NC COASTAL RESOURCES COMMISSION (CRC)
July 15, 2010
NOAA/NCNERR Auditorium
Beaufort, NC

Present CRC Members
Bob Emory, Chairman
Joan Weld, Vice-Chair

James Leutze
Chuck Bissette
Renee Cahoon
David Webster
Bill Peele
Veronica Carter
Melvin Shepard
Ed Mitchell
Lee Wynns
Benjamin Simmons

Present Attorney General's Office Members
Jennie Hauser
Christine Goebel
Ward Zimmerman

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. Charles Elam and Jerry Old were absent. There were no conflicts or appearances of conflict declared by Commissioners. Based upon this roll call, Chairman Emory declared a quorum.

MINUTES
David Webster made a motion to approve the minutes of the May 19, 2010 Coastal Resources Commission meeting. Chuck Bissette seconded the motion. The motion passed unanimously (Weld, Bissette, Cahoon, Webster, Peele, Shepard, Simmons, Wynns) (Leutze, Carter, Mitchell absent for vote).

EXECUTIVE SECRETARY'S REPORT
DCM Director Jim Gregson gave the following report.

General Assembly/Budget
The General Assembly passed their budget bill on June 30. Fortunately, the Division of Coastal Management was minimally impacted this year. We are losing one vacant position, the Washington District Planner, which will be transferred to DENR to support a new Sustainable Communities Task Force. In addition, one half of the Washington District Manager position has been shifted to receipt funding. We are also losing about $10,000 as our part of an IT budget reduction. The budget also includes two million dollars for the University of North Carolina Coastal Studies Institute to research coastal wave energy.

Bills of Interest:

SB 832 - CRC May Permit Terminal Groins – Legislation to allow terminal groins on the oceanfront was passed by the Senate during the 2009 session, and did not come up for a vote in the House. Very late in the short session, HB 1708, the Clean Marina Amendment bill, was amended by the Senate to include a section that would have allowed the CRC to permit a terminal groin by way of a variance. The amendment did not include any of the recommendations made by the CRC following the terminal groin study. This bill also did not come before the House for a concurrence vote before the session ended.

SB 836 - Oil Spill Liability – Removes the existing cap, which is linked to the federal limit, on damages from future oil spills or natural gas discharge in NC coastal waters. The Federal cap would still apply beyond the three mile limit. It requires the CRC to review its existing statutes and modify existing rules that pertain to offshore energy exploration and production, and make recommendations, if any, to the Environmental Review Commission by April 1, 2011. The bill also amends CAMA to detail additional criteria that must be met when the State makes a consistency determination for offshore energy facilities, including an assessment of the potential for spills and an oil spill response plan.

HB 683 Permit Extensions – Amends the permit extension act of 2009 to extend the expiration dates of all Coastal Area Management Act permits, along with several other environmental permits, to December 31, 2011. The original extension was until December 31, 2010.

SB 778 - Application of SEPA to Incentives – Ends the requirement for a State Environmental Policy Act (SEPA) review for projects that receive public monies in the form of certain economic incentives. This would not apply retroactively to the Titan project in New Hanover County.

SB 430 - Gives Carolina Beach more authority to regulate and enforce laws in Carolina Beach harbor and other shoreline areas near the town.

HB 1766 - Amend Environmental Laws. An amendment to this bill delays the effective date of the clean coastal water and vessel act from July 1, 2010 to April 1, 2011, and limits the Act's application to those areas designated as a no discharge zone by the Environmental Protection Agency. The Act requires certain large vessel marinas (with 10 or more slips) in communities with a "no discharge zone" designation to install a pumpout facility, prohibits discharge of sewage into coastal waters and requires vessel operators and marina owners to keep pumpout logs.

DCM is currently working to implement a pilot program to establish criteria within the No Discharge Zone program in New Hanover County, the only NC county currently designated by the EPA. Our Clean Marina coordinator, Pat Durrett, is conducting an inventory of all marinas that meet the large vessel marina definition in the legislation (marinas with ten or more wet slips for vessels 26 feet or greater that have marine sanitation devices). Currently Pat has identified approximately 77 marinas in New Hanover County that meet this criteria. Pat is also coordinating with the U.S. Coast Guard and the Division of Water Quality to educate marina

operators on record keeping requirements of the bill and is working to get informational material out to area marinas and boaters. We are also adding new pumpout logs and other materials to our websites for boaters and marinas to use. The Division has also proposed some amendments to some Departmental rules that would aid in the implementation of this pilot program.

Masonboro Island

This Fourth of July weekend left the Masonboro Island component of the North Carolina National Estuarine Research Reserve in much better shape than on previous holiday weekends. Increased law enforcement presence and the coordination of that presence by the Wildlife Commission, Wrightsville Beach police officers and the New Hanover County Sherriff's department was an effective deterrent to some of the most egregious behavior. Law enforcement did write citations for underage drinking and for boating violations, but indicated that activity on the island was kept in control relative to previous years. The Division contracted with the New Hanover County Sherriff's Department to have five additional uniformed patrol officers at the Island. I would like to thank Hope Sutton for her coordination efforts with New Hanover County. There was an effort by volunteers from Masonboro.org to hand out trash bags and educate visitors which resulted in a cleaner island by Monday morning, with no sign of the mountains of trash we saw left behind last year.

CZM Program Changes

NOAA has notified DCM of their acceptance of a proposed routine program change to the state's Coastal Management Program. These changes involved the incorporation of 7H.0306 Use Standards for Ocean Hazard Areas (setback rules) and 7J.1200 Static Vegetation Line Exception Procedures into our federally approved coastal management program.

Section 309 Assessment/Strategy

DCM has recently completed its draft FY2011-2015 Program Assessment and Strategy. This section is headed up by Guy Stefanski. Section 309 of the Coastal Zone Management Act establishes a voluntary coastal zone enhancement grant program which encourage states to develop program changes in one or more of the nine coastal zone enhancement areas. Every five years, coastal states conduct a detailed assessment of those enhancement areas and identify high priority areas for inclusion into a five year strategic plan. We have determined that two program areas (Coastal Hazards and Ocean Resources) will be included as part of our FY2011-2015 Strategy. Through this Strategy, DCM will develop the information and tools necessary to provide for new and/or revised regulations, authorities, guidelines, procedures, policy documents and memoranda of agreement that will result in meaningful improvements in coastal resource management on three major fronts: oceanfront shoreline, estuarine shoreline and coastal/ocean environment. This draft was submitted to NOAA/OCRM on June 30, 2010 and is currently being reviewed by their staff. We will be conducting a public review period concurrently with OCRM's review of this document. Beginning July 19, the draft will be available on our website under the "WHAT'S NEW" section. Written comments related to this document should be sent to Guy Stefanski in the Raleigh DCM office or by email at guy.stefanski@ncdenr.gov. All comments are due by August 31, 2010. In addition, Guy will provide us with an update on the

Assessment and Strategy during the September CRC meeting. The final document is due to OCRM by November 1, 2010.

LPO Workshops
DCM staff recently conducted three Local Permit Officer workshops for 69 Local Permit Officers. The workshops were held in Wilmington, Morehead City and Southern Shores. On the agenda were the many rule changes we've made during the past year, and the introduction of a newly redesigned CAMA Minor Permit Application form.

Staff News
Jim Hoadley, DOT field representative in the Elizabeth City office, has left DCM for a position with the NC Department of Transportation.

Jason Dail, Wilmington Express Permit Coordinator, has accepted a transfer to a new position with the Division's Coastal Reserve Program. Jason will serve as the Division's Stewardship and Education Specialist for the southern reserve sites. Jason will be responsible for the stewardship of the Zeke's Island component of the NCNERR and the state Bald Head Woods component. He will also be working to develop an education strategy for the southern Reserves and implementing the strategy primarily at the Masonboro Island and Zeke's Island components.

Kristen Hall has joined the Raleigh office as part of a paid summer internship through DENR's REACH program. Kristen will be completing her bachelor's degree in geology at N.C. State University in May and will start her Master's program in geology at UNC-Wilmington this fall. Both of her degrees have and will focus on coastal geological processes. Kristen is working with Jeff Warren on shoreline trend analysis to assist with DCM's erosion rate update.

David Nash Memorial
In a July 17 ceremony, the Live Oak Park at Southport Marina will be dedicated to David Nash, a longtime cooperative extension agent for Brunswick and New Hanover Counties as well as a CRAC member, who passed away in March. David's family has extended an invitation to the event, which will include a memorial Paddle Out at 8 a.m. at Beach Access #4 at Wrightsville Beach and the park dedication at 1 p.m. A reception will follow at the Southport Marina/Park location.

David Nash was an agent for more than 21 years in New Hanover and Brunswick County, earning a respected reputation for his work in beach restoration and preservation of the North Carolina coastline through the research and propagation of sea oats, urban forestry, commercial horticulture, and master gardener programs.

CHAIRMAN'S COMMENTS

Chairman Emory advised everyone in attendance that following the public input and comment section, the Commission will go into closed session to consider some ongoing litigation matters. At that time everyone else will be released for lunch. At the end of the closed session the Commission will recess for lunch. Renee Cahoon has mentioned that during the "Old Business"

session of the agenda she would like to have a discussion on clarification of the letter that the Commission sent to the Legislature on the terminal groin study. The Executive Committee met this morning and talked about some things that we would like to reinvigorate. When we talk about future meeting agenda items I will mention these things.

CONTESTED CASES

Jennie Hauser, CRC Counsel, stated we are dealing with three quasi-judicial matters. The first is a contested case, the second is a variance and the last is a request for certification of a land use plan. As you are aware, quasi-judicial decisions effect individual parties and you sit primarily as a judicial body which means that you need to be impartial in your decision making. The first thing we always ask members to do is to consider whether or not they have a direct financial interest with any of the parties appearing in front of the Commission for a quasi-judicial matter. If you don't have a direct financial interest, we ask you to think about whether you might have an indirect financial interest, either through yourself or through your family members, which might make you something other than an impartial decision maker. If you are not indirectly financially related to any of the parties then we ask you to consider whether or not your experience is such that you already have a predetermined idea of the outcome of the matter in front of you.

Hugh Donaghue, Petitioners, stated that in order to protect my rights I am objecting to the jurisdiction of this Board. I believe that in the current setting we have a comingling of both the adjudicative process and the prosecutorial process. The Notice of Violation and Continuing Notice of Violation were served by the very agency that this Board represents. This Board serves many functions but in today's function you sit as an independent judicial body to make an independent decision. At the same time the same Department of the State which is prosecuting the claim against me, the Attorney General's office, a member of that office is providing legal advice to this Board. I agree with Counsel's remarks except for one thing. The findings of fact, as set forth by the independent administrative law judge, must be considered as true unless there is no support for the same in the record. Counsel for the Attorney General's office has provided instruction to both parties that if you were to object to a finding of fact as made by the administrative judge then you are specifically to list in the record the support for which you are arguing or deeming the fact to not be true. I submit to this Board that the Counsel representing the agencies submitted 18 objections to the finding of facts of the administrative law judge, yet of the 18 he only pointed to the record with respect to seven. I believe, based on Counsel's remarks and based on Appellate Law this Board cannot consider any objection to a finding of fact by the previous judge if there is not specific support pointed to that objection in the record.

Jennie Hauser stated that Mr. Donaghue is taking objection because the Attorney General's office represents both the Division of Coastal Management and represents the Coastal Resources Commission. Our Appellate Law in North Carolina is well settled that it is not a problem. The Attorney General's office can bear both of those functions simultaneously. Therefore, you don't need to worry about jurisdictional issues on that basis. You may hear some other jurisdictional questions about the case, but that is not a basis for lack of jurisdiction with the Board. With regard to the standard by which you must review the evidence before you, I did not read through 150B-36 in our general comments because I preferred to let you hear the arguments of the

parties. At the time that the arguments are finished, the questions are finished and you are ready to begin deliberations, I would be happy to go back through the standards that you must apply to the evidence before you.

Donaghue v. DCM (09 EHR 0568), Carteret County, 50% Rule

Ward Zimmerman, of the Attorney General's Office, represented Staff and stated that Petitioner, Mr. Donaghue, is present and has requested to be heard in this matter. This is a contested case that involves the unpermitted development of pier. Some permitted development occurred on the property owned by the Petitioners, Hugh and Denise Donaghue, at 115 Bogue Court, Emerald Isle, Carteret County, North Carolina on the southwestern tip of the island facing Bogue Sound. This area is commonly referred to as the point. This property is classified as an ocean hazard AEC and is thus regulated by CAMA. As you are well aware, any development in this AEC requires a CAMA permit. Petitioners purchased this land in the early 2000's and built the house that currently occupies the property. At the time of purchase there was an existing pier that measured approximately 100 feet. A pier is categorized under CRC rules as a "water dependent structure". At some time after purchasing the property, Petitioners began removing portions of the pier. This eventually led to nearly all of the horizontal portions of the pier being removed, resulting in pilings sticking up from the sand. Generally speaking, there is nothing wrong with tearing down and removing structures from one's property. However, it is what Petitioners did next, or rather what they did not do, that caused the issue over which we are here before you today. They built back the pier, at least 62 feet of it, but did this without first seeking a CAMA permit. They added new stringers, joists, collar beams and decking. They build back nearly all the horizontal pieces of the pier. Petitioners did all of this without seeking a CAMA development permit. Upon becoming aware of this unpermitted development the administrative body charged with regulated CAMA, DCM, issued a Notice of Violation on December 31, 2008 and subsequent Continuing Notice of Violation on March 2, 2009 against the Petitioners requesting that the property be restored to "pre-development conditions". That is to remove all of the new components of the pier. Petitioners refused and cited 15A NCAC 07J .0210(2)(a). This rule sets forth the method for determining how to classify a project and states that the construction of water dependent structures is considered replacement if more than fifty percent of the framing and structural components (beams, girders, joists, stringers, or pilings) must be rebuilt in order to restore the structure to its pre-damage condition. If bringing the structure back to its pre-damaged condition requires replacement of more than half of the framing and structural components of the original structure then the project is considered replacement and not repair and thus requires a CAMA development permit. As soon as Petitioners removed and replaced more than half of the framing and structural components of the original one hundred foot long pier then they needed to seek a CAMA development permit which they did not do. The policy behind the rule is to protect against someone wanting a new pier but not wanting to go through the CAMA permit development process. The purpose of this rule is to allow the repair of damaged or deteriorated structures, not to allow for the unpermitted full-scale development. Petitioners never rebuilt the structure back its pre-damaged condition. Instead they replaced 62 feet of an original one hundred foot long pier without seeking a CAMA permit. This alone removes Petitioners from the protection of the repair exception in 7J .0210. If they would have built back to the original one hundred feet it would have required even more new materials. Thus they are in violation of CAMA for conducting unpermitted development. Under the

equation set forth in the rule, it is abundantly clear that more than fifty percent of the framing and structural components were replaced. Petitioners did not seek a CAMA development permit, therefore DCM properly issued the NOV and CNOV to petitioners. DCM respectfully asks that you find that they acted appropriately and that you support DCM's continued request that petitioners restore the property to the pre-development conditions.

Hugh Donaghue, representing his wife Denise and himself, stated as the administrative law judge indicated in his conclusion of law #24 the appellants in this case acted erroneously in issuing a notice of violation and then a Continuing Notice of Violation based on erroneous conclusions that this was a "major development" and that the Donaghues entered into major development by constructing a 62 foot pier. When in fact the Donaghues attempted to explain to the State upon the first notice of violation what had occurred, the State did not undergo any investigation but then issued another Continuing Notice of Violation with no investigation. In the record on page 79, "there was not ground disturbance"; record page 79-80 "no knowledge as to when, how or why the decking was removed"; record page 80 "no investigation as to how and why what was done"; record pages 95-96 "no knowledge as to any excavation, no knowledge as to any dredging, no knowledge as to any filling, no knowledge as to any dumping, no knowledge to any removal of sand, no knowledge as to any bulkheading, no driving of pilings, there was no effect to any land mass" and these are the representatives of the State. When the prosecution went forward it did not go forward on development of a major pier because there was none. The State then resorted back to the fifty percent rule. This is a direct violation of due process rights. You cannot deprive one of his property rights and then threaten a $10,000.00 fine and a $10,000.00 fine per day unless you specifically elicit what the complaint was. To date, neither I nor my wife has ever received a proper complaint from the State of North Carolina as pointed out by the Administrative Law Judge. This is a violation of due process. The charging document of this case never specifically pointed to or in any way alluded to the fifty percent rule. Counsel begins his argument by suggesting that this a water dependent structure and the record is correct that at the time the hearing was conducted and at the time that the repairs were made it was a water dependent structure. But what Counsel has just suggested to you is a complete misstatement of the record. The misstatement of the record is he said that this is how this appeared. But it was how it appeared in 1982 as set forth in the record. What Counsel forgot to point out to you in the record was that it remained in that condition until very recently. What they have not told you, and is a part of the record, is that the State of North Carolina permitted a 250 foot bulkhead running 30 feet into the ground to my neighbor two doors down, to which I did not object. However, a discussion was held as set forth in the record with Mr. Bob Townsend that this would cause an escarpment. By erecting the bulkhead, an escarpment developed causing erosion on his property and my property thereby exposing the very walkway in question. When Counsel makes the representation to this Board that Counsel went and removed this, the record indicates that nothing to that effect happened. It was the gradual erosion that took place that the decking was removed. In a two day period the decking was replaced by myself and my sons. The independent law administrator, the judge, has already pointed out as a conclusion of law in this case that part of this repair was caused by the permitting of the bulkhead. I have recently shown the State pictures of how the present situation exists. As the ALJ pointed out, the decking is not to be considered in any way as part of the definition of a structural component. This is the ALJ's finding of fact and conclusion of law that decking does not comprise anything with respect to the fifty percent rule. We are talking about 18 pieces of wood and Counsel is suggesting to this

Board that the 18 pieces of wood somehow violates the fifty percent rule. That is ludicrous. If one was to accept Counsel's argument that decking is a structural component, anyone who has a deck or a walkway in the State of North Carolina and decides to replace their decking because it is weathered would be in violation of this rule if they replace all of their decking at the same time. That would be absurd. The ALJ was the only person in this case who visited this site, saw the bulkhead, saw what we put up, and saw that two neighbors to the north have a walkway that is twice the size of the one in question that was repaired, but there was no violation found there. The ALJ considered all the facts, those presented by the State and us and he reviewed the law very thoroughly. He reached the right decision. Unless there is some finding of fact that does not support the findings of fact as made by the ALJ, they must be accepted by you. Counsel has made an argument today in an attempt to reargue this case. This case has been argued and this case has been decided. The purpose of today's hearing is to point out errors made by the ALJ. It is not an opportunity to reargue the case.

Mr. Zimmerman stated the structure in question is a water dependent structure regardless of whether water laps up against it or not. This violation occurred for two main reasons. The first of these is that this pier was originally 100 feet long and that calculation was determined by aerial photographs. The rule that we have here is a repair rule. This rule is for structures (walkway or deck) and it gets damaged or deteriorates over time then it can be repaired. Framing and structural supports can be replaced as long as you don't do over fifty percent. The reason we have this rule is we don't want this to be a loophole so someone can go in and build an entirely new structure without getting a CAMA development permit. This 100 foot long pier was not built back to its proper, original, pre-damaged condition. Sixty-two feet were built back. Everything horizontal is new. Sixty-two feet out of an original 100 foot span is over fifty percent especially taking into account that the 100 foot original is the number that you have to use in the equation. At this point I think the record and pictures speak for themselves.

Mr. Donaghue stated the question is not that. The law in this case is as the ALJ has decided it. Counsel has yet to point to the record to indicate in this case where the ALJ made an incorrect finding of law or an incorrect finding of fact.

Melvin Shepard made a motion to reject the AJL's decision and Conclusion of Law #15 and adopt Respondent's comments that decking should be included as a structural and framing component. Veronica Carter seconded the motion. The motion failed with three votes in favor (Shepard, Carter, Wynns) and eight opposed (Leutze, Mitchell, Webster, Simmons, Peele, Weld, Cahoon, Bissette).

Chuck Bissette made a motion to accept the ALJ's decision. Jim Leutze seconded the motion. The motion passed with nine votes (Leutze, Mitchell, Webster, Simmons, Peele, Weld, Cahoon, Bissette, Wynns) and two opposed (Shepard, Carter).

Melvin Shepard made a substitution motion to reject the ALJ's decision based on the ALJ's conclusion of law #26 and adopt the Respondent's comments. This motion did not receive a second.

VARIANCES

Christine Goebel, of the Attorney General's office, represented Staff. Ms. Goebel stated Jim Hopf is in attendance and will represent Petitioner. Ms. Goebel stated this variance request is from V. Parker and Becky Overton for property located at 13 Comber Road on Figure Eight Island in New Hanover County. Ms. Goebel reviewed the stipulated facts in this variance request. The Overton's own 13 Comber Road as well as the interior lot located at 21 Comber Road. The long-term annual erosion rate for Petitioner's property is two feet per year; however since 1996 it has been subject to chronic erosion as a result of the northward movement of the main channel of Rich's Inlet. In 1996 Petitioners built a 5,379 square foot home along with driveways attached decking and fencing. On June 3, 2002, the structure was determined by the Division of Coastal Management to be imminently threatened and a General Permit was issued for the placement of a 6' by 20' sandbag revetment. In July 2003, the CRC granted a variance to increase the size of the sandbag revetment to 10' high by 40' wide. The sandbags were due to come out in May 2008. In February 2009, a CAMA Minor Permit was issued to authorize the relocation of the single family residence to the interior lot. On March 15, 2010 DCM staff sent a letter to Petitioners notifying Petitioners that the rules require that the sandbags be removed since the structure had been removed. Currently, the sandbags on the north end of Figure Eight Island cover 19 lots and approximately 1,730 linear feet, If petitioner's sandbags were removed, a gap of approximately 90 linear feet would result. Petitioners in this case are seeking a variance from the provision that requires the sandbags to be removed once the lot becomes vacant. During extreme high tides, storm events and other occasions when the ocean waves reach the sandbags, the areas adjacent to a sandbag gap resulting from the removal of the Petitioner's sandbags will likely experience accelerated erosion.

Ms. Goebel stated that Staff and Petitioners agree on all four facts in this case; however there is significantly different reasoning. Staff believe that the strict application of the rules would cause Petitioner and petitioner's adjacent neighbors unnecessary hardships. Staff notes that the sandbags already exist on Petitioner's property and are a part of a much larger sandbag revetment. To require removal would result in a 90 foot linear gap in the larger structure that could cause accelerated erosion on adjacent properties. Staff acknowledges that the increased erosion due to the typical inlet processes of this area are not peculiar, however the property's location in this area combined with its existence as one part of a much larger sandbag revetment is the peculiarity in this case. Staff do not believe that hardships result from actions taken by Petitioner. Staff notes that Petitioner has relocated the home to the interior lot as suggested by CRC rules. Staff agrees with Petitioner that the variance would be consistent with the spirit, purpose and intent of the rule.

Jim Hopf, of Hopf & Higley, P.A., represented Petitioners. Mr. Hopf stated Ms. Goebel has outlined the request. Petitioners are seeking to continue to be allowed to keep sandbags at the property as long as other sandbags are in the revetment so we don't create an erosion point from the gap. The property owners on each side of the Overton's are very much in support of this request and are concerned that if the bags are taken out then it would become a point of erosion and damage their properties. The Petitioner has taken the steps to move their house at a considerable expense. Mr. Hopf stated there is precedent in front of this commission for this sort of request. This request is reasonable and within the spirit of the rules of the CRC.

Joan Weld asked about the dog fence and concrete remaining at 13 Comber Road. Mr. Hopf stated that these are structures that have been there since the house was originally built. Mr. Hopf stated the materials that are on the lot are the remnants of having moved the house. Chairman Emory asked Mr. Hopf if the Commission grants the variance with a condition that the fence be removed, would it accomplish what the Petitioners need accomplished? Mr. Hopf stated that he believes the Petitioners could work through that.

Jim Leutze made a motion to accept Staff's position that strict application of the development rules issued by the Commission would cause the Petitioner unnecessary hardships. Ed Mitchell seconded the motion. The motion passed unanimously (Leutze, Mitchell, Webster, Simmons, Weld, Carter, Cahoon, Bissette, Wynns) (Peele absent for vote).

David Webster made a motion to accept Staff's position that hardships result from conditions peculiar to the petitioner's property. Ed Mitchell seconded the motion. The motion passed unanimously (Leutze, Mitchell, Webster, Simmons, Weld, Shepard, Carter, Cahoon, Bissette, Wynns) (Peele absent for vote).

David Webster made a motion to adopt Staff's position that hardships do not result from actions taken by Petitioner. Jim Leutze seconded the motion. The motion passed unanimously (Leutze, Mitchell, Webster, Simmons, Weld, Shepard, Carter, Cahoon, Bissette, Wynns) (Peele absent for vote).

Jim Leutze made a motion to accept the Staff's position that the variance request will be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; will secure public safety and welfare; and preserve substantial justice. Chuck Bissette seconded the motion. The motion passed unanimously (Leutze, Mitchell, Webster, Simmons, Weld, Shepard, Carter, Cahoon, Bissette, Wynns) (Peele absent for vote).

Joan Weld made a motion that a condition be added onto the variance request that the dog fence and associated concrete be removed. Jim Leutze seconded the motion. The motion passed with eight votes in favor (Leutze, Webster, Simmons, Weld, Shepard, Carter, Cahoon, Wynns) and two opposed (Mitchell, Bissette) (Peele absent for vote).

This variance was granted conditional on the removal of the dog fence and associated concrete.

PUBLIC COMMENT

Allen Holden, Mayor of Holden Beach, stated Holden Beach is between Lockwood Folly Inlet and Shallotte Inlet. I am here today to specifically address your proposed inlet hazard area expansion and particularly on the east end of Holden Beach. Holden Beach is an engineered beach. We have an ongoing staff of engineers that tell us where we add sand, put sand fences, put beach grass and so forth on a year round basis. We grow our beach and the evidence shows

that we are spending a lot of money. We have a good intent to continue to grow this beach and the evidence shows that we are doing a pretty good job. Fencing, vegetation, hauling sand and so forth. The concern the Town of Holden Beach has, as well as the citizens and property owners of Holden Beach, is to find this proposed map without having our input. I am here today to ask that the CRC ask the DCM Staff to meet with the Holden Beach engineers and look at the data we have accumulated through the years resulting from a lot of expenses, a lot of education, a lot of heart ache, and a lot of planning. We feel like all of this money and effort is at a loss if it is not taken into consideration by the CRC and your decisions on what you are going to do with our beach and the public's beach. At the east end of Holden Beach alone, you are impacting over fifty million dollars of our tax base. You are going to devalue our property by millions of dollars and yet the results of our expenditures and our efforts and our professional engineers will show that we are growing our beach and yet you are penalizing us by expanding the proposed inlet hazard area. Take advantage of the evidence that we have and the data that we have in making your decisions of how you are going to more regulate our island, which we think is contradicting what we have proven to be the facts.

Dennison Breese, Coastal Coanda Partners, stated I have written a research paper based on ten years of living here and research on the causes of erosion. I have determined exactly and precisely what the cause is. The cause is excess water inside the shore. (*a visual demonstration was shown to the Commission*) If you elevate the water in the land, the water forms a siphon going offshore. That is what eats the beach. I have met with the Corps of Engineers on this. They have reviewed it. The Major said that he found my research so interesting that he might have changed to coastal engineering instead of structural engineering. The Major said to contact the Towns that have an erosion problem and work with them to try to get permits and I have done that. I have talked to Figure Eight and some people up in Dare County. Figure Eight is very interested, but they want an opinion from CAMA on whether or not they need a CAMA permit. Basically what we are proposing is done on land. There are no structures in shore or out in the water. It is water management ashore. I have brought a copy of my papers. Our wonderful representative Pat McElraft has suggested that I bring a copy for each of you. I would be delighted to share our knowledge and research with members of your staff. Figure Eight Island has asked for a letter from CAMA or from someone who is responsible. Hurricane season is here.

Joan Weld made a motion that the CRC move into closed session pursuant to NCGS 143-318.11(a)(3) to consult with legal counsel regarding Midgett v. CRC 08 CVS 372. Bill Peele seconded the motion. The motion passed unanimously (Leutze, Mitchell, Webster, Simmons, Peele, Weld, Shepard, Carter, Cahoon, Bissette, Wynns).

The CRC went into closed session at this time.

ACTION ITEMS
Land Use Plan Certifications and Amendments

Town of Sunset Beach LUP Certification (CRC 10-24)
John Thayer stated the Town of Sunset Beach adopted their land use plan on June 7, 2010. Staff has reviewed the document and found that it does meet the substantive requirements of the

guidelines and that there are no conflicts or issues with the 7B guidelines or other state or federal rules. Staff recommends certification of the land use plan.

Ed Mitchell made a motion to certify the Town of Sunset Beach land use plan. Veronica Carter seconded the motion. The motion passed unanimously (Leutze, Mitchell, Webster, Simmons, Peele, Weld, Shepard, Carter, Cahoon, Wynns) (Bissette absent for vote).

PRESENTATIONS

South Carolina Shoreline Change Advisory Committee Report (CRC 10-25)
Braxton Davis, Director
Policy and Planning Division, S.C. Ocean & Coastal Resource Management

Braxton Davis stated we interact regularly with the Staff at DCM and continue to be impressed with the Staff and the work of the Commission in North Carolina. Staff came to South Carolina several times to inform the Committee of the beach management approaches in North Carolina.

South Carolina got going strong in 1987 with beachfront management. We had authorities with beachfront from the time our program was created in 1978, but very limited jurisdiction on the beachfront so there was a Blue Ribbon Committee appointed in 1987 by the Coastal Council (which is now OCRM) and they appointed 25 members to look at long-term solutions to beach erosion issues and to try to balance public and private interests. Of our 188 miles of oceanfront beaches, they found that 57 miles were considered critically eroding in their report. They cited sea level rise, development encroachment into the beach dune system, shoreline armoring that was ineffective or harmful, and a lack of beach management planning as major concerns that needed to be addressed by the State. Most of their recommendations were adopted the following year in the 1988 Beachfront Management Act. This Act established a comprehensive planning and management program within our agency, it enacted a long-term policy of retreat, and established a policy that encouraged responsible renourishment. It established our setback area, site specific erosion rates with a minimum of twenty feet on the beachfront. No seawalls or revetments, no shore parallel hardening structures and generally restricts new structures in the area to 5,000 square feet of heated space. It established standards for both a state beach management plan and local comprehensive beach management plan. While the CRC certifies land use plans we do a certification process for local comprehensive beach management plans under the Act. The Act also established real estate disclosure requirements for beachfront properties. Our shoreline can be thought about in three large regions. The Grand Strand region which is relatively high topography along the beachfront does not have major inlets or new sources of sand coming into that system. There is big tourism and recreation there. From Georgetown down to Charleston (the central region) we have a lot of protective barriers. Across the beachfront in South Carolina we have about 42% of the beachfront protected by some type of federal, state or local protection. In this area you also have some significant human alterations of the system. The dam and the Charleston Harbor jetty have had significant implications. As you move from Folly down to Hilton Head it is dominated by large-scale estuaries and tidal inlets. Larger tidal ranges and large scale inlet processes dominate. There is also very low topography in this area as well. Since 1987 we have seen rapid development continuing. We count close to 1,500 habitable structures at this point in our setback area. That is about 39% of the total number

of beachfront habitable structures in the state. Most of our beaches are net erosional. The long-term erosion rate that we calculate for the standard beach zones are anywhere from zero to four feet per year. In the inlet zones, which are obviously more dynamic, we have long-term erosion rates of up to twenty feet per year. We count 25 renourishment projects in South Carolina since 1985. We have close to 25% of the developed beachfront that still has seawalls and revetments that were grandfathered into the Act. There are four proposals currently in house for groins. We do not distinguish terminal groins from groins. We have 165 groins in existence. Emergency orders are authorized for major events. We have had 111 emergency orders issued since 1985. We do not know nearly as much about the estuarine/sheltered shorelines. We have issued over 1,000 permits for traditional bulkheads and revetments along the estuarine shoreline since 2001. We do not have a cumulative assessment of changes in these shorelines or alterations in these shorelines in the coastal counties. Four or five years ago when we were developing our last five year strategy we were looking at the continuing conflicts and increasingly controversial permits along the beachfront and upcoming state and local beach plan updates and we developed a five year strategy to look back over the last 20 years and see what we have learned since the Blue Ribbon Committee. We are looking at monitoring associated with renourishment projects. We want to bring together federal, state and local experts to update us on where we stand on science and policy issues. This will include beachfront and estuarine shorelines. Our external advisory committee leans heavily on agency and academic experts in South Carolina. We also brought in stakeholders to make sure the discussion was rounded out. This was not a politically represented or appointed committee. This was a staff appointed committee. It had some of the best debates and discussions that we have seen in a long time. The committee members whittled down 13 general recommendations for the report. The committee had to develop a detailed rationale for why they were making the recommendation. There was a significant amount of public input during the process. There were public hearings and public comment periods at each committee meeting. The full public comments are included in the final report. The whole point of this report was a scoping document for higher level decision makers and policy makers to consider. The way the committee laid out the report is in four main sections. They wanted to minimize the focus on the term retreat and focus more on the idea of reducing risks to beachfront communities by limiting future exposure to losses. In the first chapter we examine the existing regulatory approaches to the retreat policy in the Act. We described confusion that we found in public hearings up and down the coast over what retreat means and the mechanisms for retreat. There are limited sources of funds for relocation of properties out of the setback area. Policies that we have don't encourage the active relocation now of structures outside of the setback area, although there are parts of the Statute that seem to indicate that we were shooting to have structures out of that area. Renourishment has kept pace with erosion in most places to date. The committee raised questions about the economic sustainability of renourishment and that this would be a community by community decision. Some communities can afford to do it longer. The South Carolina beachfront setback area still causes confusion for folks. It is called a setback area, and we require that folks locate their structures as far landward as possible for a new or rebuilt structure, but as you run out of room on lots we may not see a lot farther retreat. You can build within the setback up to 5,000 square feet. It is not a strict setback in the sense of a no-build zone. Our setback area is based only on long-term chronic erosion rates. It does not address storm-based risks. It limits exposure in the sense that 5,000 square feet is much smaller than a large hotel. It was not designed to protect the health of the dune system. It has some requirements for dune mitigation, but does not focus on that issue. Its main mechanism is the

restriction on erosion control devices. The committee redefined and reinforced the idea of retreat to be that if and when renourishment is no longer viable, strategies should be in place for structure relocation and abandonment over the long-term to reduce costs to coastal communities. The idea is to maximize space between beachfront development and the shoreline and five recommendations were laid out to minimize the risk. The first recommendation is to prevent the seaward expansion of development. The committee recommends that the State establish a line and hold existing regulatory lines from ever moving seaward. The second is strengthening our setback area. The minimum should go from twenty feet to fifty feet. The minimum setback applies now to close to half of our developed beachfront. You can drop in a seawall just behind twenty feet and develop right up to the line. The committee recommends expanding the area. They looked at public subsidies for development on the beachfront and recommended that the state adopt something like the Federal Coastal Barrier Resources Act system which is the barrier resource units. There are seventeen in South Carolina that prohibit new development from receiving federal flood insurance and other infrastructure type subsidies. The idea is that the State could adopt the same units and restrict future renourishment funding and subsidies for new development in those areas. It is a controversial idea. The State of Maine has established this under state law. This is the only example that we have been able to find. The fourth recommendation is the strategic acquisition of beachfront lands and easements. The last recommendation is to look at the role of local governments in beach planning. The one big difference between now and 1988 is that a lot of the capacities have grown in our local governments and beachfront and they have staff and GIS skills and zoning authorities that they didn't have back at that time. The incentive for this and a number of the other recommendations was the establishment of a Beach Management Trust Fund. We currently have a beach renourishment trust fund in South Carolina. The idea was to expand that and make it open to options other than renourishment. You could use this trust fund for competitive proposals for property acquisition, easements, relocation of structures, and other planning approaches in addition to renourishment. The recommendation for improved planning of renourishment recommends that our State partner with the Army Corps of Engineers to become involved in regional sediment management. We have begun those discussions and held a workshop. We need to look at regulatory decision making regarding nearshore alterations within one mile of the beachfront. We need to make sure that we have a substantial review process for anytime that you are borrowing sand within the close proximity of the beachfront. We also need to improve and standardize the monitoring requirements for renourishment projects. The committee wants to reinforce our existing prohibition of erosion control devices in the setback area and to improve regulatory guidance on emergency orders and groins and breakwaters. We have some restrictions on groins, but very few. The committee wants an ad hoc technical advisory committee to be formed to help guide us on additional recommendations for how we can make decisions on groins and breakwaters. The sandbag issue was probably the most complex and long-term effort that we undertook as a committee. I know you can sympathize with that. The committee also looked at expanding real estate disclosure. The current requirements lay out the erosion rates and the setback area. The enhanced management of our sheltered coastlines or estuarine shorelines follow on the work of what has been done by DCM staff. We are looking at mapping and monitoring the changes in erosion rates and the forces causing that and what type of erosion control approaches will work for different kinds of shorelines. We need improved regulatory decisions. We need to know a little bit more before we can make increased requirements for erosion control approaches, but in the meantime there are a number of things

that we can do to encourage alternatives to traditional bulkheads. Another controversial recommendation is the establishment of estuarine vegetative buffers by the State. The minimum would be 25 feet coast wide. This has already been adopted by several of the coastal communities. It is an attempt to provide the minimum but encourage coastal governments to do more. This would be for new developments and also provide tax incentives for existing developments to restore and certify vegetative buffers on already developed properties. All of the information that went into the development of this report can be found on our shoreline change initiative webpage. Last week we took this report to our South Carolina Department of Health and Environmental Control Board, which is the Board that oversees our part of the program. We asked them to approve the formation of a Blue Ribbon Committee. It would be a more politically appointed committee made up of a number of legislators and other politically connected folks and have them look at this detailed scoping document and develop the specifics for legislative language and regulatory language that they would like to see move forward. We anticipate a one year effort because the document that we have created will present the competing sides of the arguments and allow them to quickly move through the ideas and decide for themselves which way the State should be going. We are happy that they approved the formation of this Committee and we are going to move forward as quickly as possible in getting that Commission set up.

Oil Spill Response
Lt. Shannon Scaff, USCG

Lt. Shannon Scaff stated I will be discussing the Coast Guard's responsibilities and capabilities of pollution incidence in North Carolina. *(A map of the Coast Guard nationwide breakdown of districts was shown.)* There are two major areas, the Pacific area and the Atlantic area. It is further broken down into nine districts. North Carolina is part of the 5th Coast Guard District. Our Commanding Officer in North Carolina is Captain Anthony Popeil. He has a big job in North Carolina. He is the designated Captain of the Port. There is another one down in Wilmington, Commander McGee, at the Marine Safety Unit. He has oversight of all operations in and out of the Cape Fear River. Captain Popeil has the day to day operations here in Morehead City. If there was a significant event, i.e. a storm or a major pollution event in the Cape Fear River, Capt. Popeil could assume Captain of the Port Authority down in Wilmington as well and work closely with State partners and Commander McGee. Additionally, Capt. Popeil has responsibility for 519 folks across Base/Sector North Carolina, 9 multi-mission Boat Forces Units up and down the North Carolina coast, 2 Aids to Navigation teams, 4 Coast Guard cutters, and one Marine Safety Unit in Wilmington. A big job of the Captain of the Port is to work hand-in-hand with industry and commerce. There are three marine safety offices in North Carolina. One is in Wilmington, one in Morehead City, and one in Nags Head. There are pollution investigators located at each one of these units that are on call 24 hours per day 7 days per week. There are two 110 foot patrol boats located in Atlantic Beach. These are operational units that are capable of search and rescue, law enforcement, and to put eyes on the scene of a spill. One of our patrol boats in Atlantic Beach is scheduled to go to the Gulf to help with the efforts there. We have nine multi-mission boat forces units. One of which is a seasonal unit located at Ocracoke. It is manned by Station Hatteras Inlet between Memorial Day and Labor Day every year. Each unit in Sector NC has a pollution trailer located at the Unit that has a modest amount

of pollution gear. If we have an incident in a remote area we can connect the trailer to a government vehicle and drive it to the scene. There is a 47 foot motor lifeboat. There are two surf stations in North Carolina. The folks at these units are highly trained and are some of the best in the world at operating these vessels in the worst cases imaginable. They can withstand 30 foot breaking seas and 50 knot winds. A step down from that are the heavy weather stations which are trained to withstand some pretty serious conditions, but not quite the magnitude of the surf stations. We have four multi-mission stations. Oregon Inlet and Hatteras Inlet are the surf stations. Fort Macon and Oak Island are the heavy weather stations. Coast Guard cutter SMILAX is also located here at Atlantic Beach and is primarily an aid to navigation boat. There is a 100 foot tug and a 70 foot barge that could bring good capability with managing a moderate sized spill. We have another one just like it down at Oak Island. Coast Guard Air Station Elizabeth City has five HC-130J long range search aircraft which is some of the newest aircraft in the Coast Guard inventory. It is capable of focusing on the smallest target such as a car license tag. We also have the MH-60T medium range helicopters.

The federal classifications for the size of oil spills are minor, medium and major. Unless there is a spill 100,000 gallons or more coastal or 10,000 or more inland then it is not major. Discharge refers to oil spill. Release refers to a hazardous substance. There are several pollution laws that are enforced by the USCG. We have pollution investigators that are on board 24 hours per day 7 days per week ready to go out and take a look at the scene and see what we have to contend with. Some of our laws include the Federal Water Pollution Control Act, Clean Water Act, and the Oil Pollution Act of 1990 which was a direct result of Exxon Valdez. We also have the Comprehensive Environmental Response, Compensation, & Liability Act which is strictly used for hazardous material. The Superfund Amendment & Reauthorization Act can be used for oil and hazardous material. The Refuse Act and the Federal Water Pollution Control Act are the primary laws that we enforce as pollution investigators. The Coast Guard serves as the initial response and works as oversight for response efforts. We can go out to the scene and take a look at it. We can put out some boom, but a large majority of the response effort will come from commercial contractors. The Federal On Scene Coordinator (FOSC) is overall responsible for directing the response efforts of both commercial entities and federally. In a world class event, like what we have in the Gulf right now, you have seen Admiral Allen. He is the National Incident Commander and is the national level for what Captain Popeil is here at the state level. The FOSC ensures the effective removal of discharge of oil or hazardous substance into U.S. navigable waterways, adjoining shorelines or into/on the waters of the Exclusive Economic Zone, which is 200 miles out and further. The FOSC also has oversight of the development of the Area Contingency Plan. This is a living document that is constantly changing and we are constantly reevaluating it to make sure that we are ready for any and all hazards. Capt. Popeil will not go out to the scene of every single incident. The FOSC representative can go in his place. This would be a seasoned pollution investigator who is well versed in the laws and the Coast Guard's capabilities. They are the eyes and ears of the FOSC and they report to the scene and can access federal funding if required. If they need to access federal funding they have either not been able to identify a responsible party or the responsible party is not capable or not willing to pay for the spill. The Pollution Investigator is the "boots on the ground". They act on behalf of the FOSC. They conduct the preliminary investigation including the magnitude and severity, recoverability, and identifying potential responsible parties. They are responsible for evidence collection, interviewing folks at the scene, and taking oil samples. They can also make

recommendations and initiate courses of action including use of Coast Guard assets, personnel, consumables, hard boom, boats and aircraft or the use of contractors. They have the authority to issue a "NOFI" which is a notice of federal interest which tells individuals on the scene that we are interested in what happened and interested in knowing what you know about the incident and we want to let you know that if you are responsible for this incident then this is what we expect you to do. It is not a ticket. A step up from that is the "NOV" which is a notice of violation and is a monetary ticket based on the size and nature of the spill. Notification is the law. The number to the National Response Center which takes calls for spills is 1-800-424-8802. If you own a vessel or an offshore or onshore facility and you discharge oil or a hazardous substance you are required to call this number. If you don't call the number and you are found liable, you will have civil penalties and you can go to jail.

Marinas, PNAs and Dredging
David Taylor, DMF

David Taylor stated many of our estuarine dependent species start out in the ocean and spawn. The eggs and larvae will travel up into the rivers and go to the upper most reaches of the rivers and creeks where there is salinity. Food availability and lack of predators make them ideal places to grow up and spend the initial phases of their life. It is absolutely necessary that this type of habitat be there and be protected because it is a limiting factor on the recruitment. If they aren't there the proper food cannot be obtained and they are exposed to predators and the physical characteristics of salinity and water quality for their growth are impeded. After they spend that initial time in the estuaries and in the nursery areas they will come back down and a lot of species go back out the inlets into the ocean as adults. The majority of the recruitment period is during the early spring and through the fall, but most any time of year you will have something coming in the inlet. Nursery areas, in general, are defined by our Marine Fisheries Commission rules. They are defined as those areas for reasons such as food, cover, bottom type, salinity, temperature and other factors. This is where young finfish and crustaceans spend the major portion of their initial growing season. In North Carolina there are three types of nursery areas the primary, the secondary, and the special secondary. Primary nursery areas are defined as those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. The Marine Fisheries Commission's purpose was taken out of the rule by the A.P.A. process, but it used to say the purpose was to maintain, as much as possible, in their natural state and allow juvenile populations to develop in a normal manner with as little interference from man as possible. The Wildlife Resources Commission in 1990 recognized the value of designating these inland nursery areas in their waters. The WRC rules define their nursery areas as those areas inhabited by the embryonic, larval or juvenile life stages of marine or estuarine fish or crustacean species due to favorable physical, chemical or biological factors. The WRC has approximately 10,000 acres of inland primary nursery area. The history of the designation started in 1970 when the early biologists at the Division began a trawl survey of the whole state. It was an inventory that began in the southern part of the state and worked its way north. By 1978 the whole state had been surveyed. The stated purpose of that survey was to delineate nursery areas of economically important species and protect them from bottom-disturbing gear. The first formal designation that resulted from the samples was in 1977. About 76,000 of the 80,000 acres of primary nursery area that we

have now were designated in that first designation. About 44% of the 80,000 acres of PNA is tidal wetlands. The designations are based on the catch per unit effort we get with the trawl of indicator species during the major recruitment period and the physical and environmental characteristics of the site. The latest update of our primary nursery area designation protocol was in 2002. We use a trawl and tow for one minute and calibrate for speed. The potential sites that we look at are sampled for three years in a row to allow for variability and to make sure we sample under all conditions. The site is compared to existing primary nursery areas to determine whether those areas are statistically different in terms of species abundance, size distribution and diversity. The criteria for designation include the abundance of selected recreationally and commercially important fish and shellfish species. The size composition and the presence of early juvenile states are what we look for. We also look at species diversity and the bottom type. Most primary nursery areas are in shallow water with a depth of usually six feet. We sample all 104 stations each year in May and June during the same two week period. Additional samples can be taken if we are examining something for potential designation or if coastal development is being proposed. The nursery areas are evaluated each year to determine whether they still meet the criteria for designation. Designations can be adjusted or dropped depending on results. Agencies have adopted rules to correspond with the protection of the primary nursery areas. The Marine Fisheries Commission prohibits the use of trawls, long haul seines, swipe nets and dredges in any primary nursery area. The Coastal Resources Commission's rules state dredging of channels, canals or boat basins must avoid primary nursery areas. The Environmental Management Commission has designated all primary nursery areas as High Quality Waters.

Anne Deaton, DMF, stated the impacts of marinas and dredging on nursery areas can be found in the Coastal Habitat Protection Plan (CHPP). The nursery areas are critical areas to protect. If you have successful recruitment in the nursery areas then you can really help a population. A primary nursery area is usually in shallow water and is usually where the bottom is very productive. If a marina goes in, one of the primary impacts is dredging because these boats need at least a three foot draft to get in and out. Sometimes the marina will require dredging through wetland or soft bottom. Either way it is deepening the bottom which is going to allow predators in and give it less protection. It also decreases productivity due to the decrease in wetlands. Also, when you dredge you remove the film of microalgae that is a food source for very small larvae. You reduce oxygen levels. It can attract larger fish, but it is attracting them to poor water quality in some cases. The other problem with dredging is it alters the sediment. It changes the benthic composition to pollution tolerant species. It can impact the diet of juvenile fish. In addition to dredging there are other impacts of marinas. The biggest one is the water quality impact. When pollutants are in the water they settle out into sediments. The sediment can be polluted over time as well as the water. The main things are heavy metals and hydrocarbons coming from boats and bottom paint. You can also have increases in bacteria. There can be a lot of toxins going into the water if the marina does work on boats. All of this will impact larval and juvenile fish because all of the pollutants can be toxic and slow down growth. Another impact is when shoreline configurations are done. If a basin is put in or groins are put in then the fish have to go out into deeper waters. It can also alter circulation in non-beneficial ways. There can also be reduced wetland productivity from the bulkheading that goes along with these marinas and shading from the dockage. The advantages of upland marinas are you are not on the public trust bottom as much and you have a much smaller footprint. There is less structure over the PNA, there would be less dredging in the PNA, and less shoreline

stabilization. There are some negatives with upland marinas. Usually they have poor circulation with worse water quality, you also have to dredge the access channel through the PNA, and you can cut out a pretty big basin in these uplands which will support a lot of boats and they have to come through the shallow PNA. Open marinas have better flushing which can help maintain water quality. Open marinas also have the option of piering which would avoid dredging. However, in open marinas dredging could be needed later if shoaling occurs. Open marinas will also take up more public trust bottom which can interfere with navigation and also fishing in some areas. Because it is out in the open it can also cause larger shellfish closure. Shellfish Sanitation has to calculate a buffer around marinas and it tends to be a larger buffer when it is in open waters. If you look at open versus upland marinas we know both have potential impacts to nursery habitat. DMF would recommend that there should be no new marinas in primary nursery areas. In other areas, open marinas would be preferred but DMF would defer to a case by case situation based upon the location, resources and the type of facility.

Rich Carpenter, DMF, stated he would like to answer some questions that were raised from the Bennett Brothers Yachts variance request. The Cape Fear was initially sampled in the 1970's and all that information was put together and the initial designations were made in 1977. In the Cape Fear, in addition to our regular monitoring, in 1997 we did a cooperative study with UNCW where we looked at some of the populations from the middle part of the river. At the mouth of Smith Creek there is a station that is the closest to the Bennett Brothers location. The Smith Creek site has been sampled since 1978. All of the indicator species are present in the list of top ten species at this site. One of the things about the southern part of the State is that we do see a different composition of species in our samples. During the study between UNCW and DMF we used the trawl and the electroshock method. You will see a difference in the number of species that you get when you use more than one method of sampling.

Inlet Hazard Area Discussion (CRC 10-28)
Jeff Warren

Jeff Warren, Division of Coastal Management Coastal Hazard Specialist, stated this study has been heavy with Science Panel involvement. One thing I would like to underscore is that there are no rules on the table right now. We originally came out with the boundary recommendations in the fall of 2007. At that time we were prepared to review and revise the policy of what you can do inside the boundaries. The boundaries have increased quite dramatically in some places. In July 2008 there was still concern by the Science Panel and the Commission that there were some outstanding issues that the Science Panel still wanted to consider, primarily how we would want to apply an erosion rate and setbacks in the inlet boxes. The Science Panel has done a thorough analysis and it has been very data intensive. At the last meeting you saw some of the Science Panel's work on recommendations for what you could do inside of the box based on a 30-year risk window. The boxes went out in the fall of 2007 and have created a lot of unrest with stakeholders. We would definitely benefit from marrying these two policies together and having a set of draft use standards for what you can do inside of the new boxes. The goal is to decide what to do inside of the boxes. The Commission has the ability to tweak the boundaries of the boxes, but the report represents a final set of recommendations from the Science Panel and the Division of Coastal Management. My interpretation of what development policy should be

addressing inside of an inlet is two fold. For the most part we have two types of inlets in the state. We have the migrating inlets and those are really not an issue with some of these one size fits all challenges. The others are oscillating inlets. One thing we have tried to take into account is to not go with a one size fits all scenario. I think what you will like about the boxes is that they are very inlet specific. When we start looking at what you can do inside the boxes and look at the erosion rates they are also very inlet specific. There are two governing principles that inlet management can do. The first is in the oscillating situations I would think that it is smart coastal policy to not allow people to build oceanward in a situation where the inlet has built out when you know over time that the inlet is going to come right back to where it was on a decadal scale. The second thing is that these boxes represent a different area of risk. They are inlet related risks and not oceanfront related risks. You can look at that as one way to diminish risk. Don't create an area where you cannot build. These are areas that recognize that they are under an inlet associated risk and you can limit size. That is what the current rules do by applying a 5,000 square foot limit to commercial and multi-family. If there is a size limit in the future then you should apply that to all structures to be in compliance with the current setback policy which is size and not use. Today we will talk about two different proposals with live GIS. The first will go back to the original coastal management proposal from the summer of 2008 which talks about still using the vegetation line and also looking at the erosion rate and a setback factor the same as the oceanfront (30 times the erosion rate). We are going to be updating our erosion rates at the same time that we are dealing with these rules. I will show you erosion rates today that will be very similar to the methods that we employ for the inlets in this update. We will also have a line that is the 30-year risk line. There are a couple of uses for such a risk line. The Science Panel looked very hard at shoreline change. They used a 30-year time window because that is a management window that is throughout our rules. They not only looked at erosion rate, but they also looked at the deviation of those shorelines. We will look at Shallotte Inlet, Lockwood Folly Inlet, and Bogue Inlet. We actually marked where the vegetation line is today. You are seeing very recent photography and you are also seeing the vegetation line as staked out and surveyed in the field. We can then run setback scenarios off of that. The goal for today is to put the DCM scenario back in front of you as far as what we can do to regulate setbacks and development location. The other scenario I would like you to consider is the Science Panel's 30-year risk line and what you might like to do with it. It would be a great goal to leave here with choosing one or the other. After we get something the Commission endorses then we can take it out to the communities and talk to the realtors, developers, and Town Councils. This is an AEC boundary change and would have to go to every effected county with an AEC change in it. There are a couple of things you could do with the Science Panel line. The first is to use it as a setback and only build behind it. The second would be to use it as a zone. You could say that anything oceanward of this would be a higher hazard than the area behind it and you could zone the inlet boxes. You could limit total floor area oceanward of the line. Lastly, the Science Panel line could merely be a line on a map that is out there for educational purposes. 7H .0304 defines the boundaries. 7H .0310 defines the use standards within the boundaries. These two rules need to move forward together.

Spencer Rogers stated that he has a specific suggestion on how the CRC might start their approach. It is important to keep it simple and just as important to keep it similar to the ocean hazard area methods. The CRC should look at a size limit on the inlet hazard area as a whole. The limit that is obvious is 5,000 square feet. Look at the 30-year risk line as an equivalent to

the 30-year setback line. You call it a setback line on the oceanfront, but it isn't because you have exceptions. It has been obvious to me that if the Science Panel is going to do its job of giving you good lines for these two purposes then there is going to have to be an exception system setup. In those areas one of the tools that Jeff has already thrown on the table is the existing building line, the existing vegetation line and the potential erosion setbacks that could be used seaward of the 30-year risk line or whatever you end up calling it as part of the exception system. That wouldn't necessarily prohibit construction on any single lot. That is the way the CRC has done it historically in the past. Usually the way that the CRC has done it in the past is you have pushed the setback first and the exception later. It makes sense to me to put them together this time and have the exception planned when whatever you do with these other lines is implemented.

Jeff Warren stated that what Spencer is describing is more of a zoned approach. I am afraid that it is all in marketing here. If you say that it is a setback line, even if you say we are going to have eight exceptions in place, people are going to stop listening at "setback line". With a zoned process you can achieve what Spencer is talking about. I would suggest after dealing with stakeholders for so many years that if you want to incorporate the risk line you should really think more of it as a zone and not a setback.

Spencer Rogers stated that public information is important on this issue. The public needs to understand that we believe that there is a very good risk that anything seaward of the 30-year line has an excellent chance of sitting on the beach. If you want to buy a place to get in trouble go seaward of the line. If you want to get a longer lifetime out of what you are purchasing then go on the other side of the line. That is good public information that needs to be implemented based on all the work that has been done.

Chairman Emory requested that Staff come back with a couple of different scenarios that would include development standards. The CRC could then make a decision based on those scenarios. This is still too much information.

Sandbag Overview/Update (CRC 10-29)
Mike Lopazanski

Chairman Emory stated everyone received the memo that gave the history of sandbags in North Carolina, how we got to where we are, the exceptions we have made for communities that are pursuing beach nourishment, the exceptions we have made for communities that are pursuing inlet relocation, and the Legislature's moratorium on sandbag enforcement. The moratorium runs out September 1, 2010. The Division would like some advice on what should happen after September 1.

Mike Lopazanski stated there have been 298 sand bag structures permitted since 1996. When you consider the bags permitted by local governments prior to 1996, there is a total of 359 sandbag structures. The Legislation prohibited the CRC from enforcing the sandbag rules in terms of expiration dates, but did not prevent us from enforcing other aspects of the rule. There were ten structures removed in Dare County because the structure was condemned or otherwise

removed from the beach so the sandbags were no longer necessary. This leaves us with about 150 sandbag structures that are eligible for removal. The moratorium comes to an end on September 1. DCM is looking for direction as to how the CRC intends the Division to implement the temporary erosion control policy.

Sandbags – Science Panel Recommendations
Spencer Rogers

Spencer Rogers stated the theory behind the size limits on sandbag revetments relates back to seasonal fluctuations in the beach. The typical North Carolina beaches change from six to eight feet seasonally. They are normally narrower and lower in the winter season and wider in the summer. The idea behind the size limit was that once you erode the beach to the bottom of the seasonal fluctuations, when the seasonal beach returns then most of the structure will be buried. This is a distinct method to limit the effectiveness of the method, but to give some limit of protection for buildings that were either going to be moved or had temporary erosion that would get better. The problem with sandbags is the potential impacts to the neighbors and the beach, litter and debris, difficult orientation and enforcement. Sandbags were at one time mentioned as soft structures. They are not. There are a lot of structures out there that are way over six feet. Sandbags are also clearly a debris problem in some areas. The geotubes have performed much better in the state. Geotubes can be up to 300 feet long and are a variety of diameters. They are filled with bigger pumps with water and sand being pumped into the bags. One of the advantages of going with the single tube would be to reduce the footprint from twenty feet down to ten. There is 2/3 less fabric. There is the potential for a lower cost for property owners. The Science Panel has been asked to look at various sandbag issues over the years. One of our earliest short-term recommendations was to strictly enforce the regulations. That recommendation would have included the size limit and the time limit. The Panel was asked to look at whether time limits should be enforced on areas where pending beachfill projects were under design. We cannot find any of the records for that effort. The way the discussion went within the Panel was that there were a number of members who were against the sandbags. In the end the Panel reached a consensus that the most important issue for sandbags behind all projects was the size limit that is in place. The Panel didn't think time limits were necessary behind beachfill projects, but strongly recommended enforcement of the size limits that were in the regulations. Had we been asked the broader question, we would have recommended against time limits everywhere. There have been some changes in the Science Panel so I don't know if there would be a consensus now. If you keep the structures small, most of the bad impacts go away. It isn't a lot of protection, but it is a way to remove most of the problems that are being generated now. One thing to look at, if you do any changes to the sandbag regulations, is to look at including geotubes as an alternative.

Chairman Emory stated we spent a lot of time, effort, and some money on pursuing removal of sandbags whose time had expired. I don't think we removed any, but we put a lot of effort into it. We ended up having a declaratory ruling that we had to deal with as a partial result of it. The Legislature felt it necessary to intervene. I would like to suggest that the CRC focus our enforcement efforts on sandbag structures that are oversized as opposed to being over their time limit. If a structure is exposed or becomes exposed and we discover that it is larger than the

permitted size or if it is larger than the size that the CRC allowed in a variance for that structure then the property owners would have to restore it back to the permitted size.

Lee Wynns asked if the CRC should enforce orientation as well as size. Chairman Emory agreed. Renee Cahoon stated that she agrees, however in Nags Head they have to remove sandbags off the beach as well as ordering houses off the beach. When we remove the houses we find that there are sandbags twenty feet deep. While I have a hard time telling people to take their houses off of the beach because they don't have insurance, sandbags are their only options. The biggest issues are the sandbags that totally surround the house on all four sides. The idea of the one geotube bag versus many bags is better. We do not need to disturb 15 feet into the sand to get a sandbag out. The Towns will eventually deal with it when it comes to the surface, but you don't need to destabilize more sand than you have to. Melvin Shepard stated that if we focus our enforcement efforts to situations that are the worst then it would be a reasonable approach.

Jim Gregson stated if the CRC wants to not require bags to be removed but just wants to be concerned with the size limit then there should be a consideration that even though we allowed them to be taller than six feet, as of September 1 those bags have to come out. If they have to come out anyway then we can say keep them at six feet and if they are taller, then they have to be brought down to six feet. We could go through rulemaking that does not have a specified time limit for removal, but any bags that are existing that are over six feet would have to be brought into compliance with the size limit.

Chairman Emory asked the Division staff to bring back some potential rule changes that allows geotubes.

David Webster made a motion to give the CRC the time necessary to review the options at the September 16, 2010 meeting. The Division has sent notices but should delay enforcement of sandbag removal. Jamin Simmons seconded the motion. The motion passed with six votes (Webster, Simmons, Peele, Weld, Cahoon, Bissette) and one opposed (Shepard) (Leutze, Mitchell, Carter, Wynns absent for vote).

ACTION ITEMS
OLD/NEW Business

Renee Cahoon stated there seems to be some confusion as to the letter that the CRC sent to the General Assembly on terminal structures. I thought that we gave it a positive recommendation. I cannot speak for the other people that voted in the affirmative, but according to the Speaker of the House we didn't give them any direction. I take exception to that. We stated that terminal groins in conjunction with beach fill showed positive effects. I am paraphrasing from the document. I would like to see us revisit this. Chairman Emory stated that he does feel that the CRC gave direction. The CRC reported on the report that stated that terminal groins can be effective but if the General Assembly chooses to allow them then there are other risks. If the General Assembly saw fit to allow terminal groins then they should take several things under

advisement. Renee Cahoon stated that she would like to see it come back before the Commission.
Chairman Emory stated that there are several items for the next agenda including the inlet hazard area, sandbags, and discussing the meaning of the CRC's report on terminal groins to the Legislature.

Chairman Emory stated the land use planning guideline team is working on an update of the rules and can provide an update at the next meeting. The CHPP Final Report should be ready to be reviewed by the CRC.

With no further business, the CRC adjourned.

Respectfully submitted,

James H. Gregson, Executive Secretary

Angela Willis, Recording Secretary