

NC COASTAL RESOURCES COMMISSION (CRC)

August 27, 2009

NOAA/NCNERR Administration Building
Beaufort, NC

Present CRC Members

Bob Emory, Chairman

James Leutze

Chuck Bissette

Ed Mitchell

Charles Elam (present at 10:15)

Melvin Shepard

Lee Wynns

Veronica Carter

Bill Peele

Wayland Sermons

Bob Wilson

Present Attorney General's Office Members

Jennie Hauser

Christine Goebel

CALL TO ORDER/ROLL CALL

Chairman Emory called the meeting to order and reminded Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act.

Angela Willis called the roll. Jim Leutze stated he has a possible conflict with the variance on the agenda and will recuse himself. Joan Weld, Renee Cahoon, Jerry Old and David Webster were absent. Based upon this roll call, Chairman Emory declared a quorum.

MINUTES

Jim Leutze made a motion to approve the minutes of the June 2009 Coastal Resources Commission meeting. Veronica Carter seconded the motion. **The motion passed unanimously (Leutze, Bissette, Peele, Sermons, Shepard, Mitchell, Wilson, Wynns, Carter) (Elam absent for vote).**

EXECUTIVE SECRETARY'S REPORT

DCM Director Jim Gregson gave the following report.

Legislative Update/Sandbag Update

HB 709: Implemented to Address Erosion Control Issues - This bill imposes a moratorium until September 1, 2010, on sandbag enforcement, prohibiting the CRC from ordering the removal of sandbag structures in communities actively pursuing beach nourishment or inlet relocation projects. Although the bill does not direct the CRC to consider permitting terminal groins at this time, it does direct the CRC, in consultation with DCM, the Division of Land Resources, and the Coastal Resources Advisory Council, to conduct a study of the feasibility and advisability of the use of terminal groins as an erosion control device. The final report must be presented to the Environmental Review Commission and the General Assembly by April 1, 2010.

SB 202: Appropriations - This year's budget bill included \$300,000 for the design and operation of up to three demonstration wind turbines in the sounds or off the NC coast. There is language in the bill that would exempt a pilot project from any required CAMA permits and other permits, but would not exempt it from Dredge and Fill permits.

SB 831: Extend Certain Development Approvals - This bill will effectively extend the expiration dates of all Coastal Area Management Act permits (and several other environmental permits) effective between January 1, 2008 and December 31, 2010. The problem for DCM is, based on past permit renewals, it would reduce receipts about \$30,000 - \$35,000 over the two year period.

HB 1378: Clean Marinas/Pumpout Stations - Requires full service marinas (with 10 or more slips) in communities seeking a "no discharge zone" designation to install a pumpout facility by July 1, 2010. Prohibits discharge into coastal waters and requires vessel operators to keep pumpout logs. Directs DCM to establish a pilot program in New Hanover County to begin phasing in the requirements of this act.

Setbacks/Static Line Rules in Effect

Amendments to the Coastal Resources Commission's rules governing setbacks for oceanfront structures and static lines for communities with large-scale beach nourishment projects became effective this month. Changes to 7H .0306 General Use Standards for Ocean Hazard Areas were adopted by the CRC in Sept. 2008, but were subject to legislative review. No bills affecting the rules were acted upon during this year's legislative session, which means the rules became effective at the end of the session.

Town of River Bend enforcement Plan

On August 6, the Town of River Bend submitted their letter of intent to adopt a local implementation and enforcement plan, which will allow the Town to administer CAMA minor development permits. The Town plans to hold a public hearing regarding the plan at the September meeting of the Town Council, and will present their proposed plan to the Commission for review at the October meeting.

BIMP Update

DCM received the second draft of the Beach and Inlet Management Plan from Moffatt and Nichol On Friday August 21. The final due date for the BIMP is September 30. In order to ensure the BIMP initiative continues to progress through this new fiscal year, DCM will have Steve Underwood continue to be the BIMP coordinator and the main point of contact for the BIMP. DWR has also agreed to utilize existing staff in moving forward on potential long-term funding mechanisms.

Reserves Management Plan

NOAA and DCM are currently accepting public comment on the N.C. National Estuarine Research Reserves revised Management Plan. The revised management plan outlines the administrative structure; the education, stewardship, and research goals of the reserve; and plans for future land acquisition and facility development to support reserve operations. This management plan describes how the strengths of the reserve will focus on several areas relevant to coastal North Carolina: coastal population increase, altered land use, stormwater runoff, invasive species, tropical and coastal storm impacts and sea level rise. To view a copy of the plan, visit the reserve's Web site.

National Estuaries Day

Saturday, September 26th is National Estuaries Day, which promotes the importance of estuaries and the need to protect them. September 26th is also National Public Lands Day which is the nation's largest hands-on volunteer effort to improve and enhance public lands. The National Estuarine Research Reserve System has partnered with the National Environmental Education Foundation to celebrate both with several events, including: an education tent with hands-on activities in front of the Maritime Museum in Beaufort; free, public field trips to the Rachel Carson Reserve throughout the day; participating in the Town of Kitty Hawk's Heritage Day Festival; and holding Reserve clean-ups at the Rachel Carson, Masonboro Island and Zeke's Island sites.

Reserve Workshops

The Reserves will be holding a number of workshops over the next few months:

- Getting to Know Wetlands workshop, Sept. 23 in Beaufort
- Grant writing workshop, Oct. 27-28 at the NOAA/NERRS building in Beaufort.
- Southeast Regional Diamond Terrapin Workshop, Dec. 3 at the Fort Fisher Aquarium.
- Two hunter workshops for the Reserve's Northern Sites, in partnership with the North Carolina Wildlife Resources Commission. Workshops are scheduled for the following dates:
 - For the Buxton Woods Coastal Reserve and WRC Game Lands: 6 p.m., Wed. Sept. 9, at the Fessenden Center in Buxton
 - For the Kitty Hawk Woods and Currituck Banks Reserves: 6 p.m., Thurs., Sept. 10 at the Town of Kitty Hawk Fire Department

KWH Nature Hikes

The Kitty Hawk Woods Coastal Reserve will host naturalist-guided nature hikes on Sundays in September. The hikes will be from 9-10 a.m., Sept. 13, 20 and 27.

Certifications

Dr. Jill Fegley, Reserve Education Coordinator, and Lori Davis, Reserve Education Specialist, recently became certified North Carolina Environmental Educators. In order to become a certified Environmental Educator, candidates must attend 70 hours of instructional workshops, spend 50 hours in outdoor field experiences, attend seminars, conferences, museums, or other environmental education centers for a minimum of 30 hours, have at least 30 hours of teaching experience with hands-on, interactive activities, and carry out an "action partnership" which demonstrates the effect of the participant's environmental education through leadership, partnership, stewardship, and community action.

Masonboro Island

Once again, the Masonboro Island coastal reserve was a popular party spot on July 4th, and unfortunately the people who visited the reserve that day again left piles of beer cans and other trash behind. Volunteers collected numerous bags of trash along a quarter-mile of the island following the holiday. The division is considering many options for addressing this issue and we intend to incorporate public input into our decision-making process. While DCM does not want to restrict access to one of the only remaining pristine barrier islands in North Carolina, we may be forced to take further action if Masonboro continues to be misused by large numbers of visitors with no respect for its value. A public meeting to discuss options for addressing usage of Masonboro Island will be held at 6 p.m., Oct. 8, at the UNCW Center for Marine Science.

Staff News

David Moye, express permits coordinator in the Washington office, will be the interim district manager in Washington following Terry Moore's retirement. Daniel Govoni, assistant major permits coordinator in the Morehead City office, and his wife Beth, welcomed a son, John Thomas, on July 7. Kim Hedrick, compliance and enforcement representative in the Washington office, and her husband, Ryan, welcomed a daughter, Hayden Lilly, on July 29. Debbie Savage, GIS analyst in the Raleigh office, has a new granddaughter, Keira Lyn, born April 30. DCM's former attorney, Merrie Jo Alcock, and her husband Tom, welcomed a new daughter, Josephine Weaver, on August 19.

CHAIRMAN'S COMMENTS

Bob Emory stated the setback rules went into effect when the Legislature left Raleigh. These rules have been in the works for about three years. Today, we will receive an update from the subcommittee looking at the Ocean Policy Task Force and Beach Summit recommendations. The subcommittee is prioritizing the recommendations. We will also discuss how we will proceed on the Legislature's directions to look at the feasibility and advisability of the use of terminal groins. Chairman Emory stated that he was at the CHPP steering committee meeting a few weeks ago and was pleased with the presentation on the estuarine shoreline brochure presented by the Division. This brochure was developed by Bonnie Bendell and the Coastal Reserve education staff. This will be a tool to be put into the hands of landowners who are considering stabilizing their shorelines. It will be a tool to help them make the best decision and take into account the type of shoreline and options to consider other than vertical structures. There will be a new procedure on the agenda today. We will hear the first static line exception requests. We will also hear about a sea level rise initiative that will occur at the beginning of 2010. Chairman Emory stated he neglected to bring the economic interest statement conclusions from the ethics commission, but will take care of them at the next meeting. One of our Commissioners has been elevated to a lofty position and Chairman Emory stated he would like to recognize Wayland Sermons.

Wayland Sermons stated that he will resign from the CRC as he has been appointed to Superior Court Judge for the second judicial district. Chairman Emory stated that Wayland has been a valuable member of the Commission and presented Commissioner Sermons with a certificate of appreciation from the Coastal Resources Commission and Division of Coastal Management.

VARIANCE REQUEST

Herman Bretton Blizzard, CRC-VR 09-03
Wrightsville Beach, Riparian Setback

***Dr. Leutze recused himself from discussion and voting on this variance request.*

Christine Goebel of the Attorney General's office represented Staff. Ms. Goebel stated the Petitioner will be represented by Ken Shanklin and Cynthia Baldwin. Ms. Goebel stated the Petitioner is owner of property located at 12 West Salisbury Street in Wrightsville Beach in an area known as Sunset Lagoon. The lot is located in a bend in the curved shoreline of Banks Channel. The Petitioner is requesting to construct a freestanding mooring piling in his riparian corridor, but cannot meet the 15-foot setbacks required from the adjacent property owners' areas of riparian access. Neither of the two riparian neighbors agreed to waive the setbacks. Petitioner seeks a variance from the general permit conditions in 15A NCAC 07H .2205 and the specific use standards of 15A NCAC 07H .0208. Ms. Goebel reviewed the stipulated facts and four statutory criteria required to be met in order to grant the variance.

Cynthia Baldwin of Shanklin & Nichols, LLP represented Petitioner. Ms. Baldwin stated that without the neighbors' objections, the Petitioner would not be before the Commission requesting a variance. Ms. Baldwin discussed the stipulated facts that Petitioner contends supports the granting of the variance. The Petitioner wants a single tie piling which meets the Town of Wrightsville Beach's town ordinances. This property was purchased before CAMA was enacted and there has been a piling in the same location in the past.

Melvin Shepard made a motion that strict application of the applicable development rules, standards, or orders issued by the Commission creates a necessary hardship. Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Elam, Wilson, Sermons).

Melvin Shepard made a motion that hardships result from conditions peculiar to the petitioner's property. Veronica Carter seconded the motion. The motion passed with eight votes (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Elam, Sermons) and one opposed (Wilson).

Veronica Carter made a motion that hardships do not result from actions taken by the Petitioner. Charles Elam seconded the motion. The motion passed unanimously (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Elam, Wilson, Sermons).

Bill Peele made a motion that the variance request is not consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will not secure public safety and welfare; and will not preserve substantial justice. Bob Wilson seconded the motion. The motion passed unanimously (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Elam, Wilson, Sermons).

This variance was denied.

STATIC VEGETATION LINE EXCEPTION REQUEST

Christine Goebel of the Attorney General's Office presented the Staff's recommendation and review of reports submitted by both the Town of Carolina Beach and Town of Wrightsville Beach. If this exception request is granted, the result will be that instead of a static vegetation line, this will allow a post project vegetation line with limitations. Both Towns hired the consulting firm of CP&E to prepare the reports. The first factor addresses the history of nourishment. Both beaches have longstanding histories of beach nourishment projects and have had regular nourishment. Both reports talk about the nourishment, including the two jetties at Wrightsville Beach and the 2,500 foot rock revetment at Carolina Beach. Factor two requires details about schematics of the projects and are addressed adequately in the reports as these are long standing projects. The third and fourth factors are more difficult as you have to look into the future. Staff looked at the information provided and makes a best guess about what will happen in the future based on the information provided. The Towns have to come back before the CRC every five years and there are safeguards put on the development which include the 2,500 square foot maximum building size limitation. The reports have plenty of detail on the third factor of sand resources. While both projects used different sources initially, they have used the same sources consistently for about twenty years and there are no compatibility problems. The fourth factor is about funding sources. The primary funding source has come from a hotel occupancy tax. Both of these beaches are located within New Hanover County. This tax is administered by the County. Based upon the study in the reports, there appears to be sufficient funding to fund these projects for the life of the projects.

Dr. Jeff Warren stated that the static line does not evaporate with the granting of the static line exception. There are two facets of this rule that happen with the granting of the exception. The first is the small-scale, limited development that is allowable. It is measured from the actual stable line of vegetation. It cannot be further oceanward than the landward most adjacent building and is limited to 2,500 square feet. The other variable that can occur is that the maximum setback for large structures (greater than 5,000 square feet) is capped at 60 times the erosion rate. The static line exception addresses both small scale development and redevelopment and also addresses the large scale development.

Town of Carolina Beach Static Vegetation Line Exception Request (CRC 09-23)

Steve Coggins, counsel for the Town of Carolina Beach, stated that the Town joins in the recommendation of the Staff for approval of the static line exception. Mr. Coggins stated that he would like the affidavit of Tom Jarrett introduced into the record. *(Mr. Jarrett's affidavit was accepted by the CRC).*

At this time, Chairman Emory asked for comments from the public on the Town of Carolina Beach static vegetation line exception request. No members of the public signed up or spoke on this issue.

Jim Leutze made a motion to accept and approve the summary of all beach fill projects in the area as submitted by the Town of Carolina Beach. Lee Wynns seconded the motion. The motion passed unanimously (Mitchell, Bissette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson, Sermons).

Melvin Shepard made a motion that the plans and related materials submitted by the Town of Carolina Beach are adequate as required. Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Bissette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson, Sermons).

Melvin Shepard made a motion that documentation to delineate the planned location and volume of compatible sediment necessary to construct and maintain the large-scale fill project over its design life is complete as submitted by the Town of Carolina Beach. Jim Leutze seconded the motion. The motion passed unanimously (Mitchell, Bissette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson, Sermons).

Jim Leutze made a motion that the financial resources necessary to fund the large-scale beach fill project over its design life is adequate as submitted by the Town of Carolina Beach. Charles Elam seconded the motion. The motion passed unanimously (Mitchell, Bissette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson, Sermons).

The static line exception request was approved for the Town of Carolina Beach.

Town of Wrightsville Beach Static Vegetation Line Exception Request (CRC 09-24)

Bill Raney, counsel for the Town of Wrightsville Beach, stated the Town has submitted an affidavit from Tom Jarrett and would like it submitted into the record. *(The CRC accepted the affidavit of Mr. Jarrett).*

At this time, Chairman Emory asked for comments from the public on the Town of Wrightsville Beach static vegetation line exception request. No members of the public signed up or spoke on this issue.

Melvin Shepard made a motion to accept and approve the summary of all beach fill projects in the area as submitted by the Town of Wrightsville Beach. Jim Leutze seconded the motion. The motion passed unanimously (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson, Sermons).

Melvin Shepard made a motion that the plans and related materials submitted by the Town of Wrightsville Beach are adequate as required. Chuck Bisette seconded the motion. The motion passed unanimously (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson, Sermons).

Bill Peele made a motion that documentation to delineate the planned location and volume of compatible sediment necessary to construct and maintain the large-scale fill project over its design life is complete as submitted by the Town of Wrightsville Beach. Charles Elam seconded the motion. The motion passed unanimously (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson, Sermons).

Jim Leutze made a motion that the financial resources necessary to fund the large-scale beach fill project over its design life is adequate as submitted by the Town of Wrightsville Beach. Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson, Sermons).

The static line exception request was approved for the Town of Wrightsville Beach.

PRESENTATIONS

Update on Ocean Policy/Beach Summit Recommendation Implementation Scott Geis

Scott Geis stated the CRC subcommittee looked at the recommendations of the OPSC and the Beach Summit and prioritized them. The subcommittee came up with 11 priorities. The first recommendation was a review of the CRC's 7M energy policies for their application in siting alternative energy facilities in State waters and determining any inefficiencies of current rule language. The second recommendation is to examine CRC policies on non-water dependent structures and their pertinence to the siting of alternative energy facilities. The CRC should discuss if marine based alternative energy facilities are water dependent structures and examine the benefits and drawbacks of designating these facilities as water-dependent. The third recommendation is to develop a sea-level rise component to CAMA land use plans. The CRC should examine how a sea-level rise component could be added to CAMA LUPs in an effort to develop proactive planning efforts that address a shifting coastal environment with focus on sea level rise evaluation, hazard mitigation, and post disaster planning. The fourth recommendation is to craft a resolution encouraging the beneficial use of dredged material. The resolution would call for and support efforts between the State and the USACE that work towards the beneficial use of dredged material. The fifth recommendation is a resolution supporting efforts to make the donation of unbuildable or threatened lots more appealing through the conservation tax credit program. A resolution could be drafted to the NC General Assembly supporting efforts to strengthen the conservation tax credit program facilitated by the NC Nature Conservancy. The sixth recommendation is to instruct the Science Panel to identify potential inlet sites along the coast in an effort to understand the vulnerability of coastal areas to intense storm activity. The seventh recommendation is to discuss the underlying issues presented in "disclosure of natural hazards" bills that have come through the General Assembly. The eighth recommendation is to

re-examine rules regarding dredging around hard bottom areas. The CRC should examine rules regarding dredging activities around hard bottom areas for their affect on dredging activities related to state and federal nourishment projects. This would be a review of both the benefit and drawbacks of the rule. The ninth recommendation is an update of North Carolina's coastal ocean resources maps. The CRC should establish a subcommittee to evaluate how coastal projects and datasets, such as the BIMP and the UNC wind study, can be used to begin an exercise in marine spatial planning. The tenth recommendation is to look at permits for stormwater management structures rather than variances. The CRC should examine the creation of a general permit for stormwater management structures rather than allowing them through the variance process. This would be done in an effort to encourage stormwater management practices along the Outer Banks. The last recommendation is the CRC should establish a committee advocating beach friendly development practices. The committee should advocate for beach friendly development practices, but allow individual municipalities to have a guiding hand in their own approach to this rather than a one size fits all model. This represents the beginning of a lobbying effort that would be used in the future to advocate beach friendly development practices to the NC General Assembly and US Congress.

Jim Leutze asked if the CRC could lobby. Jennie Hauser, CRC counsel, stated that she would look into the CRC's ability to lobby. Chairman Emory and Commissioner Leutze agreed that "advocate for" or "educate" would be better than the use of "lobby".

Melvin Shepard stated when beach renourishment occurs we should do a better job of retaining large sediments from coming from the hard bottom and making it onto the beach. He further stated that he has been monitoring turtle nests recently and the higher, heavier shell content is making it to the top of the sand. The shell fragments are coming into the turtle nests. The sediments may be as small as possible, but the shell doesn't pack and runs into the turtle holes. Chairman Emory stated that this is something the CRC could look into in the future.

Feasibility of Wind Turbines in the Pamlico and Albemarle Sounds and in Ocean Waters off the NC Coast – Environmental Impacts, Synergies and Use Conflicts
Dr. Pete Peterson, UNC Institute of Marine Sciences

Dr. Pete Peterson stated the General Assembly requested this study from the University of North Carolina at Chapel Hill. We were asked to study the Pamlico and Albemarle Sounds and the offshore waters of North Carolina to address issues of feasibility of development of offshore wind farms. The wind resource evaluation compared existing wind power estimates from AWS Truewind with available low-level wind observations. The first thing to do was to extrapolate low level winds to height. Then, we collected new observations with sodar wind profiler. Extrapolation was used to estimate winds at turbine height. We had to account for varying roughness of lower boundaries due to friction. Log layer and power law fits were the techniques used. The true wind model data showed the winds were higher offshore. There are wind powered classes created by the industry. Power generation is dependent on the generator that is used. We were aware that the greatest risk of turbines biologically is to birds and bats. Commercial fishing and recreation create use conflicts. There are absolute conflicts with military space. There are also cultural conflicts. We talked to many of the people who are experts on the science and use sides. The risk assessment to birds and bats depends on abundance and behavior. Birds at risk include nocturnal songbirds, large-bodies and low flying slow fliers, and pelagic seabirds. There are measures that can be taken to reduce the risk to birds and bats including not using continuous lighting, reducing or eliminating perches, and avoiding white colors. Pilot studies and impact studies after installation and operation of the first wind farm will demonstrate whether other mitigation procedures are needed. There are conflicts with

critical fish habitats and fishing uses including primary and secondary nurseries, migration paths, strategic habitats, submerged aquatic vegetation, shell bottom, oyster reefs and live reefs. Migration corridors could be affected and interference with intense fishing uses like trawling and long hauling could occur. Transportation corridors, cultural resources including shipwrecks, and reef habitats would not be compatible locations for wind farms. Sea turtles and marine mammals are protected. Their biggest risk would be during installation when noise and injury from bottom disturbance can occur. The risk to sea turtles and mammals during operation is unknown and is an area of current research interest. Military conflicts include airspace, training routes, radar and firing ranges. The Marine Corps, Navy and Army all have concerns about use conflicts. Some of the positive interactions that could occur with the establishment of wind farms could be that they would be an excellent foundation for oyster reefs and their ecosystem services. There have been some concerns about hurricanes. Wind turbines and foundations are engineered to withstand category 3 hurricanes and below. Hurricane risk is high in North Carolina; however landfalls and tracks of large hurricanes show that the ocean well north of Cape Hatteras represents a region that receives some protection from the projecting cape to the south. There are many means to reduce uncertainty about environmental impacts and use conflicts, however a lot more could be done.

There are two foundation alternatives. The first is called a monopole which looks like a nail drilled into the bottom and needs sandy sediment. The second is a gravity-based structure which sits on a hard bottom and is more expensive and is the less desirable of the two. These wind mills are so huge that they need a massive barge to install them that draws at least 12 feet of water. This becomes a huge limitation if we are thinking of putting these in the sounds as the waters are too shallow. Where are the types of bottoms that are suitable for these foundations? South of Beaufort there is rock hard bottom. North of Beaufort there are more sandy sediments which would be good for the monopole foundations. These structures have to be hooked up to land and we need to look at the utility transmission infrastructure and where there might be receiving points. If we look to the big utility companies and the points where we could make contact and deliver power that could be delivered on utility lines that already exist, we have three. Dominion Power's transmission system is not designed to accommodate significant offshore wind without a system upgrade. Progress Energy's transmission (specifically Morehead City's) could accommodate quite a bit without major upgrades. There are utility related issues relative to development of this industry. There are state and federal statutory and regulatory barriers. There are few outright regulatory barriers, but the regulatory incentives for wind energy are not as great as for other forms of alternative energy. There is a production tax credit that is expiring and needs to be extended beyond 2009 and independent power producers need to be ensured of efficient access to markets. There are legal and policy issues. There are many federal laws and regulations that affect wind management. The Minerals Management Service has a regulatory program to lease federal waters along the outer continental shelf for alternative energy projects. Wind energy projects in federal waters would be subject to the consistency provision of the Coastal Zone Management Act, which would allow North Carolina to protect its interests in the event such a project would affect its coast. The federal project would need to be "consistent to the maximum extent practicable" with the enforceable policies of NC's coastal management plan. But, where are our state policies? North Carolina must have in place laws and regulations that govern the development of wind energy in state coastal and ocean waters to receive the maximum benefits under the federal CZMA. These state laws and regulations are needed to provide the framework for federal consistency. The state must review all its laws applicable to such projects to assure that wind energy development in coastal and ocean waters will be done in a manner consistent with state interests and fill any existing gaps. Water based turbines and transmission lines are subject to CAMA and the CRC unless they fall within the exception created by statute. The Utilities Commission defers to the CRC for projects located in AEC's.

The EMC was given authority to develop a procedure for evaluating renewable energy technologies that are, or are proposed to be, employed as part of an alternative energy facility. The EMC can also establish an environmental regulatory program where there is not one. Where the EMC will go is unclear. H.B. 809 was filed this legislative session and is a reaffirmation of the Ridge Law. This sets environmental standards for permitting wind energy facilities. It divides the authority over wind energy permitting between the CRC in coastal counties and DENR for the rest of the state. There are issues with water dependency. The answer is yes that these structures are water dependent. The wind resource is offshore in North Carolina. A preliminary economic analysis was done. We looked at a small facility with 30 turbines in the sound and then looked at offshore and how it compares with other types of other renewable or alternative energy. The first is cost. The cost for wind energy is from half to forty percent less than the cost of solar power. Yet, the current laws at the federal level provide incentives for solar power. When all the information is integrated into a geographic information system it shows what areas remain viable for wind power development. The result shows the eastern half of Pamlico Sound appears to be the only area feasible for further consideration and the offshore where more than 2,800 square miles of potential development area where high quality wind is available. There are legislative recommendations which come from this study. A comprehensive submerged lands leasing statute should be enacted as well as a single comprehensive environmental permitting process. Regulatory changes would include amending the CRC's coastal energy policies as appropriate and encourage the NC congressional delegation to support an extension of the Production Tax Credit. There are no wind based pilot projects ongoing in the US at this time.

Amendments to 15A NCAC 07H .0104

Development Initiated Prior to Adoption by the CRC (CRC 09-25)

Jeff Warren

Dr. Warren stated that June 1, 1979 is the date in the current rule (7H .0104) that deals with pre-CAMA lots and construction initiated prior to the setback rules. As part of a comprehensive review of the setback policy, we need to discuss 7H .0104 which is a grandfather provision for lots that existed during prior erosion rate updates. The last erosion rate data was a 1998 study and became effective in 2004. As this rule currently stands, if we put a new erosion rate in place today, only lots platted after today would 100% rely on the new data. All lots platted prior to today would use a combination of the most recent data and the erosion rates in place at the time the lots were platted. As the rule stands today, if the erosion rate decreases a developer cannot take advantage of the lower rate. The other option is that the erosion rate increases. If the rate increases, lots platted after the new effective rate would have to follow this setback, however lots platted prior to the new rate would only have to use the higher rate to the maximum extent feasible. DCM would suggest three changes to this rule. The first change would be the title. Initially this rule was to grandfather lots that were in existence prior to erosion rates. As erosion rate updates became more common place this rule became an evolving way to deal with the updates. As time progressed, we have had a lot of rates through time. The second change would be that you could make the primary consideration to use the current erosion rate, but could also use the rate that was in place when the lot was platted. When the rate decreases you should be able to take advantage of this rate regardless of the reason that the rate went down. If the rate increases, the third recommendation would make the development look at the current rate and have the option of using the rate at the time when the lot was platted. If you use a grandfather rate because you can't make the current rate then there would be additional criteria. The additional criteria would include using the current erosion rate to the maximum extent practicable, go as far back on the lot as you can without violating local zoning standards, move

no further oceanward than the landward most adjacent structure, and the building can be no larger than 2,000 square feet.

Jim Leutze made a motion to send staff recommendations to 7H .0104 to public hearing. Lee Wynns seconded the motion. The motion passed unanimously (Bissette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson) (Mitchell, Sermons absent for vote).

**Amendments to 15 NCAC 07H .2300
Existing Bridge Replacement GP (CRC 09-26)
Doug Huggett**

Doug Huggett stated the State DOT has acknowledged that there are a large number of substandard bridges in North Carolina that need to be replaced. An effort was recently undertaken to come up with a methodology to identify some of these bridges as low impact bridges that could be replaced on a quicker basis. There are several procedural changes that need to take place within the DOT as well as the environmental permitting arena. One of the recommendations was to look at the existing GP for bridge replacement to see if we can do modifications to make it more applicable to a higher number of DOT projects and see if there are other efficiencies during the application process that could be gained and all the while acknowledging that the environmental protection that is necessary under our program be maintained. There are a couple of changes to 7H .2302 which basically are modifications to what information is necessary for the DOT to apply for a general permit. The other change increases the expiration date from one year to two years. It also includes reference to legislation that states that any permit issued for a DOT project identified in the Transportation Improvement Program does not expire. 7H .2303 adds language that allows inter-departmental fund transfer as payment from another state agency. All of the changes made to 7H .2304 are editorial in nature. The majority of the substantial changes take place in 7H .2305. The current rule states that the general permit is applicable to bridge replacement projects spanning no more than 250 feet of estuarine water, public trust area and coastal wetland AECs. We would propose changing this to 400 feet. The next change provides an exception for expanding existing roadway deck width to create two lanes from an existing one lane bridge. The prohibition of increasing the vertical clearance has been removed. The requirement that measures sufficient to restrain sedimentation and erosion be coordinated through the North Carolina Division of Land Resources has been removed. The biggest change that has been made to .2305 is raising the coastal wetland limit able to be excavated or filled to 750 square feet. The last change is a clarification that states that pipes and culvert inverts shall be buried at least one foot below normal bed elevation to allow for passage of water and aquatic life when they are placed within public trust and/or estuarine waters AECs and clarifies that culverts placed in wetlands are not subject to this requirement.

Jim Leutze made a motion to send staff recommendations to 7H .2300 to public hearing. Bill Peele seconded the motion. The motion passed unanimously (Mitchell, Bissette, Carter, Wynns, Peele, Shepard, Leutze, Elam) (Wilson abstained) (Sermons absent for vote).

**DCM Sea Level Rise Initiative Update (CRC 09-27)
Tancred Miller**

Tancred Miller stated the framework and roadmap for the sea level rise science forum was laid out in June before the CRC. DCM has met with the Secretary's office and they were receptive. There are a couple of things to keep in mind including making sure that we are not duplicating other efforts being undertaken by Emergency Management and other DENR agencies. We have since added a member of Emergency Management on the planning committee so it will be well

coordinated. We have launched the scoping survey online and are pleased with the amount of responses. The survey ends on August 31. We will have a preliminary report available in October. The next focus is the science forum which will take place January 14-15. One of the major things that has happened is we have met with the science panel and the estuarine biological and physical processes group. They had a substantive recommendation as to how to get to the goal of the summit. DCM supports their recommendation and it will cause some changes to the timeline. The science panel thinks that instead of trying to have scientists present data and come to a consensus on a rate of sea level rise in a public forum we should have the science panel do the research and review the literature and present it to the CRC to determine rates, ranges and time scales. In January the science panel will present the report. The science panel should look for a relative rate accounting for regional differences and underlying geology. They should look at time slices which will make it more relatable for the public, planners and local governments. They should decide on either a single number rate or a range. The panel should look at either a planning rate or a predicted rate. They should look at actual rate of sea level rise or a projected rate of sea level rise. The confidence level should be conveyed to the CRC in the report. The science panel should be asked to look at recommendations on how to monitor future sea level rise and what needs to be done at the state level to increase the monitoring.

PUBLIC COMMENT

Charles Baldwin, representing the Village of Bald Head Island, stated he wants to bring to the Commission's attention an issue that has recently arisen in the Village of Bald Head. (Slides were shown of aerial photos of August 25). Mr. Baldwin stated that these photos outline a recent breach of the sandbag wall that was built by the Village in 2004. There was overwash due to hurricane Bill last weekend. We had severe overwash which closed Sandpiper Trail. The Village is here today to talk about putting 20 bags in the hole to avoid a worse situation. We lost the road last weekend and we have an emergency situation. Tropical storm Danny is approaching and it is very important to note that the sandbags were exposed as a result of the Corps of Engineers dredging. If it is the Commission's wish, I would urge the CRC to discuss House Bill 709 which gives the CRC authority to grant the limited repair.

ACTION ITEMS

Extension of Taylor v. DCM (08 EHR 1765) Decision

Jennie Hauser, CRC counsel, stated that the Taylor contested case was received at the end of July. There was not enough space on the agenda or enough time to reproduce the 21 volumes of transcript for CRC review. The CRC can extend the time for a for a final agency decision.

Bill Peele made a motion to extend the time to make the final agency decision in Taylor v. DCM and TP Inc. 08 EHR 1765 for good cause shown for the entire 120 day period allowed by G.S. 150B-44. Jim Leutze seconded the motion. The motion passed unanimously (Mitchell, Bissette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson) (Sermons absent for vote).

Town of North Topsail Beach Land Use Plan Certification (CRC 09-29)

Town of Windsor Land Use Plan Certification (CRC 09-30)

John Thayer stated the Staff has reviewed the plans and found that both meet the substantive requirements outlined within the 7B Land Use Plan guidelines and that there are no conflicts

evident with either state or federal law or the State's Coastal Management Program. Staff recommends certification of both plans.

Charles Elam made a motion to certify the Town of North Topsail Beach's Land Use Plan. Melvin Shepard seconded the motion. The motion passed unanimously (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson) (Sermons absent for vote).

Jim Leutze made a motion to certify the Town of Windsor's Land Use Plan. Lee Wynns seconded the motion. The motion passed unanimously (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson) (Sermons absent for vote).

Adopt 15A NCAC 07B .0901 CAMA Land Use Plan Amendments

Melvin Shepard made a motion to adopt 15A NCAC 07B .0901. Bob Wilson seconded the motion. The motion passed unanimously (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson) (Sermons absent for vote).

Adopt 15A NCAC 07H .0205 Coastal Wetlands

Bill Peele made a motion to adopt 15A NCAC 07H .0205. Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson) (Sermons absent for vote).

Approval of CHPP Annual Report (CRC 09-28)

Jimmy Johnson

Jimmy Johnson stated there has been a change since the CRC received their copy of the annual report.. On page 8, Goal 4, the wording has been changed to read, "CRC has adopted changes to dock and piers rules which give property owners flexibility in docking facilities and includes an 18 inch minimum distance requirement between the bottom of the floating structure and the substrate at normal water level or normal low water". Another change needed is to add the Wildlife Resources Commission to the front page.

Melvin Shepard made a motion to accept the CHPP Annual Report with corrections noted. Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Bisette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson) (Sermons absent for vote).

OLD/NEW BUSINESS

CRC Study of the Feasibility and Advisability of the Use of Terminal Groins

Jim Gregson

Jim Gregson stated House Bill 709 was signed by the Governor yesterday (8/26/09). This is a two part Bill. Section 1B establishes a moratorium on certain actions of the Coastal Resources Commission related to temporary erosion control structures (sandbags). The Commission shall not order the removal of a temporary erosion control structure that has been permitted under Article 7 of Chapter 113A of the General Statutes in a community that is actively pursuing a beach nourishment project or an inlet relocation project. This moratorium expires September 1, 2010. This will affect all sandbags in the State with the exception of a few in Corolla. The second part of the bill directs the CRC in consultation with DCM, the Division of Land Resources and the CRAC to conduct a study on the feasibility and advisability of the use of a terminal groin as an erosion control device at the end of a littoral cell or the side of an inlet to limit or control sediment passage into the inlet channel. For the purpose of this study, a littoral

cell is defined as any section of coastline that has its own sediment source and is isolated from adjacent coastal reaches in terms of sediment movement. There are six specific items which must be included in the study. There is also a requirement in the bill that the Commission hold at least three public hearings prior to April. No later than April 1, 2010, the CRC shall report its findings and recommendations to the Environmental Review Commission and the General Assembly.

Bob Emory stated that DCM staff should not conduct this study for several reasons. The timeframe involved, the disciplines required for this study, the permitting decisions that will need to be made and the public perception of DCM bias make the staff not ideal to conduct the study. Mr. Gregson stated that he would prefer if DCM staff not be involved in this study. It would put the staff in an awkward position when it comes time to make a permit decision on these structures. We could put this contract out for an RFP, however to make it through the state contract system would take about four months. The other option is to look at the current BIMP contract with Moffatt and Nichol. This contract is still active and could be extended. An initial proposal has been received from Moffatt and Nichol and we have the money to cover the cost of the study. We would like to have a kickoff meeting with Moffatt and Nichol, CRC, CRAC and Division of Land Resources to discuss the scope of work. The CRC and CRAC could guide the firm and select the sites that would be studied. It is not only Moffatt and Nichol doing this study, it would be done completely in conjunction with the CRC and CRAC and the Science Panel could be used as peer review. Moffatt and Nichol has proposed to subcontract the biological assessment and the economic analysis.

After discussion, Bob Emory stated a terminal groin subcommittee needs to be set up to attend the scoping meeting and stay engaged throughout the process. The subcommittee will consist of Commissioners Shepard, Carter, Leutze, Elam, and Emory and CRAC Chair Royal. Dara Royal will submit names of other CRAC members to be on the subcommittee.

Veronica Carter made a motion to involve the CRC and CRAC by creating a subcommittee. The subcommittee will meet with the contractor following the signing of the contract. The CRC will stay engaged throughout the process with progress reports and public comment sessions at each Commission meeting prior to the April 1, 2010 deadline. Melvin Shepard seconded the motion. The motion passed unanimously (Mitchell, Bissette, Carter, Wynns, Peele, Shepard, Leutze, Elam, Wilson) (Sermons absent for vote).

Chairman Emory stated that there had been a request from Bald Head Island during the public comment session to consider a situation there. DCM has asked for some guidance about sandbag repair. Jim Gregson stated House Bill 709 placed the moratorium on the removal of sandbags, however it does not specify whether repair is limited to structures with an active permit or if it allows for repair to sandbags that have expired permits and are subject to the moratorium. The Bald Head sandbags were due to come out May 1, 2008 or five years after the permit was issued. The permit has expired. They can now stay until September 1, 2010. The question is can they do anything to the sandbags? Any bags that were uncovered were subject to removal prior to the signing of this bill. There is a statutory provision for maintenance and repair. This would not require a permit if the repair is less than 50 percent of the physical value of the structure. Charles Baldwin stated that the Village only needs to add 20 sandbags to fix the problem. Mr. Baldwin stated that the General Assembly is clear. Bob Wilson stated the General Assembly's focus is not on the sandbags, but is on protecting the property. The General Assembly has told the CRC to allow repair if that is what it takes to protect the structure. Charles Elam stated that Bald Head has a project in place for renourishment and repair must be allowed with a hurricane sitting off of North Carolina's coast.

Bill Peele made a motion to consider this situation is a special case and the CRC should help Bald Head Island in this project only. The CRC should grant Bald Head Island permission to repair 20 sandbags based on the General Assembly's moratorium. Lee Wynns seconded the motion.

Jim Gregson asked, does the CRC want to allow maintenance and repair of sandbags whose permits have expired with the statutory exemption? Does the CRC want to allow DCM to issue permits for complete replacement of sandbags within their original dimensions for sandbags that have to be removed in September 2010? Jim Leutze stated that even if the Bill language is ambiguous about repair or replacement, you have to give the benefit of the doubt to the permit owner.

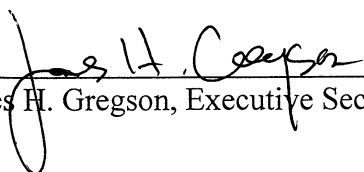
Melvin Shepard offered an amendment to the motion that this is an emergency situation at Bald Head Village. Due to Hurricane Bill and the proximity of Hurricane Danny, the CRC should grant permission to replace 20 sandbags without a variance request and consider this repair to a structure that has an expired permit. Bill Peele accepted the amendment.

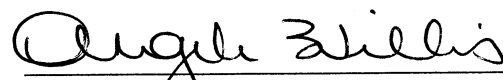
Jim Gregson stated these sandbags can take advantage of the statutory exemption for repair which does not require a permit. Ted Tyndall asked if staff should treat the rest of the sandbags that are required to be removed, however will now stay in place because of the moratorium, the same way? If the repair is less than 50 percent of the structure and the permit is expired, do we allow them to repair them under the statutory exemption? Melvin Shepard stated this action is a special case and only pertains to the situation at Bald Head Village in an emergency situation. Jennie Hauser, CRC counsel, stated that the CRC cannot act arbitrary and capricious in decision making. If another property owner presents substantially similar facts and requested a similar approval you wouldn't want to treat them differently. Charles Elam stated that anyone else that needs to do repair that is less than 50 percent can repair bags until the moratorium is over. Bob Wilson stated the intent of the Legislature was to keep the structure in place that is protecting the residence even if it doesn't have a current permit. If there is a similar situation at Nags Head then they can repair their structure even if they are going to have to take them out a year from now. Jim Leutze asked if the Attorney General's office could provide an opinion on the intent of the legislature. Veronica Carter stated that this would be a good idea as the law was just signed yesterday. We could grant this one based on the ambiguity and then ask for clarification. The CRC determined that the current statutory exemption already addresses repair less than 50 percent and no action is required.

**Melvin Shepard withdrew his amendment.
Bill Peele withdrew his motion.**

With no further business, the CRC adjourned.

Respectfully submitted,


James H. Gregson, Executive Secretary


Angela Willis, Recording Secretary