

NC COASTAL RESOURCES COMMISSION (CRC)
NOVEMBER 16-17, 2006
SHERATON
ATLANTIC BEACH, NC

DRAFT

Present CRC Members

Courtney Hackney, Chairman
Doug Langford, Vice Chair

Charles Elam
Bob Emory
Jim Leutze
Chuck Bisette
Joseph Gore
Jerry Old

Bill Peelé (arrived 10:30 am 11/16)
Wayland Sermons
Melvin Shepard
Joan Weld
Bob Wilson
Lee Wynns

Present Coastal Resources Advisory Council Members (CRAC)

Bill Morrison, Chair
Dara Royal, Co-Chair

Frank Alexander
Deborah Anderson
Joe Beck
Carlton Davenport
Eddy Davis
Webb Fuller
Gary Greene
Judy Hills
Al Hodge
Joe Lassiter
Travis Marshall
Gary Mercer

Wayne Mobley
J. Michael Moore
W. Burch Perry
Spencer Rogers
Robert Shupe
Harry Simmons
Lester Simpson
Steve Sizemore
Michael Street
Penny Tysinger
David Weaver
Ginger Webster
William Wescott
Traci White
David Stanley (Don Yousey)

Present Attorney General's Office Members

Jill Hickey
Merrie Jo Alcock
Christine Goebel

CALL TO ORDER/ROLL CALL

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

Stephanie Bowling called the roll. Renee Cahoon was absent.

MINUTES

Lee Wynns made a motion seconded by Joseph Gore to approve the minutes with correction to show presentation by Steve Underwood on Review of LUP Rules for Certification. The motion passed by a unanimous vote. (Elam, Emory, Leutze, Bissette, Gore, Langford, Old, Sermons, Shepard, Weld, Wilson, Wynns)

EXECUTIVE SECRETARY'S REPORT

Waterfront Access Committee

The Waterfront Access study committee had its first meeting in Raleigh Sept. 26 and will have its second meeting Nov. 20 in Pine Knoll Shores. This next meeting will focus on information received from Committee members relating to access and development trends, other states' efforts to address this same issue, and potential solutions.

The legislation calls for the Committee to make an interim report to the Joint Legislative Commission on Seafood and Aquaculture, the Marine Fisheries Commission and the Coastal Resources Commission by Jan. 15.

Coastal public policy roundtable

In October, Commission members Doug Langford, Joan Weld, DCM staffer Mike Lopazanski, and Charles Jones participated in a roundtable on coastal public policy at the University of North Carolina. The roundtable brought together legislators and coastal policy makers to discuss potential policy initiatives to recommend to the General Assembly. The conversation included lessons learned from 30 years of CAMA, future research needs, and a discussion of growth management policies.

Stormwater Workshop

The Rachel Carson reserve staff conducted a workshop on stormwater management and sustainable development on Nov. 1 at The History Place in Morehead City. The workshop, based on results from a needs assessment of Carteret County town planning boards, was very well attended, and included presentations on sustainable development and structural stormwater management practices.

CELCP

While DCM awaits a final decision from the Congress on FY07 funding for two land acquisition projects under the Coastal & Estuarine Land Conservation Program (CELCP), application was submitted in October for one acquisition project in the FY08 funding cycle. The FY08 application seeks to acquire 6,600 acres adjacent to the Chowan Swamp Game Lands in Gates

County. If approved, the acreage will be added to the Chowan Swamp Game Lands, owned by the State and managed by the NC Wildlife Resources Commission. A final decision on the FY07 projects could come in the lame duck session of the current Congress; a decision on the FY08 project is not anticipated before next fall.

DCM Positions Posted

DCM is now taking applications for the four new compliance coordinator positions. Briefly, these are new positions that will be based in each of the four DCM offices. The job duties are primarily those associated with compliance and enforcement of permit requirements, the CRC rules, and the dredge and fill law.

Two other vacancies have been posted: the NERR Education Coordinator and a coastal policy position.

Staff News

Staff attorney Merrie Jo Alcock was congratulated for completing the New York City marathon on Nov. 5 with a time of 5 hours and 36 minutes!

VARIANCE REQUEST

(Wilson Lots 5 & 6, and The Riggins Variance Requests were removed from the agenda and will be heard at a later date)

Miller/Kauffman, Emerald Isle, (CRC-VR-06-33)

Merrie Jo Alcock stated Petitioners own an oceanfront duplex in Emerald Isle and applied for a CAMA minor permit to develop two pools within the oceanfront setback. Ms. Alcock stated that although the CRC rules allow swimming pools as an exception to the oceanfront setback requirements, the rules do not allow multiple pools as requested by these duplex owners. The Petitioner's therefore seek a variance from 15A NCAC 7H .0309 in order to install two pools at their duplex.

Ms. Alcock stated that Staff does not agree that strict application of the applicable development rules, standards, or orders issued by the CRC cause Petitioners unnecessary hardships. She stated that to show unnecessary hardship a Petitioner must show that they have been denied the ability to make any reasonable and significant use of the property. Ms. Alcock stated there is no hardship here because the Petitioners can indeed still make reasonable use of the property and a swimming pool is an amenity. She stated that the inability to enhance rental value is not conclusive of the question of hardship. Ms. Alcock stated that the Petitioners may receive lower rental fees but the duplex unit has not been rendered unusable by the CRC's rules as to constitute a hardship. She stated that Petitioners could be permitted to construct one pool under the CRC's rules. Ms. Alcock stated that while Petitioners have stated that it is either undesirable or not feasible to construct one pool for joint use, they have not proposed any facts or submitted documentation to support their contention that joint ownership of the pool would encumber them from selling the property in the future.

Ms. Alcock stated that Staff does not agree that hardships result from conditions, which are peculiar to the property. She stated that there is nothing peculiar about the physical conditions on the property. Ms. Alcock stated the lot is 75 feet wide with frontal dune and extends to the high water mark of the Atlantic Ocean. She stated this lot is typical in most respects. Ms. Alcock stated any peculiarity results from the way the ownership rights for the lot have been allocated, not from some physical condition of the lot.

Ms. Alcock stated that Staff believes that the hardships do indeed result from actions taken by the Petitioners. She stated the Petitioners purchased the duplex in 2005, and the CRC's rules allowing pools within the ocean hazard setback has been in place since 1981. She stated the Petitioners could have applied for a permit prior to purchasing the property to determine the exact scope of their ability to construct two pools on one lot. Ms. Alcock stated because the Petitioners purchased the lot so many years after the adoption of this rule, they have contributed to any alleged hardship. In addition, she stated they have contributed to their alleged hardship by requesting two pools rather than one.

Ms. Alcock stated that Staff does not agree that the variance requested would be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the CRC, would secure the public safety and welfare, and preserve substantial justice. She stated that staff believes that the purpose of the exceptions is to allow certain structures within the setback that are expendable, that do not provide support for the primary structure, and that would have minimum impact if they were to become debris in a storm. Petitioners are seeking to broaden that exception by requesting two pools rather than one. Ms. Alcock stated that this would not be consistent with the spirit, purpose and intent of the CRC's rules. She stated Petitioners have not shown why two pools has less impact and would be better for the public safety and welfare than one larger pool. Ms. Alcock stated that denying this variance request because Petitioners do not have a hardship, nor does the variance meet any of the other criteria would best preserve Substantial Justice.

Doug Langford made a motion, seconded by Joan Weld to support the staff's position that strict application of the applicable development rules, standards, or orders issued by the CRC does not cause the Petitioner unnecessary hardships. The motion passed by a unanimous vote (Elam, Emory, Leutze, Bissette, Gore, Langford, Old, Sermons, Pittman, Shepard, Weld, Wilson, Wynns).

Jim Leutze made a motion seconded by Joseph Gore to support the staff's position that such difficulties and hardships do not result from conditions, which are peculiar to the property, such as location, size or topography of the property. The motion passed by a unanimous vote (Elam, Emory, Leutze, Bissette, Gore, Langford, Old, Sermons, Pittman, Shepard, Weld, Wilson, Wynns).

Doug Langford made a motion, seconded by Charles Elam to support the staff's position that the hardships do indeed result from actions taken by the Petitioner. The motion passed by a unanimous vote (Elam, Emory, Leutze, Bissette, Gore, Langford, Old, Sermons, Pittman, Shepard, Weld, Wilson, Wynns).

Charles Elam made a motion, seconded by Doug Langford to support the staff's position that the variance requested would not be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the CRC; secure the public safety and welfare; and preserve substantial justice. The motion passed by a unanimous vote (Elam, Emory, Leutze, Bissette, Gore, Langford, Old, Sermons, Pittman, Shepard, Weld, Wilson, Wynns).

COMMITTEE REPORTS

CRAC Report

Bill Morrison presented the minute from the CRAC meeting. (SEE ATTACHMENT FOR WRITTEN REPORT)

The CRC took the following action:

Wayland Sermons made a motion, seconded by Melvin Shepard to pass an amended version of a Resolution created by the CRAC to support the EMC strengthening coastal stormwater rules. The motion passed by a vote of 12 in favor (Elam, Emory, Leutze, Bissette, Gore, Langford, Old, Sermons, Pittman, Shepard, Weld, Wilson) and 1 abstention (Wynns).

P&SI Committee Report

Bill Peele presented minutes from the P&SI Committee meeting. (SEE ATTACHMENT FOR WRITTEN REPORT).

The CRC took the following action:

Bill Peele moved that the CRC approve the certification of the Town of Kure Beach Land Use Plan. The motion passed with a unanimous vote (Elam, Emory, Leutze, Bissette, Gore, Langford, Pittman, Shepard, Weld, Wynns). (Sermons, Wilson not present during vote).

Bill Peele moved that the CRC approve the certification of the Town of Newport Land Use Plan. The motion passed with a unanimous vote (Emory, Leutze, Bissette, Gore, Langford, Old, Pittman, Shepard, Weld, Wynns). (Elam, Sermons, Wilson not present during vote)

Bill Peele moved that the CRC approve the certification of the Town of Nags Head Land Use Plan. The motion passed by a unanimous vote (Emory, Leutze, Bissette, Gore, Langford, Old, Sermons, Pittman, Shepard, Weld, Wilson, Wynns). (Elam not present during vote).

I&S Committee Report

Bob Emory presented the minutes from the I&S Committee meeting. (SEE ATTACHMENT FOR WRITTEN REPORT)

The CRC took the following action:

Bob Emory moved that the CRC adopt 15A NCAC 07H .0312 Technical Standards for Beach Fill Projects. The motion passed with a unanimous vote. (Elam, Emory, Leutze, Bissette, Gore, Langford, Old, Sermons, Pittman, Shepard, Weld, Wilson, Wynns).

PUBLIC COMMENT AND INPUT

Justin Whiteside, Town of Ocean Isle Beach - addressed the impact of measuring the height of sand bags from the bottom of the bag and not from the elevation of the beach. He said it was normal for the bags to settle after they were put in and for the beach elevation to accrete after a storm event. In the case of Ocean Isle, public infrastructure was not being protected because of this. Mr. Whiteside stated that he knows it is possible to dig down to the lowest bag for measuring purposes, but felt it was doing more harm to the beach than good to remove those buried bags in order to place more on the top to keep the 6-foot height above ground level. He stated that it is difficult to use taxpayer's monies to maintain infrastructure that you can't maintain unless you dig up the bags. He requested that the CRC look into placement of bags based on the elevation.

Mary Alsentzer - read a letter from the Pamlico Tar River Keeper Heather Jacobs. "The Pamlico Tar River Foundation (PTRF) exists to protect and improve the environmental quality of the Tar Pamlico River. It's estuarine areas and its 5,500 square mile watershed. PTRF is a grassroots organization representing about 2500 members. PTRF supports regulation to put in an immediate halt to the detrimental practices of cutting and/or burning marsh grass and re-seeding those areas with varieties of grass seed suited only to upland lawns. By thus, changing the vegetation, developers and homeowners are able to argue that their land is no longer wetlands. They have in effect changed both the original vegetation and the hydrology of the shoreline allowing recurring, mowing and burning and subsequent receding of upland vegetation in areas that were recently natural coastal wetlands is contrary to no net loss policies, the spirit of the Coastal Area Management Act, and elements of the Coastal Habitat Protection Plan. If you do not feel that current language in CAMA regulations sufficiently addresses the prohibition of recurring mowing, burning and re-seeding, then we ask you to develop language to that effect for additional rulemaking. We would also like to take this opportunity today to support stricter regulation of the logging industry and our coastal region and along our waterways in the river basin. Time and time again we have seen areas logged under current logging exemptions to the buffer rules in the Tar-Pam Basin only to see those areas sold for development after logging. PTRF would like to see a required recovery time before coastal lands, which have been clear cut by logging practices, before they may be sold for development. Or perhaps a requirement that deforested buffers must be replanted before land may be sold for another use. We are also concerned about the working corridor as regards bulkheading and buffers. There must be some way to allow bulkheading without necessarily destroying existing natural buffers. We look

forward to seeing the shoreline stabilization alternatives that have recently been developed and we hope that these alternatives to the bulkheading now done under General Permits can help promote the retention of natural buffers along our estuarine shorelines. Additional protection for the critical aquatic habitat along our estuarine areas and in our estuarine areas is needed as the population in this coastal region expands. The Pamlico Tar River Foundation looks to you and the other Commissions established to make the difficult and often unpopular decisions necessary for the protection of our coastal areas. We are grateful for your leadership. Thank you for this opportunity to speak today and thank you for your efforts on behalf of coastal NC."

PRESENTATIONS

Proposed Variance Rule Changes

Jill Hickey presented proposed Variance Rule changes. Due to the lengthy review and discussion, please see attachment CRC-06-04 for complete proposed rule changes and reasons to support those changes. Further discussion of the variance rule changes will take place at the January 2007 CRC meeting.

New Ethics Laws

Ms. Hickey notified the CRC of the new State Government Ethics Act. She stated the law does not become effective until January 1, 2007 and will apply to public officials serving on or after that date and actions taken on or after that date. Ms. Hickey stated that in general the new law does the following things:

1. It creates an independent bi-partisan State Ethics Commission where the Governor will make 4 appointees and the General Assembly will make 4 appointees. Four will be Democrats and 4 will be Republicans.
2. It establishes ethical standards for conduct.
3. It requires most covered persons to file statements of economic interests.
4. It requires most covered persons to attend ethics education programs at least every 2 years. (current public servants must take the program within a year of 1/1/07 and then every 2 years after that.)
5. It authorizes the State Ethics Commission to issue confidential binding advisory opinion that gives limited immunity protections.
6. It authorizes the State Ethics Commission to investigate ethics violations.

Ms. Hickey stated the Act applies to CRC members in the following ways:

1. Prohibits use of public position for private gain, except to the extent the benefit enjoyed is no greater than the benefit other citizens could enjoy.
2. Prohibits mention of public position for nongovernmental advertising that advances private interests or that of another.
3. Prohibits acceptance of most gifts from lobbyists, lobbyist principals, or other persons doing business with the CRC. (there are ten exceptions listed in the statute at § 138A-32)
4. Requires due diligence to ensure avoidance of conflicts of interests.

5. Defines what constitutes a conflict of interest, clarifies what types of economic interests and economic relationships would not be considered conflicts of interests.
6. Requires removal of a disqualifying conflict of interest that prevents fulfillment of public duties or to resign.
7. Prohibits causing an extended family member to be hired in a State position.
8. Allows public agencies to adopt more stringent ethical standards for that agency's operations.

Ms. Hickey stated that public officials would have to file statements of economic interest by March 15 of each year. She stated the form requires a listing of types of assets, not to include value, held by the public official and their immediate families. Ms. Hickey stated the State Ethics Commission would review Statements for completeness and potential conflicts of interest. Public Official's authority to serve is subject to filing the form annually. She stated the Statements would be required to be sworn under oath and under the new law would be subject to penalty of perjury and other potential criminal charges for willfully misfiling or intentionally providing false information.

Stormwater Infiltration Systems

Michael R. Burchell, Ext. Assistant Professor for NC State University, gave a presentation on coastal stormwater infiltration systems. He stated in order to have successful infiltration systems near sensitive waters you must have permeable soils, a deep water table, and an adequate setback from the receiving water body. Mr. Burchell stated that the Kure Beach Stormwater BMP goal is to reduce the frequency stormwater enters the ocean directly, reduce the potential for human contact with bacteria and pathogens, and improve water quality. He stated the design considerations would capture 1 ½ inch to 1-inch storms, flow from larger storms bypass, and minimize dune vegetation and beach disturbance. Mr. Burchell stated the storm chambers are approximately 3x5x8, high density polyethylene, opened bottom, rest on crushed stone and geotextile and buried after installation. He stated that after construction, maintenance is critical to continue benefits in reducing runoff. I.e. back flushing, pruning/mulching and sweeping. Mr. Burchell concluded by stating that research and demonstrations have shown infiltration systems can reduce stormwater runoff if the site has permeable soils, low water tables, adequate distance to receiving water and can be maintained at least yearly.

ACTION ITEMS

Doug Langford made a motion, seconded by Jerry Old to adopt 15A NCAC 07B .0801 – Public Hearing and Local Adoption Requirements. The motion passed by a unanimous vote. (Elam, Emory, Leutze, Gore, Langford, Old, Sermons, Pittman, Shepard, Weld, Wilson, Wynns) (Bissette not present for vote).

Bob Emory made a motion, seconded by Jerry Old to defer adopting 07H .0306 – General Use Standards for Ocean Hazard Areas to the January CRC meeting for reconsideration of action on this rule. The motion passed by a unanimous vote. (Elam, Emory, Leutze, Gore, Langford, Old, Sermons, Pittman, Shepard, Weld, Wilson, Wynns) (Bissette not present for vote).

OLD/NEW BUSINESS

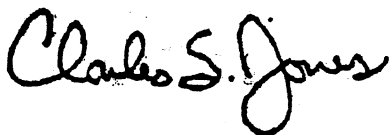
Chairman Hackney notified the CRC and CRAC that CRAC member David Nash has resigned due to conflicts with his daily work schedule.

Chairman Hackney reviewed the action taken to date on the CRAC's priority issues:

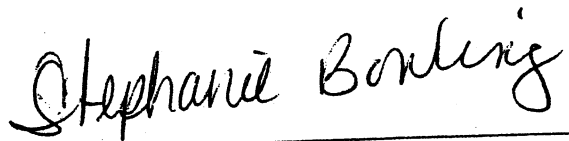
1. Shellfish Closures, Stormwater, 30-foot buffer
CRC action – Adopted resolution to support EMC effort to strengthen coastal stormwater rules.
2. General Permit for local governments to take on beach nourishment and dredging activities
CRC action – directed DCM to look at the feasibility. Staff still working on this. GP may not be most appropriate way. Need to coordinate turtle/bird moratoriums as well as with other agencies involved.
3. Enforcement existing regulations
CRC action – DCM is currently advertising for the 4 Compliance Enforcement positions.
4. Sandbags
CRC action – Clarified for staff that the sandbag structure should be measured from the bottom most bags.
5. CRC should support a Community Conservation Assistance Program
CRC action – Passed a resolution at the June 2006 meeting
6. Public Access
CRC action – DCM will be introducing amendments to the 7M Access Guidelines in January 07 that will give more flexibility to the Access Grant Program.
7. Variances
CRC action – CRC has begun to vote on the variance criteria individually.

With no further business, the CRC adjourned.

Respectfully submitted,



Charles S. Jones, Executive Secretary



Stephanie Bowling, Recording Secretary



State of North Carolina

ROY COOPER
ATTORNEY GENERAL

Department of Justice
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

Reply to:
Jill B. Hickey
Environmental Division
Tel: (919)716-6942
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jhickey@ncdoj.com

MEMORANDUM

CRC - 06 - 04

TO: Coastal Resources Commission
FROM: Jill B. Hickey
DATE: November 2, 2006
RE: Proposed Variance Rule Changes

At the September 21-22, 2006 meeting the P & SI Committee reviewed a set of proposed rules and recommended that the Commission proceed with public notice on those rules. At the meeting, the Commission agreed to give new member Wayland Sermons time to propose additional changes. Enclosed are the draft variance rules that the P & SI Committee approved in September, with Mr. Sermons proposed changes in **bold**. I have also proposed several changes, also noted in **bold**. As before, the existing rules are the backbone of the document. Proposed deletions from the existing rules are indicated by strike out. The underlined portions of the text indicate proposed additions. The information in italics explains the reason for the proposed change.

The most significant change Mr. Sermons proposes is for Commission members to be allowed to ask written questions prior to the meeting if they believe the answer is necessary to their decision on the variance. To accommodate this, the time periods had to be shifted so that the staff could get its recommendation to the Commission 5 weeks before the meeting, which gives Commission members 10 days to submit written questions and gives the staff 11 days to find the answer, try to stipulate with the petitioners, and include the stipulation in the normal mail out two weeks before the meeting.

For ease of reference, I am listing the sections in which proposed edits occur and a very brief description of the proposed edit.

.0701(a)	[wjs]	no pending litigation
.0701(b)(2)	[wjs]	submit copy of deed
.0701(d)	[wjs]	back up time to allow written questions by CRC
.0701(e)	[wjs]	clarifies that notice of variance request goes to third parties
.0701(f)	[jbh]	requires persons who represent petitioners to be attorneys

DRAFT VARIANCE RULES

9/7/06

.0701 VARIANCE PETITIONS

- (a) Any person whose application for a CAMA major or minor development permit who has received a decision by the Division of Coastal Management or a Local Permit Officer has been denied or issued with condition(s) that the person does not agree with on an application for a CAMA major or minor development permit may petition for a variance from the CRC Commission by means of the procedure described in this Section, provided that the person does not wish to challenge the permit decision. A variance is available only when the person acknowledges that the Commission=s rule(s) prohibit the development he or she wishes to undertake. If the person contends that the Division of Coastal Management or a Local Permit Officer did not correctly apply the Commission=s rule(s) in denying or in placing condition(s) on the permit, the proper avenue for this dispute is a contested case hearing under section 7J .0301 et seq. Any person who wishes to challenge the permit decision by means of a contested case proceeding must obtain a decision by the Administrative Law Judge and a final decision by the Commission, including all appeals, prior to filing a petition for a variance. In the case of a minor development permit, a decision shall not be considered final until all available local appeals, have been exhausted. Before filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the property, and there must not be pending litigation between the Petitioner and any other person which may make the request for a variance moot.

Requiring Persons to File Contested Cases Prior to Requesting Variances

N.C.G.S. ' 113A-120.1 provides for a variance only when the use of the land is Aotherwise prohibited by rules or standards prescribed by the Commission.@ Thus, the threshold for consideration of a variance is that the rule prohibits what the Petitioner wants to do. If a Petitioner wants to challenge the Division of Coastal Management or LPO decision applying the rule, the proper avenue is a contested case proceeding followed by a final agency decision by the Commission.

Requiring persons to seek variances from local requirements and to obtain court rulings on pending litigation

The first factor that the Commission must consider in any variance proceeding is whether the application of the Commission's rule prohibits reasonable use of the Petitioner's property. In order to find in favor of the Petitioner on this factor, the Commission must know the extent to

with topographical and survey information;

(6) a stipulation that the proposed project is inconsistent with the rule from which the petitioner seeks a variance and a waiver of the petitioner=s right to seek a contested case hearing to challenge the permit decision;

(7) notice of the variance petition sent certified mail, return receipt requested to the adjacent property owners and persons who submitted written comments to Division of Coastal Management and/or the Local Permit Officer during the permit review process and copies of the documents which indicate that the certified mail notices were received or that deliveries were attempted;

Paragraph (6) is proposed in order to strengthen the requirement that variance requests will be considered only if the person does not wish to challenge the permit decision, or has obtained a final decision in the permit case.

Paragraph (7) is proposed in order to notify third parties who submitted written comments regarding the permit application that the property owner has applied for a variance. This will enable third parties to follow the proceeding and exercise their rights, if any, to appeal the CRC=s decision.

(2) (8) an explanation of why the petitioner believes that the Commission should make the following findings, all of which are necessary for a variance to be granted:

(A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;

(B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;

(C) that such hardships did not result from actions taken by the petitioner; and

(D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.

(9) a proposed set of stipulated facts, for staff=s consideration, containing all of the facts

Commission members to review the variances five weeks before the meeting at which they will be heard and to request staff and the petitioner to stipulate to additional facts, as described in section . The word Aregularly@ was stricken because it is ambiguous and to clarify that variances may be considered at any meeting that meets the requirements of N.C.G.S. ' 143-318.9 et seq. The second sentence was altered to allow the Commission more flexibility in scheduling variance hearings and to allow Petitioners who submit complete variance petitions to advance more quickly through the process. The last sentence was added to be fair to persons who are waiting in line for their request to be considered and to reduce the amount of staff and Commission member time devoted to variance petitions that petitioners remove from the agenda after it has been set.

~~(g)~~ (e) Written notice of variance hearings or ~~commission~~ Commission consideration of variance petition shall be provided to the petitioner and the permit officer making the initial permit decision and to those persons described in subparagraph (b) herein.

References new requirement in section (b)(7) to notify third parties of petition for variance.

(f) A variance proceeding is a quasi-judicial proceeding. Non lawyers who appear in a representative capacity on behalf of petitioners in variance proceedings are engaging in the practice of law, which is prohibited by N.C.G.S. § 84-4. Therefore, persons other than attorneys are prohibited from representing petitioners in variance proceedings; they may, however, be allowed to answer questions at the hearing before the Commission. Petitioners may represent themselves in variance proceedings before the Commission, or they may engage the services of a duly licensed attorney to represent them. Corporations are required to be represented by an attorney.

Reason: The North Carolina State Bar has issued Authorized Practice Advisory Opinion 2006-1 regarding appearances at quasi-judicial hearings on zoning and land use. The opinion supplements a response to an inquiry made in October, 2005. The Advisory Opinion states that because variance proceedings are quasi-judicial proceedings, "it is the unauthorized practice of law for someone other than a licensed attorney to appear in a representative capacity to advocate the legal position of another person, firm, or corporation that is a party to the proceeding."

.0702 STAFF REVIEW OF VARIANCE PETITIONS

(a) The Division of Coastal Management, as staff to the ~~commission~~ Commission, shall review petitions to determine whether they are complete according to the requirements set forth in Rule

(6) (4) and any other undisputed facts relevant to the findings set forth in G.S. 113A-120.1 which the Commission must make in order to grant a variance; petitioner=s position on each of the variance criteria.

Copies of the agreed-upon description staff recommendation shall be provided to the petitioner and the permit officer making the initial permit decision at the same time as it is provided to the Commission prior to commission Commission consideration of the variance. If the facts are not agreed upon, or if Petitioner or staff has requested a recommendation from the Variance Factual Recommendation Committee and that Committee has not issued its recommendation pursuant to section .0704(e) staff does not reach agreement with the petitioner and receive the petitioner's approval of the written description at least two four seven weeks prior to a regularly scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next regularly scheduled commission Commission meeting.

If the facts are agreed upon, this proposed change allows the staff two weeks to prepare the staff recommendation before the initial mail out to the Commission five weeks prior to the meeting, as described in section (d) below. Similarly, if the Petitioner or staff requests the Variance Factual Recommendation Committee to issue a recommendation, this proposed change allows the staff and the Petitioner two weeks to prepare their arguments on the recommendation of the Variance Factual Recommendation Committee, which is incorporated into the staff recommendation.

~~(e) The petitioner shall be provided an opportunity to review the written description prepared by the staff and to agree or disagree with the facts and statements therein. The written description presented to the Commission shall include only those facts and statements that have been agreed upon and stipulated to by both the petitioner. If the staff does not reach agreement with the petitioner and receive the petitioner=s approval of the written description at least two weeks prior to a regularly scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next regularly scheduled commission meeting. If the staff determines that agreement cannot be reach on sufficient facts on which to base a meaningful variance decision, then the petition shall be considered by means of an administrative hearing.~~

(d) The staff recommendation shall be mailed to the Commission at least five weeks prior to the meeting at which the variance is scheduled to be heard. Each Commission member shall have the opportunity to submit written questions requesting further factual information deemed necessary or relevant. Commission members shall submit their question(s) to the Director of the Division of Coastal Management within 10 days of receipt of the staff recommendation. If staff and the petitioner agree on the facts, they shall prepare and sign an Addendum to Stipulated Facts, which will be sent to Commission members with the mail out two weeks prior to the meeting at which the variance is scheduled to be heard. If the staff and the petitioner cannot agree on the facts, they shall so inform the Commission by written submission sent to Commission members in the mail out, and the Commission shall decide at its meeting whether the fact is necessary to reach a decision on the variance request.

(c) ~~The Commission~~ At the Commission's request, staff shall orally describe the petition and the staff recommendation to the Commission or its appointed member(s) and shall present comments concerning whether the Commission should make the findings necessary for granting the variance. The petitioner shall also be allowed to present oral arguments concerning the petition. The Commission may set time limits on such oral presentations.

This change is proposed to allow the CRC flexibility to eliminate staff presentation if it is deemed unnecessary.

(d) The final decision of the ~~commission~~ Commission may be made at the meeting at which the matter is heard or in no case later than the next regularly scheduled meeting. The final decision shall be transmitted to the petitioner by registered certified mail, return receipt requested at the earliest feasible date after the final decision is reached, within 30 days of the meeting at which the Commission reached its decision. In the event that the Commission cannot reach a final decision because it determines that more facts are necessary, it shall remand the matter to staff and the petitioner with instructions for the parties to either agree to the necessary fact(s) or to request a recommendation from the Variance Factual Recommendation Committee pursuant to section .0704. If the parties are able to agree on the facts, the Commission shall make its final decision on the variance petition at the next scheduled meeting. If the matter goes to the Variance Factual Recommendation Committee and it issues its factual recommendation more than four weeks prior to the next scheduled Commission meeting, the Commission shall decide the variance at that meeting. However, if the Variance Factual Recommendation Committee issues its factual recommendation less than four weeks prior to the next scheduled Commission meeting, the Commission shall hear the variance at the meeting following the next scheduled Commission meeting.

This proposed change enables the CRC to obtain information it believes is necessary to its final decision to grant or deny the petition for variance. The proposed rule also places a deadline upon the CRC for issuance of its written decision. The deadlines are driven by the time necessary for the petitioner and staff to respond to the recommendations of the Variance Factual Recommendation Committee and to mail the arguments and staff recommendation to the Commission two weeks prior to the meeting at which the matter will be heard.

(e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the Commission.

(f) Variances may only be granted following affirmative findings by the Commission on each of the following points:

- (1) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;

and shall state the expertise of the individual making the statement and his or her relationship to the petitioner. All documents submitted to the Variance Factual Recommendation Committee shall be supported by sworn statements describing what the document is, who authored the document, and from whom the document was obtained.

- (d) Within 30 days of the submission of the written statements and rebuttals, the Variance Factual Recommendation Committee shall consider the matter at an open meeting, which may be held by telephone conference call. The Variance Factual Recommendation Committee shall consider only properly filed written statements and documents and shall not hear oral testimony or oral argument. The Variance Factual Recommendation Committee shall decide upon its recommendation at the meeting and shall issue its written recommended factual finding(s) within 30 days of its meeting. The Variance Factual Recommendation Committee shall transmit its written recommendation to the Commission, staff, and the petitioner.
- (e) The Commission may accept, reject, or modify the recommended factual findings of the Variance Factual Recommendation Committee. The Commission shall consider the recommended factual findings of the Variance Factual Recommendation Committee at the same meeting at which it considers the petition for a variance and shall make its decision on the facts prior to considering the variance petition. In making its decision on the recommended factual findings of the Variance Factual Recommendation Committee, the Commission shall consider the written record transmitted by the Variance Factual Recommendation Committee and shall not hear oral testimony or oral argument. The Petitioner and the staff shall have the opportunity to file objections with and present oral argument to the Commission regarding the recommendation(s) of the Variance Factual Recommendation Committee.

This section is proposed to address the problem of resolving disputed facts without involving a contested case hearing at OAH. The Variance Factual Recommendation Committee is not authorized to decide the disputed fact or facts; instead, it considers written evidence only and makes recommended factual finding(s) to the full Commission on what is anticipated to be a very limited number of facts.

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NC Coastal Resources Advisory Council Sheraton Atlantic Beach, NC November 15-16, 2006 Meeting Summary

Attendance

Bill Morrison (Chair)
Dara Royal (Vice Chair)
Frank Alexander
Deborah Anderson
Joseph Beck
Carlton Davenport
Eddy Davis
Webb Fuller
Gary Greene
Judy Hills
Al Hodge
Joe Lassiter
Travis Marshall
Gary Mercer
Wayne Mobley
J. Michael Moore

Lee Padrick
W. Burch Perry
Spencer Rogers
Robert Shupe
Harry Simmons
Lester Simpson
Steve Sizemore
Michael Street
Penny Tysinger
David Weaver
Ginger Webster
William Wescott
Traci White
David Stanley (for Don Yousey)
John Wood (for Renee Gledhill-Early)

Charles Elam (CRC)

Lee Wynns (CRC)

Council Call to Order

Bill Morrison called the meeting to order with 31 members in attendance. The Council approved the September 2006 minutes without amendment, and approved an amended version of the June 2006 minutes.

Field Discussion: Vegetation Lines, Setbacks, Large Structures

Jeff Warren led a field discussion on the subject of natural and static vegetation lines, and building setbacks for large and small structures. The Council was able to gain a hands-on perspective of how DCM and local permit officers mark vegetation lines and measure building setbacks. Jeff used the Sheraton hotel as an example of a large structure that was built using the large structure setback from the natural vegetation line. The Council was able to compare, on the ground and on maps prepared by DCM, how static lines in Atlantic Beach and Pine Knoll Shores converge and affect building setbacks.

Sandbag Heights

Justin Whiteside, Planning Director for the town of Ocean Isle Beach, addressed the Council to propose an alternative method for measuring the height of approved sandbag structures. Mr. Whiteside explained that in Ocean Isle Beach there are portions of a roadway that, because of

erosion, are now level with the tops of installed sandbag structures, which themselves are occasionally overwashed at high tide. Mr. Whiteside also noted that the sandbags are alternately buried by sand and exposed as a result of tidal action. The combined result is that the roadway is occasionally overwashed and covered with sand. The town would like the ability to modify their sandbag structure to raise the top elevation one foot above the roadway. Mr. Whiteside said he hopes the CRC would reconsider the way sandbag heights are measured. Gary Mercer asked how far the affected area is from Shallotte Inlet. Mr. Whiteside said that the area is approximately 750 feet from the inlet. Mr. Mercer questioned what the harm would be in allowing shoreline hardening within a mile or two of inlets and providing public access in other areas. The Council did not take any action following this discussion.

EMC Action on MFC Stormwater Letter

Mike Lopazanski informed the Council that the EMC had recently discussed a letter from the MFC calling for the EMC to implement several measures to strengthen stormwater management rules in the coastal zone. Currently, only three coastal counties are covered by Phase II stormwater rules, and DWQ estimates it could be up to 10 years before most coastal towns would grow large enough to be covered by the rules. The EMC decided to amend its existing rules to fit Phase II requirements, and plans to consider draft rules in January 2007. Bill Morrison said that he would like to see the CRC adopt a resolution in support of stronger coastal stormwater rules. Mr. Morrison said that the Council would need to convince the CRC to act at this meeting otherwise the resolution would not get to the EMC until after the new rules were considered. Mr. Morrison asked whether the Council was prepared to act immediately on the draft resolution that was provided to them (attached). A motion was made and seconded to ask the CRC to adopt the resolution and forward it to the EMC. The Council decided to finalize the wording after hearing from DWQ's Tom Reeder.

DWQ Studies on Stormwater Program Effectiveness

DWQ's Tom Reeder said that stormwater runoff is the number one water quality problem in the state, and that pollution associated with stormwater runoff is a result of development. Industrial runoff is more tightly regulated than residential runoff. Shellfish waters are the most sensitive receptors in the state, which is why they are used as an important indicator of water quality. 1,157 acres of outstanding resource waters (ORW) have been closed to shellfishing since 1990. Wayne Mobley said that stormwater runoff has been implicated as the primary cause of contamination in more than 90 percent of the areas sampled.

Tom Reeder went through a presentation on the existing regulatory programs, and a recent DWQ study that evaluated the performance of the programs in a sample watershed in New Hanover County. The study revealed that existing regulatory programs do not appear to have been effective in protecting waters from pollution. Existing programs rely on low density development, which do not require engineered stormwater controls. DWQ did not find any evidence that the existing programs would become any more effective in the future. The study pointed to the need to modify existing programs and/or adopt new programs to deal with the problem.

NC Session Law 2006-246 requires the EMC to amend its rules to meet Phase II stormwater requirements. The EMC must begin implementation by July 2007 and DWQ was beginning to draft rules to implement the legislation.

DWQ has also developed its Universal Stormwater Management Program (USMP). The USMP is a voluntary program that, if adopted by a local government, would replace all other applicable state regulations. The program would become effective in early 2007.

CRC Stormwater Resolution to EMC

Following Tom Reeder's presentation, the Council discussed the final language of the resolution. The Council's NCDOT representatives indicated that they could not support a resolution that did not explicitly acknowledge that NCDOT's stormwater controls are not failing, and that NCDOT does not want to be subject to the new regulations instead of their existing agreements with DWQ. The Council voted to send the resolution to the CRC in its current form.

Public Education through Local Governments

Whitney Jenkins, NC Coastal Reserves (NCCR), led a discussion around the Council's priority of public education on coastal issues, working through local governments. Whitney said that the NCCR administers a Coastal Training Program (CTP) to local governments to promote informed decision-making through science-based education. Whitney presented several outreach ideas, including offering education seminars at CRAC meetings, hosting a web-based clearinghouse, and advertising educational resources through CRAC county representatives, emails, and websites. Webb Fuller noted that while counties have representatives on the Council, most municipalities do not. Al Hodge responded that the CRAC will have to approach local governments and not wait for them to come to the Council for the information. Al suggested that the CRAC develop a standard presentation and take it on the road to local governments. Judy Hills said that the Councils of Governments have 205J money available that can help with the outreach costs. The CRAC would have to apply for grants. Eddy Davis stressed that the presentation has to focus on the relevant regulations, and what the local governments have to do and why; emphasize the practical requirements, not the science. Wayne Mobley suggested that the presentation should go beyond the regulations and educate local governments on the value of going beyond the minimum requirements. Mike Street recommended that the Council start with retrofitting for stormwater management as its first outreach topic.

Eddy Davis, Judy Hills and Penny Tysinger volunteered to serve on an Education & Outreach Subcommittee, to work with NCCR and DCM staff to devise an outreach plan for discussion at the January meeting.

Refinement of September Recommendations to CRC

30' Buffer

Bill Morrison asked how the Council wanted to approach the recommendation of expanding the 30' buffer. Mike Street responded that it is part and parcel of the stormwater discussion, and may be difficult to approach in isolation. Al Hodge asked what regulatory intent is behind the CRC rule. Mike Lopazanski said that the intent is not well codified. Several reasons were embraced during rule development, but the primary purpose since adoption has become water quality protection. Al asked whether the problem with the buffer is that it is not large enough or that it is poorly managed. Spencer replied that both are problems, plus DCM's lack of statutory authority to regulate vegetation within the buffer. Wayne Mobley added that a 30' buffer is not sufficient unless it is supplemented with a properly maintained engineered system.

Al Hodge said he would like the Council to push the CRC to request more regulatory control over vegetation. Terry Moore said that DCM has asked the Attorney General's office whether DCM has the authority under CAMA to regulate marsh alteration as development. The Council decided to wait for the AG's response before considering further action.

Retrofitting

Gary Mercer said that as a developer he is doing work and research on the subject of retrofitting. Bill Hunt and his program at NCSU has had money available for retrofitting and has a lot of information about it on his website. The Council decided to work with Bill Hunt for help in creating

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and disseminating local government tools. Webb Fuller said that this would be a good local government initiative, as opposed to a handed down state regulation.

Tax Credits

Webb Fuller advised the Council not to pursue tax credits as they would require changes in state law. Webb said it would be more efficient to work on giving credits against permit fees instead. Judy Hills said the Council could also look into stormwater utility fees. The Council did not take any action.

Strategic Habitat Areas

Mike Street said that the Division of Marine Fisheries would be presenting its proposed SHA designation process to the Marine Fisheries Commission on November 30th, and he could report to the Council in January on what the MFC decided to do. The Council agreed to hear Mike's report in January before further discussion.

New Business/Old Business

With no further business the Council adjourned.

##

**North Carolina Coastal Resources Commission Resolution
Supporting The Environmental Management Commission Effort To Incorporate
Phase II Stormwater Requirements In The Coastal Stormwater Program**

WHEREAS, North Carolina's coastal fisheries are among the most productive in the United States because of the wide variety of habitats available, the largest estuarine system of any single Atlantic coast state, and the location of North Carolina at the transition between mid-Atlantic and south Atlantic regions, and;

WHEREAS, approximately 60,000 acres of highly productive oyster harvest area is permanently closed to shellfish harvest, temporary shellfishing closures encompassing most of the southern coastal area of the state now restrict shellfish harvest on a regular basis, and permanent shellfishing closures are increasing and spreading into previously unaffected areas, and;

WHEREAS, bacterial contamination of shellfishing waters by stormwater runoff from land development near those waters has been identified as the primary cause for recent harvest closures in North Carolina's shellfishing waters, and;

WHEREAS, the N.C. Division of Water Quality has recently completed a comprehensive study on the effectiveness of its stormwater programs in protecting five small watersheds in New Hanover County, all with significant shellfish resources formerly available for harvest, and;

WHEREAS, the N.C. Division of Water Quality has determined that approximately 70 percent of all development on the coast has been low density in accordance with current coastal stormwater rules utilizing swales for treatment of stormwater runoff, and;

WHEREAS, the N.C. Division of Water Quality study found that swales can add pollution to stormwater runoff making the low density option of the current stormwater rules one of the primary causes for recent harvest closures of shellfish waters in North Carolina, and;

WHEREAS, the recently adopted Phase II Stormwater Rules and Universal Stormwater Management Program do not cover all coastal areas or shellfishing waters (surface waters rated SA and SB), depend at least in part, on voluntary participation, and are not designed to include rural areas potentially targeted for development, and;

WHEREAS, the Environmental Management Commission has directed the N.C. Division of Water Quality to develop draft language to incorporate Phase II Stormwater Program requirements into the coastal stormwater rules for the 17 coastal counties not currently part of the program.

THEREFORE, IT IS HEREBY RESOLVED THAT, the North Carolina Coastal Resources Commission (CRC) supports the Environmental Management Commission's (EMC) effort to amend the coastal stormwater rules to incorporate all new Phase II Stormwater requirements into the Coastal Stormwater Program. The CRC also requests that the EMC remove the distinction between Shellfish Resource Waters (SR) and Shellfish Waters (SA) and lower the requirement threshold to 10,000 square feet of land disturbance.

Dr. Courtney Hackney
Chair, N.C. Coastal Resources Commission

Date

Planning and Special Issues Committee

Meeting Summary
November 16, 2006

Committee Chair Bill Peele called the meeting to order at 1:34 p.m.

Urban Waterfront Development – Morehead City

Linda Staab, Director of Planning and Inspections for the Town of Morehead City presented the Town's experience with urban waterfront development when applying CAMA Urban Waterfront Rules. Ms. Staab reviewed the nine (9) specific structures located over the Public Trust Waters within the Town's Urban Waterfront District and addressed their redevelopment status. Ms. Staab believes the Rules recognize the uniqueness of downtown waterfronts and allow reconstruction of what would be non-conforming structures, allowing the local government to plan for redevelopment within the framework of CAMA rules. Primary issues discussed included:

- 1) building height – whether it should be addressed in the UWR or by local governments and whether or not increased height could be a trade-off for public open space;
- 2) non-conforming uses – continuing the allowance and expansion of structures housing non-water dependant uses such as restaurants, which can be an important element of downtown public use
- 3) conflicts between CAMA rules concerning the 50% rule for nonconforming structures and CAMA Urban Waterfront Rules allowing vertical expansion
- 4) replacement of structures – specifically allowing replacement in the rules, which may allow for more intensive structures

Town of Kure Beach LUP Certification (P&SI-06-13)

The Town of Kure Beach is requesting certification of the Kure Beach Core Land Use Plan. The Kure Beach Town Council voted unanimously by resolution to adopt the land use plan on September 27, 2006.

Mike Christenbury, Wilmington District Planner presented an overview of the plan and introduced Kure Beach Mayor, Tim Fuller who gave an overview of the planning process. Fuller noted that much work went into the plan and that the Town strongly desires to keep single-family and duplexes as the principal type of land use within the Town. In order to retain the small town character and maintain traditional land uses within the Town, a policy requiring a town-wide 35-foot maximum building height is included within the land use plan.

Mayor Fuller then introduced Dean Lambeth, a Town Council member who discussed a policy included within the plan, which will establish Floor Area Ratio (FAR) standards to proactively manage and control the size and scale of future development and redevelopment.

Dr. Jim Leutze noted that he felt Kure Beach had done an excellent job in preparing the plan and that the Town worked hard to develop policies to maintain the small-town character that exists within Kure Beach today.

A Motion was made by Dr. James Lutze, Seconded by Charles Elam, to recommend certification of the Town of Kure Beach Core Land Use Plan. The Motion carried Unanimously.

Town of Newport LUP Certification (P&SI-06-14)

Maureen Meehan Will, District Planner for the Morehead City District, presented the Town of Newport's Core Land Use plan. She noted that the plan by default has policy statements that are more stringent than the State minimum use standards. The town does not allow floating structures or mooring fields, due to the fact that the Newport River does not have enough depth to accommodate these types of facilities.

In addition, since local adoption the town has moved forward with implementing the plan. The town is actively working on a local storm water ordinance that will ultimately provide improvements to water quality and water quantity throughout the town. The local ordinance will be considered for adoption this coming spring.

Maureen then turned the presentation over to Mr. Bob Chambers, Director of Zoning and Buildings to further outline the plan. Mr. Chambers thanked DCM Staff and offered to answer any questions.

A Motion was made by Michael Moore, Seconded by Judy Hills, to recommend certification of the Town of Newport Core Land Use Plan. The Motion carried Unanimously.

Town of Nags Head LUP Amendment (P&SI-06-15)

Charlan Owens, Elizabeth City District Planner, gave a brief presentation concerning the proposed text amendment to the Town's 2000 LUP certified by the CRC on September 29, 2000. The amendment is to allow for the filling of tidal adjacent wetlands on lands abutting the north side of highway US 64/264 between the Melvin Daniels and Washington Baum bridges when a CAMA dredge and fill permit and a US Army Corps of Engineers permit (if required) have been issued. Both the current policy and proposed amendment meet and in some cases would exceed minimum CAMA permit requirements for the filling of *Coastal Wetlands*. Ms. Owens submitted the staff recommendation that the

Committee forward the amendment to the CRC for certification with the finding that it is not in conflict with the Coastal Management Program and other state and federal rules. Ms. Owens then introduced Bruce Bortz, AICP, Deputy Director of the Town of Nags Head Planning and Development Department.

A Motion was made by Charles Elam, Seconded by Michael Moore, to recommend certification of the amendments to the Town of Nags Head Land Use Plan. The Motion carried Unanimously.

Docks and Piers – Issues Overview (P&SI-06-16)

David Moye, the Express Permit Coordinator in the Washington Regional Office, did a presentation on the pier rules and what changes may be needed to accommodate current trends in the field.

Mr. Moye presented a brief history on how the pier rules were developed. He went on further to describe how slips were calculated and defined in the 1995 rule changes.

Mr. Moye went through examples of different types of pier and docking structures, both residential and commercial, and described the different uses associated with each type of pier or dock.

Issues to consider for rule change recommendations include: CHPP's 3rd goal, which is to enhance habitat and protect it from physical impacts; recommendations from the Multi-Slip Docking Facility Work Group; and guidance from Marine Fisheries for construction of docking facilities in certain habitat.

Staff recommends that pier development is considered as a maximum footprint of shading issues by combining all impacts allowed under the .1200 General Permit of the .0208 Major Permit Use Standards on the basis of square footage. After providing this recommendation, Mr. Moye provided examples of how this strategy would work.

All recommendation examples were constructed using the 20 ft² per linear foot of shoreline.

If the P&SI considers this to be a plausible approach, DCM would continue with the development of appropriate rule-making language.

Dr. Courtney Hackney interjected that the original intent of the current consideration to revise the pier rules is to give the homeowner options and flexibility while also addressing cumulative impact of shading, especially over SAVs.

Members of the committee, as well as members of the public, asked questions

and raised concerns about calculation of square footage and how the rules would be applicable to existing structures.

A Motion was made by Dr. James Leutze, Seconded by Charles Elam, for staff to bring back potential rule language that would give homeowners flexibility in the type and square footage of pier structures while at the same time providing more protection to the marine habitat. The Motion carried Unanimously.

LUP Implementation Status Report (P&SI-06-17)

Steve Underwood, Assistant Director for Policy and Planning provided an overview of the implementation status report requirements for communities. 7B 2002 guidelines and 7L funding rules requirement that communities with plans funded by the State, were required to submit a Land Use Plan Implementation Status Report every two (2) years after the plan has been certified by the Coastal Resource Commission (CRC).

The report should provide a clear correlation between land-use decisions that have been made during the twenty-four (24) month reporting period and the policies and implementation action programs of the adopted plan. The report must also be shared with the public, and forwarded to DCM.

Moreover he suggested that the implementation report be presented to the P&SI when the meeting is in the same region where the local government is located.

Continued Urban Waterfront Rule Discussion

Mike Lopazanski provided the following language for the committee to consider:

For the purpose of this rule, existing ~~Existing~~ enclosed structures may be replaced and or expanded vertically provided that vertical expansion does not exceed the original footprint of the structure.

The language proposed is an attempt to address the conflict between non-conforming and replacement issues associated with the rules. The language example was constructed using information from the declaratory rulings from past cases.

Mike asked whether the language expressed the intent of the commission being met with the proposed rule change?

Questions and discussion revolved around new development, height (pros and cons of height regulations) as well as why reward non-conforming situations where their neighboring vacant properties do not have the same benefit?

The committee agreed to continue the discussion at the January meeting.

Variance Controverter

Continued until January.

Planning Issues/Updates

John Thayer, Manager of the Planning and Access Programs passed out a cliff notes checklist for P&SI and CRC to use in reviewing plans and explained how to use the sheet.

Expected at the January Meeting are two LUPs for certification: Currituck County and Town of Beaufort; also two LUP amendments are expected: Carteret County and Emerald Isle. Emerald Isle will also be presenting their Implementation Status.

The meeting was adjourned at 4:44 p.m.

**Implementation and Standards Committee
November 16, 2006
Sheraton
Atlantic Beach, NC**

Bob Emory, Chair

Estuarine Shoreline Stabilization Subcommittee Update (I & S -06-30)

Bonnie Bendell gave the committee an update on the status of the work by the Estuarine Shoreline Stabilization Subcommittee. She presented a photomontage and definitions of the different shoreline types in North Carolina as well as the different possible shoreline stabilization methods. General concepts for rule development for estuarine shoreline stabilization were presented. Bonnie informed the committee that draft rule language would be presented at the January meeting. Joan Weld emphasized the need for public input in the rule making process as early as possible. Bonnie concurred and said that the committee will make plans for stakeholder input.

Summary of Comments on 15A NCAC 07H.0312 Technical Standards for Beach Fill Projects (I & S-06-29)

Jeff Warren thanked all who participated in the development of the sediment criteria during the last four years, with special thanks to the CRC Science Panel. Warren reviewed the comments made by stakeholders at the public hearing held at the last CRC meeting (September 21, 2006) as well as additional comments submitted in writing between August 1 and October 2, 2006. Warren identified minor changes made to the proposed rule language by DCM staff in order to add clarity and recommended that the Committee send the rule language to the CRC for adoption. Comments were made by Spencer Rogers (CRAC, CRC Science Panel) and Layton Bedsole (NC Ports) expressing concern about proposed beach fill projects that had already collected sediment data prior to an effective rule date. Specific concern was that these data may differ from those stipulated by the sediment criteria. The question was asked what would happen in these circumstances. Warren stated that permits would not be issued if the sediment criteria rules were not followed, but that these specific situations could be addressed through the variance process. A motion was made and seconded to send the proposed rules to the CRC. With the exception of Spencer Rogers, who voted against the motion because he felt the criteria should be implemented first as permit conditions, the rest of the Committee voted that the CRC consider these rules for adoption. Warren commented that rules adopted on Friday could become effective on February 1, 2007 if approved by the Rules Review Commission.

Static Vegetation Line/Ocean Development Setback Discussion (I&S-06-28)

Jeff Warren reminded the Committee of the Science Panel recommendations from May 1999, presented at the September 2006 meeting, stating that oceanfront setbacks should be increased for larger structures. At the request of Joan Weld, the Panel was polled whether they still supported this statement. Eight of nine Science Panel members agreed with the earlier recommendation (the ninth, Dr. Bill Cleary, had not responded via email or phone). Warren then asked the Committee to provide guidance to DCM staff for the development of potential management concepts and rule language associated with setbacks. The Committee unanimously supported staff's position to lift the exemption from single-family structures when dealing with setbacks and treat all structures based on size and not use. The Committee also provided unanimous support for the increased setback greater than 60 times the erosion rate for larger oceanfront structures such as condo towers and hotels. An additional request by Warren to bring draft rule language to the Committee in January identifying additional methods for the calculation of the alternative vegetation line (AVL) was also approved. The Committee requested that DCM staff compile data to address the current relationship of shorelines to static vegetation lines as well as identify past beach fill projects that would have gotten static vegetation lines had the 50 cubic yards per linear foot stipulation not been included in the definition of a large-scale beach fill project. In addition, staff will bring GIS displays to help illustrate specific examples being discussed.

Draft Exception to Buffer Rule for Stormwater Ordinance (I&S-06-23)

This agenda item was postponed until the January 2007 meeting to be held in Morehead City.