NC COASTAL RESOURCES COMMISSION (CRC)
October 29 - 30, 2009
Sheraton
Atlantic Beach, NC

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

James Leutze
Melvin Shepard
Renee Cahoon
Charles Elam (present at 10:10 10/29, absent 10/30)
Bill Peele (absent 10/30)
Veronica Carter (present at 10:20 10/29)
Chuck Bissette (absent 10/30)
Jerry Old
Ed Mitchell (absent 10/30)
Bob Wilson
Lee Wynns
David Webster

Present CRAC Members
Dara Royal, Chair
Penny Tysinger, Vice-Chair

Bob Shupe
Charles Jones
Tim Tabak
Ray Sturza
Dave Weaver
Christine Mele
Bill Morrison
Wayne Howell
Webb Fuller
Joe Lassiter
Anne Deaton
Phil Harris
J. Michael Moore
Frank Rush
Harry Simmons
Rhett White
Bert Banks
Judy Hills
Tim Ware (Eddy Davis Alternate)
Tracy Skrabal
Spencer Rogers
Lee Padrick
Cyndi Karoly

Present Attorney General's Office Members
Jennie Hauser
Christine Goebel
Jill Weese

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. Chairman Emory stated that he is a friend of attorney Clark Wright, attorney representing the Petitioner in the contested case hearing, however it will not affect his ability to participate in the case. No other conflicts or appearance of conflict were stated by Commissioners at this time. Based upon this roll call, Chairman Emory declared a quorum.

MINUTES
Melvin Shepard made a motion to approve the minutes of the August 27, 2009 Coastal Resources Commission meeting. Bill Peele seconded the motion. The motion passed

unanimously (Weld, Leutze, Bissette, Cahoon, Webster, Old, Peele, Shepard, Mitchell, Wilson, Wynns) (Elam, Carter absent for vote).

EXECUTIVE SECRETARY'S REPORT

DCM Director Jim Gregson gave the following report.

DCM/DWQ Agreement

The Division of Coastal Management has entered into a memorandum of agreement with the Division of Water Quality that will help streamline environmental permitting in the Neuse and Tar-Pamlico River basins. This agreement grants DCM the authority, on behalf of DWQ, to review and approve requests for Buffer Authorization Certificates for development projects that also require a Coastal Area Management Act general or minor permit.

Specifically, this agreement applies to development activities that are consistent with CAMA general permits for bulkheads; riprap; docks and piers; boat ramps; groins; maintenance excavation activities; installation of aerial and subaqueous utility lines; emergency CAMA and/or dredge and fill projects; temporary structures; replacement of existing bridges and culverts; riprap revetments; the emergency storm permit; and riprap sills.

This agreement also applies to all minor development activity that is exempt under the DWQ riparian buffer rules Table of Uses. The agreement does not apply to projects that require an individual 401 Water Quality Certification or a non-404 wetlands and waters permit.
DWQ staff will continue to track and report authorizations and will offer technical assistance to DCM permitting staff when requested.

South Atlantic Alliance

At the Coastal States Organization's meeting last week, representatives of four Southeastern states announced an agreement to work together to better manage and protect ocean and coastal resources, ensure regional economic sustainability and respond to disasters such as hurricanes. The agreement establishes an alliance among North Carolina, South Carolina, Florida and Georgia. The Governor's South Atlantic Alliance will leverage resources from each state to protect and maintain healthy coastal ecosystems, keep waterfronts working, enhance clean ocean and coastal waters and help make communities more resilient after they've been struck by natural disasters. The alliance was signed by North Carolina Gov. Bev Perdue, South Carolina Gov. Mark Sanford, Georgia Gov. Sonny Perdue and Florida Gov. Charlie Crist. All of the Governors welcomed the agreement as an example of the ability to discuss and act regionally on common issues paramount to the South's economic vitality and quality of life. CRC Commissioner Jim Leutze, DENR Secretary Dee Freeman, and former DENR Secretary Bill Ross attended this meeting.

Email Retention Policies

The Department has some new email retention policies. State employees are required to retain all of their e-mails for 24 hours so they can be backed up on the State's exchange servers. I would ask that if you receive an email that is part of conducting CRC business, please forward to a DCM staff person so they can be maintained. CRC members' email addresses are not currently listed on DCM's web site.

Clean Marina Position

DCM is in the process of creating a temporary Clean Marina position using some coastal non-point source funds, provided through the NOAA Section 310 Grant. We are working with DWQ to use this position to provide education on some specific water quality issues related to pressure

washing and hull-scraping at coastal marinas. This position will also implement the N.C. Clean Marina program and the Marina Pumpout Grant program that is funded through the U.S. Fish and Wildlife Service. Mike Lopazanksi currently operates these two programs for DCM. Currently we also use the Section 310 Grant to fund a water quality planner position with NC Sea Grant.

CAMA Lines

The Division of Coastal Management is pleased to introduce a new blog site called CAMA Lines that is located at camalines.wordpress.com. A link to the blog is also available from the front page of the DCM web site. We hope the blog will be a useful way to keep you up to date on issues regarding the Division and the N.C. Coastal Reserve Program. It will be updated frequently, so please check it often.

BIMP Update

The engineering firm of Moffatt and Nichol has delivered their final BIMP report to DCM and the Division of Water Resources. It is currently being reviewed by DENR and will be made available for public comment in the near future.

Masonboro Island

At the August CRC meeting I gave an update on the situation that was happening on July 4th at the Masonboro Island component of the NC National Estuarine Research Reserve located in New Hanover County. In that report I stated that the Division was considering many options for addressing this issue and that we intended to incorporate public input into our decision making process. A public meeting to discuss options for addressing usage of Masonboro Island was held Oct. 8, at the UNCW Center for Marine Science. The meeting was very well attended by local residents, who overwhelmingly asked DCM not to punish them for the actions of a few people who abuse the island on summer holiday weekends, particularly July 4th. Southern sites Reserve manager Hope Sutton began the meeting with a presentation about the Reserve; the Reserve's goals for education, stewardship and research; and an overview of Reserve rules. Rebecca Ellin then moderated a public input session, which included several suggestions about how to manage holiday crowds, including suggestions for a permit system, increased law enforcement presence, and educating local university students about the Reserve. We are currently considering instituting a ban on alcohol on all Reserve properties, which you will be hearing about from Rebecca Ellin later this morning. We have also had some good discussions with the Division of Marine Fisheries, the Wildlife Resources Commission, the Division of Parks and Recreation, the U.S. Coast Guard and local law enforcement agencies about increasing law enforcement presence at the Reserve on holiday weekends.

Reserves Management Plan

The Division and the N.C. Coastal Reserve Program have adopted a revised management plan that outlines the administrative structure; the education, stewardship, and research goals of the reserve; plans for future land acquisition and facility development to support reserve operations; and future staffing and facilities needs. The plan identifies coastal management issues that affect the Reserves sites, and that the Reserve will work to address through its program, including 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 website at nccoastalreserve.net.

CHAIRMAN'S COMMENTS

Chairman Emory stated that we have had a lot of attention on terminal groins since the last time we met. This topic is on the agenda today. Before we are finished tomorrow we will talk about how we might get from here to April 1, which is when we will have to make our report to the Legislature. Both the wind turbine and coastal reserve presentations will need to be looked at by the Commission. We have what could potentially be a very full agenda today and we need to remember that have a lot to cover.

PRESENTATIONS

CRC Study of the Use of Terminal Groins – Update
Paul Tschirky

Jim Gregson stated House Bill 709 is why the Commission is doing this study. This is a two part bill. The first part was to impose a moratorium on certain actions of the CRC and stated that the Commission shall not order the removal of temporary erosion structures in a community that was actively seeking a beach nourishment project or an inlet relocation project. It had some exceptions on some actions that the Commission could continue to do relative to sandbags. It also directed the Commission to study the feasibility and advisability of the use of a terminal groin as an erosion control device. In section two of the bill it also stated that the CRC would do this study in consultation with the Division of Coastal Management, the Division of Land Resources, and the Coastal Resources Advisory Commission which is actually the Coastal Resources Advisory Council. In this consultation, the CRC shall study the feasibility and advisability of the use of a terminal groin at the end of littoral cell or at the side of an inlet to limit or control sediment passage into the channel. The bill goes on to define what a littoral cell is and this definition is taken directly from the Corps of Engineers manual. Chairman Emory has forwarded a letter sent by Senator Basnight to address this issue and whether terminal groins should only be studied at inlets or in other locations at the end of a littoral cell. When we go over the sites that were selected by the Science Panel, it will become clear on how this issue is being addressed in the study. The bill required the Commission to consider six things in conducting the study. The first of which was to gather data regarding the effectiveness of terminal groins constructed in North Carolina and other states in controlling erosion. The second was to gather scientific data regarding impact on natural wildlife habitats. The third was the information regarding the engineering techniques used to construct terminal groins including any technological advances that are available that would minimize the impacts on adjacent shorelines. The fourth and fifth parts of the bill are the economic part of the study. The fourth part is to gather information regarding the current and projected economic impact to the state caused by shifting inlets. The fifth part is information regarding public and private money that would be used to pay for terminal groin construction and the cost of the terminal groins. The last part is whether the potential use of terminal groins should be limited to dredged inlet channels that are used for navigation. House Bill 709 also requires the Commission to hold at least three public hearings where interested parties and members of the public would have the opportunity to give their views on the study and the use of the terminal groin as an erosion control device. The Commission is required no later than April 1, 2010 to report their findings and recommendations to the Environmental Review Commission and the General Assembly. The big question since the bill came out has been what will the role of the CRC and the CRAC be during the study. It was decided at the last CRC meeting that the science panel should have a big part in the study. The CRC and the CRAC will provide guidance to the contractor during the study and would be ultimately responsible for developing the policy conclusions and recommendations that would be reported to the ERC and General Assembly. The science panel

was at the original scoping meeting that was held in New Bern. They will be used as peer review of all the interim documents as well as the draft and final reports prior to recommendations being considered by the Commission. Moffatt and Nichol has committed to providing memos describing methodologies that they are using for the study. We are currently working on the best way to schedule meetings with the science panel; however the problem is that this is a short study and we are well into it. We are trying to work in science panel meetings as well as the existing CRC meetings and trying to get the reports and recommendations back to the contractor.

Paul Tschirky of Moffatt and Nichol stated the study was divided into tasks. The first was the coastal engineering analysis and the effectiveness of terminal groins. Part of the first task was selecting sites which we will use in the study to gather information. The second part of this is looking at the environmental impact of these structures at those sites. The third task is to look at construction techniques. The project schedule is quite tight. We have seven months. There are three public hearings required and there are four scheduled.

The first proposal was to try to choose the best eight possible sites for coastal analysis. On September 29 we met with the science panel in Raleigh and reduced the list of sites to five. The five sites were Oregon Inlet and Fort Macon in North Carolina and Amelia Island, Captiva Island and John's Pass in Florida. You will see that there is diversity of characteristics at these sites and the type of structure at each site. It is hopeful that this diversity of coastal sites could avoid bias in the study. Oregon Inlet has a wrap around shape and there is a fairly rich dataset on Oregon Inlet as there has been monitoring done, it is in North Carolina and there is extensive information about its construction. A historic photo from 1961 was shown of Fort Macon and the main terminal groin was pointed out. South Amelia Island has a terminal groin structure at the south end of Amelia Island. The designers call this a porous, leaky structure and the objective was to not block all sand but to allow some to flow through. It is a fairly recently constructed structure so there is data available. Captiva Island's terminal structure is a rock structure with a different size with an inlet coming in. John's Pass is unique because it has structures on both sides, but the primary purpose is retention of sediment. Some of the important considerations were that our data collection and assessments are going to be specific to these five sites. We will assess these projects and we will discuss the applicability to North Carolina, but our part of the study will not specifically address North Carolina inlets. The study will focus on what has been learned from these existing installations with respect to geology of the sediment transport, the hydrodynamics, the natural resources and how effective they have been and what kind of impact they have had. Some modeling will be done but it will simply be schematic desktop analysis. The next phase with the science panel will be to address what approaches we will take. We will look at trends and relative behaviors of these kinds of structures and not absolute design values. The contractor's part of the study will be to do an assessment of the terminal groins and look at the technical data and then the CRC will take over the policy decision side. The seventh part of the study is the public input. The first public hearing will be today, the second is in Raleigh on January 13, the third is in Wilmington in February and the last is in Sunset Beach in March. There is a website setup for the project at www.nccoastalmanagement.net and will contain the minutes of meetings, presentations, the locations of the five sites and public comments received. Comments should be sent to Jim Gregson in his role as Executive Secretary to the CRC at jim.gregson@ncdenr.gov. The draft report from the contractor is due on February 1, 2010. The final report is due on March 1, 2010. We are finalizing the data collection and have put together a bibliography of what we found on these five sites that we will send out to the science panel to solicit their feedback. We will develop methodology statements for analysis and are trying to set up a science panel meeting for November to discuss data and methodology review and discussion. The next CRC meeting and public hearing will be in January.

Renee Cahoon requested that another hearing be scheduled in the northeast. After discussion it was determined that another public hearing should be scheduled in the northern section of the coast. Bill Peele stated that he would be willing to set some time aside to be present at a hearing in December in Nags Head.

Town of River Bend Implementation & Enforcement Plan (CRC 09-31)
Ed Brooks

Ed Brooks stated the Town of River Bend has submitted an implementation and enforcement plan for the minor permit program. Within CAMA is a cooperative effort between the state and local governments in the management of our coastal resources. The minor permit program is a big part of that. The law and the CRC's Administrative rules 15A NCAC 07I set forth a process by which a local government can be delegated the authority to issue minor permits within their jurisdiction. The reason you don't see these very often is because most of the local governments that have minor permit programs had this done back in 1977-1978. Occasionally as new towns become incorporated along our coast they show interest in becoming a part of our minor permit family. The Town of River Bend was incorporated in 1980 and at your last meeting delivered a letter of intent that they were interested in moving forward in trying to get a delegation of authority to issue minor permits within their jurisdiction. The Administrative rules set forth the process a local government must go through to devise a plan, a public hearing process, and the local adoption. The plan is then brought before the Commission for its approval. Once the plan is approved the local government must go back through the public hearing process to adopt the plan into ordinance to give it authority. The Town of River Bend would be the forty-second local government in the twenty coastal counties to adopt a local program and become a permitting agency for minor permits.

Jim Leutze made a motion to approve the implementation and enforcement plan submitted by the Town of River Bend and delegate authority to the Town of River Bend to administer the CAMA minor development permit program. Ed Mitchell seconded the motion. The motion passed unanimously (Cahoon, Old, Webster, Mitchell, Wynns, Peele, Weld, Shepard, Carter, Bissette, Wilson, Leutze, Elam).

Discussion of Amendments of 15A NCAC 7O .0202
Reserve Use Requirements (CRC 09-33)
Rebecca Ellin

Rebecca Ellin stated she would like to remind the Commission about the purpose of the Reserve since we are not before you all that often. We are mandated to protect representative coastal habitats and we do this through the ten sites that we have in the Reserve program. Currently we protect about 41,000 acres of salt marsh, maritime forest, sand and mud flats, submerged aquatic vegetation, and dune and beach system. We are required to maintain the essential character of these sites to conduct research and education as well as allow for compatible, traditional, recreational uses. CAMA stipulates that the Reserve was established by the Department of Environment and Natural Resources and is administered by the Department. The Department shall consult with and seek the ongoing advice of the Coastal Resources Commission. The Department, by rule, may define the areas to be included in this system and set standards for its use. The rules in our Administrative code define the purposes of the Reserve, describe the different components that are within the Reserve, describe the Division's management

responsibilities and the Reserve use requirements. The Reserve rules are Department rules so we will be seeking your input and guidance with respect to changes but you will not be required to take action on them.

With the increase in coastal population and the increased interest in enjoying North Carolina's beautiful coast, the rules and policies for managing and protecting the Reserve have not kept pace with the level of use that the Reserve sites are currently experiencing. As a result the Reserve sites are experiencing types of uses at levels that are not consistent with the Reserve's purpose. The Division must maintain essential, natural character of its ten sites for the primary purpose of research, education and compatible traditional uses. In doing so, the Division does seek to promote a clean, safe and family oriented atmosphere. There has been recent evidence of alcohol use and misuse at the sites and that has caused the Division to consider an amendment to its Reserve use requirements that would prohibit possession and consumption of alcoholic beverages and controlled substances while on the Reserve. There are a variety of reasons for considering such a rule. Alcohol use and recreation based on the consumption of alcohol does not support the mission or purpose of the Reserve and these do not constitute compatible traditional uses. Many of the Reserve sites are remote and difficult to access easily. Prohibiting alcohol will ensure the safety of visitors as it may be difficult for help to arrive quickly should a medical problem or altercation arise. Prohibiting alcohol on the Reserve will help limit the liability of the state of North Carolina should an incident arise. Small and large groups gather at Reserve sites and consume alcohol. State and volunteers often have to clean up significant quantities of alcohol related trash, such as bottles and cans, as a result of these gatherings. Consumption of alcohol may also contribute to the vandalism that has occurred recently at Reserve sites. We have a couple of sites where we have experienced spray painting of trees and defacement of the boardwalk. Significant amounts of staff and volunteer time are dedicated to addressing alcohol related issues from trash clean up and filing vandalism reports to developing strategies and programs to address large group gatherings such as what is going on down at Masonboro. Prohibiting alcohol will align the Reserve with the rules of other publically held lands such as N.C. State Parks and N.C. State Forests both of which do not currently allow alcohol on those properties. It will also align the Reserve with many local municipalities that provide public access. Such a rule will clarify the Division's position to the public and to law enforcement regarding alcohol and controlled substances providing a tool for law enforcement in case problems arise. The rule that we are proposing will apply to all ten sites of the Reserve. This came up as an option when we were discussing strategies for dealing with the Masonboro Island issue, but upon examination of what was going on at our other nine sites and the desire for consistency, we did make the determination that it would be appropriate to have this rule apply to all ten of the sites to provide the consistency in how the sites are managed and to resolve issues that we are experiencing at most if not all of the sites. I do want to say that it can be confusing if we have rules that are site specific from the public's and partner's perspective as well as law enforcement. The proposed rule language comprises two parts. The first is prohibiting possession or consumption of any alcoholic beverage or controlled substance within the Reserve. The second part of the rule states that persons shall not be or become intoxicated while within the Reserve. This is an effort to make sure that we don't have people coming onto the Reserve already in an intoxicated state and then creating challenges for law enforcement or vandalizing property. I want to state that we did conduct research with respect to the language of these rules and the language presented here is similar to what is included in State Parks and State Forest rules. As many of you know the Reserve does not possess law enforcement power and we rely on state and local law enforcement entities such as the Wildlife Resources Commission, the Marine Patrol, county sheriff's offices and town police departments. It is our intent that the enforcement of the proposed rule will be accomplished by state and local law enforcement officers. Enforcement will not change dramatically because of this rule except on an as needed

basis. Law enforcement has asked for more specific rules to help them when patrolling Reserve sites and the proposed rule will accomplish this for alcohol and controlled substances. I do want to be upfront and recognize that there have been some questions raised about the ability to enforce our rules. We have requested some assistance from the Attorney General's office to provide us some clear guidance on the authority for state and local law enforcement to enforce Administrative rules such as these. We have not received this guidance back so we recognize that we need to have this input before we move forward. We also are looking to get some clarification from the Attorney General's office on how our rules apply to waters within the Reserve boundaries.

The process that we go through when making a change to our rules is different since they are Departmental rules. Per our Administrative Code we have local advisory committees. On Tuesday we wrapped up input of our local advisory committees. The prohibition of alcohol was presented as an option at the Masonboro public meeting. The intent of this meeting was not to review this proposed rule change specifically but it was an opportunity to hear from the public about their thoughts on how we should manage crowds on holiday weekends at Masonboro. Obviously today, as part of our guidelines for making rule changes, we are here to seek input from the Commission. We will take all of this input, talk with the Department and make a recommendation as to whether we want to proceed with the rule change or not. If we do decide to proceed with rulemaking it is our intent that we would like to have something in place by the visitor season of 2010. We have received a lot of input from the local advisory committees. Currently there are seven local advisory committees. We do not have one for Buckridge, Permuda or Bird Island. The purpose of the local advisory committee is to advise Reserve staff and give us feedback and recommendations on the site activities and management. The composition of the committees varies based upon the needs and characteristics of the site. Average membership is about eight to ten individuals. The collective input received from the advisory committees indicated from the 48 responses received that 29 are in favor of this proposed rule change, 15 are in favor of the rule changes with some changes to the language, three are opposed and one person was not able to make a determination. There were some concerns about the proposed language. There are several instances within the Reserve where people actually have to navigate through Reserve property to access their personal property. There was concern that landowners could not access their own property with alcohol in their car. There are two options for the language changes. The first would be complete removal of the possession of alcohol from the language and only speak to the consumption of alcohol. Seven of the 15 advisory members were in favor of this change. The second language change that was suggested was adding a clarification to the proposed language keeping possession in the rule as prohibited, but making an exception for those who have to traverse Reserve property to get to private property.

We received comments concerned about the change indicating that the masses should not punished by the actions of a few. There was considerable conversation about utilizing the existing state laws that are on the books to address the problems that we have. These laws include underage drinking, drunk and disorderly conduct, and littering. There were concerns about the ability to enforce the rules. While it is our intent that law enforcement presence would not change significantly, we do not have control over law enforcement on our properties because it is managed through partners. It is the opinion of the staff that this proposed rule will proactively address the misuse at the Reserve sites by providing a tool for law enforcement and will preserve public access. This is especially important as the coastal populations continue to increase. We do not have the rules and policies in place that we need to protect the Reserve. It is our intent to conduct a close examination of the rules and policies that we have in place. It is important for us to consider that all proposed actions and changes need to be made under the

consideration of the resources that the Reserves have. We do not have law enforcement authority and we have very limited education and site management staff. We also have very limited program implementation funds. Any changes that are made with respect to the program are made in light of that context. We want to make sure it will actually support and enhance our ability to move forward.

Charles Elam stated there are limited resources and it may be better to turn the land over to an agency that has management resources. Jim Leutze stated that the problems he is familiar with on Masonboro Island are pretty concentrated to the holidays, so would it be easier if we made these restrictions specific to these times. He further stated that he did not see a problem with people drinking a beer at Masonboro Island and taking their trash home with them and it doesn't hurt the Island. The newspaper today said that dogs were not going to be allowed on Masonboro Island. Rebecca Ellin stated when we looked at this rule it was from the context of what was happening at Masonboro, but when we looked at the activities going on at all the other sites we saw that this was a rule that would protect all of them. The issues at the other sites have been outside of the holiday weekends. She further stated that currently in the management plan, the Reserve has a policy that states that pets must be under control and it defers to the local county or municipal ordinance. In New Hanover County there is an ordinance that states that dogs must be on leash. Jim Leutze stated that the reason that the public sets these sites apart is so that they may be preserved in their natural setting, but also so there can be dual use. Bill Peele stated that if a person shall not be or become intoxicated while at the Reserve is it enough of a law enforcement issue to deal with possession and consumption. We can vote for the need for responsible citizen action first and then if it is still a problem we can look at possession and consumption. Bob Wilson stated possession of something, whether it is a firearm, a knife or alcohol what matters is the use. It is far reaching for any state agency to say that if I have a six pack of beer in my boat and I am going to one of these facilities by vessel, then I am in technical violation of some rule by possessing a six pack of beer that I may consume later in the day. I think a rule needs to make sense and you should try to focus on the abuse of alcohol. If you are talking about the behavior of people that might be intoxicated that is one thing, but to try to control possession is far overreaching for any state agency. It is unenforceable. Even if you could enforce it, it smacks to me to be an abusive process. Chuck Bissette suggested striking 6(a) from the proposed rule language. Veronica Carter asked how rules are enforced now. Ms. Ellin stated it is very difficult to enforce rules currently. Veronica Carter asked if it would be better to have a law since law enforcement can enforce a law, but a rule may not be enforceable. Jim Gregson stated that state parks and state forests currently prohibit state possession and consumption. Vice-Chair Weld stated that law enforcement is already stretched so thin that maybe Marine Fisheries could come in and help. She asked what kind of input the Reserves got from the meeting about Masonboro. Ms. Ellin stated the public meeting was in direct response to Fourth of July. Between twenty and twenty-five public comments were received and the general sentiment was do not punish us for the actions of a few. Lee Wynns suggested that it might be time to say that this was a knee-jerk reaction. While there is a problem on a very small scale you cannot penalize the majority on the actions of a few. Maybe there is another way around this without this rule change. I respect law enforcement people and they get caught in between a rock and a hard place when they are faced with enforcing rules that they might not particularly like to enforce. They have enough to do and they don't need to go here. Chairman Emory asked if there would be a consensus of the Commission that part (b) of the rule amendment is reasonable because I hear lots of concern about (a). Jim Leutze stated this is too difficult to enforce and the more practical way to accomplish it is to close Masonboro Island on the Fourth of July. Further instead of restricting camping on these islands you could issue permits for camping. Jim Leutze stated that he does not want to infringe on the public's ability to enjoy these sites and the next time we want to put something in a preserve, the public will vote

against it. Bob Wilson stated this sounds like we have been informed rather than consulted, but I don't know if it isn't appropriate for the CRC to have a recommendation to the Department that (a) in the proposed rule change be eliminated or has this just been a discussion and there is not any action the CRC can take. Chairman Emory stated that the consensus of the CRC is that we are comfortable with (b) but not with (a) in the proposed rule amendment.

PUBLIC COMMENT

Charles Baldwin, representing the Village of Bald Head Island, stated he would like to report a favorable development. After many years of work, Bald Head Island's sand placement is now underway. Sand pumping will start next week. I want to thank Jim Gregson, Doug Huggett, Heather Coats and all the DCM staff that have worked with the island so closely over these years to get this done and they will be doing a lot more work as the project develops.

Richard Johnson, representing Masonboro.org, stated the focus of Masonboro.org is to focus on traditional uses. In one month we now have over 200 members. We are concerned that the public's right of use is getting watered down with every management plan revision. I think one reason this is happening is the broad definition of the word compatible. Those who have suggested more restrictive rule changes or amendments are looking at opposing their unique perspective in suggesting changes using broad studies that took place in Florida and are being extrapolated with specific conclusions without doing any local research or impact studies. They are also using the negative publicity and the ugly pictures that result from the annual Fourth of July party to push for changes. While this party has a bad reputation it takes place on a very small percentage of the island and volunteers quickly clean up the mess. Within a few days you would not even know the party took place. One recent change is requiring dogs to be on a leash. This happened without proper review. One reason I was told is that it was not a traditional use, but I have 200 people that say that it is. There haven't been any real impact studies of the dogs versus foxes or wildlife. There is some question as to whether the state or the county would supersede their role and it wasn't the case in years previous and hasn't been enforced and just recently it has. That's a flash point for a lot of people that live locally in Wilmington because Masonboro makes one third of our coastline. It is just a real concern that we are losing control. The last thing I would like to say is I have tried to understand how rules get passed and I am not sure the Department could impose a rule if you did decide to vote on something. If you don't then I guess they can do what they want, but there is a reason they have to go through this body. Thank you.

PRESENTATIONS

Ocean Policy/Beach Summit Recommendation Implementation
Joan Weld/Scott Geis

Joan Weld stated you may remember at the August meeting Scott Geis provided a list of eleven priorities from the CRC subcommittee. These priorities are related to the implementation of the recommendations of the Ocean Policy Steering Committee and the 2009 Beach Summit. The subcommittee has approved rule language that will be provided to the CRC in more detail during Staff's presentations later in the meeting. Changes to the rule language are based on various reports and have been circulated through state agencies, the General Assembly, and the EMC. The subcommittee has approved the rule language revisions and is recommending that this is the right time for the CRC to consider wind turbines to be water dependent structures.

Scott Geis stated that in going forth with wind energy recommendations, the one aspect we want you to be aware of is that we are not coming forward and asking for approval of the rule

language changes to go to public hearing. This is just the beginning steps to circulate ideas through the Commission as well as other state agencies.

VARIANCE REQUEST
Town of Caswell Beach CRC-VR 09-04
Christine Goebel

Christine Goebel of the Attorney General's Office represented Staff. Ms. Goebel stated Bill Raney, legal counsel for the Town of Caswell Beach, would represent Petitioners. This is a variance of the oceanfront setback rules for a proposed sewer line. Petitioner plans to develop a sewer system that will connect to the Town of Oak Island's new sewer system and will ultimately treat wastewater from both town at the treatment plant on the mainland owned by Brunswick County and the Town of Oak Island. Petitioner was issued CAMA Major Development Permit 71-09 on May 29, 2009, and seeks a variance from permit condition number three which requires compliance with the ocean erosion setbacks. Ms. Goebel discussed the stipulated facts, noting the fact that at the time the permit was issued the new CRC setback rules were not in place. Ms. Goebel stated that Staff and Petitioners agree on all four statutory criteria.

Bill Raney of Wessell & Raney, LLP represented the Town of Caswell Beach (petitioners). Mr. Raney stated Ms. Goebel has addressed the facts and the Town does not disagree with the Staff as far as the recommendations. The only thing to add is that this is a project that is desirable and necessary. The clean water management trust fund is very competitive and they only give grants to projects that meet the requirements of the clean water management trust fund funding standards and require a significant benefit to the environment to get a grant.

Melvin Shepard made a motion that strict application of the applicable development rules, standards, or orders issued by the Commission would cause the Petitioner unnecessary hardships. Jim Leutze seconded the motion. The motion passed unanimously (Cahoon, Old, Webster, Mitchell, Wynns, Peele, Weld, Shepard, Carter, Bissette, Leutze, Elam) (Wilson absent for vote).

Melvin Shepard made a motion that hardships result from conditions peculiar to the petitioner's property. Veronica Carter seconded the motion. The motion passed unanimously (Cahoon, Old, Webster, Mitchell, Wynns, Peele, Weld, Shepard, Carter, Bissette, Leutze, Elam) (Wilson absent for vote).

Veronica Carter made a motion that hardships do not result from actions taken by the Petitioner. Jim Leutze seconded the motion. The motion passed unanimously (Cahoon, Old, Webster, Mitchell, Wynns, Peele, Weld, Shepard, Carter, Bissette, Leutze, Elam) (Wilson absent for vote).

David Webster made a motion 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 the public safety and welfare; and preserve substantial justice. Jerry Old seconded the motion. The motion passed unanimously (Cahoon, Old, Webster, Mitchell, Wynns, Peele, Weld, Shepard, Carter, Bissette, Leutze, Elam) (Wilson absent for vote).

This variance was granted.

CONTESTED CASE

Taylor et. al. v. DCM and TP Inc. (08 EHR 1765)
Jennie Hauser gave an overview of the Contested Case procedures.

Jennie Hauser, CRC counsel, stated the CRC will exercise their quasi-judicial authority to make a decision. You have to ask yourself do you have a conflict with any of the parties before the Commission, have you received any ex parte contacts from members of the public or the parties themselves that would bias your understanding. You are required to make your decision on the record you have received. There are many exhibits you will receive today, but they are exhibits that the parties are going to emphasize to you in their oral arguments. This case arose as a third party petition for a contested case. It challenges the issue of three CAMA minor permits. The petition was granted by the former Chairman of the CRC as to particular issues. In presenting the contested case to the ALJ, the Petitioner has the burden of proof and the burden was to prove that the permits were issued contrary to law. The ALJ determined that based on the evidence presented in the hearing, the Petitioner had failed to meet the burden of proof. Ms. Hauser reminded the CRC that the Administrative Procedures Act requires you to adopt the ALJ's findings of fact unless you can determine that his findings are clearly contrary to the preponderance of the evidence in the record. You must give due regard to the ALJ's evaluation of the credibility of the witnesses. If you decide to modify the ALJ's decision you must set forth reasons for doing so and you must set out the evidence in the record that supports your changes. If you decide to adopt the ALJ's decision then the Petitioner has filed with you his exceptions to that decision and he will have the ability to go to Superior Court to appeal the decision. Oral arguments will be presented by the parties, then you will have the opportunity to look at all of the oversized exhibits that are on the walls as you have not seen these in their exact form, and then you will have the opportunity to present questions to counsel for the parties and to do deliberation. There can be no questions of persons other than the attorneys representing the parties because we have to make sure that we do not take any new evidence in this proceeding as you are limited to the evidence that has already been gathered.

Clark Wright of Davis Hartman Wright represented Petitioners. Jill Weese of the Attorney General's Office represented the Respondent. David Pokela of Nexsen/Pruet represented the Intervenor-Respondent. Clark Wright presented Petitioner's exceptions, argument, and proposed decision to the ALJ's decision. Jill Weese presented Respondent's arguments in support of the ALJ's decision. David Pokela presented Intervenor-Respondents arguments in support of the ALJ's decision.

Following the break to examine oversize exhibits, Ms. Hauser stated that during the break it was brought to her attention that Mr. Giles is an employee of the Coastal Federation and serves as the coastkeeper for the southeastern portion of our coast. There are two member of the CRC that have Board positions with the Coastal Federation. Veronica Carter stated that as a member of the CRC and a member of the Board of Directors for the NC Coastal Federation she will recuse herself from any further discussion in this case. Melvin Shepard stated that as President of the NC Coastal Federation he will recuse himself from this case. Ms. Hauser stated that there has not been any discussion or deliberation on this matter up to this point and there is not a problem for the Commission to continue in its decision making with recusals occurring at this point. Jim Leutze stated he has missed everything from the beginning of the case and will recuse himself.

Bob Wilson stated he has been to this site. Jennie Hauser stated he cannot consider what he saw and limit his deliberations to the official record, oral arguments, and the discussion today. David Pokela asked that BobWilson recuse himself. Jennie Hauser asked Bob Wilson if the site visit would prevent him from having an unbiased ability to make a decision. Bob Wilson stated that

there is nothing that he saw at the site that would in any way change or influence his decision and he will not recuse himself.

After CRC discussion, Jerry Old made a motion to uphold the ALJ's decision. This motion did not receive a second.

Jim Leutze stated that he has a question about his recusal. He further stated he was only absent for 35 minutes and has been present for 2 ½ hours and reviewed the record prior to the meeting. Jennie Hauser stated that Jim Leutze had properly recused himself since he had missed the oral arguments by counsel. Ms. Hauser stated that it was very late in the presentations, in fact it had already gone into the question and answer session, when Jim Leutze joined back with the Commission and it would not be appropriate for him to participate.

David Webster made a motion to overturn the ALJ's decision. David Webster stated the reasons for overturning the decision include that he is troubled by the transition of the definition of naturally occurring stable vegetation being applied in this particular instance to propagated vegetation that was artificially watered and fertilized except during the cold months when photosynthesis and the need for water greatly decreased. David Webster further stated the decision was made in a way that did not interpret the statutes correctly. David Webster stated the property owner of these lots should not push vegetation out beyond scarp lines and bulldozing lines in places that are naturally very unstable. It would be very easy for me to find just one or two places that undermine this entire argument because everything is based on a false premise or a false interpretation of statute. There is also a question of the encroachment on public trust property. Looking at the photographs in the record this was an individual effort on restricting part of the beach. Charles Elam seconded the motion. The motion failed with three votes in favor (Webster, Weld, Elam) and five votes opposed (Cahoon, Old, Mitchell, Wynns, Wilson) (Peele, Bissette absent for vote).

Bob Wilson made a motion to adopt the ALJ's decision in its entirety. Lee Wynns seconded the motion. The motion passed with five votes in favor (Cahoon, Old, Mitchell, Wynns, Wilson) and three opposed (Webster, Weld, Elam) (Peele, Bissette absent for vote).

PUBLIC HEARING

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

Paul Tschirky stated this study comes from House Bill 709. The Bill specified six items that should be considered in this study. Three public hearings are required during this study. The final report and CRC recommendations are due to the General Assembly and the Environmental Review Commission on April 1, 2010. The contract study team to look at data gathering and information of the feasibility of terminal groins is made up of Moffatt and Nichol. Dial Cordy and Associates will handle the environmental aspects. Dr. Duncan Fitzgerald from Boston University will help with the coastal geology and Dr. Chris Dumas of UNCW will look at the economic aspect. The scope of work consists of eight tasks which follow along with the six items identified in HB709. The study team will look at the information and the CRC and CRAC will provide guidance to the team. The CRC will be responsible for any policy conclusions and recommendations that are supplied to the ERC and General Assembly. The Science Panel has been involved in the scoping and will be involved in the peer review of the documents. The team will provide the Science Panel with memos describing methodologies and analysis for their review and comment. The team met with the Science Panel on September 29 and five sites were

chosen. There are four public hearings currently scheduled. The Division of Coastal Management's website will contain the terminal groin presentations, meeting summaries, and public comments. In his role as Executive Secretary of the CRC, Jim Gregson is the e-mail contact for any comments. The draft report is due at the beginning of February and the final report is due to the CRC on March 1, 2010 so they can give their input to the Legislature by April 1. The team is ending the first phase of data collection mode. The team will finalize the data collection, meet with the Science Panel to discuss the data collection and methodology, and the next CRC meeting and public hearing will be in Raleigh on January 13.

The following public comments were received:

Andy Sayre stated he represents the Village Council of Bald Head Island. In preparation for the nourishment project we had some survey information that we would like to share with the CRC. As you know, in the springtime, we had the dredging of the Wilmington Harbor Channel with the sand dredge going over to Caswell Beach and not on Bald Head Island. From May 2009 to September 2009, actually less than five months we lost 700,000 cubic yards of sand. For the eleventh month period of November 2009 to September 2009 we lost 1,050,000 cubic yards of sand. Our historical loss is 300,000 cubic yards of sand per year. We are in a critical situation. In anticipation of what we projected to be a much less serious situation, knowing that the dredged material would not be put on our beaches in this cycle, the Village recently sold general obligation bonds of $15,000,000.00 to be paid off over six years. This money plus more from general revenue will fund a private sand placement project which has been five years in the planning. This completely privately funded project will deposit about 1,500,000 cubic yards of sand on our beaches. In other words we are barely keeping up and it has become obvious that the present strategy for shoreline stabilization along this federal navigation channel is ineffective and unsustainable. One of our goals is to have the channel moved westward to diminish this impact. However, it is our firm belief that a robust terminal groin or groin field is essential in order for us to manage the unnatural erosion caused by the channel.

Marty Cooke of the Brunswick County Commission stated there are many people who are very passionate on both sides of this issue, but not only do I serve as a county commissioner I have a business at Ocean Isle Beach and have seen through the years the realities of beach renourishment and erosion. I believe that terminal groins from what I have seen based on reports that were presented to this board in June as well as other research that we have seen from other terminal groins up and down the coast that they show to be a stable and establishment of a permanent structure that will allow us to have stability with respect to our beaches. We see this with respect to the evidence that was presented in June regarding the Pea Island Oregon Inlet bridge. We know the state of North Carolina had to find a viable and effective means to be able to stabilize the bridge structure. We also see it at Fort Macon with respect to the stability of that area and to present a way of preserving that historic fort. We see the same thing with respect to the aspects of our area beaches and we feel like it would do a variety of things. The beaches are not just beaches they are towns. The inlets aren't just inlets, they are highways. We have a stability issue whereas we would like to be able to retain the tax base and infrastructure and we would like to see this board look past the mischaracterization that we see in the media as it being presented as jetties. We would like to see the agendas by some individuals and organizations to go past that and look at scientific studies. We would like for this to be brought forth so this board can look at this as a viable means as an option to the situations that we see throughout North Carolina.

Frank Iler, N.C. House of Representatives District 17, stated District 17 includes about ninety percent of Brunswick County including all of the coastal area of Brunswick County. We almost

had an opportunity to vote on a Bill that would authorize this Commission to permit terminal groins this year. The next opportunity will be in May after the report from the CRC. What we have been hearing is there is a need for another tool for the CRC in the toolbox to stabilize inlets, protect turtle habitat, protect property, etc. As you know I represent Brunswick County of which there are citizens and officials who are very interested in this subject. As far as the study we are discussing today, I appreciate the extra hearing being scheduled in Wilmington February 17. I hope there will be at least two things considered. One would be an exercise of smart planning to consider all viable alternatives as opposed to the continued expense of dredging and other temporary solutions. Number two would be that the study be driven by facts, by the science and not by personal or group agendas. As a member of the House of Representatives I am pretty frustrated that the Bill authorizing the tool for the CRC, not the study, to have terminal groins as an option passed the Senate with about eighty percent of the vote. It was held up in a House Committee by agendas based on bad science. It has been endorsed by the Senate President Pro-Tem Marc Basnight; I believe he recently transmitted a letter to the CRC Chairman. He has been in support of it and it has been very bipartisan in nature as far as the House is concerned as well as the Senate. What we are asking for is for the people's representatives in the House to be given a chance to vote on the issue. We would like to debate just like the Senate did and if it passes the House it would be another tool in the toolbox for this group to permit or decide not to permit. If not this then what? If not now then when?

Debbie Smith, Mayor of Ocean Isle Beach, stated there are emotions on both sides of this issue. We are faced with a unique opportunity right now to look at the science and to study situations where there have been terminal groins in place for short periods of time and for long periods of time. I hope we will all keep an open mind that we will do what is the best for the coast of North Carolina. You know I am a proponent and think a terminal groin will be a useful tool. But, if this study proves that it is not, then I am not in favor of doing what is not the best for our coast. Let's just all keep an open mind and know that we do the right thing. There was much discussion this morning about exactly what a terminal groin is and you have all seen pictures, but I would challenge you that while you are on this island today to drive north five or six miles and walk out on the beach and see what the actual effect is of a terminal groin on the public strand and what it can do to protect what it is designed to protect.

Win Batten, Mayor Town of Warsaw, stated I don't know if I am for groins or not because I don't really know how they work. I have seen Fort Macon and I have visited some other places and they seem to be working fine in certain locations. I don't know how they might work in our location. I am from the Town of Warsaw but I also own property on North Topsail Beach. I am concerned more about that situation. I think that any approach that we take to this is going to have to be somewhat site specific. I think that if you look at a particular inlet or a particular area there are different economic factors that are involved and different uses involved and if you don't get down to site specifics I don't know how you can equate those economic issues into it. For example, the group that I am associated with spent over $353,000.00 this past year hauling sand in to put in front of our buildings and that is certainly an economic factor that we have to be concerned about. I think that we need to be able to look at things and say that this inlet or that inlet or that area of the beach deserves protection more or less than some other area does. Site specific may be something that we need to consider. The other thing is that I hope that we will get input that will tell us if this is the way to go or is it not the way to go. If it is the way to go then let's start doing something with it and if it isn't the way to go then let's figure out some other way. Today we have heard from the engineering firm that is doing the study, but we have not heard from any other components of the study committee. I hope that we will have input from them so that we can understand what their factors and issues are in the use of groins.

Charles Baldwin of Rountree Losee and Baldwin representing the Village of Bald Head Island stated he wanted to reiterate some of the concerns that you have heard that we study this issue properly and that if it is appropriate in certain locations that this be considered another tool in the toolbox. Obviously the Island is very concerned about what it does next. We have spent all of our money to put sand on our beach and now what? We are hoping that this study might be an opportunity to look more specifically at Bald Head, but understand after the presentation today the limitations of what this study can and cannot achieve. I commend the Commission for the thought that has been put into this and the process that has been put in place and look forward to seeing results. The Village sent a letter to that effect to Mr. Gregson on September 24. I also have a letter dated October 26 from Bald Head Island resident, Mr. Joe Garner and I will submit that to Mr. Gregson.

Todd Miller, North Carolina Coastal Federation, stated he would like to endorse some of the comments that have been made by several people here today that right now the most important thing is that we have a thorough study and evaluation of the feasibility of these proposed structures. The critical issue at this stage in the CRC's deliberations in carrying out this study is to make sure that the process has been well thought through and that everyone will have confidence in the outcome of the study. I want to congratulate Bob and other members of the Commission who have put a lot of effort into making sure that the process is visible. As this goes forward, the work that has gone into thinking about how to structure this so that all views get heard and that the analysis is credible is very important. In that vein I would encourage as quickly as possible to focus on the calendar that you will be following and specifically meeting dates as you have a lot of really busy people involved in this with the science panel and other parties and scheduling meetings at the last minute is unfair in terms of getting the full participation that is needed. I would encourage members of the Commission to attend the science panel meetings to hear the discussion that goes on. The science panel as it is comprised has broad representation and interest in the meetings that have been held so far on this study. The more you can take in of the discussions the better equipped you will be to make policy recommendations when you get the report. It was interesting to me that when we really got down to where is there experience with terminal groins that we found through the work of the science panel that there are actually very few places with any relevance to North Carolina's situation. The five sites that were selected were really stretching it in terms of experience and how these five case studies are carried out and how thorough they are will really be some of the best information in terms of what groins do and what the experiences have been. There is a lot of emphasis being placed on the peer review that will occur. There is one area that the science panel is very weak in being able to do the peer review and that is the economic analysis. As most if not all of the members have a natural science or engineering background and the panel does not have any economists. This should be circulated out more broadly and I know you will do this through public comment. In my opinion so far this has been the least talked through element in terms of what will be done with the limited resources that have been provided for the economics and making sure that it is relevant to the decisions that have to be made. In closing I would just state that the science and the economics will be important in the final policy making, but when you receive this information you will need to look at your permitting authorities and how you have to make decisions because the expectation to the public is that you are going to be able to make correct decisions on these proposals if you are given the authority to do it on a consistent basis to protect the public trust beach. The level of certainty that comes out of this information is going to be pretty important in terms of whether or not the CRC is in a position based on the Coastal Area Management Act to make good permit decisions.

Harry Simmons, Town of Caswell Beach, stated I have been to and seen four of the five terminal groins that are in the study collection and there is a lot that can be learned for North Carolina by

those sites. I was at John's Pass about two weeks ago from the boat side and from the land side of the terminal groin and it is a marvelous structure. The one that is in Amelia Island, which is the one that I haven't seen, on paper seems to be a fabulous opportunity for North Carolina to consider something like it. A leaky terminal groin if you will. I encourage you as did Todd to seek all the input that you can possibly get in the time that you have to do it in and good luck.

Don Martin, Mayor North Topsail Beach, stated our inlet is very unique in that we could probably use this terminal groin on our beach to stop beach erosion. To the north is Camp Lejeune and it will not affect Camp Lejeune a bit. But to the right is our beach and it has beach erosion very badly so we hope that you will take this into consideration and do the best you can.

PRESENTATIONS

DCM Sea Level Rise Initiative – Preliminary Survey Report
Mike Lopazanski

Mike Lopazanski stated this is a preliminary look at the survey that we did over this past summer to get an idea on the public's perception of sea level rise in the state. The survey ran from July 21 through August 31 and an invitation to complete the survey circulated broadly. There were over 1,100 responses to this survey. There was an overwhelming belief that sea level rise is occurring and that the state should be planning for it. It was interesting that the amount of sea level rise most respondents expected during the next century was in line with the IPCC assessment and projections. Nearly 800 respondents believe sea level rise is happening in North Carolina and think their property or finances will be affected. About 400 of them believe it is happening, but don't know if they will be affected. Most of the survey participants think that the state should be taking steps now to plan and prepare for sea level rise. When asked how much they think the sea will rise along the North Carolina coast by 2100, over 400 respondents though it would be around two feet. Most respondents thought that it would be three feet or less. Nearly 200 respondents said that they didn't know how much the sea would rise along the North Carolina coast and that tells us that there is an opportunity for some public education. We asked about the vulnerability of the various regions of the state and the barrier islands were perceived to be at a higher risk. Most of the studies have shown that it is actually the mainland areas, in particularly the Albemarle and Pamlico Peninsula, as one of the most at risk areas in the state and it was not reflected in the survey results. This shows another opportunity to do some public education. When survey participants were asked who should be taking action on sea level rise in North Carolina and in what roles, the CRC topped the list as needing to address sea level rise. The CRC was followed closely by the scientific community as well as state agencies. This indicates a need for public involvement in preparing a response to sea level rise. The private sector was not looked at as a group to take a lead role although there were a significant number of respondents that noted that the real estate and development interest as well as private land owners should have a supporting role. We asked what measures you would recommend the CRC and DCM take to address sea level rise. In response to this education and land use planning was recommended. The unlimited use of sandbags, use of sea walls, and groins were not recommended. We asked folks to describe what else should be done in North Carolina to address sea level rise. Respondents wanted hazard disclosure, prohibiting public expenditures in high risk areas, determine a sea level rise rate, and produce maps. The final survey report will be presented at the DENR/DCM sea level rise science forum on January 14-15, 2010. The CRC Science Panel and Biological & Physical Processes Workgroup are preparing sea level metrics report as requested by the CRC and this will be presented at the January science forum. The report will include the current and projected rates of sea level rise in North Carolina through 2100.

Wind Turbines and Water Dependent Structure Issues (CRC 09-34)
Doug Huggett

Doug Huggett stated in 2005, I came before the Planning and Special Issues Committee to discuss the issue of water dependency with wind facilities. At that time we were starting to get a feel that wind energy facilities was a rising issue, but it hadn't risen to the forefront. The CRC's rules state that only water dependent activities and structures can be permitted within our state's public trust and estuarine waters in the coastal zone. The CRC's rules have a long list of things that may be considered water dependent and things that are not considered water dependent. The rules are not all inclusive because when the rules were written you could not have contemplated all of the various scenarios and types of development activities that would pop up. With that in mind, wind facilities were not included as either a water dependent structure or a non-water dependent structure. The P&SI Committee felt that utility grade wind facilities could work equally well in certain land areas in coastal North Carolina as well as within our waters. There also wasn't a concrete proposal on the table at the time and there didn't seem to be a whole lot of movement with the idea of moving forward with a defined wind energy proposal. The guidance that the P&SI Committee gave to Staff was to not consider these structures to be water dependent and they could not be allowed under the rules without getting a variance.

In the past couple of years the wind energy issue has really exploded. You have heard multiple presentations over time and heard updates and recommendations to the Legislature from the EMC. It has become clear that the wind energy issue is out there and is in front of us today. There has been legislation that was introduced during the last legislative session that ultimately was not passed that would have set up a permit program for wind energy facilities. As part of that program it was going to modify CAMA to define large-scale, utility grade wind energy facilities as water dependent structures. There was a provision in the state budget that did pass that set up a pilot program that is going to allow potentially three offshore wind towers to be built in either our sounds or our ocean waters. This budget rider also included provisions that basically exempted these facilities from going through most of the state's permit requirements including CAMA. It doesn't exempt it from the state dredge and fill law, but it does exempt it from CAMA. All of this leads us to believe that this issue is coming and it is something that we have to deal with. The political desires appear to be to allow these things in coastal North Carolina and you put that with a lot of the studies that you have heard which seem to indicate that probably the most feasible location for utility-grade and utility-scale wind development in coastal North Carolina appears to be within our sounds or ocean waters. Once you start coming over land with the wind resource the wind resource starts to dissipate where it does not become cost effective to try to build utility-grade wind farms in coastal North Carolina. We believe there is a public policy and political desire to move forward in examining these structures within our waters. It is Staff's recommendation that the CRC grant us guidance today that would change the Commission's guidance from a few years ago that we do want to consider these to be water dependent structures. This would allow us to do several things. The first is it would clear the pathway for us to move forward with a more formal rulemaking initiative that would add wind energy facilities to the water dependent definition and would also setup various siting and permitting requirements for wind energy facilities. The second positive to this is we are receiving two to three calls per week from developers that are looking into wind energy in North Carolina. Currently we have to tell all of them that the rules say that you cannot put them into our waters and sounds. This would remove that technical obstacle. Lastly, it would be safe to say that it is a good idea to try to take hold of this issue ourselves instead of the decision being made elsewhere.

Dr. Pete Peterson stated several years ago North Carolina purchased estimates of wind speeds over the land and over the water of North Carolina. Our particular study updated that so we would have true knowledge of wind speeds at the elevation that will turn the blades. The actual wind resource is not what we experience, it is higher. Our assessment of this with numerous wind speed locations showed that the only areas in the state that have utility grade wind power that could be harvested are over water. Furthermore, there is only a small portion in the sounds that meet the criteria that would provide a harvestable resource and those are in four small areas in eastern Pamlico Sound. The bulk of this lies offshore and the further offshore, the better. Especially south of Hatteras down to Cape Lookout and somewhat south of Cape Lookout. There is also a small patch south of the Cape Fear. Most of these patches are in federal waters, but they include state waters where they are feasible and in Pamlico Sound. We had a public hearing in relation to the potential one to three windmills that may be constructed as a pilot construction in Pamlico Sound. Jim Leutze attended that hearing and can share his views on how it was received. My views are that there was a dramatic acceptance by the public on Hatteras Island. The University of North Carolina system has a signed contract with Duke Energy for the construction of one to three of these pilot windmills in the eastern part of Pamlico Sound guided by all the use conflict studies that we have done, but also consistent with any other permit that is required. I and our UNC group had absolutely nothing to do with the provisions of that legislation that asked that the CAMA rules be overlooked in developing these. We did have a number of policy recommendations in our report and a big one is the very one that we have on the table. Another was the issue of the prohibition against utility transmission lines coming through the beach and we have moved ahead on that. We participated in a UNC law presentation for attorneys interested in coastal law in New Bern and Joe Kalo had the opinion that rather than call these structures wind dependent that there is a provision that allows it already. That provision says that there are exceptions or there are reasons why something go ahead even though it is not wind dependent because it is essentially the only practical way to achieve that and it is in the public interest. Our group has identified this as a very important policy issue that needs to go forward and is in support of the CRC discussing it. Hopefully the CRC will be moving ahead to allow a green energy without a carbon footprint and one for which North Carolina could be a leader in the country to move forward.

Joan Weld made a motion that after due consideration the Coastal Resources Commission considers utility-grade wind energy facilities water dependent. Jim Leutze seconded the motion. The motion passed unanimously (Cahoon, Webster, Wynns, Weld, Shepard, Carter, Wilson, Leutze) (Old absent for vote).

Wind Energy Facility Amendments to 15A NCAC 07M .0400 Coastal Energy Policies; 15A NCAC 07H .0208 Use Standards and 15A NCAC 07H .0106 General Definitions (CRC 09-35) Mike Lopazanski/Scott Geis

Mike Lopazanski stated since we have gotten the nod on the water dependency issue we would like to move ahead with developing rules. I will be covering rules for siting facilities within state waters. Scott will talk about amendments to the coastal energy policies and those will primarily apply to facilities that will be constructed in offshore waters outside the state's jurisdiction. This is just to get an idea from the CRC to make sure we are on track. After this we would like to take this to other DENR permit review agencies to be sure we are asking the right questions when it comes to siting these facilities. If the Commission intends to move ahead then we will have to make additional amendments to our Administrative rules for the siting of wind facilities. In developing these amendments staff has relied on the recommendations of various groups considering these issues and we have put a lot of emphasis on the findings of the EMC. One of the first things we need to look at is the definition and this appears in 7H .0106. Since the state

has focused on utility-scale wind power, the EMC developed a definition that was consistent with the requirement for facilities to receive a certificate from the North Carolina Utilities Commission. "Wind energy facility means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of three megawatts or more of energy" has been added to 7H .0106. In 7H .0208 we will add wind energy facility to the section that deals with structures that are considered water dependent.

David Webster made a motion to accept the definition as presented in 15A NCAC 07H .0106. Jim Leutze seconded the motion. The motion passed unanimously (Cahoon, Webster, Wynns, Weld, Shepard, Carter, Wilson, Leutze) (Old absent for vote).

Amendments to the use standards for ocean and estuarine systems AEC (7H .0208) will be necessary for the actual siting considerations and permitting of a facility in state waters. Staff is proposing the addition which draws heavily on the work of the EMC and with what appeared in Senate Bill 1068. The provisions in (A) outline what would be required of a permit applicant in terms of what they need to address in their application. Section (B) contains the findings that would be used by the Division in making the permit decision. Many of these provisions are similar to those used to evaluate other types of development already present in your rules. Section (C) addresses permit conditions and this is standard language we have to ensure compliance with other guidelines for development. It also lets the applicant know that monitoring will be included. There is also a public benefits exception included in (D) that includes the types of development that are allowed.

Scott Geis stated the coastal energy policies look in general terms to broaden the way we look at energy development. When we last visited these ten years ago they were in the form of oil and gas development primarily. One of our main goals was to update this policy in terms of incorporating how we look at alternative energies. The changes you will see in 7M mirror those that were in 7H. The first section "Declaration of General Policy" talks a lot about balancing the public welfare in terms of the need for energy development with conservation. Originally it talked about balancing the necessity of energy production with the protection of the resources, but we wanted to expand it a little bit. We wanted to balance the need for energy, the protection of the natural resources and ecosystems, and also the public's ability to use or have access to those resources. The "Definitions" section has two areas that we have tweaked. We focused on impact assessment and major energy facility. Impact assessment is important because impact assessments are required for any major energy facility that would go in. An impact assessment is an assessment of the costs and benefits of the entire project. We have changed the assessment to include effects the project will have on the use of public trust waters, adjacent lands and on the coastal resources of the coastal area. Natural resource has been changed to coastal resource in several areas as we have found that it gives us more flexibility going forward with our permitting. The first major change that we see is under the definition of impact assessments (4). We have added a component that talks about beach compatible sand. This is not a permitting requirement, but needs to be included in the assessment. In (a)(7) this language comes from the efforts made in Senate Bill 1068. There were specific requirements in terms of studies for shadow flicker and turbine noise. In (a)(10) decommissioning is an obvious concern with any type of structure that is going to be placed out into the water. Language is needed discussing the decommissioning plan. Another issue that comes up with decommissioning is the requirement of a bond. We do not have the authority to require a bond. Therefore if the CRC feels that a bond is the appropriate activity to require for decommissioning, then we would have to get a formal opinion from the Attorney General's office and pursue legislative action in order to do it. In

(a)(11) oil and gas has changed to energy exploration to make it a wider ranging statement to incorporate all forms of alternative energy. The second part of the definitions is the major energy facility. In this section we were hoping to get at the specific types of projects that would go out into federal waters and how they would fall back in line with the major energy facility. In the permitting process a major energy facility requires an impact assessment. In (b)(5) this is the same language that was used in 7H. In 7M .0403 we pull in the defined words. In (c) it states that this section shall not limit the ability of a city or county to plan for and regulate the siting of a wind facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes. Wind energy facilities constructed within the planning jurisdiction of a city or county shall demonstrate compliance with any local ordinance concerning land use and any applicable permitting process. This comes out of the EMC's report and addresses the ability of the local government to plan for and regulate the siting of a wind energy facility. There should be state permitting oversight; however it will allow local governments to continue to exercise the full range of land use and police power ordinances. In (H), (I), (J) and (K) we have added language for areas that we would not want to have significant adverse impacts. Veronica Carter made a suggestion that (I) should be changed to include training areas. Renee Cahoon stated the definition of local significance found in (J) should be noted.

CRAC REPORT

Dara Royal, CRAC Chair, stated there were three agenda items at the meeting. The first was the annual election of Chair and Vice-Chair of the CRAC. The Chair and Vice-Chair serve two annual terms, however the Council has decided to make a change in this year since we feel that we have not had a full year this year. Also, Penny Tysinger has had a change in employment so she will not be the representative of the Cape Fear Council of Government. The Council reelected me as Chair next year and elected Frank Rush as Vice-Chair. I would like to thank Penny Tysinger for her services to CRAC. The second order of business was discussion about CRAC involvement in the land use plan guidelines update. John Thayer presented us with a preliminary list of issues that maybe addressed in the review process. After much discussion, it was the recommendation of the Council that there should be a subcommittee workgroup established to do some of the groundwork in preparation for more extensive presentation. Next, we had discussion about the composition and function of the CRAC. This was an opportunity to provide some feedback to DENR who is reviewing their Boards, Commissions and Councils as asked by the General Assembly. We believe the principles upon which the CRAC was created are as valid today as they were 35 years ago. At its best the CRAC is a model for state and local government relationship in coastal management. Lastly we discussed some future agenda items. One of the things that has resurfaced that we would like to revisit is any permitting obstacles that may still exist in beach nourishment projects.

ACTION ITEMS

Chairman Emory asked Jennie Hauser to discuss how we should treat the Taylor Contested Case going forward. Ms. Hauser stated the CRC reached a decision yesterday; however the Chairman and I will be working to draft a written decision. That will not happen for a period of time. Once that happens it is very likely that the case will go into judicial review at the Superior Court. You have most recently experienced the remand of a variance case from the Superior Court and that is a possibility in this case. You should still avoid ex parte contacts with people who might be involved with this case. This includes Staff, members of the CRAC, or any person that might contact you about the case. The ex parte issue doesn't arise in conversations that you have with other Commission members, but if the case comes back to you there is always the question of whether or not you have become biased in making a new decision. I would encourage you not to have conversations about the matter during this time.

Chairman Emory stated the proceeding yesterday was difficult. Ms. Hauser has been asked to give us some instructions on how the contested case proceedings go at a future meeting so we will not be caught unprepared. Jim Leutze stated that he questions the whole process. He stated the process seems flawed. After the ALJ rules, it seems almost impossible to overturn it. So why are we hearing it? It is a waste of time. He stated that he would personally pursue legislation that changes this. He further stated that he wanted an Attorney General's ruling on the issue of recusal and whether one can withdraw a recusal. The opinion should include whether recusal means you cannot speak or whether it means that you cannot vote. Jim Leutze stated he has had a legal opinion that recusal can be withdrawn at any time. Jim Leutze further stated that commissioners Carter and Shepard's recusals are also somewhat questionable.

LAND USE PLANS

John Thayer stated that on June 24 there was a first batch of amendments to the Brunswick County LUP. This request has additional amendments. They could be characterized as a group of amendments that are related more particularly to the Town of Saint James that is incorporated. There are 24 minor plan map adjustments.

The Town of Swansboro, City of Havelock, and Craven County are also requesting certification of their plans. Staff has found no issues with any of these documents and have not received any correspondence raising questions with the local adoption or certification. Staff would recommend that the CRC certify each of these requests as having met the substantial requirements of the 7B guidelines and there are no conflicts with the State's provisions.

Brunswick County Land Use Plan Amendments (CRC 09-36)

Veronica Carter stated that she has worked with the Brunswick County planning director who is here for the Brunswick County land use plan, but has had absolutely no dealings with the land use plan.

Jim Leutze made a motion to approve the Brunswick County Land Use Plan Amendments. Renee Cahoon seconded the motion. The motion passed unanimously (Cahoon, Webster, Wynns, Weld, Veronica, Wilson, Leutze) (Old, Shepard absent for vote).

Town of Swansboro Land Use Plan Certification (CRC 09-37)

Veronica Carter made a motion to certify the Town of Swansboro Land Use Plan. Jim Leutze seconded the motion. The motion passed unanimously (Cahoon, Webster, Wynns, Weld, Shepard, Carter, Wilson, Leutze) (Old absent for vote).

City of Havelock Land Use Plan Certification (CRC 09-38)

Renee Cahoon made a motion to certify the City of Havelock Land Use Plan. Jim Leutze seconded the motion. The motion passed unanimously (Cahoon, Webster, Wynns, Weld, Shepard, Carter, Wilson, Leutze) (Old absent for vote).

Craven County Land Use Plan Certification

Chairman Emory stated that he is a resident of Craven County and attended one of the scoping meetings early on in the process.

Veronica Carter made a motion to certify the Craven County Land Use Plan. Jim Leutze seconded the motion. The motion passed unanimously (Cahoon, Webster, Wynns, Weld, Shepard, Carter, Wilson, Leutze) (Old absent for vote).

OLD/NEW BUSINESS

Bob Wilson stated that we need to look at the concept of natural vegetation and what it means to various members of the Commission, what it means to the public, and what it means to our Staff in actual practice. Jim Gregson stated new rules were effective April 1, 2008 that defined exactly what a vegetation line is and it goes into more detail about what stable is and what natural is. This rule was not in effect at the time of the Taylor permit decision.

Jim Leutze stated that Jim Gregson had announced that there is a new coastal alliance between North Carolina, South Carolina, Georgia and Florida. He stated that he would like us to think of how we can gain some information from other states on issues that are similar to the issues we are dealing with. Jim Gregson stated that Staff can come back with a short presentation on this alliance at the next CRC meeting. Mr. Gregson further stated that he will send the link to the CSO to the Commission.

Melvin Shepard stated the he is concerned that an LPO can trump the Division of Coastal Management. The Division is guided by the CRC and the Division should be able to guide the LPO. Jim Gregson stated that a presentation could be given at a future meeting regarding the relationship of the LPO and DCM.

With no further business, the CRC adjourned.

Respectfully submitted,

James H. Gregson, Executive Secretary

Angela Willis, Recording Secretary