

APRIL 7-8, 2005  
CRYSTAL COAST CIVIC CENTER, MOREHEAD CITY

**CRC MEMBERS**

Courtney Hackney, Chairman

Chuck Bissett  
Renee Cahoon  
Chuck Elam  
Bob Emory  
Doug Langford  
Jim Leutze

Larry Pittman  
Melvin Shepard  
Joan Weld  
Bob Wilson  
Lee Wynns  
Bill Peele

**CRAC MEMBERS**

Robert Shupe, Chairman  
Bill Morrison, Co-Chair

Dave Weaver  
Ray Sturza  
Jimmy Johnson  
Lester Simpson  
Webb Fuller  
Carlton Davenport, Jr.  
Penny Tysinger  
Mike Street

Calvin Wellons  
Harry Simmons  
Dara Royal  
Wayne Mobley  
Joe Lassiter  
Frank Alexander  
Ann Holton

**ATTORNEY GENERAL'S OFFICE**

Jill Hickey  
Christine Goebel  
Merrie Jo Alcocke

## **CALL TO ORDER/ROLL CALL**

Chairman Courtney Hackney called the meeting to order and reminded Commissioner's the need to state any conflicts.

Stephanie Bodine called the roll. Jerry Old was absent.

## **MINUTES**

**Bob Wilson made a motion, seconded by Renee Cahoon, to adopt the January 2005 minutes as written. Doug Langford made a motion, seconded by Renee Cahoon to adopt the February 10, 2005 conference call minutes as written. The motions passed by a unanimous voice vote. (Bissett, Cahoon, Elam, Emory, Langford, Leutze, Pittman, Shepard, Weld, Wilson, Wynns) (Peele not present for this vote)**

## **EXECUTIVE REPORT**

Charles Jones gave a brief update on the following issues:

### **New CRC appointments**

- Chuck Bissette of Morehead City.
- Charles Elam of Apex.
- Dr. James R. Leutze of Wilmington.

In addition, the Governor's office has appointed Courtney Hackney as Chairman of the CRC, and has reappointed Doug Langford, Jerry Old, Bill Peele, and Melvin Shepard to the Commission. Their terms will expire June 30, 2008.

CRC Chairman Eugene Tomlinson has tendered his resignation as a member of the Coastal Resources Commission. Gene has been a member of the CRC since 1977 and has served as CRC chairman since 1993. Gene has been instrumental in most of the Commission's accomplishments, including championing the rules that prohibit the hardening of our ocean shorelines.

## **CHPP**

Gene Tomlinson joined DENR Secretary Bill Ross at a CHPP signing celebration in Morehead City on Feb. 11.

### **New Morehead City Office**

The Morehead City staff moved to 400 Commerce Ave. There is also a new toll-free number: 888-912-2262. Rulemaking procedures to make Morehead City the headquarters of DCM will begin at this meeting.

## **2005 Hurricane Season**

Colorado State's William Gray is predicting 13 named storms this year. Seven will grow into hurricanes, with three of those becoming intense storms of Category 3 or above.

### **Workshops**

On March 8, NC NERR, DCM, NOAA and Duke University Marine Lab co-hosted a Stormwater Technology Fair in Beaufort. There were 100 participants, including local government staff, state agency staff and engineering firms. The purpose of the fair was to highlight innovative technologies and practices for controlling stormwater runoff. Various companies and engineering firms demonstrated their products and/or past projects. These ideas will later be incorporated into a plan to control stormwater runoff and seawater system effluent on Piver's Island.

DCM also conducted a series of well-attended Clean Marina workshops in January.

### **Federal and State Budgets**

The DCM federal budget was decreased by \$40,000 for Fiscal Year 2006. The President's budget provides support for the U.S. Ocean Action Plan that was developed in response to the US Ocean Commission's report.

In addition, DCM expects to have additional reductions in its' state appropriations.

### **NC and Federal Legislative updates**

1) The NC Shore and Beach Preservation Association are circulating a new draft of the "Beach and Coastal Waterways Conservation, Restoration and Public Access Act."

A similar bill was introduced in 2001 by Rep. Nurham Warwick (D-Sampson). This bill created a Beach Preservation and Restoration Commission to serve as an independent agency in NC. The Commission had extensive powers, including the charge to develop a beach management plan and administer the Beach Preservation and Restoration Fund. Under this bill, the Fund would receive an annual appropriation of \$12 million. The bill was referred to the House Rules Committee and then re-referred to the House Environment Committee. The Committee did not take up the bill.

Although the 2005 draft closely resembles the 2001 version, there are several differences. For example, the 2005 version recognizes the CHPP as an integral component and requires that a larger percentage of the Advisory Council members be affiliated with local governments.

2) Senator Daniel Clodfelter introduced an act to enhance the infrastructure that supports oyster restoration activities, to protect and restore water quality and habitat in prime oyster growing areas, and to appropriate funds to help support projects to rehabilitate oyster habitats

and sanctuaries. Senator Julia Boseman introduced similar legislation that would allow for the development of oyster hatcheries at each of the three NC aquariums.

3) Rep. Bonner Stiller has submitted a bill that would let the CRC allow a porous groin structure, extending into the sea, on one or more Brunswick County beaches.

4) Gov. Mark R. Warner vetoed a bill that would have urged Congress to end its ban on drilling for natural gas off the Virginia coast. The bill called for Virginia's Liaison Office to lobby the state's congressional delegation and federal agencies in Washington to drop a decades-old ban on natural gas drilling off Virginia's coast. It urged passage of "proposed" federal legislation known as SEACOR, or the State Enhanced Authority for Coastal and Offshore Resources.

The SEACOR legislation has not been introduced in Congress yet. It remains in draft form and has been described by some opponents on Capitol Hill as "a stealth strategy" for again allowing oil and gas drilling off the East and West coasts.

5) The House Energy and Commerce Committee has begun marking up the provisions of the Energy Bill under their jurisdiction. There are three provisions of particular interest to coastal states:

- Section 320 relating to siting of Liquefied Natural Gas Facilities. Concerns have been raised by states that the provision would (1) preempt state permitting and limit state review; (2) authorize FERC to set the schedule for all federal and state administrative reviews (approval will be conclusively presumed if schedule is not met); (3) establish the FERC record as the exclusive record for all administrative appeals or proceedings; and (4) limit state safety reviews.
- Section 330 would limit the record on a CZMA consistency appeal for pipeline, LNG facilities, or offshore mineral development projects to the record developed by FERC or the relevant permitting agency (e.g. MMS)
- Section 355 would encourage prohibition of offshore drilling in the Great Lakes.

#### Staff News

- Lowana Barrett is the new receptionist in Morehead City.
- Rebecca Ellin is the new NERR Coastal Reserve Manager. Rebecca has her Masters degree in Marine Science from the University of South Carolina. She was once a NERR Graduate Research fellow for the North Inlet-Winyah Bay NERR, and was also a NOAA Coastal Management Fellow for the California Coastal Commission.
- John Cece has joined the Elizabeth City office as a field representative. John has a degree in marine and estuarine biology from the University of Maryland. His past work experience in the environmental consulting field includes the development of plans for

federal agencies to comply with requirements of NEPA, CZMA and reduce potential impacts of proposed development projects.

- Congratulations to Morehead City planner Maureen Meehan, who married Rob Will on Feb. 12.
- Anthony Snider joined us as our Southern Sites Manager for our Coastal Reserve program. He will be based out of our Coastal Reserve Office at UNCW's Center for Marine Science in Wilmington. Anthony will be primarily overseeing stewardship activities for the 2 National Estuarine Research Reserve Sites (Masonboro and Zeke's Islands) and the 2 Coastal Reserve sites at Bald Head and Bird Island. He holds a PhD in Forestry/Botany from N.C. State University. He worked at the University of Minnesota teaching various environmental policy/conservation and management issues related to natural resources.
- Heather Wells will be joining us as our new NERR research assistant. Heather comes to us from UNCW's Aquatic Ecology laboratory where she has been working as a research technician since 2000. Heather brings with her an impressive background in water quality monitoring and more importantly in water quality data compilation and quality control.
- Cathy Wood is the Accounting Technician in the Raleigh office. Cathy comes to us from the Museum of Natural Sciences, where she worked for almost 22 years.

### **CRC COMMITTEE ASSIGNMENTS**

Chairman Hackney assigned Bob Wilson and Chuck Bissette to the I&S Committee, and Jerry Old, Charles Elam and Jim Leutze to the P&SI Committee. Bill Peele will Chair the P&SI Committee.

### **PRESENTATIONS**

#### **History of the Coastal Habitat Protection Plan (CHPP)**

Mike Street, Division of Marine Fisheries, presented a history of the CHPP stating first that all the Commissioners received a CD version of the CHPP. Mr. Street stated that in that late 80s and early 90s there were serious coastal habitat problems, many, associated with commercial and sport fishing, the habitat itself, fish kills, oyster disease, sea turtle mortalities related to fishing gears, marine mammal mortalities related to entanglements, interagency conflicts related to gear, overfished stocks, sportfishing conflicts related to commercial gear, space competition related to access of water, licenses, and gear limits. Mr. Street stated the goal of the CHPP is the long-term enhancement of the coastal fisheries associated with each habitat. He also stated the Department was charged by the Act to prepare the Plan for adoption by the three Commissions, the CRC, the EMC, and the MFC. Mr. Street stated that the three Commissions adopted the initial guidelines in 1988 and established the InterCommission Review Committee, which consists of two members from each of the three Commissions. He stated the CHPP is an extensive scientific document that will serve as the Scientific Source Document for all other plans. Mr. Street stated the CHPP was adopted

unanimously by all three Commissions in December 2004 and implementation will now begin after the Commissions adopt their Implementation Plans this summer.

#### DENR CHPP Implementation

Steve Wall, DENR, presented the goals of the DENR Implementation Plan, stating that the focus is on coordination between the Commissions, as well as ensuring that all DENR Divisions are taking actions that support the goals and recommendations of the CHPP. Mr. Wall noted some action items to include strengthening enforcement programs by seeking legislation that will raise the maximum Coastal Area Management Act penalties for minor and major development violations. He also noted that DENR, through the Public Affairs Office, would coordinate the publication and release of Commission activity related to the CHPP through newsletters, new releases, the web site and other appropriate publications. Mr. Wall stated that DENR would hold quarterly meetings to include such agencies as Division of Coastal Management (DCM), Division of Water Quality (DWQ), Division of Marine Fisheries (DMF), Division of Land Resources, Division of Environmental Health, Wildlife Resources Commission and U.S. Army Corps of Engineers (ACE). DENR would also establish an Intercommission Advisory Committee to meet regularly to strengthen coordination among the Commissions and review progress of the implementation plans. Mr. Wall also noted that legislative authority would be pursued for the wastewater loan program to allow a reduced interest rate for applicants and an allowable increased flexibility for the use of the buffer restoration fund. He also stated that DENR would provide support needed for the continuation of the voluntary Swine Buy-Out to remove high-risk swine operations from the 100-year floodplain. The program would be conducted through the Division of Soil and Water Conservation with funding from the Clean Water Management Trust Fund.

#### Marine Fisheries Commission (MFC)/DMF CHPP Implementation

Mr. Street, DMF, presented the goals of the MFC/DMF Implementation Plan stating that the mission is to ensure sustainable marine and estuarine fisheries. Mr. Street stated that DMF staff drafted the CHPP, and would staff many of the groups working on implementation actions. Mr. Street noted some action items to include cross training Marine Patrol officers to take note of and report violations of CRC and EMC rules in Coastal waters to appropriate agencies. He also noted that the MFC would establish a scientific advisory committee to develop a standard process and criteria to identify and designate Strategic Habitat Areas (SHAs), and develop research priorities to identify SHAs, including chronological order of needed tasks. Mr. Street also noted that the MFC would consider modifying shrimp trawling areas through the current Shrimp FMP process to restrict trawling over or immediately adjacent to shell bottom, SAV, or nursery areas and maintain an adequate buffer. Mr. Street stated that this would start once the Shrimp FMP was approved, expected by December 2005, and complete by December 2006.

## Environmental Management Commission (EMC)/DWQ CHPP Implementation

Dianne Reid, DWQ, presented goals of the EMC/DWQ Implementation Plan stating that the goal is to maintain or restore and improve the aquatic environment and to ensure compliance with state and federal water quality standards. Ms. Reid noted that DWQ would design an effective Inspection Program to focus more resources on areas that are critical to coastal habitat protection. She also noted that a forum would be hosted for coordinating water related monitoring government agencies, universities and local governments. Ms. Reid noted that DWQ would participate in DENR efforts to develop criteria for Strategic Habitat Areas. DWQ would study the feasibility and benefits of developing an SAV Mitigation Program. Ms. Reid noted that an evaluation would be done on wetland and stream mitigation requirements to determine if restoration includes fisheries benefits. DWQ would continue working closely with the AEC and other entities to ensure protection of anadromous fisheries in dam operations and modify a Dam Removal Policy. Ms. Reid noted that DWQ would evaluate regulations regarding wastewater treatment systems for opportunities to provide incentives for upgrading all types of systems, ocean wastewater treatment systems and make recommendations to the EMC. She also noted that a plan would be developed to phase out municipal stormwater outfalls to sounds. Ms. Reid noted that DWQ would develop an optional plan that local governments could undertake to meet multiple stormwater regulatory requirements. DWQ would also evaluate stormwater pollution control mechanisms and cumulative wetland and stream losses in the Cape Fear and White Oak River basins to determine if additional regulatory controls are needed.

## CRC/DCM CHPP Implementation

Steve Underwood presented goals of the CRC/DCM Implementation Plan stating that the goal is to work to protect, conserve and manage NC's coastal resources through planning, permitting, education and research. Mr. Underwood stated that CRC meetings will include updates on the activities of other commissions and the CRC will continue to participate in the Intercommission coordination. He also noted that habitat restorations will be expanded to ensure that CRC rules are consistent with the MFC effort to establish oyster reefs. Mr. Underwood noted that DCM would prepare and implement a beach and inlet management plan to include completion of sediment criteria, development of minimum criteria for monitoring beach nourishment projects and a convene stakeholder group to identify data gaps, funding needs, framework and develop a timeline. He also noted that DCM would redefine the general permit for marsh sills, establish a CRC/CRAC Estuarine Shoreline Stabilization Subcommittee, and encourage alternatives to vertical shoreline stabilization methods through permit requirements and fees. Mr. Underwood noted that the CRC would request that the General assembly establish a coastal stormwater utility to facilitate the inspection and monitoring of engineered stormwater treatment systems. Lastly, he stated that DCM would incorporate the EMC's prohibition of marinas in Outstanding Resource Waters into CRC rules and evaluate marina development standards.

## CRC Variance Procedures

Jill Hickey, Attorney General's Office, reviewed the CRC variance procedures. Ms. Hickey noted that CRC rule 7H .0701(f) states a variance petition shall be considered by the Commission at a regularly scheduled meeting. She also stated that rule 7H .0703(a), (c) and (e) state the CRC may review the variance petition and staff comments and hear any oral presentation by the petitioner in full session or may appoint a member or members to do so. In cases where a member or members are appointed, they shall report a summary of the facts and a recommended decision to the commission; the CRC staff shall orally describe the petition and shall present comments concerning whether the CRC should make the findings necessary for granting the variance. The applicant shall also be allowed to present oral arguments concerning the petition; and final decisions concerning variances petitions shall be made by concurrence of a majority of a quorum of the CRC.

Chairman Hackney encouraged the CRC to read the CAMA requirements for variances so as to familiarize themselves more thoroughly.

## Update on National and Local Efforts to Re-establish Funding for Federal Dredging and Beach Nourishment Projects

Greg Rudolph, Shore Protection Manager for Carteret County, gave an update on the status of federal funding for dredging and beach nourishment projects. Mr. Rudolph explained that while federal mandatory spending has increased over the past 35 years and federal interest payments have remained fairly constant, discretionary spending (which includes funding for navigation projects) has steadily declined. Under the President's \$840 Billion proposed budget for FY2006, the US Army Corps of Engineers would receive \$4.5 Billion for civil works projects. The NC portion of the Atlantic Intracoastal Water Way would receive \$860,000 under the President's proposed budget, short of the \$5-6 Million needed. Maintenance dredging for the state's deep-draft harbors and ports would be funded at \$37 Million, and dredging for the state's shallow-draft inlets would be unfunded. Mr. Rudolph mentioned the state's Congressional delegation was able to secure emergency funding for dredging North Carolina's shallow draft inlets this year. The President's budget zeroed out funding for beach nourishment projects in the state, with an exception of \$890,000 earmarked for Wrightsville Beach. Mr. Rudolph said that coastal states and the White House are now engaged in a game of "Appropriations Chicken," to see whether the federal or local governments will be first to provide steady funds for dredging and nourishment.

Mr. Simmons noted that while Dare County has just approved a one percent tax increase to fund nourishment projects, he would prefer to see local governments wait until all possible avenues for federal funding are exhausted before accepting a shift in the financial burden from the federal government.

Mr. Rudolph emphasized that Congress continues to be generous in their proposed dredging and nourishment funding, but that it continues to be the White House, over the last few Administrations, that has pushed for progressively lower funding. This is the first year, Mr. Rudolph added, that the White House has proposed zero funding. He also stated that a bill



would be introduced to the state Legislature that will seek, in part, to convene a Blue Ribbon Commission to study these issues, and to establish a dedicated funding source for the state match.

### CHPP AND OTHER PUBLIC INPUT AND COMMENT

Michele Duval, Environmental Defense, addressed the CRC on the adopted CHPP on behalf of various organizations. She stated that she first would like to commend the CRC for formally adopting the Plan by the deadline. Ms. Duval stated that she recognizes that the document is lengthy and technical in nature, and that several of the recommendations would require rulemaking. However, she stated, the future health of the coast depends on strong and coordinated leadership from all of the NC rulemaking Commissions, but especially the CRC. She urged the CRC and DENR to move forward with identifying priorities for implementation as soon as possible and to stand by the established deadline of July 2005 for finalizing the first round of priorities. Ms. Duval noted that support has been generated for the CHPP and the Commissions and DENR need to capitalize on this momentum and follow through on the commitment to the citizens of NC to implement the Plan. She also added, that as part of the commitment she strongly supported the inclusion of funds in the DENR expansion budget. Ms. Duval closed her comments by stating that efforts made by the Commissions to advance the goals of the plan, especially improving the effectiveness of existing rules, will serve to enhance the enjoyment of public trust resources for all citizens, not just fishermen.

Jan Harris, Brunswick County Environmental Information Action Team (BEAT), addressed the CRC regarding the continuation of construction on Sunset Beach. She stated that she didn't have specific comments; rather she handed out articles from the Wilmington Star-News so that the Commissioners that did not receive this newspaper would be made aware of the issues currently taking place in Sunset Beach. The articles addressed building near inlets and a bill submitted that would let the CRC allow a porous groin structure, extending into the ocean, on one or more Brunswick County beaches.

Sammy Varnam addressed the CRC on Third Party Appeals. Mr. Varnam is a resident of Varnum Town, Brunswick County and encouraged the CRC to be aware of frivolous Third Party Hearing Requests that he believes are being disguised as legitimate concerns. Mr. Varnum noted that he believes there is an on going abuse of the process that is occurring in Sunset Beach. He noted that he believes it is evident that the BEAT is only hindering projects that have approval and legal permits to conduct business associated to Mr. Ed Gore. Mr. Varnam noted that Mr. Gore has been a major developer for over 50 years to the Sunset Beach area and his efforts have contributed to making Brunswick County a desirable place to visit as well as live and raise a family. He noted that Mr. Gore's business practices have always been ethical and environmentally friendly. Mr. Varnum expressed that he believes this issue has become a personal vendetta for the BEAT and is getting increasingly worse. Mr. Varnum noted that Third Party Hearing Requests being abused not only cost the developer, but also in addition costs to CAMA. Mr. Varnum noted that the petitioners of these requests need to be held responsible for the down time and loss of monies. Mr.

Varnam encouraged the CRC to investigate any abuse of the Third Party Hearing process and evaluate what is good for the NC coast.

## VARIANCES

### Henry Sneed (CRC-VR-04-18)

Merrie Jo Alcoke reviewed the Stipulated Facts of Attachment B of CRC-VR-04-18, stating that the petitioner is the owner of four adjacent oceanfront lots in Atlantic Beach. The petitioner applied for a CAMA Minor Permit to construct one single-family residence on Lots 1 and 2 and one single-family residence on Lots 11 and 12. The Army Corps of Engineers (Corps) periodically performs maintenance dredging of the Morehead City harbor and in some instances disposed of the dredged material on Brandt Island near the Morehead City harbor. Ms. Alcoke stated that in 1986 the Corps pumped sand out from Brandt Island and deposited the dredged material along a stretch of shoreline in Atlantic Beach, including the area in front of the Petitioner's lots. The disposal of dredged material as a result of these projects was a "large scale beach nourishment or spoil deposition project" as defined in CRC rule 7H .0305(f). Ms. Alcoke stated that the Petitioner's lots have received the benefits of being in close proximity to these large-scale projects. She also stated that the lots are located in the Ocean Erodible AEC. In September 1996, the CRC adopted an amendment to 7H .0305(f) which states in part: "In areas within the boundaries of a large scale beach nourishment or spoil deposition project, the vegetation line that existed prior to the onset of project construction shall be used as the vegetation line for determining ocean front setbacks after the project is complete...". Ms. Alcoke stated that at the request of the Petitioner a DCM Field Representative located the first line of stable natural vegetation without the application of the large scale project rule in 7H .0305(f) on the Petitioner's lots in August 2004. This line was shown on the site plan as "Apparent Vegetation Line". She stated that if the Petitioners were able to use the Apparent Vegetation Line, their proposed development would meet the 60-foot setback. Ms. Alcoke stated that the Petitioners have obtained preliminary approval from the Carteret County Health Department for the proposed residences for an on-site sewage disposal system for 3 bedrooms. Final approval would be obtained after a determination by the CRC to grant the variance. The Petitioners requested a variance from 7H .0306(a).

Ms. Alcoke stated that the DCM staff agrees that Petitioners have a hardship in that they purchased the property prior to the 1986 beach nourishment and prior to the CRC's 1996 adoption of the rule requiring use of a pre-nourishment vegetation line. She stated that in this case the difference between the pre-nourishment vegetation line and the existing vegetation line is substantial. This area is subsumed by the existing septic system. Therefore, the Petitioners cannot construct a residence that complies with the setback rule. Ms. Alcoke stated that the hardships do not result from conditions peculiar to the property, in that the lots, in most respects, are typical in size, shape and dune features. She also stated that construction of new structures entirely within the minimum 60-foot setback is inconsistent with the purpose of the CRC's rules and losses to life and property would be enhanced rather

than minimized. Ms. Alcocke stated that the Petitioner has not demonstrated that the variance will secure public safety and welfare, or that it will preserve substantial justice.

Bill Raney, Attorney for the Petitioner, reviewed the stipulated facts mentioned above. He also stated that there is currently only 10 feet of land to build on and without a variance the land is useless. Mr. Raney provided photographs that were stipulated in the facts. Mr. Raney also reviewed the Petitioner's position on the criteria questions noting that there is a difference of staff's opinion on two. He stated that hardships do result from conditions peculiar to the property, such that the Petitioner is subjected to a rule that fixes the vegetation line for ocean front setbacks. Mr. Raney stated that if the actual line of vegetation were used as the measurement line, the Petitioner would be able to build reasonable residential structures on the lots. Mr. Raney also stated that the proposal is consistent with the spirit, purpose, and intent of the rules in that it would allow development in an area that is already completely developed, the development would be superior from a hazard standpoint due to better building codes and construction techniques, the development would not present danger to life or property due to modern construction techniques and an unusually stable shoreline, and the project would achieve a balance between the financial, safety, and social factors that are involved by allowing productive use of the Petitioner's property.

**Melvin Shepard made a motion, seconded by Jim Leuzte to deny the variance request. The variance requested was denied by a hand vote of 7 in favor (Cahoon, Emory, Langford, Leutze, Peele, Shepard, Weld) and 5 opposed (Bissett, Elam, Pittman, Wilson, Wynns).**

#### B & D Investments, LLC (CRC-VR-04-27)

Ms. Alcocke reviewed the Stipulated Facts of Attachment B of CRC-VR-04-27, stating the Petitioner owns a lot that is situated on a slight V-shaped bend in the shoreline of Banks Channel. She stated that the Petitioner's lot is one of the very few remaining undeveloped lots on that stretch of the shoreline. Ms. Alcocke stated that the Petitioner proposed to construct a pier and docking facility to provide riparian (deep water) access. The property immediately to the north of Petitioner's property has a pier, and the property two lots south of the Petitioner's property has a pier. Ms. Alcocke stated that the ordinances of the Town of Wrightsville Beach state no pier, dock or other structure shall be constructed which is closer than 15 feet to the owner's extended property lines and that no other structure shall be constructed within 15 feet of any other pier unless it is a part of the same mooring system. Ms. Alcocke stated that the Town agreed to waive its setback requirement and allow construction of Petitioner's pier within both the Town's pier construction setbacks and the CRC's 15-foot setback from areas of riparian access. The Town's pier construction setbacks and the CRC's rules for riparian setbacks create conflicting lines in this case. Ms. Alcocke stated that if the Petitioner did not have to comply with the Town's pier construction setbacks, they could otherwise meet the CRC's riparian setback rules. She also stated that the Petitioner requested a variance from the CRC's riparian setback rules in order to

construct a pier, which would be approximately equal distance between the two adjacent piers. Ms. Alcocke stated that without a variance, Petitioner could construct a pier that is 40 feet long and meet both the Town setback and the CRC setback, but a pier that length would not allow the Petitioner to reach deep water.

Ms. Alcocke stated that the combination of the Town's pier construction setback together with the CRC's required setbacks from the adjacent property owners' areas of riparian access cause the Petitioner a hardship. She stated it is not common for a local government to have its own requirements regarding placement of docks and piers. Ms. Alcocke stated that meeting both setbacks is difficult due to the size and trapezoidal shape of the Petitioner's lot, combined with a slight bend in the shoreline. She also stated that the Petitioner's proposed pier would be substantially shorter than the neighboring piers and also placed an equal distance between lot lines. Ms. Alcocke stated that the proposed pier would not cause unreasonable interference with navigation and therefore staff agrees that the requested variance is consistent with the spirit, purpose and intent of the CRC rules.

Mr. Frank Sheffield, attorney for the Petitioner, reviewed the above stipulated facts, and made mention that DCM staff and Petitioner agree on all four criteria.

**Joan Weld made a motion, seconded by Bob Emory, to grant the variance request. The variance request was granted by a unanimous hand vote. (Cahoon, Emory, Langford, Leutze, Peele, Shepard, Weld, Bissett, Elam, Pittman, Wilson, Wynns).**

#### Larry & Sonja Powell (CRC-VR-04-28)

Christine Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-04-28 and stated that the Petitioners proposed to build a deck on a single-family residence currently under construction. Ms. Goebel reminded the CRC that the home is under construction based on a variance from the 30-foot buffer rules, granted in October 2004. She stated that the home design included a 196 sq. foot slatted, wooden, elevated unroofed deck within the 30-foot buffer. The Petitioners have since requested a modification of their permit to add a second story, 196 sq. foot, deck to the home, making the total area of deck 392 sq. feet. Ms. Goebel stated the proposed decks are entirely within the buffer area. She stated that Petitioners are seeking a variance from the 200 sq. foot limit for decks within the 30-foot buffer area. Ms. Goebel stated as a condition of this variance, Petitioners proposed to record restrictive covenants, which require the use of pervious material for both driveways on the lot and in addition prohibit covering the decks with impervious material.

Ms. Goebel stated that the hardships do not come from the strict application of the buffer rule; rather it's the Petitioner's design, which causes the hardship. She also stated that the hardship does not result from conditions peculiar to the property. Although the lot is subject to the 30-foot buffer on two sides, this is very common along the coast. Ms. Goebel stated that the Petitioners could have worked a smaller deck area without a variance from the CRC. She stated that the Petitioners should have researched the rules and designed their home and decks to meet the buffer rules and decking exception. Ms. Goebel stated that the Petitioners

proposed a "catch basin" system that will collect the first 1.5 inches of rainfall, and are willing to make the western driveway of pervious materials as well as abide by the prior variance condition to make the eastern driveway of pervious material. She noted that if the CRC believes that the increased pervious surface area will compensate for the increased degree of imperviousness of the two-story deck, then the staff would agree that the variance would be consistent with the spirit, purpose and intent of the rules, and protect public safety and welfare.

Mr. Raney, attorney for the Petitioner's, stated that the Petitioners are precluded from constructing a deck because of the 200 sq. foot decking limitation in the 30-foot buffer, even if the total footprint is less than 200 sq. feet. Mr. Raney stated that the Petitioners argue their hardship is caused by the lot's small size. He also stated that the Petitioners are not the cause of hardship. The lot sizes and the size of houses built prior to the rule are factors over which Petitioners had no control. Mr. Raney stated that the Petitioner's proposal does not increase the ground area covered by the proposed deck because the deck would be located entirely over a deck that is permitted by the rules. He stated that the proposal would preserve substantial justice by allowing Petitioners to construct a house commensurate with other house in the neighborhood.

**Bob Wilson made a motion, seconded by Renee Cahoon to deny the variance request. The variance request was denied by a hand vote of 11 in favor (Cahoon, Emory, Langford, Leutze, Peele, Shepard, Weld, Elam, Pittman, Wilson, Wynns), and 1 opposed (Bissette)**

Wayne & Susan Lehman (CRC-VR-05-01)

Ms. Goebel reviewed the Stipulated Facts in Attachment B of CRC-VR-05-01 stating that the Petitioners proposed to build a single-family residence that is located in the Coastal Shorelines AEC. She stated the home would be on the county water system, and will have a septic system. Ms. Goebel stated that the total proposed impervious area, consisting of the home footprint and driveway, is 2,231 sq. feet and will cover 32.7% of the AEC area of the lot. She stated that the home would encroach 4' into the buffer; the covered porch would be 194.6 sq. feet of area in the buffer, and the open decks are approximately 445 sq. feet. Ms. Goebel stated that the Petitioners proposed a storm management system to contain the first 1.5 inches of rainfall. She also reminded the CRC that they granted a variance to the Petitioner's neighbor, in July 2002, for a 1,200 sq. foot home and a 480 sq. foot open deck in the buffer. Ms. Goebel stated that the Petitioner's requested a variance from the 30-foot buffer rule and the 30% impervious limitations.

Ms. Goebel stated that the Petitioners have not shown that unnecessary hardships result from application of the buffer rule, as they can design a 2,100 sq. foot footprint home that meets the 30-foot buffer and allows for the septic system. She also stated that the hardship does not result from conditions peculiar to the property, in that a half-lot was added to the single lot and that is wider than most lots. Ms. Goebel stated that any hardships are the result of the Petitioner. She stated that the Petitioners purchased the lot after the buffer rules took effect

and that the Petitioner should have researched the rules prior to purchase and design the home to meet the rules. Ms. Goebel stated that the variance would not be consistent with the spirit, purpose and intent of the rules in that the Petitioners could design the home to meet the small house exception or reduce the overall size of the house and decks to meet the rules.

Wayne Lehman, Petitioner, addressed the CRC stating that they would install a stormwater containment system to include gutters and a sprinkler system that would disburse the water into the front yard. Mr. Lehman stated that the LPO inspected the neighbors stormwater system, which is similar to Petitioner's proposal and believed that it worked well. He stated that in addition to the stormwater system he proposed a general grade on the lot, which would go from the bulkhead to the road to further ensure there would be no stormwater going into the Sound. Mr. Lehman stated that in order to meet the local setback and the CRC's setback he could only build a house that is 25 feet wide. He stated that to put a 10-foot deck on that would decrease the width to 15 feet. Mr. Lehman stated that the house he currently lives in was built to meet the CRC setback rules and the size of it is not suitable for a permanent residence in his opinion.

**Doug Langford made a motion, seconded by Charles Elam to grant the variance with the conditions that the grade of the lot slope from the waterward side backward toward the street, but swaled at a point before it reaches the street so as not to impact the rest of the neighborhood and that the water containment system and the sprinkler system be installed and remain operative throughout the applicants period of ownership. At any point in the future, should the applicant decide to sell the property, that these conditions be recorded on the plat so that the attorney for the new owner would have full knowledge of the responsibility to maintain the system.**

**Bob Emory made a friendly amendment, to use the standard language for variances, that prior to occupancy of the residence and prior to issuance of a final Certificate of Occupancy by the local permitting authority, the Petitioner shall provide certification from the individual who designed the system that the stormwater system has been inspected and is installed in accordance with the CAMA permit, the approved plans and specifications, and other supporting documentation.**

**The motion failed by a hand vote of 3 in favor (Bissett, Elam, Langford) and 9 opposed (Cahoon, Emory, Leutze, Peele, Pittman, Shepard, Weld, Wilson, Wynns)**

**Melvin Shepard made a motion, seconded by Bill Peele, to deny the variance as requested. The variance request was denied by a hand vote of 9 in favor (Cahoon, Emory, Leutze, Peele, Pittman, Shepard, Weld, Wilson, Wynns) and 3 opposed (Bissett, Elam, Langford).**

#### The Riggins H.O.A. (CRC-VR-05-02)

Ms. Goebel reviewed the Stipulated Facts in Attachment B of CRC-CR-05-02, stating that the Petitioners have sought and were granted prior variances to keep sandbags in front of

their property for a period longer than allowed by rule. She stated that current variance allows bags to remain until May 9, 2005. Ms. Goebel gave a brief history on the prior variance requests and added that in July 2004, the Town of Kure Beach was awarded a \$3.6 million dollar FEMA grant to acquire the current site once the Riggings relocates across the street. She stated that as of March 2005 the Petitioners are working with architects and surveyors to finalize plans to rebuild the structures across the street and remove the current structures, and have contractors ready to start construction once the planning is complete. The Petitioners are requesting a variance to keep the sandbags in place until the relocation has taken place.

**Bob Emory made a motion, seconded by Melvin Shepard to grant the variance request. The variance requested was granted by a unanimous hand vote (Cahoon, Bissett, Elam, Emory, Langford, Leutze, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns)**

### **CRAC COMMITTEE REPORT**

Bob Shupe presented the minutes from the CRAC (SEE ATTACHMENT FOR WRITTEN COPY). The CRC took no action during this report.

### **I&S COMMITTEE REPORT**

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

**Bob Emory moved that the CRC send 15A NCAC 07H .0304(4)(b) AECS WITHIN OCEAN HAZARD AREAS to public hearing for amendment for the removal of oceanfront areas in New Hanover, Pender, Carteret, and Onslow Counties from Unvegetated Beach Designation. The motion passed unanimously (Cahoon, Bissett, Elam, Emory, Langford, Leutze, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns)**

**Bob Emory moved that the CRC send 15A NCAC 7H .0309(b)(4)(c) USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS to public hearing for an amendment in order to allow proposed development located in a high erosion rate area to use concrete, asphalt, or turfstone so long as the development does not directly abut the ocean and is located landward of a paved public street or highway currently in use. The motion passed unanimously (Cahoon, Bissett, Elam, Emory, Langford, Leutze, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns)**

**Bob Emory moved that the CRC adopt amendments to 15A NCAC 7A .0101, 7H .0503, 7I .0302, 7J .0301, 7J .0302, 7J .0407, 7J .0602, and 7J .0701 following a relocation and designation of DCM's Morehead City office as the Division's main office. The motion passed unanimously (Cahoon, Bissett, Elam, Emory, Langford, Leutze, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns)**

**Bob Emory moved that the CRC send 15A NCAC 07O .0105 to public hearing in order to include two sites by rule into the NC Coastal Reserve complex. The motion passed**

unanimously (Cahoon, Bissett, Elam, Emory, Langford, Leutze, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns)

### **P&SI COMMITTEE REPORT**

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

**Bill Peele moved that the CRC certify the Town of Duck's Land Use Plan based on a determination that the plan has met the requirements of the Guidelines and that there are no conflicts with the State's Coastal Management Program. The motion passed unanimously (Cahoon, Bissett, Elam, Emory, Langford, Leutze, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns)**

### **OLD/NEW BUSINESS**

Verbatim minutes begin:

COURTNEY HACKNEY: I would like to make sure that we're all clear on our next meeting. Our next meeting is going to be May 13<sup>th</sup> in accordance with Article 5 Section 1 of the Internal Operating Procedures of the Coastal Resources Commission. A regular meeting of the Coastal Resources Commission will be held at 10:30 on May 13, 2005 at the Wilmington DENR office on North Cardinal Drive. I understand that not everyone is going to be able to attend this meeting in person, but those of you who can please be there, those of you who cannot you will get a phone number and you will be able to participate as a call in vote. We will take up; this meeting is going to be in Wilmington. The purpose of this meeting is considering amendment of the Carolina Beach LUP and any other relevant business that we have to take care of. You will get the call in numbers. Stephanie will take care of that. For those of you who are new, this isn't something we haven't done before. It usually runs pretty smoothly.

CHARLES JONES: We will also send a package of material that will come to you. This is going to be a regular Commission meeting. There will be an agenda.

Verbatim minutes end.

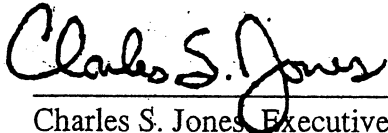


## NEXT AGENDA ITEMS

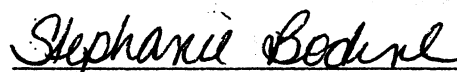
- Overview of the beach nourishment program.
- CRC preview meeting being held on Wednesday June 15, 2005 for about one hour at 7:00 p.m.
- Election of Vice Chair.

With no further business, the CRC adjourned.

Respectfully submitted,



Charles S. Jones, Executive Secretary



Stephanie Bodine, Recording Secretary



COASTAL RESOURCES COMMISSION  
MAY 13, 2005  
CONFERENCE CALL

CRC Attendance

Courtney Hackney, Chairman

Renee Cahoon  
Bob Emory  
Chuck Bissett  
Charles Elam

Doug Langford  
Melvin Shepard  
Joan Weld

Roll Call

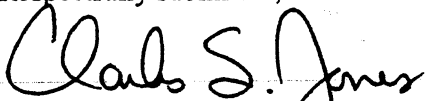
Stephanie Bodine called the roll. Jim Leuzte, Jerry Old, Bill Peele, Larry Pittman, Bob Wilson, and Lee Wynns were absent.

Presenting the Eure-Gardner Award

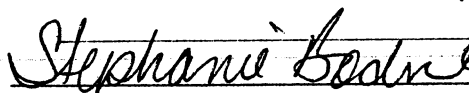
Bob Emory made a motion, seconded by Doug Langford to nominate and present the Eure-Gardner Award to former CRC Chairman Eugene Tomlinson. The motion passed by a unanimous voice vote. (Cahoon, Emory, Bissett, Elam, Langford, Shepard, Weld)

With no further business, the meeting adjourned.

Respectfully submitted,



Charles S. Jones, Executive Secretary



Stephanie Bodine, Recording Secretary



**Planning and Special Issues Committee**

Meeting Summary

April 7, 2005

Committee Chair Bill Peele called the meeting to order at 1:27 p.m.

**Election of P&SI Subcommittee Vice Chair**

- Doug Langford nominated Jerry Old
- **Charles Elam made a motion to nominate Renee Cahoon for vice-chair this was seconded by James Leutze**
- **There was a vote and Renee Cahoon was chosen as Vice-Chair**

**Atlantic Beach – History of the Circle and Current Plans**

- Lee Smith, Planning Director for the Town of Atlantic Beach gave an introduction and overview of the area of Atlantic Beach known as ‘the Circle’
- The Bathhouse and Pagoda were the central meeting points for tourists in the early 1920s
- Mr. Smith explained that there have been several different efforts to revitalize the area that was in decline through the 60s, 70s and especially the 80s.
- The Circle had been the main attraction of Atlantic Beach, and was developed as a tourist destination with hotels, eateries and shopping.
- 2003 Circle Redevelopment Area was adopted by the Town board with the intent to reestablish the area as a civic, recreation, and social area within the town as a premier destination of residents and tourists alike.
- CDD- Circle Development District became a zoning classification with specific development regulations.
- The standards of the district include regulations that encourage a pedestrian oriented area as well as density and lot size, setback standards, building design and orientation, landscaping, buffer yards, screening, automobile access, and parking.
- The district was designed to allow higher buildings up to 185’ in the center with the height no more than 45’ as you move to property adjacent to residential areas.
- Fred Bunn, the developer has assembled property in the circle redevelopment district and provided site-specific building characteristics of his concepts by showing plan and building height renderings.

**Duck LUP (P&SI-05-05)**

- Charlan Owens, Elizabeth City District Planner gave an overview of the development process of the Town of Duck Core Land Use Plan, as well as a geographical and demographic profile of the Town. She also stated that the policies meet DCM LUP requirements and do not conflict with any other state or federal programs and should be forwarded on to the CRC for certification.

- She then introduced Sue Cotellessa the Planning Director for the Town and Bill Turner, the consultant who prepared the plan.
- The plan was locally adopted on February 2, 2005.
- Policies have been adopted to preserve a small town low-density coastal village character.
- There are no policies that exceed state minimum development standards.
- Bill Turner provided a background of the process the Town followed and displayed the maps that were developed throughout the LUP process.
- Sue then spoke on behalf of the Town giving a more detailed outline of the LUP process as well as other local ordinances and guidelines that have been outlined within the LUP to implement the plan. There are also plans such as the zoning ordinance and development guidelines, which have been completed since the LUP process was started.
- Ms. Cotellessa also discussed a municipal CAMA Public Access project located in the community village center providing access to the Currituck Sound.
- Ms. Cahoon also questioned the road systems and public beach access within the town. Ms. Cotellessa explained that the town is pursuing opportunities for public beach access.
- Mr. Langford asked about working with Dare County and adjacent communities, did you provide copies to each community for review? Ms. Cotellessa replied yes, the communities were provided copies.

**Doug Langford moved to recommend to the CRC that they certify the Town of Duck's Land Use Plan based on a determination that the plan has met the requirements of the Guidelines and that there are no conflicts with the state's Coastal Management Program. The motion was seconded by Renee Cahoon and passed unanimously.**

#### **Amendments to LUPs Developed Under 1995 Guidelines (P&SI-05-06)**

- John Thayer, Manager of Planning and Grants reminded the committee of the recent experience at the January P&SI meeting, where the Town of Carolina Beach LUP Amendments was denied because they did not meet LUP Guidelines.
- He noted the purpose of this item is to consider a DCM staff recommendation as to how we can clarify the requirements for amending Land Use Plans (LUP), more particularly, which were not prepared or certified per the new Guidelines, which came into effect in 2002.
- The committee agreed with staff proposals, which clarify that old plans when amended, should be exempt from addressing the six Management Topics.

Per section .0901(a):

- (4) CRC review and action on CAMA Land Use Plan amendments shall be in the same manner as provided in 15A NCAC 7B .0802 (b), (c), (d) and (e); except that amendments to Land Use Plans which were certified prior to the August 1, 2002 are exempt from section 7B. .0802 (c)(3)(D), unless subsection .0901(a)(1) applies.

and new language to help clarify the requirement for analysis per .0802(c)(3):

- (D) contain policies that address each Management Topic. If a local government cannot meet any CAMA Land Use Plan requirements contained within .0702(d) and (e), ~~each of the six Management Topics~~ the plan shall include a description of the analysis that was undertaken, explain the reason(s) the requirement could not be met, and the local government's alternative plan of action to address the CAMA Land Use Plan requirements. If such description(s) are not included in the plan, it shall not be certified.
- The committee also agreed to proposals which would ensure that the concept of internal consistency within the LUP is maintained for a proposed amendment.

Per section .0901(a):

(5) The local resolution of adoption shall include findings which demonstrate that amendments to policy statements or to the Future Land Use Plan Map (FLUP), have been evaluated for their consistency with other existing policies.

Or for a new plan per section.0802(c)(3):

E) contain a local resolution of adoption that include findings which demonstrate that policy statements and the Future Land Use Plan Map (FLUP), have been evaluated and determined that no internal inconsistencies exist.

- The committee then asked staff to clarify language in Subsection .0901(a), which attempts to clarify when amendments trigger a complete update of the plan meeting the new rules:

(1) The CAMA Land Use Plan may be amended and only the amended portions submitted for CRC certification if local conditions create a need for policy or map changes or clarifications. If the local government amends half or more of the contents, ~~or policies, implementation, or Future Land Use Plan Map portions of the document associated with .0702(d) and (e) of these rules of the CAMA Land Use Plan,~~ an entirely new locally adopted plan shall be submitted to the CRC.

Then the committee asked the staff to better define this section and to bring it back to the June meeting in Greenville

## **New Protocol for Conducting Sanitary Surveys of Shellfish Waters**

- Shannon Jenkins, with Shellfish Sanitation Section gave a background on the shoreline survey program
- Goals of the Section include: identify pollution threats, accessibility to these threats, and cooperation w/other agencies to help protect shellfish growing areas
- The Section makes recommendations for open and closed shellfishing areas
- Shellfish are filter feeders that remove sediment and pathogens from the water. These pathogens can concentrate in the shellfish and if consumed raw can cause illness. North Carolina has no reported outbreaks resulting from the consumption of shellfish harvested in NC waters.
- In cooperation with NCCF and Duke the section is active in wetland restoration at the North River Farm Project in Carteret County
- Shoreline Survey Protocol is required by the NSSP (National Shoreline Survey Protocol) model ordinance and is conducted triennially for each shellfish growing area.
- There are 3 main requirements for the survey, identification and evaluation of pollution sources, map actual and potential pollution sources, compile a written summary of findings
- New methodology for surveying includes the use GPS and digital photography transferred into GIS
- Areas that are collected and entered into the system include – failing septic systems, marinas, gray water outfalls, livestock, and development
- The Section uses historical data including aerial photography to follow development trends adjacent to shellfishing areas
- Interagency cooperation is key to program success – DWQ, DCM, DOT, DLR, USACE are all agencies currently working with the Section
- Benefits of the new methodology may be seen in the shellfish industry and public health
- Questions from the committee were asked concerning the methodology and functions of the database and information available. Wayne Mobley and Patty Fowler were introduced to help clarify some of the issues raised. The information will be available on IBEAM for interagency access.

## **Public Beach Access Website Demo (P&SI-05-07)**

- Steve Underwood introduced Ken Richardson, GIS analyst with DCM who has helped develop this site
- DCM has partnered with the North Carolina Shore and Beach to collect data on the location and amenities of public access sites along the oceanfront.
- The current database contains approximately 600 public access sites along the oceanfront and the estuarine waterfront.
- Ken walked the committee through a site search showing different tools and attributes that are available for the site. The demonstration included showing access site locations on various overlay backgrounds, a photo of the site, and how to use map quest to obtain directions to an access site. The current map, photo and address can be printed straight from the site.



- The website was developed for various user groups such as the general public, researchers, and local governments.
- Questions and answer session initiated dialogue between Ken, committee members, and members of the audience.
- The hours of operation for access sites will be added to the information available on the website in the near future

### **Planning Issues/Updates**

- John Thayer announced that Pre-application packets for the Public Access Grant Program are going out next week and that the Camden County Advanced Core LUP and the Kitty Hawk Core LUP will be reviewed at the June CRC Meeting in Greenville.

The meeting was adjourned at 4:40 p.m.



**Implementation and Standards Committee**  
**April 7, 2005**  
**Crystal Coast Civic Center**  
**Morehead City, NC**

**Bob Emory, Chair**

**Sediment Criteria - Work Plan for Evaluation Phase (I&S-05-09)**

Jeff Warren began by reviewing what the sediment criteria were and how they came about for the benefit of the Committee's two new members, Bob Wilson and Chuck Bissett. Melvin Shepard asked if the discussion was going to address the recent white paper by Dr. Orrin Pilkey. Bob Emory stated that Mr. Warren's progress report was focused on early results from the evaluation period adopted by the Committee at their January meeting. The Pilkey paper might be taken up at a different time. Mr. Warren continued by reporting that native beach sediment data had been acquired for more than 11 separate beaches from Dare County to Brunswick County.

Using native beach data for Oak Island and Holden Beach, Mr. Warren compared how the sampling protocols recommended by the Science Panel differed from those used by the US Army Corps of Engineers (USACE) and pointed out there were many different ways to sample a beach both physically and statistically. In these two locations, the coarse fraction ( $>4.76$  mm) differed by less than 1% and the fine fraction ( $<0.0625$  mm) by less than 2%. These preliminary analyses suggested that the Science Panel methodology would not drastically alter beach characterization yet illustrated how the USACE's distribution of a high number of offshore samples decreased the average grain size of a composite sample by pushing towards the fine-grained end of the spectrum. Further, the Science Panel approach was able to normalize most historic sediment data to allow an "apples to apples" comparison. Ongoing analyses and results for additional beaches will be presented to the Committee during future reports during the evaluation progress. Analyses would also be expanded to include potential and historic borrow sites.

Ray Sturza expressed concern on achieving and/or defining minimal environmental impact during dredging operations. Mr. Sturza also cautioned the identification of "native beach samples" on developed areas of the coast that had not experienced nourishment but has undergone human alteration of the natural coastal system (e.g., bulldozing, dune construction, dumping of truck-hauled sediment, etc.). Mr. Wilson wondered if potential sediment criteria rules would disallow nourishment altogether in certain cases. Mr. Bissett queried how economic impacts would be assessed. Mr. Emory stressed the importance of this evaluation period in order to understand how the Science Panel recommendations and potential rules would affect North Carolina.

## Effect of Stabilization Structures On Shoreline Habitats

Dr. Carolyn Currin of NOAA's Fisheries Habitat Research Laboratory reviewed the science regarding shoreline stabilization structures. Dr. Currin provided a characterization of natural shorelines, the value of the habitats, types of structures used in stabilization and the effects of those structures on those habitats. In reviewing the ecosystems services of the habitats, she emphasized that half of the primary productivity is due to the microscopic algal community that is dependent on adequate light penetration. Dr. Currin also stated that shallow water habitat is also important in providing juvenile fish and shrimp refuge from predation by larger fish.

Dr. Currin stated that the values associated with a salt marsh and how these values are impacted by vertical stabilization structures are well documented in the peer-reviewed literature. The physical impacts, including wave refraction and scouring can be found in 232 peer-reviewed articles over the past ten years. Ecosystem impacts are documented in over 25 articles. Dr. Currin further stated that the CHPP contains a very good review of the science and is a good reference to guide Commission decisions on the issue.

Dr. Currin reviewed impacts associated with bulkheads that include scour and erosion, effects of wood preservatives, increased turbidity, decrease benthic primary production, loss of intertidal habitat and loss of shallow water refuge. She stated that the scientific literature supports the assertion of bulkheads being associated with decreased fish, shrimp and clam abundance when compared to other forms of shoreline stabilization such as sloped riprap. She further stated that similar to a marsh, sloped riprap also accumulates woody debris. Dr. Currin advised that when it comes to alternatives to non-vertical stabilization measures, there is no one solution that will address all shoreline situations. In some cases, bulkheads can be appropriate such as on low energy shorelines, provided that they are positioned well upland of the high tide line. Dr. Currin stated that there are also concerns with marsh and stone sills such as the creation of tomobolos and crenulated shorelines. These structures cover soft bottom substrate with the rock and their long-term effectiveness has not yet been determined. There is also concern about the survival of SAV in front of sills. She stated that another alternative that needs further study is the use of oyster reefs for stabilization purposes.

Dr. Currin advised that it is important not to overlook the value of small fringing marshes since most of the ecological benefits of a marsh occur along its edge. She further advised that the Commission should continue to develop alternative approaches to shoreline stabilization and strengthen GPs to minimize loss of shoreline habitats. Dr. Currin stated that NOAA provided the USACE with comments relating to marsh sills and the backfilling of bulkhead and would be happy to provide the Committee with a copy of those comments.

After many appreciative comments, Dr. Currin was thanked for her excellent presentation. It was then suggested that staff follow up this informative presentation with an encore presentation given by the Wildlife Resources Commission some time ago. Staff will attempt to schedule the presentation in front of the full Commission during the June meeting.

## **Buffer Exemption for Local Gov't Stormwater Ordinances (I&S-05-05)**

At the January CRC meeting, staff was instructed to explore local government incentives for exceeding CRC rules, particularly as they relate to the buffer requirements. Mike Lopazanski stated that there has been a propensity for the CRC to grant variances to the buffer rule when an engineered stormwater system is proposed as part of the development activity. Mr. Lopazanski advised that an option available to the Commission is to develop an exemption to the rule for local jurisdiction with a stormwater ordinance containing specific elements that would lead the CRC to grant a variance. As a starting point, he suggested using the Town of Ocean Isle Beach stormwater ordinance as a model. He cautioned that staff still has reservations about these systems since they require maintenance and repair and expressed concern about the responsibility for these systems being passed on to subsequent property owners. Mr. Lopazanski cautioned the Committee that in creating such an exemption, they would be giving up their ability to review some specific projects within the buffer. He stated that there have been several cases in the past year that the Commission did not grant a variance even when a stormwater system was proposed. Mr. Emory stated that he felt a limited exemption could be developed that would provide property owners some relief from having to appear before the Commission with a variance request that included a stormwater design. The Committee discussed the early history of the buffer rule including its original intent through its evolution to focusing on stormwater runoff. Some committee members expressed concern that the cumbersome nature of variances was driving the decision to develop an additional exemption to the rule. In the end, the Committee directed staff to outline an exemption that would include certain elements such as:

- limiting the exemption to those jurisdictions with a stormwater ordinance,
- limiting encroachment into the buffer to a certain percentage,
- limiting the types of development activities allowed,
- not exceeding the impervious surface limits for the AEC,
- determining where the water goes, and
- tying maintenance of the system to the deed.

## **Removal of Oceanfront Areas in New Hanover, Pender, Carteret and Onslow Counties from Unvegetated Beach Designation NCAC 7H.0304(4)(b) (I&S-05-06)**

Mr. Lopazanski advised that the removal of oceanfront areas in New Hanover, Pender, Carteret and Onslow Counties from the unvegetated beach designation was strictly a housekeeping measure. These areas were originally designated following Hurricanes Bertha and Fran in 1996. Mr. Lopazanski reviewed the process for determining the setback line in unvegetated areas in NCAC 7H .0304, including the removal of the designation when the vegetation has recovered and is no longer needed. He advised that during the development of the unvegetated beach designation for Hatteras Village, it was discovered that the designation existed for these other areas although it was no longer being used to determine oceanfront setback. However, the issue was not addressed at the time in order not to delay adoption of the designation for Hatteras Village. **Mr. Sturza made a motion to accept staff's recommendation to remove the 1996 Unvegetated Beach designation for the aforementioned counties and to take it to the full Commission. A friendly amendment to send the rule change to public hearing was made and seconded. The motion passed unanimously.**

### **Concrete Driveways in the Oceanfront Setback (I&S-05-02)**

At the October 2004 CRC meeting, Commissioner Doug Langford asked staff to look into the conflict of the CRC rule that prohibits concrete driveways with the zoning language of many coastal municipalities that actually requires the installation of concrete driveways.

With that guidance, Ted Tyndall made a presentation to the Committee on the Ocean Hazard Area Exception rules and how it allows structures to be located seaward of the oceanfront setback requirements when certain conditions are met. One of those conditions being that driveways and parking areas must be constructed of clay, packed sand or gravel. He stated that even in those cases, the structures must still meet a minimum 60' setback from the first line of stable natural vegetation.

Mr. Tyndall stated that the situation Mr. Langford mentioned has become common in the northern Outer Banks after the severe erosion caused by Hurricane Isabel. In those areas, the vegetation line is often located adjacent to the street or highway limiting the application of the exception rule. He stated that staff believes that the oceanfront rules as currently written provide a solid foundation for management of the Ocean Hazard AEC and are hesitant to recommend any substantial changes to the rule. However, staff did provide a proposed rule amendment to the Ocean Hazard Area Exception rule that would allow for the use of concrete, asphalt, or turfstone so long as the development does not directly abut the ocean and is located landward of the public street or highway currently in use and continues to meet those specific conditions including meeting a 60' setback from the first line of stable natural vegetation.

After a few comments, **Melvin Shepard made a motion to take the rule amendment to the full Commission for action. Lee Wynns made a second and the motion passed.**

### **Address Changes to NCAC 7A, 7H, 7I, and 7J (I&S-05-07)**

Tancred Miller presented the Committee with eight rules that require non-substantive amendments to update the physical address for the Division along with various editorial changes. He stated that the CRC is permitted under the APA to adopt these changes immediately, meaning that public notice and a hearing are not required. **The Committee approved a motion that the Commission adopts the proposed amendments as proposed.**

### **Inclusion of New Sites in the Coastal Reserve (I&S-05-08)**

Rebecca Ellin told the Committee that the NC Coastal Reserve staff currently manages ten sites, but that only eight are named in Commission rule 70.0105. Bird Island and Emily and Richardson Preyer Buckridge were acquired for the Coastal Reserve system, but have not yet been incorporated by rule. Staff recommended that the I&S Committee commence rulemaking (including a public hearing) to include these two sites into the NC Coastal Reserve complex.

**Mr. Wilson made a motion to take the amended rule to the full Commission. Larry Pittman made a second and the motion passed unanimously.**

### **Update on Refining NCAC 7H.2700 – GP for Marsh Sills**

Doug Huggett explained staff's plans in attempting to further streamline the existing general permit for the construction of riprap sills for wetland enhancement. He stated that the current general permit, which was implemented as a temporary rule in 2004, and became a permanent rule on April 1, 2005, contains numerous conditions that may limit the public's desire to use the general permit. Due to the fact that many of these conditions were placed on the general permit at the request of various state and federal review agencies, staff intends to initiate a series of stakeholders meetings with these agencies to determine whether some of the more burdensome conditions can be removed or simplified. During this stakeholder process, evidence from previously permitted and constructed sill projects will be revisited to see whether or not this information will help to alleviate resource agency concerns. Scheduling of the first stakeholder meeting will take place shortly, and a more detailed report on this issue will be delivered to the I&S Committee at the next CRC meeting.

### **CRC Variance Procedures**

Commissioner Dr. Courtney Hackney asked the I&S Committee to review and discuss how the CRC handles the many variances brought before it in an attempt to be as efficient as possible. Jill Hickey started the discussion by suggesting the possibility of a "subcommittee" comprised of a member or members hearing the variance, making a recommendation to the Committee and then the Commission could make a decision. Numerous members stated that they felt that the full CRC should hear the variances in order to be "fair" to the citizens. Mr. Emory suggested that there are some things that could be done immediately to speed the process up including simply sticking to the stipulated facts. He stated that the chairman could exercise more authority when the petitioner or staff vary from the stipulated facts and suggested that Commissioners themselves limit their questions to a clarification of the facts. A discussion on the merits of hearing oral arguments for variances that staff and petitioners agree on followed as did a discussion on other ways to hear variances. It was agreed upon that Jill Hickey and other staff would look into the regulations for ways to improve the process. The importance of this issue was emphasized numerous times and it was finally agreed upon to suggest to the chairman that the variance process be placed as an agenda item at a future CRC meeting to allow all Commission members a chance to participate.

With no further discussion, the I&S Committee adjourned.





## Draft

### NC Coastal Resources Advisory Council Crystal Coast Civic Center Morehead City, NC April 6, 2005 Meeting Summary

#### Attendance

Robert Shupe (Chair)  
Bill Morrison (Vice-Chair)  
Frank Alexander  
Carlton Davenport  
John Doughty  
Renee Gledhill-Early  
Ann Holton  
Jimmy Johnson  
Joe Lassiter  
Angie Manning

Wayne Mobley  
Dara Royal  
Harry Simmons  
Lester Simpson  
Mike Street  
Susan Suggs (for Lee Padrick)  
Penny Tysinger  
Dave Weaver  
Calvin Wellons

#### Council Call to Order

Bob Shupe called the meeting to order at 3:00pm, with 19 members in attendance. **The Council approved the January meeting minutes. There was one amendment to the minutes from Penny Tysinger, who noted that Calvin Peck had been incorrectly listed as a CRAC member.** Mike Street announced that the Coastal Habitat Protection Plan is complete and available for viewing on the Division of Marine Fisheries' website.

#### Update on National and Local Efforts to Re-establish Funding for Federal Dredging and Beach Nourishment Projects

Greg Rudolph, Shore Protection Manager for Carteret County, and Harry Simmons gave an update on the status of federal funding for dredging and beach nourishment projects. Mr. Rudolph explained that while federal mandatory spending has increased over the past 35 years and federal interest payments have remained fairly constant, discretionary spending (which includes funding for navigation projects) has steadily declined. Under the President's \$840 Billion proposed budget for FY2006, the US Army Corps of Engineers would receive \$4.5 Billion for civil works projects. The NC portion of the Atlantic Intracoastal Water Way (AIWW) would receive \$860,000 under the President's proposed budget, short of the \$5-6 Million needed. Maintenance dredging for the state's deep-draft harbors and ports would be funded at \$37 Million, and dredging for the state's shallow-draft inlets would be unfunded. Mr. Rudolph mentioned the state's Congressional delegation was able to secure emergency funding for dredging North Carolina's shallow draft inlets this year. The President's budget zeroed out funding for beach nourishment projects in the state, with an exception of \$890,000 earmarked for Wrightsville Beach. Mr. Rudolph said that coastal states and the White House are now engaged in a game of "Appropriations Chicken," to see whether the federal or local governments will be first to provide steady funds for dredging and nourishment.

Mr. Simmons noted that while Dare County has just approved a one percent tax increase to fund nourishment projects, he would prefer to see local governments wait until all possible avenues for federal funding are exhausted before accepting a shift in the financial burden from the federal government. Mr. Simmons explained that dredging and nourishment are more than local issues, they are national issues, with property ownership and recreational benefits extending to dozens of states and several countries. Mr. Simmons maintains that federal interests should be federally funded.

Mr. Rudolph emphasized that Congress continues to be generous in their proposed dredging and nourishment funding, but that it continues to be the White House, over the last few Administrations, that has pushed for progressively lower funding. This is the first year, Mr. Rudolph added, that the White House has proposed zero funding. Mr. Simmons added that a bill would be introduced to the state Legislature next week that will seek, in part, to convene a Blue Ribbon Commission to study these issues, and to establish a dedicated funding source for the state match.

#### **NC Coastal Federation, North River Farms Wetlands Restoration Project**

Sarah King of the NC Coastal Federation spoke about the Coastal Federation's wetland restoration project at North River Farms in Carteret County. North River Farms comprise 87,000 acres on the south side of Open Grounds Farm, and when restored, can serve as filtration buffer for a portion of Open Grounds to improve water quality. The restoration would also provide wildlife habitat and opportunities for increased seafood harvest, public recreation, and scientific research. Ms. King said that the property was transferred into state ownership in 1795 as a result of a tax default. It remained as wetlands until the 1850s, when it was ditched and cultivated as farmland. Ms. King explained that the ditches enable the transport of pesticides and fertilizers to public waters.

The Coastal Federation has so far restored approximately 350 of the 87,000 acres, and is testing different restoration methods. So far the scientists have seen a direct correlation between cost and effectiveness of the different methods. Scientists are currently designing another restoration method, that will re-create tidal and freshwater streams by diverting some water flow from the North River onto the site. Ms. King said that scientists from NC State University are doing post-project monitoring and evaluating various parameters. The scientists have found that approximately 50 percent of the replanted vegetation survives less than 12 months. The scientists are also confident that eliminating the drainage ditches will not have any adverse drainage effects on Open Grounds Farm. The Coastal Federation currently holds title to the North River Farms property, and intends to transfer title to public ownership in the future.

#### **NC Marine Science and Education Partnership**

Dave Inscoc, Executive Director of the Carteret County Economic Development Council spoke about the Marine Science and Education Partnership (MSEP). MSEP is a loose consortium of eleven organizations that has, over the past four years, been assessing the socioeconomic impacts of the marine science and educational institutions active in Carteret County. Partners meet six to eight times per year. A recently completed study by the Kenan Institute found that Marine Science and Education partners directly employ of 400 people in Carteret County and report a \$17 Million annual payroll. Secondary impacts to the county are \$127 Million in annual economic impact, and over 3,100 related jobs. The group sees their main challenge as capitalizing on the economic development potential in marine sciences and technology. Some desired outcomes are to develop new markets, continue to shape education curricula, foster innovation, and to increase political influence. The group has recently applied for a Partnership in Innovation grant from the National Science Foundation. If the application is successful, the group will use the funds to find ways to develop the economic potential in Carteret and surrounding counties. Planned activities will include job training. Mr. Inscoc would like to see MSEP expand statewide to include similar organizations, and to increase joint efforts on marine research, technology development and socioeconomic impact.

#### **CRAC and Local Government Input on Sediment Criteria**

Jeff Warren asked the CRAC to solicit input on the proposed sediment criteria from their represented bodies as the criteria progress from recommendations to rules. Mr. Warren also exhibited a sample of the porous groin material that has been legislatively proposed for temporary use on Brunswick County beaches. The bill, HB 1070, was introduced by Rep. Bonner Stiller on March 31<sup>st</sup>. Mr. Warren cautioned that whether the proposed groins would comply with state and CRC prohibitions against hardened structures on the ocean shoreline is subject to interpretation.

## **Draft**

### **Old/New Business**

Mr. Shupe raised the question of new mileage reimbursement rates, referring to information that the reimbursement rate for state employees had increased in January of this year. Mr. Shupe and Mr. Morrison wanted to know if there had a rate increase for members of the CRAC, particularly in light of current gas prices averaging \$2.25 per gallon. John Thayer checked with Jaye Poole by phone, and confirmed that the mileage reimbursement rate had not been increased for CRAC members. Mr. Shupe remarked that he hopes that the Division or the Department can consider increasing the rate. Several members responded that the rates are determined in the legislative branch, and that the Division and Department have no control over where the rates are set.

### **Adjourn**

With no further business the Advisory Council adjourned at 4:50pm.

