & Environmental Control; Barbara Neale, Director of the Regulatory Division; Braxton Davis, Director of the Science and Policy Division and Shawn Kiernan, Senior Planner in the Coastal Planning Division.

CHAIRMAN'S COMMENTS

Bob Emory stated that since the last CRC meeting there has been a meeting of the CHPP Steering Committee. The minutes of the meeting were included in the CRC's materials. There has also been a meeting of the Estuarine Shoreline Stabilization Subcommittee and the main outcome of this meeting was that Staff of the effected agencies was asked to make use of the N.C. estuarine and biological and physical processes workgroup report which analyzed the different shoreline types in North Carolina and what the most appropriate stabilization techniques for each of these shorelines. The Staff was instructed to look at this report and tailor some rules that match stabilization type to shoreline type.

Robin Smith stated she has provided a brand new Department guidance manual on preparation of environmental documents under the State Environmental Policy Act. This has a special emphasis on providing some guidelines for assessing secondary and cumulative impacts. This is the product of 2-3 years of work with a lot of input from our permitting staff. This will be useful both on the Staff side as well as the applicant side. It is on the Department's website.

CONTESTED CASES

Cowell/Dressler v. DCM & Westphal 06 EHR 1185

Attorney Jim Conner represented Petitioners Mr. Hank Cowell and Dr. Carolyn Dressler. Mr. Conner stated this case involves a pier permit issued by DCM. Mr. Conner stated the Petitioners have submitted written exceptions to the Administrative Law Judge's decision and a proposed

decision that the Petitioners would wish for the CRC to adopt. The main issue in this case was a 110-foot pier which was installed through a coastal wetland when there was a practical alternative that would have avoided the impact. Mr. Conner further contended there were six violations of the law in issuing this permit. Respondents request that the permit be declared invalid, the pier be removed from the wetlands, and the wetlands be ordered to be restored.

Christine Goebel of the Attorney General's Office represented the Division of Coastal Management, the Respondent in this case. Ms. Goebel stated the Permittees, Earl and Mary Jane Westphal, are present and have requested to present oral arguments. This case is a third party petitioner challenging the issuance of a CAMA General Permit for a two-slip pier in Pamlico County near Oriental. The ALJ in this case ruled that the permit was properly issued by DCM Staff and is consistent with the CAMA and CRC's rules.

Mary Jane Westphal spoke on behalf of herself and Earl Westphal, the Respondent-Intervenors in this case. Mrs. Westphal stated Mr. Conner's case is about significant impact. However, the area that was affected by this pier is less than five percent.

Bob Wilson made a motion that the Coastal Resources Commission adopt the Administrative Law Judge's decision and issue a final agency decision affirming the Respondent's decision to issue the CAMA General Permit. Lee Wynns seconded the motion. The motion passed with nine votes (Sermons, Wynns, Wilson, Elam, Peele, Weld, Carter, Bissette, Webster) and one opposed (Shepard) (Mitchell abstained).

NC Coastal Federation v. DCM & Wind Over Waves, LLC 07 EHR 0345

Joan Weld stated she has an appearance of conflict in this matter and recused herself. Veronica Carter stated she has an actual conflict with this case and recused herself. Melvin Shepard stated he has an actual conflict with this case and recused himself. Bob Emory stated he is a friend of Mr. Sheffield, but it will not hinder his ability to make an objective decision.

John Suttles of the Southern Environmental Law Center represented Petitioners, North Carolina Coastal Federation. Mr. Suttles stated this case involves a CAMA Major development permit for the third phase of the Wind Over Waves development complex which is located on the shores of Pamlico Sound and Britt Creek which is a tidal creek on Hatteras Island, North Carolina. The decision of the Division of Coastal Management relies on a stormwater permit that was issued by the Division of Water Quality. In July 2008, the EMC considered the entire record in that case, considered the briefs filed by counsel and the arguments of counsel and vacated the stormwater permit. The Petitioner urges the CRC to deny the permit in this case because it would violate 3 state laws. The Petitioners have file exceptions to the ALJ's recommended decision.

Christine Goebel of the Attorney General's Office represented the Respondents, NC Division of Coastal Management. Ms. Goebel stated this case started as a challenge to the CAMA permit (specifically the coastal wetlands line that was delineated) and throughout this case Petitioners have attempted to bring in the stormwater permit and the EMC's decisions related to the stormwater permit. One of the very first things that happened in this case was a motion to sever filed on behalf of the Respondents. The ALJ has split this case and severed it into two separate cases. The Petitioners are still trying to bring in the stormwater permit into this case to challenge the CAMA permit that was issued for a road and utilities. Mr. Suttles has gone outside the record in this case by referencing the newer occurrences that have been handled on the EMC side

and we would object to consideration of these new facts. The Respondents have filed a memorandum in support of the ALJ's decision.

Amy Wang of Ward and Smith, P.A. represented the Respondent-Intervenor, Wind Over Waves, LLC. Ms. Wang stated the Intervenor-Respondent agrees with Staff and Ms. Goebel's representation of the delineation that was done in this matter. According to the testimony in the record, this was a conservative call and it took months to go through the evidence that could be found. Ms. Wang stated the CRC should adopt the decision of the ALJ to uphold the CAMA permit. The Respondent-Intervenor has filed a statement in support of the ALJ's decision as well as an exception and proposed alternative to the ALJ's conclusion of law number 3.

Bob Wilson made a motion that the Coastal Resources Commission adopt the Administrative Law Judge's decision and issue a final agency decision affirming the Respondent's decision to grant the CAMA permit. Lee Wynns seconded the motion. The motion passed with five votes (Wynns, Wilson, Elam, Peele, Bissette) and two opposed (Sermons, Webster) (Mitchell abstained).

CRAC Report

*****See attached for CRAC report. *****

The CRC took the following actions:

The CRAC recommended certification of the Currituck County Land Use Plan amendment. **Charles Elam made a motion that the Coastal Resources Commission certify the Currituck County Land Use Plan amendment. David Webster seconded the motion. The motion passed unanimously (Sermons, Wynns, Wilson, Elam, Peele, Weld, Shepard, Carter, Bissette, Webster) (Mitchell abstained).**

The CRAC recommended certification of the Town of Carolina Beach Land Use Plan amendment.

Dara Royal made a motion that the Coastal Resources Commission certify the Town of Carolina Beach Land Use Plan amendment. Melvin Shepard seconded the motion. The motion failed unanimously (Sermons, Wynns, Wilson, Elam, Peele, Weld, Shepard, Carter, Bissette, Webster) (Mitchell abstained).

Bill Peele made a motion to deny certification of the Town of Carolina Beach Land Use Plan amendment. Joan Weld seconded the motion. The motion passed unanimously (Sermons, Wynns, Wilson, Elam, Peele, Weld, Shepard, Carter, Bissette, Webster) (Mitchell abstained).

PRESENTATIONS

**South Carolina Coastal Program – S.C. Coastal Issues Update
Marvin Pontiff, Asst. Deputy Commissioner of S.C. OCRM**

Marvin Pontiff stated that Carolyn Boltin, Deputy Commissioner of OCRM was unable to attend. We are happy to talk today about the challenges and opportunities that we face in coastal

zone management in South Carolina. Earlier this year Jim and members of his staff came down and visited with us. We had a very productive meeting and learned a lot. We are looking forward to a continued long-term relationship with the state of North Carolina.

In the mid-1970's while the country was focused on issues of clean water and air, there was another federal effort underway and that was the passage of the Federal Coastal Zone Management Act in 1972. In response to this federal legislation, the South Carolina General Assembly and Governor, recognizing the importance of coastal tourism as an economic driver for the State, passed the South Carolina Coastal Tidelands and Wetlands Act in 1977. In 1979 as directed by the 1977 Act, the General Assembly and the Governor approved South Carolina's Coastal Zone Program. This was later approved by NOAA. Our program oversees the activities in the coastal zone (made up of 8 coastal counties). Direct permitting authority is in the critical area and this direct permitting authority includes the tidelands, coastal waters, beaches, and the oceanfront sand and dune system. South Carolina has 2,876 miles of tidal shoreline and 187 miles of Atlantic coastline. A few interesting facts show the value of our coastal resources. One hundred eighty million Americans annually make 2 billion visits to ocean, Gulf and inland beaches. Over 15 million tourists visit the South Carolina coast each year. Beaches contribute more than 320 billion dollars annually to the national economy while coastal states receive about 85 percent of tourist related revenues in the United States. South Carolina coastal tourism is a 6 billion dollar plus industry. We have discovered that marshes and the dune system provide a critical buffer from storms and hurricanes.

The OCRM is part of the Department of Health and Environmental Control in South Carolina. We have six divisions and about 60 staff. Our main office is in Charleston and there are regional offices in Beaufort and Myrtle Beach. The regulatory division is our permit division and they handle all critical area permitting, dock permits, stormwater and land disturbance permits, and the State and Federal certification activity. They are also involved in beach monitoring and beach management issues and conduct compliance inspections. The coastal planning division provides expertise and project management to local governments and other agencies to encourage sustainable coastal development and resource protection. They do special area management plans and work with local beachfront communities to develop the beachfront management plans and coordinate the coastal nonpoint program. Our science and policy division leads the science and policy research for short-term decision making and long-term policy development.

Our program goals are to implement the Coastal Zone Management Act through our regulatory programs. We foster public participation and outreach and develop partnerships with other state and federal agencies. We are facing significant coastal challenges. We are trying to manage coastal growth with an increased number of permits and pressure on our limited staff resources. There has been an increased level of public interest with a greater number of comments for our permit applications, permit appeals, and public hearing requests. We are addressing coastal hazards throughout the process particularly erosion, climate change, sea level rise and hurricanes. We have seen a rise in the last decade in the stormwater permit applications. Even as these are increasing, we note that buildable coastal areas are becoming more scarce. The review of projects is becoming increasingly technical as smaller lots with varying terrain, wetlands, and possible cultural resource issues are being developed. About 23% of the state's land is in the coastal zone, but roughly 42% of the stormwater permits are processed within the 8 coastal counties. For critical area permit applications we have seen a small decrease. We have a

renewed focus on shoreline management due to chronic erosion issues. OCRM is under growing pressure to allow increased shoreline protection measures such as seawalls, bulkheads and development within the immediate beachfront. Sea level in the Charleston area has risen 9-12 inches in the past 100 years and the intergovernmental panel on climate change predicts this rate will accelerate over the coming decades. Erosion is a significant issue for us. Some beaches in South Carolina are stable or even accretional, but most beaches experience some degree of long-term erosion of about 1-3 feet per year. Some of our beaches are eroding between 8-10 feet per year. It is challenging to apply a retreat policy. South Carolina also experiences erosion along estuarine shorelines due to sea level rise, shoreline hardening and increased boat traffic. In 2007, we were in the middle of a chronic erosion event on the northern end of the Isle of Palms. We ultimately took enforcement action on the property owners for failure to maintain sandbags, but along the way we learned a lot of lessons. We learned a lot about the use of sandbags for property protection. Our regulations specify five-gallon bags, they do allow for some discretion with application. The smaller sandbags were not the way to go, as they would get scattered up and down the beach. We recognized issues we had with local governments and their issuance of emergency orders. South Carolina has relied on beach renourishment as a viable solution to maintain our beaches. Since 1990 over 220 million dollars has been spent on renourishment projects in our state. Typically 45% of the funding is from the federal government, 45% is from the state/municipal governments and 10% is from private resources. Some of these projects have been privately funded at gated-communities. Sixteen of the eighteen Atlantic and Gulf Coast states have beach renourishment policies. We are revisiting our state long-term policy of retreat as renourishment may not be a definite, viable option. We have two jurisdictional beach lines (baseline and a setback line). There are three defined zones a standard zone, a stabilized inlet zone and an unstabilized inlet zone. Erosion data is collected at an ongoing basis and our erosion rates are calculated by scientists at Coastal Carolina University. Our lines are set by staff and may move landward or seaward depending on the calculations and the zone designations. Our Statute requires that when these lines are reviewed/revised that they are publically noticed for a 30-day period and public hearing be held. In the standard and stabilized inlet zones, the baseline is established at the crest of the primary oceanfront sand dune. The setback line is landward of the baseline at a distance of 40 times the calculated erosion rate, but no less than 20 feet. In the unstabilized inlet zones the baseline is the most landward shoreline during the past 4 years based on historical aerial photos. The setback line is landward of the baseline and is calculated at a distance of 40 times the annual erosion rate with a minimum of 20 feet. We are targeted to complete the beach jurisdictional line review in August 2009. These lines will be the jurisdictional lines for the next ten years. Our staff worked with the city of Isle of Palms to develop the first local comprehensive beachfront management plan. The Beachfront Management Act states the management of the beachfront is both a local and state responsibility. Thirteen of our eighteen communities currently have approved plans and these plans have to be updated every 5 years. There are 10 required elements in these plans. Some of these elements include inventories of beach erosion, public beach access, structures located in the setback area, and turtle nesting and other habitats. We have initiated a shoreline change effort with the designation of a Shoreline Change Advisory Committee. This is a multi-year effort and is designed to help guide us in considering our experiences over the past 20 years. A Shoreline Change Advisory Committee was established in late 2007 and is comprised of 23 coastal managers, scientists, representatives of non-governmental organizations, municipal officials, developers and legal professionals. The advisory committee will work on identifying research needs and identifying pros and cons of various broad policy options (information is available on the website). We have also recently constituted an ocean planning workgroup. It is made up of

federal, state and academic partners. A series of workshops will be held on emerging sand, energy, mapping, and habitat issues. We also have a very active abandoned vessel removal program. This addresses the water quality threat, threats to shellfish, navigation and recreation. We are very proud of the S.C. coastal information network. This website was launched in January 2008 and addresses information and training opportunities. We look forward to a long-lasting relationship with our N.C. counterparts.

Offshore Wind Energy
Bob Leker, State Energy Office

Bob Leker, renewables program manager for the State Energy Office of the North Carolina Department of Administration, gave an overview of the wind resource. International examples of offshore wind and some of the North Carolina opportunities and issues were illustrated by maps. There are opportunities in the mountains, but the focus will be on the coastal region. Some of the opportunities on the coast include some of the large landowner-held coastal farms. There are vast areas of good wind resource in the sounds. In the ocean off the Outer Banks the wind resource gets better. Generally wind developers look for high level winds that are stable and away from sea level. The point at which blades attach to the turbine motor is between 70-80 meters in height. The focus will be on utility scale. Mr. Leker said he hadn't seen anything other than utility scale being proposed on the water, except for sailboats to power their batteries. A land-based example case study at North River Farms estimates that this 7 square mile plot of land could support about 25 turbines at the 2-mega watt size. Although this example takes up 7 square miles, the actual footprints of turbines are quite small.

The Department of Energy looks at offshore wind potential and in North Carolina we have plenty of wind resource and plenty of shallow water which are the two ingredients that make wind potential. The benefits for sighting offshore include less turbulence, higher capacity factor, the visual effects are less since they can be sighted further away from habitable areas, and it avoids some of the land-based weight constraints. Offshore wind is being installed as we speak. Britain has wind farms installed and operating. There is international experience with offshore wind farms. One development example is the Horns Rev wind farm off of Denmark. It has 2 MW machines and the hub height is 70 meters. Some of the upward cost pressures on the industry include turbine supply shortages, steel and material prices, regulatory uncertainties in the United States, and risk uncertainty related to public acceptance for individual sites. There are downward cost drivers also including the experience we are learning with land based sites and increased mass production. There are technology improvements that we will be applying to water-based siting. Some of the U.S. projects that have been proposed are in Delaware, the Great Lakes and the Gulf Coast. There are no installed offshore projects in this country as of this date. The most common foundation would be the monopole foundation. A Danish study of birds at a wind farm system was looked at and radar plots have been documented. The birds see the farm and go around it. We can learn from the European experience about birds and migration. There is sophisticated software about what the wind farms would look like prior to construction. A model wind ordinance is available. Results from surveys were discussed. These surveys indicated that there is significant support for wind turbines. Some of the benefits of wind energy are that wind is renewable, the fuel is free, cost competitive, land-lease payments made to local land owners, local property tax revenues, and no emissions. Project review areas include land use planning, zoning, wildlife, aviation concerns, visual impacts and shadow flicker, wetlands, noise, construction traffic, radio wave interference, cultural concerns, and plants and

soils issues. Some of the key issues for wind power installation include incentive uncertainty, siting and permitting issues, transmission infrastructure issues, operation impacts, and accounting for non-monetary values.

Offshore Wind Energy in NC: Legal Framework

Lisa Schiavinato, NC Sea Grant

Joe Kalo, UNC Law School

Joe Kalo, co-director of N.C. Coastal Resources Law Planning and Policy Center, stated offshore wind turbines are not legally simple. There are significant legal uncertainties that may impede water-based wind turbine projects. We will identify some of the legal uncertainties and what may be needed to resolve them. There are at least three important state entities that will play a role in the permitting of water-based wind turbines in N.C. The placement of wind turbines in coastal waters would be a major development and require a CAMA major development permit. Would the CRC be the entity that is establishing the environmental and natural resource protection rules that would govern the permitting of these facilities in coastal waters? CAMA creates an exception to the definition of development. It excludes work done by any utility or other persons for the purpose of construction of facilities for the development, generation, and transmission of energy to the extent that such activities are regulated by other law or by present or future rules of the State Utilities Commission. The permitting of wind turbines may be out of the purview of the CRC. Currently, the N.C. Utilities Commission focuses on whether to grant a certificate of public convenience and necessity. They do not get into questions of environmental protection or natural resource protection. Should CAMA or the Utilities Commission have authority over maintenance and the decommissioning of these facilities? The Environmental Management Commission was given the authority to evaluate a procedure for evaluating renewable energy technologies that are proposed to be employed as part of a renewable energy facility. The EMC may establish standards to ensure that renewable energy technologies do not harm the environment, natural resources, cultural resources, or public health, safety, or welfare of the State, and to the extent that there is not an environmental regulatory program to implement these protective standards. Is the EMC to develop all the rules for land and water-based wind turbines? This is a problem that needs to be worked out. The CAMA permit program is an existing regulatory program with standards for development in coastal waters. It will not be necessary for the EMC to develop another environmental regulatory program.

Is there the necessary statutory authority to grant the necessary rights to developers of wind energy projects to place them in coastal waters? The developers will need the right to occupy specific areas of state owned public trust submerged lands, the right to occupy some specific portion of the associated water column, and the right to occupy some specific area of air space above the water surface. There are existing statutes, but these statutes do not appear to be broad enough to grant all of the rights that developers would need.

Lisa Schiavinato, coastal law policy and community development specialist and co-director of N.C. Coastal Law Planning and Policy Center, continued the presentation by covering several of the existing statutes and their limitations. A solution would be for the General Assembly to enact a comprehensive statute to address the granting of rights to use submerged lands, the water column and the air space for wind turbine facilities. The CRC does currently have some general permit authority that could apply to wind turbine facilities in coastal waters {G.S. 113A-120(a)}.

However, there is a water dependency rule. Unless there is a specific exception in the rule, if it is not water dependent you cannot permit for waters in AEC's. The CRC deemed wind turbines to not be water dependent. If the CRC decides that it wants to craft some rules for wind turbine facilities, one solution would be to craft an exception to this rule and another specific rule for water-based wind turbines with factors such as project size, permissible site issues, and transmission lines.

Overview of Local Wind Ordinances

Paul Quinlan, N.C. Sustainable Energy Association

Paul Quinlan, Director of Economic Research and Development, stated the mission statement of the N.C. Sustainable Energy Association is to promote renewable energy and energy efficiency through public policy education and economic development. Wind energy has been a part of North Carolina's history. Prior to electricity windmills were used (photo of 1890 windmill in Beaufort was shown). After electricity was available, a 2 MW turbine was used on Howard's Knob in Boone, N.C. At that time this turbine was the largest turbine in the world. There hasn't been much happen on this front for awhile. In 2006 the interest in wind energy started picking back up. A project was proposed in Ashe County by the Northwest Wind Developers, but ultimately this project disappeared when the developers were unable to secure a certificate of public convenience and necessity from the Utilities Commission. More recently we have had a utility scale project proposed in Carteret County. This project is still pending because of an ordinance that the county is developing. The reason we are seeing a lot of discussion about wind energy in North Carolina is because of the passage of the N.C. Renewable Energy and Energy Efficiency Portfolio Standard (REPS). This Bill requires public electric utilities to generate 12.5% of their electricity from renewables and/or energy efficiency by 2021. A few counties have enacted ordinances (Watauga, Ashe, Camden, Currituck, and Carteret). The regulatory spectrum was explained (via a PowerPoint slide). Why would a community need local ordinances? To ensure public safety, promote good land use practice, mitigate off-site impacts, to inform and involve the public, provide developers clear and predictable standards, and to express local preferences. Mitigation strategies for local concerns were discussed. After the REPS Bill passed, the two existing wind-working groups merged to form the North Carolina Wind Working Group. The goals are to understand what needs to be done to encourage responsible wind energy development in North Carolina. In January 2008 we started building a model local ordinance to be used as a tool for local conversations. In July 2008 this process was completed. The model wind ordinance addresses minimum setback requirements, noise, shadow flicker, application requirements, installation and design requirements, and decommissioning requirements.

Environmental Management Commission's Renewable Energy Committee

Steve Smith, EMC

Steve Smith, Chairman of the EMC and Chair of EMC's Renewable Energy Committee, began his presentation with Senate Bill 3. The statutory language is the reason the EMC created a renewable energy committee in January 2008. We saw our charge as involving four elements. First, is to evaluate renewable energy technologies that are proposed to be employed as a part of a renewable energy facility. Second is to ensure that renewable energy technologies do not harm

the environment, natural resources, cultural resources, public health, safety or welfare of the State. Third is to evaluate whether or not there is an existing environmental regulatory program to protect these things. Lastly, if there is not an existing environmental regulatory program then establish an environmental regulatory program to implement those standards. The EMC asked the Attorney General's Office to give some advice on interpreting this. On September 10, an advisory memo from the AG's office was received by the EMC which states that the EMC has the authority to develop and implement regulatory programs for renewable energy resources that are not adequately covered by an existing regulatory program and secondly, the protective standards developed for a new regulatory program may be implemented through a permitting procedure. The EMC's Renewable Energy Committee was then able to go forward with Senate Bill 3.

You have heard about the application for the Certificate of Public Convenience by the Carteret County wind farm. The application came in the name of Nelson Paul (Golden Wind Farm). The Utilities Commission entered its order granting the certificate of public convenience in April. After the Renewable Energy Committee was formed, we put out a scoping notice asking the world at large to make submissions to us about the matters that we were interested in looking at. We received submissions on a variety of technologies including wind, biomass (woody mass and poultry litter), and solar methane from swine farms. After receiving these various submissions, we undertook to hear from various individuals about these various technologies. All of the submissions are listed on the EMC's webpage as well as the presentations. These are categorized so you can pull only the wind energy submissions if you wish. From this, the Renewable Energy Committee came to a consensus. There was a realization that the bulk of the people that has presented to the Committee on wind energy believe that any potential regulation would be more effective if it combined both local government and state involvement. The Renewable Energy Committee agreed with this and at our last meeting we began the process of trying to put this into specifics. We are moving towards considering a state regulatory block to cover wind energy that will carve out some issues that rise to the state level and leave the other issues at the local government level where they have more traditionally been handled (land use issues, zoning issues). Local government issues would include setback and lot size, lighting, shadow flicker, zoning). State level issues would include minimum standards for withstanding severe weather, standards for transmission lines, protection of significant state vistas, protection of wildlife, civilian/military air traffic routes, and civilian/military communications. We still have under consideration what to about standards for maintaining and decommissioning. We are moving forward to begin the process of considering how the state level issues should be regulated. The Renewable Energy Committee will make a recommendation to the full EMC. The EMC will then decide how it will proceed.

Wind Energy Panel Presentations

Steve Smith introduced the panelists in attendance. The panelists were as follows:

Curtis Smalling – Audobon of N.C., important bird areas coordinator and mountain program manager. Mr. Smalling is also a member of the N.C. Wind Working Group.

Anne Deaton – N.C. Division of Marine Fisheries, section chief of habitat protection.

Joy Wayman – N.C. Dept. of Administration, real property agent in the state property office.

Doug Huggett – N.C. Division of Coastal Management, major permits coordinator.

Maria Dunn – N.C. Wildlife Resources Commission, northeast permit coordinator.

Paul Friday – Marine Corps Installations East, community plans and liaison coordinator.

John Langdon – Carteret County Manager.

Curtis Smalling stated Audubon of N.C. is the state office of the National Audubon Society. It has been the position of the state office as well as the National Audubon that renewable energy and renewable energy development is an important step in the right direction. The impacts of traditional methods of energy production are well known. Some of the impacts are quite severe on some of our natural resources. Using these renewable sources is an important part of some of our solutions along with aggressive conservation. It is important for all of us to highlight the need for responsible siting. Over a several year period, the National Renewable Energy lab and the National Wind Coordinating Committee poured millions of dollars into studying wind out west where the original installations were done. After the fourth national meeting, the bottom line was to reduce the impact on birds, put them where there aren't many birds. Birds use the wind for energy. In North Carolina there is a high diversity of bird life. A number of these species utilize our coastal resources. Up to 75% of the Atlantic flyaway populations of waterfowl use northeast North Carolina as a wintering area and stopover site. Millions of other birds use this corridor to migrate. A number of species in the world are pelagic species that only use offshore waters. We have to keep these resources in mind as we think about allowing the wind energy efforts in these areas. Many of our most productive areas for shore birds are in the inlets. Any utility scale project, whether wind or chicken litter, will have environmental impacts. Sometimes the impacts are not direct mortality impacts. Often times large wind farms take habitats out of the useful area for species. Where we place turbines offshore can have a tremendous impact on the amount and availability of foraging habitats. Audubon has taken a stand that we really want to see more resources put into post construction monitoring. The other important component is mitigation. We are starting to move into this on land-based systems. If we find that wind developments off shore are completely disrupting the sea mammal migration off of our coast, what do we do? We have to be informed about this and make choices in an informed way. All of these issues point back to the fact that we need some regulatory framework that addresses the statewide and regional wide issues rather than leaving up to local government. There is a need for the oversight of the CRC and EMC can help provide.

Anne Deaton stated she was here to discuss how the Division of Marine Fisheries would feel about wind energy. It has been discussed as a Division. Overall, DMF supports the concept of promoting wind energy or other renewable energy sources as long as it is properly sited. Eventually this will come through some sort of permit application and the Division would be asked to review it. Whenever we review any type of permit application we look at potential impacts on habitats, fish, fishing activities, and navigation. We know where most of our habitats occur. There have been studies done on the effects noise and electromagnetic field from wind turbines on fish. These studies have been inconclusive and we need more information before we know if it will affect migration routes. If you site the wind farms in Pamlico Sound then you have fishing activity interests to consider. There are a lot of shrimp trawlers in Pamlico Sound. I am not sure whether there would be restrictions on fishing. I have read that the blades are so high that you could actually fish under the structures. However, if there are cables on the surface of the seafloor, there will be concerns about trawling. We need to be sure that we do pre-monitoring and post- monitoring so we can adapt and modify these to minimize impacts.

Joy Wayman stated she had concerns about the effects of windstorm and hurricanes and how to prepare for reconstruction, repair, replacement, and the underground and submerged hazards. Also, we need a process in the new legislation to reassign the facilities should the operator fail.

Doug Huggett stated the Division of Coastal Management's regulatory program is an umbrella program. We bring in the resources and concerns of many other state and federal resource agencies. The CAMA actually lends their support to these agencies concerns and as we have heard, it is all in the siting of these types of facilities. There are a couple of regulatory impediments to permitting these facilities that currently exist within the CRC's rules. The water dependency issue has been brought up, but I will say that in 2005 the CRC was asked their opinion of whether offshore wind farms would be considered water dependent structures. The CRC's response was no. The second regulatory impediment would be for any ocean based system where any kind of transmission cabling would have to come back in through the ocean beaches or inner tidal areas. The CRC rules require, with certain exceptions, all structures have to be located landward of the appropriate vegetation and setback lines on the ocean beaches. Because our permit authority is three dimensional (into the air and into the ground), aerial lines would violate the setback standard because it is not currently exempted in the rules. In addition to any of the environmental issues that would come up on a case-by-case basis, we could not permit a facility of this nature.

Maria Dunn stated the Wildlife Resources Commission generally supports the alternative energy resources, however we want to make sure that all impacts to aquatic and terrestrial wildlife resources would be considered prior to moving a project forward. We have consulted several of our biologists and have come up with some concerns we would look for during review. Project details including exact location, total project size, facility operation, and any restrictions of public use. The presence of biological resources would need to be known up front before we could adequately assess what types of impacts a project would have. The land-based facilities would not have as large of a public trust concern as a facility proposed in the sounds. There would be cumulative concerns. We would also have concerns about structure stability during hurricanes. Other concerns include shadow affect from large wind turbines, placement of turbines in shallow water habitats, avian mortality and migration route changes. The placement of these facilities on land can be looked at on a case-by-case basis, however placements of facilities in the Pamlico, Albemarle and Currituck Sounds would be more difficult to monitor and impact a larger population and diversity of birds. The placement of turbines in shallow water areas near SAV would impact the foraging behaviors of many species. Studies indicate that wind facilities in areas of migratory routes have higher mortality rates. The North Carolina coast is a heavily traveled route and information should be obtained to determine if certain away from shorelines would have less of an impact.

Paul Friday stated he would present the military's perspective on wind energy. Marine Corps Air Stations East's area covers from Quantico, Virginia down through Florida and are housed at Camp Lejeune, North Carolina. Mr. Friday introduced Dave Plummer, Aviation Manager for Marine Corps Installations East and Bill Van Houden from the Office of the Secretary of Defense Installations and Environment. Mr. Friday stated their purpose for being here is to help identify Marine Corps needs and interests on wind energy. In eastern North Carolina we do a lot of training. From the Marine Corps' perspective, we train from sea, in the coastal areas, on land, and we train in the air. The major flying areas were shown. There are some specific concerns about wind energy. The wind energy systems can be as tall as 500 feet. There are safety ramifications with the way we train and the way we fly. We fly at treetop level with our helicopters and as low as 200 feet above ground with regard to high performance jet aircraft. These are in specially designated areas, but has an effect on the placement of wind turbines and transmission lines. The electromagnetic spectrum impacts are of interest to us. It will affect our

radars and airborne aircraft systems. We are bound by federal law as it pertains to energy sources, particularly alternative energy and renewable energy resources. We have goals of 30% reduction in our BTU capacity between FY 06 and FY 16. We will work aggressively to meet these goals. We understand that we are competing for alternative energy, as we are both a user of it and a supplier. We are in the midst of significant population growth in our coastal county areas.

Dave Plummer discussed specific maps and airspace issues. The restricted airspace area map of 1957 was shown. In 1963, the airspace was shrunk. In 1972 there was a significant reduction in airspace and connectivity with offshore waters was lost. By 1978, we were a shadow of our former selves. By volume we had lost 85% of the training spaces. Significant erosion of airspace has occurred overtime and a piece of it was removed to allow civilian flights to fly to Morehead City and to the beaches. The remaining training space must be protected from further erosion. We have had to be creative on how to share the airspace with the many new users. Our military aircraft have to check in with an air traffic controller to gain access to airspace. We manage the military activities inside these areas with access to civilian flights. In bringing wind energy and development into the picture, we have tried to identify areas of grave interest to our military operations. The low-flying altitude areas of concern were discussed and maps shown. Anything that is constructed above 500 feet will change the level of flight that the aircraft may be maneuvered at to join a final approach course. Maps were shown which displayed the areas of greatest concern. Development in these areas have the potential of adverse impact upon the Marine Corps' mission. Some of these areas are not just of concern to the Marine Corps, but to County airport managers as well.

Paul Friday stated we do support the development of wind energy and other alternatives in North Carolina. Our primary concerns are on compatible use and many competing uses for the space. We suggest that North Carolina policy and guidance include that all proposed wind energy projects be coordinated with the Department of Defense and that any wind energy project that will negatively impact the Department of Defense's operation and training be mitigated to prevent the impact as a condition of approval. Future Marine Corps action include working aggressively to meet our goals, meet with state regulatory agencies, meet with local government officials, and work proactively to meet our alternative energy goals and do our training in an environmentally sustainable manner.

John Langdon stated it is encouraging that the EMC has taken a leadership role in alternative energy. It is clear that the Legislature recognized that North Carolina has a problem in defining what the State's interests are. Carteret County was not involved in this until a News and Observer article indicated that there has been a proposal in front of the Utilities Commission to have 3 MW generators in Carteret County. Two years ago, a man wanted to know if there would be any ordinances or restrictions to building some small scale wind towers (about 100 feet high, 1-10 KW) and there wasn't. There was an ordinance that came out of a land use plan controversy and the height restrictions for buildings did not apply to wind towers. Everything changed with the presentation to the Utilities Commission, which hasn't been granted yet. Carteret County held public hearings and declared a moratorium which ends in December. But if we don't come up with a position, we will find ourselves where we were in January/February in that if an application is made, we have no criteria for which to deny a permit. This is true for the State as well. The Utilities Commission is evaluating the business relationship between the generators of power and to whom they would sell it. What we are facing is a land use and

zoning issue. From what we have learned is that the hardest thing to get a handle on is not what the EMC or the CRC should be doing in their clearly defined roles. We have heard about various easements and authorities and exemptions that may have to be considered, but we need to have Commissions and Departments in North Carolina government in partnership with local communities to figure out the boundary issues. The most positive thing I have heard today is that is generally recognized that North Carolina's model is going to be a state and local government partnership. All eyes are on Carteret County and it will be colorful before we are done, but in the end what we will decide is a matter of setbacks and considerations in terms of maintenance. There are much greater issues statewide that need to be considered. I am hopeful that there are forward-thinkers that are working on this. As we work on our setbacks and what might be appropriate for the public safety of our citizens, it has become apparent to us that our jurisdiction is questionable over public trust waters. If we were to determine several thousand feet for our setback from existing residences, I would ask that the CRC consider local governments or residents along the shoreline to be a part of it.

CAMA Major Permit and Dredge & Fill Review Process (CRC 08-39)

Doug Huggett

Doug Huggett stated under the CAMA the public's opportunity to enjoy the physical, aesthetic, cultural and recreational qualities of the natural shorelines of this state shall be preserved to the greatest extent feasible. Water resources shall be managed in order to preserve and enhance water quality and to provide optimal utilization of water resources. Land resources shall be managed in order to provide growth and development and to minimize damage to the natural environment. This article mandates that we protect a lot.

The CAMA was enacted in 1974. The CAMA also set up the Coastal Resources Commission. Sometime between 1974 and 1977 a group started to enact the rules of the CRC. In one of the first rules of the CRC simply states, "the intent of this authority is not to stop development, but rather to ensure the compatibility of development with the continued productivity and value of certain critical land and water areas". There are two different ways to implement this protection measure. The first would be to create a super-Division that has expertise in all of the various areas that would be necessary to protect coastal resources. The second would be to set up a focal point for a coordinated effort and to utilize the expertise of existing state agencies to protect the resources. The second option was utilized with the Division of Coastal Management being the focal point. The state dredge and fill law was put into place first. This law states that applicants for permits shall be circulated by the Department among all state agencies and at the discretion of the Secretary to appropriate federal agencies having jurisdiction over the subject matter. The CAMA which was enacted 5-6 years later, a similar statement is included which states, "upon receipt of the application, the Secretary shall issue a public notice of the proposed development by mailing a copy of the application or modification to, among others, appropriate or interested state agencies". The rules of the CRC took the guidance that was put forth by the dredge & fill law and CAMA and in 7J standards it states that the Department will circulate major development permit applications to the several state agencies having expertise in the criteria in CAMA or the state dredge & fill law. The 7J standards set forth the template for our permit process. If you read through the CAMA you can see what CAMA considers to be a coastal resource. These resources include fisheries, wildlife, recreation, air quality, water quality, cultural, state transportation system, energy, economic, and aesthetics. The number and diverse

nature of the coastal resources makes it almost impossible for any one agency to have an expertise to make all of the findings needed during the permit process. Almost every one of these areas has expertise in another state agency. This is why the drafters of the dredge & fill law, CAMA, and the original CRC rules developed the coordinated review process. **Another reason for bringing so many other agencies into the permit review process is because prior to issuing a permit, we have to determine that a project is not detrimental to public trust rights in the biological and physical functions of the estuary, we have to find that projects shall not block or impair navigation channels or increase shoreline erosion or deposit soils below normal high water or cause adverse circulation patterns or violate state water quality standards or cause degradation of shellfish waters.** Projects shall have a minimum adverse impact on the productivity and biological integrity of coastal marshlands, shellfish beds, beds of SAV, spawning and nursery areas, nesting and wintering sites for waterfowl and wildlife, and important natural barriers. This encompasses a lot and brings multiple agencies into the review process. There are further standards that state that development shall not violate water and air quality standards, development shall not cause major or irreversible damage to documented archeological or historic resources, and development shall be timed to have minimum adverse significant effects on life-cycles of estuarine and ocean resources. There are standards for navigation channels and excavation projects. There are standards for maintenance excavation. No development shall be allowed in any AEC which would have the likelihood of causing pollution of waters in which shellfishing is an existing use to the extent that the waters would be officially closed to the taking of shellfish. There is also a rule that states that no development shall be allowed in any AEC which would result in a violation of any rules, regulations, or laws of the state of North Carolina or the local government in which the development takes place. All of these issues were used as a guidance document to develop our major permit process. The major permit process was discussed (provided in a handout). A pre-application meeting takes place, the application package and permit fee is submitted to the field representative, the field staff takes the application, makes a site visit, and reviews the application for completeness. Then the field rep completes a field investigation report. This is a summary of the proposed project. This allows the review agencies and the public to be able to get a good feel for the project. A copy of the application and field investigation report are sent to all of the state and federal review agencies. A public notice is done at this time and an opportunity is given for comments. A placard is placed at the project site requesting comments. The comments from agencies are submitted to the major permit staff in Morehead City. When a negative comment is received, DCM staff will suggest solutions to the permit applicant. After all of this takes place, a permit decision can be made. The permit coordinator makes a recommendation to either issue or deny the permit. If a permit is denied, the permit applicant can appeal it or a variance can be applied for. If a permit is issued, a third party appeal can be filed. The permit process for major permits is generally 75 days, with the possibility of an extension of 75 days if necessary to complete the review. Unless the project is put on hold for additional information, a permit decision must be made within the 150-day deadline. When we collect our permit fees for the permit application, we are actually collecting two different fees. One is for DCM and one is for DWQ for the state water quality permit. There is a cooperative agreement with DWQ to collect the joint fee and based on the type of development the fees represent a cost savings to the applicant. The application process suffices for applications for potentially five different permits (CAMA, Dredge & Fill, Division of Water Quality Certification, Federal Wetlands permit, and Navigational permit from the Corps).

CHPP Shoreline Stabilization Subcommittee Update

Bob Emory

Chairman Emory stated we have wrestled with the shoreline stabilization rules for 4-5 years. When Jim Gregson became the director he issued some policy direction to all of the DCM offices about where bulkheads should be located relative to mean high water. There had been some interoffice differences in interpretation and now there is uniformity. We were contemplating regulations on bulkheads that would place them landward of mean high water and then we had a conflict with the DWQ buffer rules. Our rules require alternative structures for stabilization where possible. The problem is we have not defined "where possible". Bonnie Bendell led a group of scientists who put together an excellent assessment of shoreline types in North Carolina and identified a hierarchy of stabilization techniques for each shoreline type that, in their opinion, went from most desirable to least desirable. We have not attempted to put this into rule language. We have not resolved where we want to go with shoreline stabilization. Since we are beginning to see that this is not something that one agency can address, we have begun to discuss this at the CHPP Steering Committee. There is a Subcommittee of the CHPP Steering Committee that met and some next steps came from this meeting to include (1) ask an interagency group to create an outline of an analysis to match stabilization method with shoreline type, (2) direct the agencies to simplify the General Permit for marsh sills, and (3) for each Commission to take educational opportunities and interact with marine contractors and landowners.

Ocean Policy Study Committee Update (CRC 08-40)

Scott Geis

Scott Geis gave an update on the Ocean Policy Study Committee. Mr. Geis stated at the last meeting the CRC had asked for an update on what the committee was doing and Dr. Leutze asked who is taking a look at comprehensive coastal management? DCM's approach is a three-part process. (1) Working from the estuaries out, we have an estuarine shoreline mapping project, (2) the Beach and Inlet Management Plan, and (3) the Ocean Policy Steering Committee. The estuarine shoreline-mapping project is DCM's methodology for delineating a contiguous estuarine shoreline for the state which currently does not exist. We are working with our sister agencies as well as stakeholders to create one shoreline for the estuaries and characterize the shoreline. During this process we will take an inventory of shoreline structures. A working group has been working with our sister agencies to make sure that they are on board with how we are coming up with this line, how they would use it, and what we should take into consideration. The goals of the mapping project are to (1) quantify how many miles of estuarine shoreline there are in North Carolina, (2) characterize the shoreline types, and (3) what is the coverage of public trust waters. The Ocean Policy Steering Committee is a 14-member committee. It is comprised of various academics as well as members from our sister agencies. It is chaired by Joe Kalo and Lisa Schiavinato. We also have representation from non-profit groups as well as local stakeholders. The charge that DCM gave this group is three fold. We wanted to identify emerging ocean and coastal issues. This project stems from a 1994 Coastal Management study that looked at what we could expect in the future. This committee has been asked to look at existing state rules and policies in order to see if there is anything that needs to be changed/updated to meet these emerging issues. Lastly, we will be making recommendations to the CRC based on these emerging issues. The goals we hope to reach include preparing North Carolina to meet these changes as the coastal setting continues to experience technological,

social and economic changes. It will also help insure there is federal consistency as new technologies are employed in the federal waters outside of our state water jurisdiction. The emerging issues we have identified are sand resource management, barrier island and inlet management, ocean based renewable energy, ocean outfalls, open ocean aquaculture, and comprehensive ocean management (ocean zoning). The next meeting is scheduled for October 3 in Raleigh. We have gone through the emerging issues and we are now in the process of coming up with draft recommendations. Before we present the draft recommendations to the CRC we will have a public outreach component which will consist of three public meetings. We hope to have the final draft and recommendations in front of the CRC in February.

Beach and Inlet Management Plan Update (CRC 08-41)

Steve Underwood

Steve Underwood showed the draft region and sub-region boundaries and how we came up with this. There are four regions with various sub-regions inside. These will be used to work with our federal partners to start a regional approach to sediment management along our coast. We are working with the Army Corps of Engineers in the Wilmington district. Some of the approaches and descriptions of what regional sediment management is a holistic approach. It has to recognize sediment as a resource and an asset. The idea that all of these sediments; whether coming through the estuary, the rivers, or down the coastline we should be able to come up with sustainable solutions to some of the issues we may be currently be creating ourselves and keep them to a minimum. We are getting away from a project-by-project basis. We are establishing partnerships with the stakeholders which include local governments, representatives of CRAC, and NCBIWAY. Some of the benefits are the cost savings, reducing materials, and mobilization and demobilization costs. We need to understand the processes that are going on along our coast, minimize impacts, and knowing where our sensitive environments are located. We have a database that we have adopted that the Corps has that will allow us to share information. We will be able to do things more quickly because we will have all the information out of people's files in a common database and working together. We can also leverage financial and other resources and streamline the regulatory process. Our goals are to maximize the beneficial use of sediments, minimize the environmental impacts, and optimize expenditures. (The regions were explained with slides/photos).

Public Comment Summary – 15A NCAC 07H .0306/07J .1200 (CRC 08-42)

Staff Recommendations – 15A NCAC 07H .0306/07J .1200 (CRC 08-43)

Jeff Warren

Jeff Warren stated this is a project that we have worked on for two years. What you have in front of you today is a policy that is built on our current setback factors of 30 and 60 and now we are recommending 90 for larger structures which will prepare the state for the next 30 years. If you look at the statistics for development on the oceanfront, there is about 85% single family. There are about 8,300 structures total and only about 15% of that is commercial or multi-family. The nature of our coast is much different than that of South Carolina. You may have heard from some stakeholders in the past that argue against the 30-year setback that South Carolina has at least a 40-year setback. I hope you realize that S.C. has a ½ foot erosion rate as their minimum, but North Carolina's is 2 feet per year. With statistics you need to be careful and paint the whole picture. This is the second time that 7H .0306 has been out for public comment. There were five regional hearings to receive as much public input as possible. The comments received either

focused on the static line exception or the graduated setback. This rule covers a lot of territory, but a lot of folks only commented on one part or the other. Changes were made to the rule language that went to public hearing. Most of these are wordsmithing and changing rule references. One addition was made that was based on a stakeholder comment in 7H .0306(a)(8)(F) which states, "shall be as far landward on the lot to the maximum extent feasible". This was to try to incorporate comments from Oak Island and Ocean Isle. This was only part of their comment. They wanted to do something as far back as feasible in conjunction with a construction line. Staff does not support a construction line because that gives you another static line and we are uncomfortable drawing another static line when this is a rule that is trying to work around some of our static line issues. This is a substantive change and would require this rule to go back to public hearing. The stakeholder has indicated that they would prefer for this rule to be adopted, rather than to add this language and send it back for public hearing. In 7J .1200 we want to eliminate "long-term" because we have already defined long-term as 30-years. We would also like to change the 30-year period to 25 years. The spirit was that there be a 30-year project and the spirit is still there because there is a 5-year waiting period before a town can come forward for a static line exception.

This is a very complicated rule and it does a lot. This rule changes the calculation of total floor area. This removes structurally attached roof covered porches and decks from the calculation of total floor area and just make it heated square footage. This puts it in line with how towns calculate it and doesn't penalize folks for having large porches that can easily be unattached if the structure needs to be moved or is in jeopardy. This rule states that setback shall be based on size and not use. Currently there is a 30-year setback for single-family homes regardless of size. We are seeing homes that are 10,000 or 12,000 square feet being built on the oceanfront. We have a setback for larger structures that are 5,000 square feet or greater, but this is limited to commercial and multi-family (4 units or more). At the 5,000 feet threshold, you must follow a 60-times the erosion rate setback. The proposal here is that all structures at 5,000 square feet go to 60-times the erosion rate to be consistent because the hazard is the same to the structures. In current policy there is a decreased setback as the erosion rate gets above 3.5 feet per year. This proposal states the higher the erosion rate, the higher the hazard. This proposed policy makes it an easy formula. The CRC suggested eliminating cantilevering into the setback and over the setback. The current proposal eliminates cantilevering altogether over and into the setback. There is a provision in the proposed rule for relief for linear infrastructure. There is a proposal for a graduated setback for structures greater than 10,000 square feet. This increases the setback from 60-times to 90-times the erosion rate in a graduated fashion. There is a provision in the rule which addresses the two philosophies communities have for mitigating coastal erosion. The first is to move the structure farther from the shoreline. The other is beach-fill which moves the shoreline farther from the structure. CAMA is a state and local partnership. If the town is going to be proactive and go after a long-term beach fill program to mitigate the hazard, then the CRC recognizes they can fall under different development standards. As part of the graduated setback there is a provision that states if you get a static line exception you do not have to follow the graduated setback. The final provision in this policy is an exception to the static vegetation line. A static vegetation line is the location of the vegetation prior to a large-scale beach fill project. The policy has never allowed development to follow vegetation that moves oceanward of that line. However, we have seen many communities make the commitment to maintain these projects. For towns that will commit to 30-years plus of beach fill and they can't meet the static line setback, there is a provision to allow them to measure a setback from the actual line of vegetation. They also have to be in line with the landward most adjacent structure. This is not

allowing development to move any further oceanward than it currently is or than adjacent properties are located. The procedures are in 7J .1200 which state what a town needs to do to get an exception. You have to wait five years after the initial project. You have to come before the CRC to provide the plan from the engineer or the Corps. You have to show where the sand will come from and that it will follow the compatibility rule. You also have to show the funding mechanisms. Staff recommends adoption of these rules with the minor changes.

Charles Elam made a motion to adopt 15A NCAC 07H .0306 removing the proposed language in (a)(8)(F) adding the recommended change of a 25-year period. Bob Wilson seconded the motion. The motion passed with seven votes (Sermons, Wilson, Elam, Peele, Weld, Shepard, Carter,) and one opposed (Bissette) (Webster absent for vote).

Charles Elam made a motion to adopt 15A NCAC 07J .1200 with the recommended change of a 25-year period. Melvin Shepard seconded the motion. The motion passed with eight votes (Sermons, Wilson, Elam, Peele, Weld, Shepard, Carter, Bissette) (Webster absent for vote).

PUBLIC HEARINGS

Chairman Emory opened the public hearing and gave an overview of the rules subject to the hearing. 15A NCAC 07H .0205, .1401, .1402, .1404, .1405, .2101, .2102, .2104, .2105, .2401, .2402, .2404, .2405, 07J .0701, .0703, 07M .0301, .0302, .0303, .0306, .0307.

There were no comments presented for this public hearing.

PUBLIC COMMENT AND INPUT

Susan Bullock stated she represents the Holiday Inn Sunspree, her company is Independent Opinion Research, our lobbyist and attorney Steve Levitas was unable to be here and she is here to give the CRC thanks and praise for all of the hard work that has gone into the setback rules and regulation. She is the information gatherer and has passed on a lot of information to Jeff Warren and DCM staff and we look forward to the final report and final summary. Whether we agree or disagree we feel we have had a good working relationship.

ACTION ITEMS

OLD/NEW BUSINESS

Dara Royal stated in 2005 the CRC made a full slate of appointments for the 12 positions on the CRAC that they are authorized to appoint. The CRC's policy is that initial appointments are two years and reappointments every four years. A few of the appointments that were made in November 2005 were initial appointments and therefore the term has expired. Joan Weld, Dara Royal, and Chuck Bissette will serve on the CRAC nominating committee and will report at the next meeting.

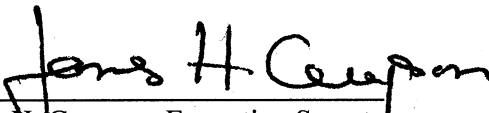
Chairman Emory stated that November's meeting would likely be full of variances. He stated with the recent talks of exploration for oil, should the CRC look at this issue? Jim Gregson stated Mike Lopazanski is keeping up to speed on what is going on in Washington daily. We will keep the November agenda open pending several variances, but a comprehensive update

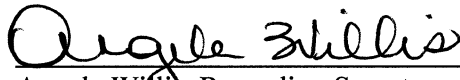
could be given in November if time allows. Mike Lopazanski stated Congress has let their moratorium expire at the end of the month. They have chosen to not include OCS moratoriums for the Atlantic or Pacific coast into their continuation resolution. At the same time the President has directed the Department of Interior to get a head start on the new lease program. The Mineral Management Service does a lease program in five-year intervals. They have requested information from all Governors for the latest round for the new lease plan which would take effect in 2010. The MMS has received 180,000 comments on the proposed plan. They hope to have a draft ready for review sometime in January 2009. This is an extensive process and an update will be available in November. Bill Peele requested a presentation on how transmission cables are laid for wind turbines. Wayland Sermons stated he would like to be reminded of the strategic planning session goals and that Veronica and Ed could benefit from this as well.

Jennie Hauser, CRC Counsel, updated the CRC on two cases that had been before them previously. The Bryant case was a case that involved a pier decision. The Superior Court Judge who received the petition for judicial review has denied the petition and will be upholding the CRC's decision. The Canady case was a case that involved a small house situation, the Superior Court Judge in this case also denied judicial review and will uphold the CRC's decision.

With no further business, the CRC adjourned.

Respectfully submitted,


James H. Gregson, Executive Secretary


Angela Willis, Recording Secretary