

NC COASTAL RESOURCES COMMISSION (CRC)

June 20-21, 2012

NOAA/NCNERR Auditorium

Beaufort, NC

Present CRC Members

Bob Emory, Chair

Joan Weld, Vice Chair

Lee Wynns

Pat Joyce (absent 6/21)

Renee Cahoon

Charles Elam

David Webster

Ed Mitchell (absent 6/20)

Jerry Old

Bill Peele

Veronica Carter

Melvin Shepard

Jamin Simmons

Present CRAC Members

Bob Shupe

Charles Jones

Tim Tabak

Ray Sturza

Kristen Noble

Dave Weaver

Steve Myers

Missy Baskervill

W.H. Weatherly

Bill Morrison

Anne Deaton

Wayne Howell

Webb Fuller

J. Michael Moore

Harry Simmons

Bert Banks

Judy Hills

Bryant Buck

Tracy Skrabal

Spencer Rogers

Lee Padrick

Boyd Devane

Present Attorney General's Office Members

Jennie Hauser

Christine Goebel

Amanda Little

CALL TO ORDER/ROLL CALL

Bob Emory called the meeting to order reminding the Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called.

Angela Willis called the roll. No conflicts were reported. Based upon this roll call, Chairman Emory declared a quorum.

VARIANCES

Weber (CRC VR-12-03) Emerald Isle, Oceanfront Setback
Amanda Little

Amanda Little of the Attorney General's Office appeared and presented argument on behalf of the Division of Coastal Management. Petitioner George Weber was present and represented himself.

Petitioner proposes to construct a roof over an existing oceanfront deck located at 2205 Ocean Drive in Emerald Isle. On March 13, 2012 the Town of Emerald Isle Local Permit Officer denied petitioner's application based on the proposed development being inconsistent with 15A NCAC 07H .0306(a)(8)(D) which states in pertinent part that, "No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footing, extends oceanward of the landward-most adjacent building or structure". Ms. Little reviewed the stipulated facts for the variance request. Staff and Petitioner agree on three of the four variance criteria. Staff disagrees with Petitioner on the second statutory criteria which must be met in order to grant the variance. Staff disagrees that there is any specific location, size or topographical condition peculiar to this property. However, Staff does acknowledge that the petitioners are being penalized due to their neighboring house to the east that is noticeably landward of the predominant line of development along this area of beach.

George Weber stated he understands the purpose of the regulations and is not going to go oceanward. All of the homes that you see were built in approximately 1979 with the exception of the home to my east. It was built nine years after my home was built and was built more landward than any of the other homes in this area. The overhang will protect my property. The deck and carpet take a beating because of the sun. Additionally, our home is the only home in the area that does not have a covered porch.

Renee Cahoon made a motion to support Staff's position that strict application of the applicable development rules, standards or orders issued by the Commission cause the Petitioner unnecessary hardships. Melvin Shepard seconded the motion. The motion passed with ten votes in favor (Webster, Joyce, Simmons, Wynns, Peele, Weld, Shepard, Old, Cahoon, Elam) (Carter abstained).

Renee Cahoon made a motion to support Petitioner's position that hardships result from conditions peculiar to the petitioner's property. Jerry Old seconded the motion. The motion passed with ten votes in favor (Webster, Joyce, Simmons, Wynns, Peele, Weld, Shepard, Old, Cahoon, Elam) (Carter abstained).

Renee Cahoon made a motion to support Staff's position that hardships do not result from actions taken by Petitioner. Charles Elam seconded the motion. The motion passed with ten votes in favor (Webster, Joyce, Simmons, Wynns, Peele, Weld, Shepard, Old, Cahoon, Elam) (Carter abstained).

Renee Cahoon made a motion to support 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 the public safety and welfare; and preserved substantial justice. Melvin Shepard seconded the motion. The motion passed with ten votes in favor (Webster, Joyce, Simmons, Wynns, Peele, Weld, Shepard, Old, Cahoon, Elam) (Carter abstained).

This variance request was granted.

LEGISLATIVE UPDATE

Robin Smith, DENR Assistant Secretary, provided a status report on pending legislative issues. The budget proposed by the House reduced DENR's budget by another 1.7% (on top of the 2011 reduction of about 12.5%). The House proposal specified where the cuts should be taken and some of the cuts identified would be very problematic – such as cutting positions in the sedimentation program and reducing the budget for the seven Regional Offices by about \$350,000.00. The Senate proposed a budget with a 2% reduction, but in the form of a flexibility cut that did not specify where the reductions had to be taken. House and Senate conferees have been meeting to resolve the differences. In substantive legislation:

H819 addresses sea level rise. Sea level rise added to the bill by the Senate restricted the way state agencies, including the CRC, could determine the rate of sea level rise and also limited the use of that information. The House did not concur with the Senate language, so the bill has been sent to a conference committee to work out the differences. Representative McElraft made the motion on the House floor to not concur in the Senate bill and said that her desire was to have this turned into a study of sea level rise and how to best evaluate it.

Three different bills propose to create a grandfather provision on the new oceanfront setback rules. One version of the grandfather provision appears in **S229** (the annual catchall bill that amends environmental statutes); the language incorporates a number of technical suggestions from DCM staff and reflects the way the CRC has dealt with other exceptions to the setback rules. **S229** has passed the House and gone back to the Senate for concurrence. **S229** also addresses the grant funds that DCM awarded to the Town of Carolina Beach for construction of an ocean pier in conjunction with the state's aquarium at Pine Knoll Shores. Since completion of Jennette's Pier in Nags Head, state participation in the construction of publically owned ocean piers has become very controversial. **S 229** would allow the Town of Carolina Beach to retain coastal waterfront access grant funds for land acquisition that had originally been proposed in connection with a second state-local ocean pier project.

The Boards and Commissions Efficiency Act (**S 851**) would have made changes to a number of state boards and commissions and eliminated a significant number of smaller boards. DENR, with input from DCM, sent comments to the bill sponsor and legislative staff expressing concern about proposed changes to the CRC and CRAC. The signs seem to be that this bill will not go anywhere this session. This year's regulatory reform bill (**S810**) makes a number of amendments to the state's Administrative Procedures Act. Several provisions are new and of concern to DENR. Section 7 of the bill changes the criteria for awarding attorney's fees to a party in an administrative case to make those criteria very similar to the standards for winning a contested case. DENR thinks that it is problematic to require a state agency to pay a party's attorney's fees based simply on a finding that the state agency made an error. That is particularly a problem for permitting agencies like the CRC that may be in the middle of a three way controversy with the permit applicant on one side and someone who opposes issuance of the permit on the other. In those cases, any outcome may result in a party being entitled to attorney's fees. There is also a requirement in the bill for additional permit tracking. DENR reports annually on permit processing time (from receipt of a complete application) for many development permits; that report covers CAMA permits and coastal stormwater permits. The new provision would require the report to also show the time that a permit application is on hold for additional information.

ACTION ITEMS

Land Use Plans

New Hanover County LUP Amendment (CRC 12-13)

John Thayer stated there are four land use plan amendments before the Commission today. The first is the New Hanover County/City of Wilmington joint land use plan. Because it is a joint land use plan each of the jurisdictions can amend the plan separately without requiring a hearing by the other agency. In this request the county is requesting to redesignate four parcels on the land use plan map changing it from a resource protection designation to a transition designation. Staff has reviewed the paperwork and the amendment and found that the process has met the substantial requirements of the 7B guidelines and there are no apparent conflicts with the state or federal rules. The public has had an opportunity to provide correspondence and we have not received any. Staff recommends the certification of this amendment.

Charles Elam made a motion to certify the New Hanover County land use plan. Joan Weld seconded the motion. The motion passed unanimously (Webster, Joyce, Simmons, Wynns, Peele, Weld, Shepard, Carter, Old, Cahoon, Elam).

Town of Topsail Beach LUP Amendment (CRC 12-14)

John Thayer stated this is an amendment to the Topsail Beach (not North Topsail Beach as indicated on the agenda and memo) land use plan. Topsail Beach is requesting an amendment to the policy provisions in their plan related to inlet hazard areas. Staff has reviewed the request and have found that there are no conflicts with the 7B guidelines and it has met the substantive requirements. The public has had the opportunity to provide written comments and we have not received any. Staff recommends the certification of this amendment.

Joan Weld made a motion to certify the Topsail Beach land use plan amendment. Veronica Carter seconded the motion. The motion passed unanimously (Webster, Joyce, Simmons, Wynns, Peele, Weld, Shepard, Carter, Old, Cahoon, Elam).

Town of Swansboro LUP Amendment (CRC 12-15)

John Thayer stated the Town of Swansboro wants to expand their urban waterfront designation area in the land use plan involving several parcels and make some policy text changes within the document. Staff has reviewed this request and has not received any comments regarding the amendment. Staff has determined that it meets the substantive requirements of the 7B guidelines and recommends certification.

Bill Peele made a motion to certify the Town of Swansboro land use plan amendment. Veronica Carter seconded the motion. The motion passed unanimously (Webster, Joyce, Simmons, Wynns, Peele, Weld, Shepard, Carter, Old, Cahoon, Elam).

Pamlico County LUP Amendment (CRC 12-16)

John Thayer stated the Pamlico County LUP includes several municipalities including the Town of Minnesott Beach. Since it isn't a joint plan, the Town of Minnesott Beach needs to work through the County's Board of Commissioners in amending the land use plan. This amendment proposes to move some text language within a policy statement related to dry stack storage facilities in Minnesott Beach. The policy only applies to the Town of Minnesott Beach. The amendment does meet the substantive requirements and we find no apparent conflicts with state or federal rules. We have not received any comments and staff recommends certification of the Pamlico County land use plan amendment.

Melvin Shepard made a motion to certify the Pamlico County land use plan amendment. Pay Joyce seconded the motion. The motion passed unanimously (Webster, Joyce, Simmons, Wynns, Peele, Weld, Shepard, Carter, Old, Cahoon, Elam).

MINUTES

Melvin Shepard made a motion to approve the minutes of the April 19, 2012 and May 24, 2012 Coastal Resources Commission meetings. Jamin Simmons seconded the motion. The motion passed unanimously (Weld, Wynns, Cahoon, Elam, Webster, Old, Peele, Carter, Shepard, Mitchell, Simmons).

EXECUTIVE SECRETARY'S REPORT

DCM Director Braxton Davis gave the following report.

It has been a busy few months at since the April meeting. In your information packets there is a DCM Update Memo, we've also provided a hard copy for today's meeting. As with your last meeting, we have begun providing this as a standard part of your packets to provide a little more detail on ongoing activities at DCM in terms of permitting, enforcement, rule development, planning and Coastal Reserve activities, and we'd appreciate any feedback you might have. We are also in the process of closing out our fiscal year at the end of June and are happy to have Arthur Stadiem, our Budget Officer, back on board at DCM.

For today's meeting, we developed an agenda with the Executive Committee to address several important program areas. First, we will hear from Ray Sturza on the continuing, and we believe very promising, progress being made by the CRAC on understanding and improving public shoreline access. Next, as you will recall from the last meeting, the next steps on the draft sea level rise policy were for DCM staff to edit the draft to remove any language that might be unnecessarily controversial and based on comments from Commissioners over the past couple of meetings, and then to send it back to the Estuarine and Ocean Systems Subcommittee before reconsidering its release for public hearings. Today we'll hear a report from Commissioner Peele, who chairs that subcommittee, on the results of their discussions yesterday. Then we will hear from staff in DCM's Regulatory program. We wanted to provide the Commission with a basic update and general refresher on our permitting process, our focus on customer service, our new "tiered enforcement" policy and our focus on compliance assistance. There is no action item associated with this session, but we hope that you'll benefit from the opportunity to ask questions about our process and provide any feedback that you might have.

We will also have an update from John Thayer on the 7B LUP Guidelines Review, and then I will discuss efforts within DCM to strengthen our engagement with local governments and build on past experience with the LUP process. Mike Lopazanski will then update us on the status of proposed rules and then we will wrap up with presentations on a new effort within DENR to advance, where appropriate, living shorelines or preferred alternatives to traditional, vertical shoreline stabilization methods. An essential part of this involves DCM's continuing investments in shoreline mapping and analysis, and we'll get an update from Kevin McVerry on those efforts.

On another note, I have inquired about CRC appointments with the Governor's office. The two new appointments are still in process and should be announced soon. There is no news on re-appointments.

Finally, as we discussed at your last meeting, the August meeting will be held in Sunset Beach at the Sea Trail Convention Center. We are planning to then move up the coast for the November meeting and welcome suggestions for future meeting locations.

CHAIRMAN'S COMMENTS

Bob Emory stated since the last meeting I have had a lot of opportunities to talk about our draft sea level rise policy. We had a productive committee meeting to move it along to the next step. Staff's edits have made it what we intended it to be which is for education, understanding and outreach. Braxton and I visited Bald Head Island to look at some of the issues they are facing down there and it was an informative and productive day.

CRAC REPORT

Ray Sturza stated the CRAC worked on public beach access and coastal resource access programs. In previous meetings we have discussed the ocean access program and estuarine programs, but yesterday we took a different focus and saw a presentation from DMF that brought us up to speed on grant programs that are available for transient mariners. Money is available for the construction of docks and makes our waterways more accessible. In addition to that we had a presentation on the North Carolina Conservation Tax Credit program that allows for the donations of land. This land can be used for public access. At our next meeting we will try to put together a recommendation for the Commission. We also had a presentation from DWQ on permeable surfaces and how it affects the stormwater programs and their BMPs. DWQ has come to the conclusion that permeable surfaces, particularly permeable concrete, are being recognized as a valuable tool in addressing stormwater management. Using this new surface, the dependence on retention ponds might not be as prevalent as it has been in the past. We also heard a presentation from Spencer Rogers talking about some of the practices that are in place that were not intended to address sea level rise, but were to mitigate storm hazards, and do address changes that occur as a result of storm activity and address sea level rise.

PRESENTATIONS

Sea Level Rise Adaptation in North Carolina Spencer Rogers

Spencer Rogers stated that sea level has been a controversial issue in North Carolina in recent days. One of the frustrations for me is that in one of the first college classes I had in coastal processes the first thing we addressed was sea level rise. Sea level has never been a constant and has always been changing. It has mostly been rising in my lifetime. The debate over the issues is something we handled forty years ago and not something we are dealing with today. One of the frustrations for North Carolina is that while we are being made fun of, North Carolina is way ahead of other states in dealing with sea level rise. Today I will talk about putting the Science Panel's recommendations in a perspective that may be a little easier to understand and talk about things that have been done in North Carolina to address adaptation. There are lots of issues around sea level rise and education is extremely important to understand what the risks are and what the consequences might be. I am interested in the adaptation part. Adaptation in other hazards is known as mitigation, but in terms of sea level rise it is called adaptation. Sea level rise has some pretty serious consequences and there are barriers that make it less than easy to present to the public to get them to do something. One of the problems is it is an imperceptible change. You can't go out and look at it today and see that sea level is rising. It is something that is going to occur over decades or hundreds of years. The worst consequences are way in the future. The science is far from perfect. Predicting climate over the next hundred years is not an easy process. Anybody that attempts to do it will tell you there is a

high error bar. We are used to dealing with things that are much more certain and immediate. In the case of sea level rise it is something that is 100 years in the future and the accuracy of the models is probably around 50%. The debate in science for something like this is never pretty. If somebody makes a prediction then someone else is going to try to rip it to shreds. The other issue that is unusual is that it has gotten into a political debate and it is now more a belief than a science. If you look at the various predictions that have been made over the last 20-30 years, most of the predictions center around one meter. The upper end is around two meters. The Science Panel's recommendation is one meter. This is a serious number. Anyplace in North Carolina with that much rise is going to be a pretty serious problem. But the real issue is that is in 2100 so it's not the best way to look at sea level rise. You don't have to be rocket scientist to understand tides, but it helps. Tides are driven by the sun and the moon and their relative position over time. Eighty percent of the tides are driven by the moon and the other twenty percent by the sun. If you look at the alignment of those they change the elevation of the tide. If you really want to know what the tide is doing then you have to look at astrophysics or about 20 years of tidal records in order to come up with a trend in sea level rise. It is not a trivial exercise to measure and predict trends in sea level rise. The tide range in the northern part of the state is about three feet and about five feet in the southern parts of the state. It is a significant challenge. The Science Panel has recommended a one meter prediction by 2100, which is 90 years in the future from when the report came out. This is a pretty scary number. But in terms of using that number, no one is planning for anything in 2100. Probably no one in the room is alive in 2100. So is this the most realistic way to look at a one meter rise in sea level? I think it isn't. As the CRC has done in the past, I think a better way to look at it is in a 30 year time limit which is the lifetime of a typical mortgage or for setbacks in the CRC's case. The other issue that is important is that the line that the Science Panel gave you is not a straight line. A straight line would imply that in 2010 there was going to be a drastic change in acceleration that would instantly occur. But what the Science Panel gave you and is typical in most of the climate models is a gradually accelerating rate of increase over time that is heavily loaded on the back end. If you look at what the Science Panel gave you, at the 30 year point the total amount of sea level rise suggested for planners is eight inches. Of those eight inches, only three inches of that is the acceleration. With all the controversy in North Carolina over accelerated sea level, in the next thirty years the Science Panel is telling you to plan for three inches of acceleration. To put that into annual terms, if you look at the linear rate of one meter, the rate of sea level rise per year is a stack of six nickels. The historical rate of rise at Duck is two nickels thick per year for the next thirty years. If you look at acceleration then it is a little more than three nickels thick for the next thirty years. What we are looking at in the shorter term is actually a fairly small number. If you look at what we should expect to see in sea level rise it is not something that we will ever identify on its own, but what we will see is more frequent flooding shallow water flooding and we will have slightly higher extreme flood events.

A number of things have been done over the years in North Carolina. North Carolina adopted the second oldest hurricane building code in the United States. The importance of that is that when you visualize a beach house, the picture that pops into your mind is an elevated house with under-house parking. If you came to North Carolina before the 1950s when we got seven major hurricanes, the normal construction was just like inland buildings. In the 1960s the building code Council adopted a requirement for the first 150 feet back from the ocean. They required that you be elevated on a piling foundation and that you had to be above the highest watermark. There was a major shift from on-ground construction because of what was initiated by the building code. The interesting thing to me is that there was a narrow requirement, but they wanted it eight feet tall and under house parking and it was an individual choice not because of the requirement. This has made a profound effect with houses on pilings surviving hurricanes. Another program that came in later was the National Flood Insurance Program. One issue on adaptation is building higher than the minimum

requirement. This is called freeboard. The flood insurance requirements say that you have to be at a certain elevation above sea level. A freeboard is something that an individual or a community can adopt to build higher than that. The importance of that is not well understood in part because the 100-year flood has a 1% chance in any given year is perceived to be a pretty high standard. If you look at the actual performance of those, the 100-year standard is not that high compared to most other building standards. The importance of freeboard is a safety factor that elevates you above the 100-year flood and the consequences of that are a high standard. If you look at it over the lifetime of an average building then it is a 51% risk of exceedence. If you are building a new house without freeboard then there is a 50-50 chance you will exceed it. There are a couple of things that support freeboard requirements in North Carolina. One is the Community Rating System which is part of the National Flood Insurance Program. It is designed to improve flood hazard awareness, improve preparedness, and reduce flood damage. For each foot of freeboard that a community adopts, there is a about a 1% discount for every flood insurance policy. There are 112 coastal communities in the 20 coastal counties. If we look at the freeboard requirements that have been adopted already three percent of these communities have adopted three feet, 46% of the communities have adopted two feet, and 61% of the communities have adopted greater than one foot as of March 1, 2012. On March 1, 2012 the North Carolina State Building Code adopted a one foot freeboard requirement for the entire state. This was not done for sea level rise, but for flood preparedness. There are financial incentives for individual owners to build higher than you have to. That has been built into the flood insurance program since 1976. Another thing we have done in North Carolina is used erosion rates to apply the oceanfront setback. Sea level has been rising over time and is included in the erosions. We have already added the historical rate to our erosion rates. If you look at the erosion rates in the state, half of the state is eroding at one foot per year or less. The other half of the state is eroding at more than one foot per year. Don't think that the only driver for erosion problems is sea level rise. It is actually a small part of a long-term problem. There are already flood problems and other storm issues that are out there today. The real important issue is to look locally at what the issues are and what is the best way to make adaptation for all of these hazards in the future. If we focus too much on sea level rise then we are going to miss the current problems. For the last four years we have been working intensely with the Texas coast and the follow up of Hurricane Ike. If you look at the consequences of that storm, there were 6,000 buildings before Ike and 2,000 left after the storm. You don't have to market adaptation down there. The property owners are well aware of what the consequences are because they have all of these examples next door.

ESTUARINE AND OCEAN SYSTEMS COMMITTEE REPORT

Bill Peele stated CRC Chairman Emory opened the meeting by saying that he hoped the committee would agree on a version of the draft sea level rise policy to forward it to the Commission. Introductory comments were made by Braxton Davis. Braxton stated DCM would benefit from the policy by providing context for continued work on sea level rise. He also said that DCM is expected to have some expertise on sea level rise and should be able to provide information and assistance and be able to partner on local, statewide and regional sea level rise related efforts. With this policy, the Division could continue to make progress on research and monitoring, working with partners and developing educational and outreach materials. These activities are in line with ongoing efforts to address other coastal hazards. The policy would be guidance from the CRC about how to proceed on future research, education, and interactions with local governments and other stakeholders. Without the policy the staff and our partners would be somewhat uncertain of our role.

Commissioner Peele said we need to be proactive, smart and discuss multiple viewpoints and community needs. It is important to allow room for the options of those who question sea level rise and global warming. I hope that those who do not believe in sea level rise will become educated enough to allow for the possibility of it existing. How we study sea level rise is important and we need to agree on a strategy, system and parameters. We need to think about expected impact zones, develop assessment tools and record data over time. We need to think about response thresholds and adaptation strategies. We need to be prepared to address short-term and long-term infrastructure needs that are practical and affordable. This is not the time to pack up and retreat, but it is time to think about vulnerability. There are many questions such as when and where the biggest impacts will occur, but we need to education ourselves and the public on becoming prepared to face the reality that sea level rise could have more of an impact in the coming decades than it did in the last 50 years.

Tancred Miller reminded the committee of the major changes that the CRC made to the draft policy in February 2011. The one meter planning benchmark was removed from the draft. The draft policy does not contain any numbers, rates, ranges or planning benchmarks. The draft does not contain any projections of future sea levels or acceleration. The draft does not and should not have any regulatory impact. The draft will not require revision to local land use plans and will not be used for development permitting. There was little discussion about the draft and only minor changes were made by the Committee. Spencer Rogers made a motion to accept the staff's revised version, including the committee's changes, and forward it to the full Commission. Melvin Shepard seconded the motion. The motion passed by a vote of 8-0. The Committee is delivering the draft policy to the CRC with a recommendation that the CRC consider it for public comment. Please note that the committee is not recommending that the CRC take action today. Staff is seeking confirmation that whatever draft the Commission concludes with today is intended to be the public hearing draft and can be sued in preparing a fiscal analysis. If so, staff will post the new draft on the DCM website and prepare the fiscal analysis. The draft policy and fiscal analysis will appear on the CRC's August agenda as an action item to adopt for a series of public hearings.

Renee Cahoon made a motion to accept the Committee's report on the sea level rise draft policy. Veronica Carter seconded the motion. The motion passed unanimously (Webster, Mitchell, Simmons, Wynns, Peele, Weld, Shepard, Carter, Old, Cahoon, Elam).

PRESENTATIONS

DCM's Regulatory Process

Customer Service Focus

Ted Tyndall

Ted Tyndall, DCM Assistant Director, provided an update on the regulatory process and reviewed directives from the Legislature and DENR. The regulatory role is a complicated process balancing good customer service with environmental and resource protection. For years we had two sections or units called permitting and enforcement. That section is still the same today, but enforcement is now called compliance. We are trying to guide the applicant through the process to ensure project compliance. The Division is set up into four districts. There are offices in Elizabeth City, Washington, Morehead City and Wilmington. This covers all 20 coastal counties. This was set up for several reasons, but the primary one is to ensure the public has easy access to staff. It also recognizes that there are regional differences that staff in that area will have local knowledge of. We have a regulatory staff of 31. In a response to budget cuts and in an effort to streamline

government we have combined several positions. In 2007-2008 DCM had 39 staff. In 2007-2008 the economy was booming and permit numbers were high. Permit processing times were also high. This was typical across DENR. The Department held a series of listening sessions to address customer service as well as improve processing times. The result was not more rules but better enforcement of the existing rules. The Department developed four positions for compliance and enforcement to actually be out in the field and monitor projects. The Department assigned these four to DCM. In our protocol, we are out in the field everyday face to face with applicants. Violations went down as a result. DENR then expanded it across the other Divisions. Since 2008, DENR has taken a 40% cut in its budget. Secretary Freeman emphasized customer service. Processing times for Major Permits in 2011 averaged 85 days. For the first quarter of 2012, it averaged 72 days. General Permits allow for an expedited review. On average, it takes about 7 days to get a permit. The CRC has approved 17 General Permits. Coordination with state and federal agencies for a template of conditions and comments allows for an expedited review. In FY 2010-2011 staff issued 1,759 General Permits. A recent audit of the Express Permitting program was conducted and expanded into the total Major Permit program. We used the opportunity to examine our process. Processing time improvement became our commitment. One important customer service aspect is our hurricane planning and DCMs response. During Hurricane Irene the Secretary implemented the Emergency GP. It allowed for the rebuilding of storm damaged structures with no permit fee for one year. It was implemented August 29, 2011 and up to today we have issued 850 replacement permits under GP .2500. It is still valid and effective through the end of August 2012. Staff was ready. The assessment of the coast was done with local governments and staff had the Emergency GP on the streets within two days. Our staff also had permits to NCDOT for NC-12 and its bridges within a few days. DENR has implemented a new three-tiered approach to enforcement. This allows for flexibility in responding to regulatory violations and deficiencies. It gives us more latitude to look at harm and repetitive nature to be more responsive to particular violations. It is working well.

Major Permits

Doug Huggett

Doug Huggett, DCM Major Permit Coordinator, stated the CRC manages and is the rulemaking body for CAMA. Also under the CRC's authority is a regulatory law that precedes CAMA and that is the state Dredge and Fill Law. The state Dredge and Fill law came into effect in the late 1960s and says that any time before you do any excavation or filling within an estuarine water, tideland or coastal wetland then you have to get a permit. That permit program was established before CAMA came into effect. When CAMA came into effect in 1974 the Legislature had the foresight to realize that there were some similarities in these two permit programs and they put the authority for rulemaking under the CRC and the active management of DCM. In the CRC's rules it says the intent of the authority is not to stop development, but rather to ensure the compatibility of the development with the continued productivity and value of certain critical land and water areas. Not everyone realizes that CAMA is a balancing act. One thing that is important to understand is that CAMA, the Dredge and Fill Law and the CRC's regulations require a significant amount of coordination between DCM and other state and federal resource agencies. The State Dredge and Fill Law originally required that permit applications be submitted to appropriate state and federal agencies for review and comment. CAMA said the same thing when it was drafted. In 7J .0207 of the CRC's rules it was further codified in regulation requiring that applications be submitted to several state agencies having expertise in various criteria. Each of these reviewing agencies may make comments back to DCM as part of the permit process. Each reviewing agency may request

additional information if such information is deemed necessary for a thorough and complete review of the application. DCM is the manager of this umbrella permit program. We are not just coordinators of the application process. Just as we view DMF as an expert agency on fisheries resources, DCM is an expert agency on certain resources such as navigation, oceanfront setback requirements, sediment criteria, and coastal wetlands. 7J .0209 says DENR will make a final decision with respect to a permit application upon considering the field investigation report, the comments of all interested state agencies as well as the comments of adjacent property owners and members of the interested public. There are findings that have to be made by DCM before a permit can be issued. We have to make sure projects won't have adverse impacts to public trust rights and biological and physical functions of an estuary, we have to make sure that navigation channels are not adversely impacted, projects won't increase shoreline erosion, won't cause adverse water circulation patterns, violate water quality standards, won't cause degradation of shellfish waters, projects must have a finding that there will be a minimum adverse impact on the productivity and biological integrity of marshes, shellfish beds, SAVs, spawning areas, waterfowl habitats and erosion barriers. We have to make a determination that a project will not violate a state water quality or air quality standard. We have to make a determination that our cultural resources will not be adversely affected. We have to make sure projects are timed properly so they don't have an adverse impact on larval fish or sea turtles. We have to make sure the development is not done in such a manner that it will impede or create a significant interference with access to public trust or estuarine waters. We have regulations that we have to make sure that navigation channels will not have adverse impacts to fisheries and water quality. Maintenance excavation of existing basins and channels can only take place as long as they won't lead to a significant adverse impact to nursery areas and beds of SAV. When permitting a marina we have to make a determination that the siting of the marina will not lead to a closure or expanded closure for waters that are open to the taking of shellfish. We have to make a determination that the development will not result in a violation of any other rule, regulation or law of the state of North Carolina or local government in which the development takes place. Combine all of the things that are defined as coastal resources with all of the findings that we have to be able to make on every project before we issue a permit and think about the expertise necessary to make these determinations. Permit decisions include Major Permits, major modifications to existing permits, and permit denials. In 2006, we had 230. In general over the past 5-10 years we have been around the 175-200 range of permits issued per year. We haven't seen that much of drop off as a result of the economic downturn. We have seen a change in development type. During the time when the development was booming, we were seeing large numbers of large residential subdivisions, large marinas, new cities, and lots of commercial activity. With the economic downturn we are seeing individuals develop their properties for their own use. We are also seeing more Wildlife Resources Commission applications for boat ramps. We have seen some stimulus money projects. We have also seen an increase in beach nourishment and inlet relocation projects as local governments try to deal with the continued decrease in funding at the federal level for federally sponsored beach nourishment projects. In the first quarter of this year we have done 26 permits. Our average processing times over the last few years were higher than we need to be. We were in the 90-100 day range. We have tried some tweaks over time, but they weren't working. In early 2011 hearing the messages that were coming in and knowing the environment that we are living in now, we have implemented some more aggressive changes to the permit process to try to get the processing times down. In 2011 there was a 14-day improvement from the previous year. In the first quarter of this year there has been another 13-day improvement. Our desire is to keep doing everything we can to make this a priority and keep the downward trend going. A second part of improved customer service is not compromising the environmental protection that our process is about. We have talked to our resource agencies and they are receptive to trying to get us our comments quicker. We are also letting them know that if it is a simple

project then we may be moving forward without some agency comments if we are sure that the agency wouldn't have a problem with the project. In the past we have deferred in total to our resource agencies about their expertise. However, with the court case that was heard at the last meeting it has reiterated that we have to consider the other agency comments, but it is DCM's assessment of the validity and the logic of the objections as well as any additional information requested. This has helped take days off of the permit processing clock. There are also built in benefits to the CAMA Major Permit process. Our application process also serves as applications for four other permit programs at the state and federal level in total and three others partially. This can result in a significant time and cost savings to the applicant. DCM collects fees for both the CAMA permit and the DWQ Certification permit jointly. The collection is usually a cost savings to the applicant over what it would be if they had to pay two separate fees. DCM staff guidance to applicants is a critical part of what we do throughout the process. We also coordinate the application with local governments to ensure that the project meets zoning requirements and other enforceable policies of the local government.

Compliance and Tiered Enforcement (CRC 12-18)

Roy Brownlow

Roy Brownlow, DCM Compliance/Enforcement Coordinator, stated the Regulatory Reform Act became law on July 25, 2011. It directed the Secretary of DENR to develop a uniform policy for notification of deficiencies and violations of all the regulatory programs within the Department. Under the Act the Secretary was required to report on the development of a tiered enforcement policy to ensure that the Department's enforcement response is consistent with the type of violation and scale of environmental impacts. The Department's report was submitted to the Joint Select Regulatory Reform Committee on October 1, 2011 and included the Division's policy for implementing DENR's three tiered approach to enforcement. Pursuant to the Act the new policy became effective on February 1, 2012. Tiered enforcement is really nothing new to DCM. We have always had an approach of fair but firm enforcement. In 1985, the CRC approved an informal enforcement policy for minor development violations. We have incorporated that enforcement process into the new tiered policy. In 1989, the Director issued authority to District Managers to issue proposed civil penalty assessments. This streamlines and expedites the enforcement process. In 2007, we added four new compliance positions for enhanced monitoring as a result of CHPP. This has been successful in being proactive in preventing violations before they occur. NCGS 113A-126(d)(4) provides the eight criteria that the CRC shall consider when establishing a civil penalty. This is the same criteria that we use in assessing the appropriate level of enforcement for the nature of the violation. We give special consideration to the degree and extent of harm, duration and gravity, the effect on water quality, resources or public trust uses, willful and intentional violations and the prior record of the violator. DCM enforcement tiers are tailored as necessary to address the specific circumstances of a violation. Tier 1 is the least significant and Tier 3 may need to issue an injunction or a notice of continuing violation. Tier 2 and 3 both issue civil penalties. DCM's penalty matrix that the CRC approved in 2008 already follows this tiered level of enforcement. Tier 1 violations are issued a cease and desist or warning letter. For minor development it has to be a permissible offense. This would be development that could have received a permit if applied for prior to the work being complete. The work must still be in progress. The violator must not have had any previous violations. For major development violations, as long as it could have been issued a General Permit, the work is still in progress, the violator has not had any previous violations, and does not involve dredge and fill activity in estuarine or public trust waters or coastal wetlands. Any other violations that are de minimis in degree or harm to coastal resources would be a Tier 1 violation. While there is no civil penalty

associated with Tier 1 violations, they are assigned a case number and it will be on record. For Tier 2 violations the respondent will receive a notice of violation with the minimum amount of civil penalty under minor development violations. It has to be a permissible offense, the work is complete, and there have been no previous CAMA violations. For Tier 2 major development violations the work has to be permissible under a General or Major Permit, the work must be complete, there cannot be any previous CAMA violations, and the violation cannot involve any serious or significant dredge and fill activity in estuarine or public trust waters or coastal wetlands. Non-permissible minor/major development but resources are recoverable and restored to pre-development condition can be issued the minimum civil penalty. Tier 3 violations are continuing minor and major violations due to failure or refusal to restore or bring the development into compliance. Sometimes we have to seek an injunction to get them to restore. This usually results in a higher civil penalty. These violations are willful and intentional in nature. The violations involve significant, unauthorized dredge and fill activity within estuarine or public trust waters or coastal wetlands. If the respondent has previous CAMA violations then additional penalties are automatically tacked on. There are also situations where the violation is of such a degree, gravity or duration that significant environmental harm has been documented.

Land Use Planning Process

7B Guidelines Review – Update (CRC 12-19)

John Thayer

John Thayer, DCM AICP Manager, stated the current 7B rules became effective in August 2002. At that time the 7B guidelines were totally rewritten. CAMA calls for the CRC to review its rules every five years. Historically that has meant that there are amendments to the rules and parallel to our grant program there were another round of land use plan updates. This review effort is based on CAMA's requirement. The review was delayed for several years due to ensuring that most of the land use plans were completed rather than review the rules at the same time that the plans were in progress. The CRC's committee is made up of three CRC members and four CRAC members. Frank Rush chairs this committee. The committee has met about seven times and has reviewed the rules. At the beginning of the review process there were several assumptions. The first was that there weren't any major changes that were necessary and it would be mostly clarifications. The one exception was the possible consideration of state initiatives. There was a presumption at that time that there might be some rule work by the Commission dealing with subjects like the BIMP, working waterfronts, on-shore and off-shore wind machines, stormwater rules, estuarine shoreline mapping, and sea level rise. Additionally the assumption was that most of the issues would be addressed in a separate technical manual that helps assists the consultants and communities with updating the land use plan. When we adopted the 2002 rules, parallel to that a technical manual was prepared. Unfortunately there were a lot of gaps in the technical manual. The existing 7B guidelines do not have any definitions. One of the things that is being considered is adding a series of definitions relative to the terms that are used in the rule. Another area is public access. One of the soft spots in the planning effort by local governments is getting existing access sites to be identified and inventoried. There is also the question of access opportunities that are quasi-public or commercial in nature. There is a feeling that somehow that needs to be recognized in the land use plan process because public access isn't simply a facility that's owned, operated and managed by the governmental agency, but sometimes marinas or other facilities serve that purpose. We are trying to include the need to look at the historic and traditional access locations that aren't controlled by a governmental agency. 7B changed the most in the natural hazards area. We developed software to do a land suitability analysis. Most of the local hazard mitigation plans are

not pre-planning documents from a land use planning standpoint. Their emphasis seems to be more on post-disaster and response. Hazards are not just natural. It is also chemical storage areas and waste sites. The existing rules are silent to military interest areas. There has been some discussion on putting in language dealing with federal consistencies. We forward policy to OCRM. If they accept it then it can be used in the consistency determinations. There is an orphan paragraph in the rule that has to do with analysis. We want to clarify this and provide its own subsection. The Committee has not discussed when the plans should be updated. The current rule says within six years of the effective date of the rule the local plan is required to be updated. I know the committee would like to get closure and this will hopefully happen in one or two meetings. Then we could come to the CRC to move forward.

Land Use Planning Future Direction

Braxton Davis

Braxton Davis, DCM Director, stated the State Coastal Management programs that I have seen and worked with that have strong connections with local governments are some of the most successful and stronger coastal programs in the country. In CAMA the opening findings talk about the importance of partnering with local governments and it lays out the framework for the Minor Permit program and the land use planning program. It is a fundamental part of the philosophy of CAMA. One of the first things I wanted to do was get out and meet with the local governments. I have been more successful in meeting with beachfront communities, but I look forward to getting to all 20 coastal counties. During those meetings I have tried to emphasize the feeling amongst staff that we want to work with local communities in a supportive and cooperative way. The LPO program is the front line of the CAMA permitting process. We want to strengthen that program and support them. We also want to support the CRAC. We want to make sure they have the support to meet and get the staff support that they need. We have been talking about the future of the land use planning program. It is a good time to think about re-envisioning the future of the program as a core part of CAMA. We want to make sure the 7B review committee has a chance to finish its analysis. We also want to develop an internal analysis on plan contents and formats in the coastal communities. We would like to do some listening sessions later this fall to meet with communities and talk about how useful the planning process has been and what kind of technical assistance we can offer. We have an umbrella permitting process. What if we had an umbrella planning process? Local governments are under a number of planning requirements. There may be opportunities to blend them into our assistance on the local CAMA plan development.

CRC Rule Development

Status of Proposed Rules

Mike Lopazanski

Mike Lopazanski stated some changes were made to the APA last year and have had a dramatic impact on the speed at which we can process rules. These changes have added a substantial amount of time. Staff has been presenting fiscal analyses for the CRC's consideration and approval which is a new part of the process. We have always done fiscal analyses, but it was more of an internal process between the Division and the Department. Now the CRC is part of the process. It is then submitted to OSBM for their review and approval. Another change is that the fiscal analysis is also part of the public hearing. This will be another new step in the process. OSBM is adding a substantial amount of time to moving rules forward. They are looking at the analysis in economic terms, but also looking at the adherence to the rule development principles. OSBM has added approximately five to seven months on top of the normal rulemaking time. What was a six to eight

month process is now taking a year to a year and a half in some cases. The amount of detail that staff is required to incorporate into the fiscal analysis is dramatically increased. Something like extending the amount of time for sandbag permits would have been simple, but it took four months to negotiate the fiscal analysis with OSBM. The erosion rate report was approved by the CRC for public hearing well over a year ago, but we spent two months developing the fiscal analysis. Since that time we have spent an additional five months refining it with OSBM. The threshold has been lowered for a substantial economic impact to \$500,000.00 for any 12 month period. This is a low trigger. When you hit that threshold there are other requirements that come into play. We have to come up with alternatives to the rule and this is where we are with the sediment criteria rule.

The sandbag rules have received approval from OSBM to notice for public hearing. We have been holding back on those until we have further discussions on sandbags in case there may be additional changes. The erosion rates were approved by OSBM and we are scheduling public hearings in each of the eight oceanfront counties. The technical standards for beachfill projects rule is considered to have substantial economic impact even though it is a savings. Since we have crossed the threshold with the sediment criteria we have to develop alternatives to the rule language for the fiscal analysis. We made some changes to the ocean erodible area and we are still working through the fiscal analysis with the Department.

**Reconsideration of 15A NCAC 07K .0214 –
Installation & Maintenance of Regulatory Signs
(CRC 12-17)
Mike Lopazanski**

Mike Lopazanski stated staff suggested to the CRC that an exemption should be created for these types of structures. It was felt that the use of regulatory or informational signs occurred on a customary and regular basis and that there is little or no resource impact. Since that time there have been changes to the APA and Executive Order 70 was issued. The APA states that the following principles shall guide the drafting, adoption, modification and review of any rules and regulations.

The rule shall only be adopted when required by federal or state law or deemed necessary by the agency to serve the public interest. Rules shall not impose undue burden on those persons or entities that must comply with the rules. Rules shall be clearly written, relevant and up to date. Rules should be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall cite this information in support of regulatory proposals. Rules shall be designed to achieve their regulatory objective.

We have reconsidered the necessity of 7K .0214 and are asking the CRC to reconsider the proposal and withdraw the rule.

Ed Mitchell made a motion to withdraw 7K .0214. Renee Cahoon seconded the motion. The motion passed unanimously (Webster, Mitchell, Wynns, Weld, Shepard, Carter, Cahoon, Elam)(Simmons, Peele, Old absent for vote).

Estuarine Shorelines

Living Shorelines – Departmental Coordination Efforts (CRC 12-20)

Braxton Davis

Braxton Davis stated a lot of work has been done on the issue of advancing marsh sills and other alternatives to vertical shoreline stabilization structures. There is a lot to build on. At DCM refinements to the General Permit are under development. There have been training courses and an estuarine shoreline stabilization guide for property owners has been developed. An inter-agency assessment was recently completed of permitted marsh sills. The Division of Marine Fisheries is also undertaking a number of efforts and has been an active partner. Based on continuing feedback from partners, Commissioners, CHPP Steering Committee and others, the Director of DMF and I sat down to talk about what else we could be doing to advance this concept. We asked staff to come up with a proposal to take to the Department. The Department has adopted this new strategy. There are six main tenants of this strategy. The first is to work with the CRC to look at the marsh sills General Permit and look at ways to streamline it and eliminate conditions that require other Divisions to review individual applications. We have worked out a good compromise with DMF and DWQ and these two Divisions will not require an individual review of each application. This will streamline the process within DENR. We do not recommend moving forward with rulemaking at this time until we work with DOA on their easement requirements and work with some other partners to look at the conditions on the General Permit. The second tenant is investigating the development and implementation of a comprehensive education and training effort on the benefits of alternative shoreline stabilization approaches. The third piece is looking at financial incentives and cost reductions. The fourth is to support continued staff advocacy through enhanced information, training and outreach materials on the benefits of these alternatives. We need a pre and post-hurricane study to make sure we have good baseline information on bulkheads and marsh sills and other stabilization approaches and understand how they perform under different stresses. The final piece is continuing to map, monitor, and research coastal shoreline stabilization in North Carolina. We have had a lot of ongoing investments in mapping. Our strategy was approved by the Department and the next steps are to reprogram some grant funds within the Division from NOAA to partially support staff in implementing these actions. We have established a DENR working group which will work together with partners. They have begun developing specific actions under the strategy as an implementation plan.

Mapping – County Comparison

Kevin McVerry

Kevin McVerry, DCM GIS technician, stated I have been working on this project for about two years. Today I will explore the statistics and additional data that can be created from the shoreline by providing a comparison of three counties in North Carolina. In early 2007, DCM was interested in establishing a complete estuarine shoreline for North Carolina that can be used as a basis for examining policy language within North Carolina's ocean system and estuarine areas of environmental concern. DCM designed and created a methodology for digitizing the shoreline. Digitizing was done by DCM staff as well as faculty and students at East Carolina University who were contracted to help with the digitizing process. The last time the project was presented to the CRC was in August 2011 and at that time we still have three counties to digitize and four counties that needed to go through the QA/QC process. Carteret County was the final county to be digitized and it was completed at the beginning of this month. Over the past 10 months we have met with DCM field representatives to identify areas of the shoreline that were unable to be identified through aerial imagery. We now know that North Carolina has almost 13,000 miles of shoreline.

We digitize at a rate of about five miles of shoreline per hour. That is 2,600 hours of digitizing just to capture the shoreline. That doesn't include the time it took to capture the 26,648 bridges, piers and docks that exist in North Carolina. I was asked to do a three county comparison. So in deciding which county to choose, I wanted to get a geographically spread out region of North Carolina. Another important factor was choosing ones that were digitized using the same aerial imagery from the same year so the shorelines were subject to similar processes and it eliminated the possibility of major storm events having an effect on the shoreline and shoreline structures. Currituck, Pamlico and Brunswick Counties met the criteria and provided a range of distinct regions that exist in North Carolina. Currituck provides a look at the unique northern outer banks, Pamlico is an example of the Piedmont draining region of North Carolina where riverine waters meet the vast estuarine waters, and Brunswick looks at the southern area of our state that differs from the northern region both in geology and barrier island type. The final delineation process consists of three distinct files. The first is the linear estuarine shoreline which was categorized into five unique shoreline types. These are sediment bank, marsh, swamp forest, modified and miscellaneous. Miscellaneous shorelines are used to represent connecting lines between adjacent county boundaries and for the 20 foot upstream extent of estuarine water bodies. The next file we capture was the shoreline stabilization structures. Structures along the shoreline in addition to what those located waterward and landward of the shoreline were captured. Finally the third file was for structures over water (bridges, piers and docks).

The data for the three counties shows marsh dominates the shoreline for all three counties making up over 50% of the total shoreline. Sediment bank is the second most dominant for Brunswick County with 124 miles and for Currituck County with 83 miles. In Pamlico County swamp forest is the second most dominant shoreline type making up 56 miles of the total shoreline. Currituck County has the greatest amount of modified shoreline followed by Pamlico and then Brunswick County. DCM and other stakeholders are very interested in the amount of shoreline that has been modified and even though state permitting of shoreline structures began in the 1970s, we never knew how much of the shoreline has been modified. Out of the nearly 13,000 miles of shoreline that exists in North Carolina, just over 600 (or about 4%) miles have been modified in some way with some type of erosion control structure. DCM wanted to analyze if there was a preferred method of shoreline stabilization for each county. The preferred method for all three counties is dominated by bulkheads. Currituck County has the most stabilized shoreline, but which county has the most bridges, piers and docks? Structures in this category are recreational or commercial in use, provide direct access to the water and have a discernable length and width. Brunswick County greatly exceeds the other two counties and has well over 100 acres of structures. We also analyzed the average size of piers and docks for each county. In Brunswick County the mean size was just over 1,000 square feet compared to 750 square feet in Pamlico County and 450 square feet in Currituck County. Currituck County has the most modified shoreline, but had the least amount of shoreline structures. DCM has created a list of questions that we could answer with the shoreline data. We focused on areas that provide biological, economical, and aesthetic importance to our coastal region. How much of North Carolina's public trust waters are covered by structures? We bisected the structures with the linear shoreline so we could calculate the amount of structure that is over land and the amount that is over water. For Brunswick County 95% of the structures are over water, for Currituck County it was 91% and Pamlico County had 86% of their structures over water. We are going to continue contracting with East Carolina University to help us with our analysis. One of the examples will be looking at hot spots in the county. A hot spot is where a large amount of structures exist. This tool looks at the length of the structure and how close it is to other modified shorelines. Anyone can go to DCM's website and view the data in an interactive mapping program. The data has already been circulated to some interested parties.

PUBLIC INPUT AND COMMENT

No comments were received.

CLOSED SESSION

Joan Weld made a motion that the Commission go into closed session pursuant to NCGS 143-318.11(a)(3) to consider and give instructions to its attorney concerning litigation filed in the New Hanover County Superior Court as 09 CVS 2761 The Riggings Homeowners, Inc. v. CRC. Veronica Carter seconded the motion. The motion passed unanimously (Webster, Mitchell, Simmons, Wynns, Peele, Weld, Shepard, Carter, Old, Cahoon, Elam).

OLD/NEW BUSINESS

Charles Elam asked if the CRC could provide recognition to past Commissioners that have provided valuable expertise to the CRC. Chairman Emory said we could look at who has left within the past four years or so and see if there is anyone we need to recognize.

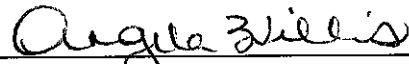
Chairman Emory stated the next meeting is scheduled for August 29-30, 2012 in Sunset Beach.

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary