

**NC COASTAL RESOURCES COMMISSION (CRC)
SEPTEMBER 21-22, 2006
HILTON RIVERSIDE
WILMINGTON, NC**

Present CRC Members

Courtney Hackney, Chairman
Doug Langford, Vice Chair

Charles Elam
Renee Cahoon
Bob Emory
Jim Leutze *(arrived just prior to Variances)*
Chuck Bisette
Joseph Gore
Jerry Old

Bill Peele
Wayland Sermons *(arrived just prior to B&D Variance)*
Melvin Shepard
Joan Weld
Bob Wilson
Lee Wynns

Present Coastal Resources Advisory Council Members (CRAC)

Bill Morrison, Chair
Dara Royal, Co-Chair

Maximilian Merrill
Renee Gledhill-Earley
Judy Hills
Bob Shupe
Frank Alexander
David Stanley (Don Yousey)
Travis Marshall
Harry Simmons
Spencer Rogers
Joe Lassiter
Deborah Anderson
Penny Tysinger
Dave Weaver
Wayne Mobley
Webb Fuller

Mike Street
Al Hodge
Bill Gardner
Gary Mercer
Steve Underwood
Ginger Webster
Lester Simpson
Joe Beck
Ray Sturza
Traci White
Stephen Sizemore
Michael Moore
Bert Banks (Eddy Davis)
Vagn Hansen (Lee Padrick)

Present Attorney General's Office Members

Jill Hickey
Allen Jernigan
Merrie Jo Alcoke
Christine Goebel

CALL TO ORDER/ROLL CALL

Chairman Courtney Hackney called the meeting to order and reminded Commissioners the need to state any conflicts.

Stephanie Bowling called the roll. All Commission members were present.

MINUTES

Jerry Old made a motion, seconded by Lee Wynns to accept the minutes with one correction to show Mr. Old as present during one of the votes. The motion passed with a vote of 11 in favor (Elam, Cahoon, Emory, Bissette, Gore, Langford, Old, Peele, Shepard, Weld, Wynns), and 1 abstention (Wilson).

EXECUTIVE SECRETARY'S REPORT

Charles Jones welcomed our newest commissioner, Wayland Sermons, to the CRC. Mr. Sermons is our new Sports Fishing representative, replacing Larry Pittman, whose term on the CRC expired in June. He is an attorney from Washington, NC, who has represented the towns of Bath and Chocowinity.

Mr. Jones then gave a brief update on the following:

Introductions

Mr. Jones welcomed visitors starting with Michael Voiland, the new executive director for NC Sea Grant. Mr. Voiland took the helm of this important organization in July of this year, and we in Coastal Management are very pleased to be working with him.

Mr. Jones also welcomed Sarah van der Schalie, who will be working with us as NOAA's coastal management specialist for North Carolina. Sarah is visiting our staff this week to learn more about our programs and to meet our staff. He also welcomed Bill O'Beirne, NOAA's Atlantic Coast Regional Team Leader, and Allison Allen, with NOAA's Center for Operational Oceanographic Products and Services.

Waterfront Access Committee

Mr. Jones stated that he and Courtney Hackney will be serving on a special legislative committee to study waterfront access in North Carolina.

Other members include Rep. William Wainwright and Senator Charlie Albertson, co-chairs of the Joint Legislative Commission on Seafood and Aquaculture; Michael Voiland, executive director of NC Sea Grant; Mac Currin, chair of the Marine Fisheries Commission; Gordon Myers, division chief, Wildlife Resources Commission; Brian Chevront, federal aid coordinator for the Division of Marine Fisheries; Neal Lewis, director of New Hanover County Parks and Recreation; and several other members representing different coastal governments.

The committee will be charged with studying incentives, zoning regulations, shoreline development trends and tools that other jurisdictions have used to facilitate access to waterfronts.

The legislation calls for the committee to make an interim report to the Joint Legislative Commission on Seafood and Aquaculture, the Marine Fisheries Commission and the Coastal Resources Commission by Jan. 15. The committee's first meeting will be Sept. 26 at the Legislative Office Building in Raleigh.

CAMA Civil Penalties increased

The General Assembly has passed legislation that will allow the division to increase the maximum amount it can assess for civil penalties for CAMA violations. This is the first increase in CAMA penalties since 1983.

The legislation increases the maximum penalties to \$1,000 for minor permit violations and \$10,000 for major permit violations beginning Dec. 1. It also allows DCM to recoup some of the investigative costs associated with violations. The legislation also allows us to weigh how much money the violator saved by noncompliance as a factor in determining the amount of the fine.

CHPP legislation

The General Assembly has enacted legislation and made appropriations to support implementation of DENR's Coastal Habitat Protection Plan. Legislation included an increase in CAMA maximum civil penalties; authorization and funding for four new CAMA compliance positions; and funds for mapping critical coastal fisheries habitat.

CELCP

The U.S. Senate has recommended funding for two land purchases in North Carolina under the Coastal and Estuarine Land Conservation Program. If approved in the federal budget, the state will receive matching grants totaling approximately \$3.4 million to acquire parcels at New Topsail Inlet and at Ship Point in northern Tyrrell County. DCM is now seeking grant proposals for fiscal year 2008. Up to three applications will be accepted, for up to \$3 million each. Applications will be due to DCM by October 6th. Please speak with Tancred Miller if you have ideas for a funding proposal.

DCM organizational changes

We have made a few changes to DCM's organization over the last couple of months: Rebecca Ellin, manager of our Coastal Reserve Program, will now report directly to me.

Also, DCM's four DOT-funded position will now report to Doug Huggett, manager of major permits. This will provide an opportunity for increased consistency with DOT permitting activity.

State of the Beach report

The nonprofit Surfrider Foundation has once again given North Carolina high marks in its 2006 State of the Beach report. In particular, the report praises Coastal Management's online information, especially our web-based guide to public beach and waterfront access areas.

Workshop

The Rachel Carson staff will conduct a workshop on stormwater management and sustainable development on Nov. 1 at The History Place in Morehead City. This workshop, based on results from a needs assessment of Carteret County town planning boards, aims to provide participants with up-to-date information on ways to manage stormwater.

Big Sweep events at coastal reserves

Four of our Coastal Reserve sites will be participating in North Carolina's Big Sweep cleanup Oct. 7 this year. The Rachel Carson reserve will conduct its cleanup on Saturday, Sept. 30, in order to avoid interfering with the NC Seafood Festival on Oct. 7. N.C. Big Sweep is a grassroots nonprofit organization whose mission is litter-free watersheds. If anyone is interested in participating, please contact Rebecca Ellin in DCM's Morehead City office.

Offshore Drilling Bills

A group of Senate Republicans has proposed ending the stalemate over offshore drilling legislation by tacking several House-passed provisions onto the defense authorization bill or another measure, if the House agrees to clear the narrower Senate drilling bill. The new strategy represents an attempt to find middle ground between the House bill, which would overhaul coastal energy policies in an effort to promote offshore drilling nationwide, and a Senate version that focuses specifically on a small section in the eastern Gulf of Mexico.

It was reported that two proposals were raised during a meeting that took place earlier this week. The proposals include: 1) language to allow Virginia to pursue offshore energy development and 2) a provision that seeks to recoup an estimated \$10 billion in royalties being lost on a series of deep-water leases issued without proper price thresholds in the late 1990s. The fiscal 2007 National Defense Authorization may be one possible for the House provisions. It is unclear if the House and Senate will be able to reach agreement on the proposed compromise.

Mike Lopazanski will have an update on these issues as they relate to North Carolina during tomorrow's presentations.

Staff News

Congratulations to **Bonnie Divito Bendell**, coastal engineer in the Raleigh Office, on her Sept. 3rd marriage to Jay Bendell.

And congratulations to **Shery Keel**, permits and consistency clerk in the Morehead City Office, and her husband Chris, on the birth of their daughter Molly, Aug. 3rd.

Frank Jennings has accepted the position of District Manager for the Elizabeth City office. Frank brings over eleven years experience as a Field Representative with the Division of Coastal Management. Frank's familiarity with the area will help his transition to this most challenging position.

Wanda Gooden, field representative in our Elizabeth City, will be leaving DCM in October for a position with the Division of Water Quality in Raleigh. Wanda is currently on an extended tour of duty with the U.S. Air Force.

Mr. Jones extended condolences to the family of former CRC Chairman Gene Tomlinson, on the death of his wife, Leigh Tomlinson, who passed away on August 29 after extended illness and to Jerry Old, on the death of his mother.

VARIANCE REQUESTS

(Jim Leutze stated for the record his attendance and he poses no conflicts)

Merrie Jo Alcoke stated the Petitioner owns a vacant oceanfront lot in Oak Island. The property is located in an area subject to a large-scale spoil deposition project (933 Project), therefore the applicable vegetation line used for setbacks is the line that existed prior to the 933 project. The local permit officer for Oak Island denied Petitioner's CAMA minor permit application because the proposed development does not meet the 60-foot setback from the pre-project vegetation line. The Petitioner therefore seeks a variance from 15A NCAC 7H .0305(f) that requires use of the pre-project vegetation line.

Ms. Alcoke stated that Staff agrees with Petitioner that strict application of the applicable development rules, standards, or orders issued by the CRC cause the Petitioner unnecessary hardship. She stated that Petitioner purchased the property in 1981, prior to the 2001-2002 spoil deposition project and prior to the CRC's 1996 adoption of the rule requiring use of a Pre-project Vegetation Line after the project is complete. Ms. Alcoke stated that in this case, application of the Pre-project line creates a negative building envelope. Therefore Petitioner cannot construct a residence that complies with the CRC's minimum oceanfront setback. She stated Petitioner couldn't therefore make a reasonable and beneficial use of the property.

Ms. Alcoke stated that staff agrees that the hardship results from conditions peculiar to the property, though not for the same reasons articulated by Petitioner. She stated that hardships result from the location of the property within the bounds of the 933 Project. The CRC's rules provide that a project shall be considered large scale when it places more than a total volume of 200,000 cubic yards of sand at an average ration of more than 50 cubic yards of sand per linear foot of shoreline. Ms. Alcoke stated that according to figures provided by the Corps of Engineers, the project only deposited 50.08 cubic yards of spoil per linear foot of shoreline within the project boundary. She stated the amount deposited was only marginally greater than the threshold of more than 50 cubic yards in order to be considered a large-scale project. Ms. Alcoke stated that the hardships in this case result from the location of the property within the bounds of this marginal 933 Project, which was considered large scale by only eight one-hundredths of a cubic yard.

Ms. Alcoke stated that staff agrees that the hardships do not result from the actions taken by Petitioner.

Ms. Alcoke stated that staff agrees with Petitioner, only upon certain conditions, that the variance request would be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the CRC. She stated that the project would meet the minimum 60-foot setback from the first line of stable natural vegetation on the beach today. Ms. Alcoke stated the CRC should grant relief from use of the Pre project Vegetation Line in this case because the facts show that the project only marginally qualifies as a large-scale project under the current rules. She stated staff believes that it would be consistent with the CRC's ocean hazard rules to grant a variance that would allow Petitioner to use the March 7, 2006 vegetation line as shown on his 2006 site plan. Ms. Alcoke stated this would provide a building envelope of approximately 14-15 feet deep, which is more consistent with the CRC's rules than Petitioner's proposed residence of 35 feet deep. Ms. Alcoke informed the CRC that in the Petitioner's permit application he stated he just wanted a buildable lot and that he would consent to any acceptable plan. Thus, a variance conditioned in this manner would still meet the Petitioner's request. Ms. Alcoke stated that locating the foundation of the residence 60 feet landward of the March 7, 2006 vegetation

line would secure public safety and welfare because the structure would meet the CRC's minimum setback and would be located behind the frontal dune, providing adequate protection for the structure while not impacting the public beach. She stated this would also preserve substantial justice because Petitioner would be able to make reasonable and beneficial use of the property with certain limitations that go toward the CRC's primary objective in the ocean hazard area, which is to protect life and property.

Melvin Shepard made a motion, seconded by Jerry Old to support the staff's position that strict application of the rules, standards, or orders issued by the CRC does indeed cause the Petitioner an unnecessary hardship. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Peele, Old, Shepard, Weld, Wilson, Wynns).

Jerry Old made a motion seconded by Jim Leutze to support the staff's position that the hardship results from conditions peculiar to the Petitioner's property. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Peele, Old, Shepard, Weld, Wilson, Wynns).

Jerry Old made a motion, seconded by Joan Weld to support the staff's position that the hardships do not result from actions taken by the Petitioner. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Peele, Old, Shepard, Weld, Wilson, Wynns).

Melvin Shepard made a motion, seconded by Joseph Gore to support the staff's position that the variance request would be consistent with the spirit, purpose and intent of the rules, standards or orders, secure public safety and welfare and preserve substantial justice on the condition that the variance would be granted using the March 7, 2006 vegetation line as shown on the 2006 site plan. The motion passed with a vote of 12 in favor (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Peele, Old, Shepard, Weld, Wynns) and 1 opposed (Wilson).

The Variance Request was granted by a majority vote.

Bobby Norton – Brunswick County (CRC-VR-06-21)

Ms. Alcoke stated the Petitioner applied for a CAMA permit to replace a family fish camp/shack over the marsh in Lockwood Folly River. She stated the project is inconsistent with the CRC's use standards for estuarine waters, public trust areas and coastal wetlands areas of environmental concern (AEC), because only water dependent uses are allowed in these AEC's. Ms. Alcoke stated that Staff determined that because so much time had passed since the original structure was in tact, the development could not be approved under the CRC's rule that allows replacement of non-conforming structures. The Petitioner therefore seeks a variance from 15A NCAC 7H .0208(a)(1) and 15A NCAC 7J .0211 in order to rebuild the fish camp similar to the one that was previously there.

Ms. Alcoke stated that Staff does not agree that strict application of the applicable development rules, standards, or orders issued by the CRC cause an unnecessary hardship in this case. Ms.

Alcoke stated that the structure has not been habitable for at least 10 years and aerial photography and site visits have confirmed that the structure has essentially been non-existent since the early 2000's. She stated it is difficult to now agree that Petitioner faces an unnecessary hardship by no longer having its use. Ms. Alcoke stated that because the property consists entirely of coastal wetlands and the area of proposed development is below the normal high water line, construction of a structure is not a reasonable use of this property. She stated that reasonable use of this type of property includes only water-dependent uses that are compatible with the setting. Water dependent uses are those that require water access and cannot function elsewhere. Ms. Alcoke stated that in this case Petitioner could potentially make use of the property by constructing a pier and/or a simple duck blind. Ms. Alcoke also stated that the CRC's rules list types of uses that are not appropriate in this AEC, to include residences. She stated that although this structure is not a residence, it is similar in that it includes a roof, finished walls, a porch and windows. Ms. Alcoke stated that this is not reasonable use of the property in general. She stated that any hardship suffered by Petitioner is a necessary one because of the importance of maintaining the integrity and function of the marsh. Ms. Alcoke noted that conservation of existing coastal wetlands is given the highest priority by the CRC's rules.

Ms. Alcoke stated that Staff disagrees that any hardships are a result from conditions peculiar to the property. The entire property is intertidal marsh that is very typical in location, size and topography.

Ms. Alcoke stated that the alleged hardship does result from Petitioner's failure to undertake minor repairs over the years that may have kept the structure in tact.

Ms. Alcoke stated that Staff disagrees that the variance would be consistent with the spirit, purpose and intent of the CRC's general use standards for the AEC would be adversely impacted in this case. She stated that the proposed use would not conserve existing coastal wetlands in their natural state as the proposed structure includes shading of 280 sq. feet of coastal wetlands. Ms. Alcoke also stated that the proposed structure would not safeguard and perpetuate the biological values of the estuarine waters. Ms. Alcoke stated the variance would not secure public safety and welfare because the proposed structure is below normal high water; it essentially substitutes an individual's rights for the public's rights in this area. She stated that this proposed structure could potentially cause additional impacts on the AEC through human use of the structure. Ms. Alcoke stated that the proposed structure would not preserve substantial justice because the alleged hardship of not being able to reconstruct a historical structure that was once located in the marsh is a "hardship" shared by many on our coast. She stated that new regulations have been put in place to prohibit this type of activity.

Jerry Old made a motion, seconded by Melvin Shepard to support the staff's position that strict application of the rules, standards, or orders issued by the CRC does not cause the Petitioner an unnecessary hardship. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Peele, Old, Shepard, Weld, Wilson, Wynns).

Doug Langford made a motion, seconded by Joseph Gore to support the staff's position that the alleged hardship does not result from conditions peculiar to the Petitioner's property. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Peele, Old, Shepard, Weld, Wilson, Wynns).

Jerry Old made a motion, seconded by Renee Cahoon to support the staff's position that the hardship does result from actions taken by the Petitioner. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Peele, Old, Shepard, Weld, Wilson, Wynns).

Jerry Old made a motion, seconded by Doug Langford to support the staff's position that the variance request would not be consistent with the spirit, purpose and intent of the rules, standards or orders, secure public safety and welfare and preserve substantial justice. The motion passed with a vote of 12 in favor (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Peele, Old, Shepard, Weld, Wynns) and 1 opposed (Wilson).

The Variance Request was denied by a majority vote.

B&D Investments, LLC – New Hanover County (CRC-VR-06-22)

Ms. Alcoke stated the Petitioner owns a lot that is 36.92 feet wide and located in a slight bend in the shoreline of Banks Channel. She stated the Petitioner desires to construct a pier but cannot meet the 15-foot setback required from the adjacent property owner's area of riparian access. The Petitioner therefore seeks a variance from 15A NCAC 7H .1205(o) in order to construct a pier. Ms. Alcoke stated that this is the second variance request filed by the Petitioner after re-designing the proposed structure.

Ms. Alcoke stated that Staff agrees that application of the applicable development rules, standards or orders issued by the CRC do indeed cause the Petitioner unnecessary hardships. She stated that the combination of the Town's pier construction setbacks together with the CRC's required setbacks from the adjacent property owners' areas of riparian access causes Petitioner a hardship in this case. Ms. Alcoke stated that it is not common for a local government to have its own requirements regarding the placement of docks and piers in the water. She stated the Town's requirements exceed the CRC's rules, which do not include a structural setback. Ms. Alcoke stated that the hardship exists due to the Petitioner having to meet two setbacks, and also is affected by the neighboring pier encroaching into the Petitioner's area of riparian access.

Ms. Alcoke stated the Staff agrees that a hardship results from conditions peculiar to the petitioner's property because the Petitioner has only 37 linear feet of shoreline. She stated the hardship of not being able to construct a pier on this lot is caused in part by the size and trapezoid shape of the Petitioner's lot, combined with its location on a slight bend in the shoreline.

Ms. Alcoke stated that Staff agrees that the hardships do not result from actions taken by the Petitioner.

Ms. Alcoke stated that Staff disagrees that the variance would be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the CRC. She stated the Petitioner's proposed pier is designed to minimize impacts to navigation in several ways. Nonetheless, the pier would still be located approximately 9 feet of the outermost portion of the neighboring pier and she has objected to the proposal. Ms. Alcoke stated that although the potential navigation problem is caused in part by the neighboring pier encroaching into Petitioner's riparian corridor, it is also caused by Petitioner's very narrow riparian corridor, which

presents limitations despite the Town's additional setbacks. Ms. Alcock stated the variance would not secure public safety and welfare due to the navigation issues. She stated that the public has the right to navigate among and between piers just as adjacent owners do, and a 9-foot separation between those waterward structures is insufficient for the navigating public. She stated the variance would not preserve substantial justice because construction of the pier, as proposed, would not create a just and equitable result for all parties.

Melvin Shepard made a motion, seconded by Joseph Gore to support the staff's position that strict application of the rules, standards, or orders issued by the CRC does cause the Petitioner an unnecessary hardship. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Sermons, Peele, Old, Shepard, Weld, Wilson, Wynns).

Melvin Shepard made a motion, seconded by Joan Weld to support the staff's position that the alleged hardship does result from conditions peculiar to the Petitioner's property. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Sermons, Peele, Old, Shepard, Weld, Wilson, Wynns).

Jerry Old made a motion, seconded by Melvin Shepard to support the staff's position that the hardship does not result from actions taken by the Petitioner. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Sermons, Peele, Old, Shepard, Weld, Wilson, Wynns).

Joan Weld made a motion, seconded by Jim Leutze to support the staff's position that the variance request would not be consistent with the spirit, purpose and intent of the rules, standards or orders, secure public safety and welfare and preserve substantial justice. The motion failed with a vote of 6 in favor (Leutze, Gore, Sermons, Shepard, Weld, Wilson) and 8 opposed (Elam, Cahoon, Emory, Bisette, Langford, Peele, Old, Wynns). Bob Emory made a motion, seconded by Renee Cahoon to support the Petitioner's position that the variance request would be consistent with the spirit, purpose and intent of the rules, standards or orders, issued by the Commission and that it does secure the public safety and welfare, and preserves substantial justice. The motion passed with a vote of 8 in favor (Elam, Cahoon, Emory, Bisette, Langford, Peele, Old, Wynns), and 6 opposed (Leutze, Gore, Sermons, Shepard, Weld, Wilson).

The Variance Request was granted by a majority vote.

Coral Bay, LLC – Carteret County (CRC-VR-06-23)

Christine Goebel stated the Petitioner proposed to build a new single-family residence on a vacant lot. She stated the proposed development is inconsistent with the CRC's 30-foot buffer rule, which requires that all new development be located a distance of 30-feet landward of the normal high water level. The Petitioner therefore seeks a variance from 15A NCAC 7H .0209(d)(10), in order to construct a single-family residence and parking pad as proposed.

Ms. Goebel stated that Staff disagrees that strict application of the applicable development rules, standards, or orders issued by the CRC cause the Petitioner unnecessary hardships. She stated that the lot is only marginally developable for a single-family residence based on the applicable NHW and wetlands delineations. Ms. Goebel stated that once the 30-foot buffer and the Town

setbacks are applied, an area of 592 square feet results. She stated that based on the current conditions of the lot, Petitioner should have no reasonable expectations that a single-family residence could be constructed on this marginal lot. Ms. Goebel stated that the Petitioner does have some value in the lot as it can be developed with boardwalks or decks in the buffer and the smaller 592 sq. foot area outside the buffer can be used for parking, a gazebo, or other small structures, serving the other lots within this subdivision. She stated the Petitioner therefore could make reasonable and beneficial use of the property and a hardship does not exist.

Ms. Goebel stated that Staff disagrees that alleged hardships result from conditions peculiar to the property. She stated that although the lot is subject to both a 30-foot buffer and setbacks required by the Town, this is not a unique situation, and is a condition shared by most coastal shoreline property in the state. Ms. Goebel stated though two sides of the property are adjacent to the shoreline and subject much of the lot to the buffer is not a peculiar condition. She also stated that much of the lot is covered with coastal and 404 wetlands, and that is certainly not peculiar.

Ms. Goebel stated that Staff believes that the hardships result from actions taken by Petitioner. She stated that the Petitioner is the developer of the Coral Bay Ridge Subdivision, and Petitioner with help from its agents, platted the lot itself. She stated that establishing small lots frequently causes future problems, as in this case. She stated that Petitioner's choice to fit as many lots into this subdivision as possible, risking an un-buildable lot if the MHW moved landward created its own hardship. Ms. Goebel stated that Petitioner further created its own hardship by proposing a single-family residence on a lot that, due to the way it was platted, cannot likely support a single-family residence.

Ms. Goebel stated that Staff disagrees that the variance would be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the CRC. She stated although the Petitioner proposed an engineered stormwater system, stormwater runoff protection is not the only purpose of the 30-foot buffer. She stated that covering most of the highground surface of one lot with impervious development would not follow the spirit, purpose and intent of the CRC's rules. Ms. Goebel stated that though the public welfare would be helped by the stormwater system, on balance, the public welfare would be better off to protect the 30 foot buffer from development so as to conserve and utilize the shoreline so as to maximize their benefits to the estuarine system and the people of NC. Ms. Goebel stated that substantial justice would not be preserved since there are many small lots similar to this one along the coast and simply addressing the stormwater retention function while ignoring the other important functions of the coastal shoreline does not appear to be wise management of the coastal area.

Melvin Shepard made a motion, seconded by Renee Cahoon to support staff's position that strict application of the rules, standards, or orders issued by the CRC does not cause the Petitioner an unnecessary hardship. The motion passed by with a vote of 12 in favor (Cahoon, Emory, Leutze, Bissette, Gore, Langford, Peele, Sermons, Shepard, Weld, Wilson, Wynns) and 2 opposed (Elam, Old).

Jim Leutze made a motion, seconded by Lee Wynns to support the staff's position that the alleged hardship does not result from conditions peculiar to the Petitioner's property. The motion passed by a vote of 13 in favor (Cahoon, Emory, Leutze, Bissette, Gore, Langford, Sermons, Peele, Old, Shepard, Weld, Wilson, Wynns) and 1 opposed (Elam).

Melvin Shepard made a motion, seconded by Joseph Gore to support the staff's position that the hardship does result from actions taken by the Petitioner. The motion passed by a vote of 10 in favor (Cahoon, Emory, Leutze, Bissette, Langford, Sermons, Shepard, Weld, Wilson, Wynns) and 4 opposed (Elam, Gore, Peele, Old).

Joan Weld made a motion, seconded by Jim Leutze to support the staff's position that the variance request would not be consistent with the spirit, purpose and intent of the rules, standards or orders, secure public safety and welfare and preserve substantial justice. The motion passed with a vote of 12 in favor (Cahoon, Emory, Leutze, Bissette, Gore, Langford, Sermons, Peele, Old, Shepard, Weld, Wynns) and 2 opposed (Elam, Wilson).

The Variance Request was denied by a majority vote.

Margaret Leneave – Brunswick County – (CRC-VR-06-24)

Ms. Goebel stated that the Petitioner proposed to build a single-family residence and 900 sq. feet impervious driveway on her vacant lot. She stated the Petitioner also proposed open decking within the buffer area of 303 sq. feet. She stated the proposed development is inconsistent with the CRC's 30-foot buffer rule and the local land use plan. The Petitioner seeks a variance from 15A NCAC 7H .0209(d)(10) to construct a single-family residence, and also requested a variance to allow the proposed 303 sq. feet of open decking.

Ms. Goebel stated that Staff disagrees that strict application of the applicable development rules, standards, or orders issued by the Commission cause the Petitioner unnecessary hardships. She stated that application of the buffer rule does not so severely limit development on the lot so as to render it an exceptional situation. She stated that instead the buffer rule limits the maximum use of the lot for Petitioner's desired purpose and design. Ms. Goebel noted that while applying the 30 foot buffer rule and other applicable setbacks yields a small building area and using the existing small house exception to the 30 foot buffer rule would allow a 1,200 sq. ft. footprint house. She stated that because Petitioner can make reasonable use of the property without a variance under an existing exception, there is no unnecessary hardship in this case.

Ms. Goebel stated that any alleged hardship does not result from conditions peculiar to the property. Although the lot is subject to 30-foot buffers on two sides due to its location, this feature is shared by a number of other lots in the Ocean Isle Beach area.

Ms. Goebel stated that Staff believes hardships are the result of actions taken by the Petitioner. She stated that though the property was purchased prior to the buffer rules being effective, any hardship is a result of the proposed design and use. She stated the Petitioner has chosen to seek a variance to build a large structure that does not meet the buffer rules instead of using the existing small house exception to the 30 foot buffer rule.

Ms. Goebel stated that Staff agrees the variance would be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the CRC, secure public safety and welfare, and preserve substantial justice. She stated that the Town requires that the Petitioner implement a stormwater management system and if the CRC feels this system would perform the same or similar function as the natural buffer, then Staff agrees that the variance would be consistent with the rules and secure public welfare. Ms. Goebel stated the variance would preserve substantial

justice because the CRC has granted similar variances to other lots in Ocean Isle Beach in the past.

Renee Cahoon made a motion, seconded by Jim Leutze to support the staff's position that strict application of the rules, standards, or orders issued by the CRC does not cause the Petitioner an unnecessary hardship. The motion passed by with a vote of 10 in favor (Cahoon, Leutze, Bisette, Gore, Sermons, Peele, Shepard, Weld, Wilson, Wynns) and 4 opposed (Elam, Emory, Langford, Old).

Bob Emory made a motion, seconded by Renee Cahoon to support the staff's position that the alleged hardship does not result from conditions peculiar to the Petitioner's property. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Sermons, Peele, Old, Shepard, Weld, Wilson, Wynns).

Jim Leutze made a motion, seconded by Joseph Gore to support the staff's position that the hardship does result from actions taken by the Petitioner. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Sermons, Peele, Old, Shepard, Weld, Wilson, Wynns).

Joan Weld made a motion, seconded by Melvin Shepard to oppose the Staff's position that the variance request would be consistent with the spirit, purpose and intent of the rules, standards or orders, secure public safety and welfare and preserve substantial justice. The motion failed with a vote of 6 in favor (Cahoon, Peele, Old, Shepard, Weld, Wynns) and 8 opposed (Elam, Emory, Leutze, Bisette, Gore, Langford, Sermons, Wilson). Bob Emory made a motion, seconded by Jim Leutze to support the staff's position that the variance request would be consistent with the spirit, purpose and intent of the rules, standards or orders, secure public safety and welfare and preserve substantial justice. The motion passed with a vote of 8 in favor (Elam, Emory, Leutze, Bisette, Gore, Langford, Sermons, Wilson) and 6 opposed (Cahoon, Peele, Old, Shepard, Weld, Wynns).

The Variance Request was denied by a majority vote.

Andy Simmons – Brunswick County (CRC-VR-06-25)

Ms. Goebel stated that Petitioner, proposed to dredge an upland basin and channel to the Cape Fear River and construct an elevated travel lift rail system, gravel apron area, a steel dolphin and boat wash-down area. She stated the basin and access channel would measure 1,150 sq. feet. Ms. Goebel stated the proposed development is inconsistent with the CRC's specific use standards for estuarine shorelines, which require that boat basins shall avoid areas that are designated as primary nursery areas by the Marine Fisheries Commission (MFC). Petitioner seeks a variance from 15A NCAC 7H .0208(b)(1) in order to dredge a basin and channel for the Cape Fear Boatworks.

Ms. Goebel stated Staff agrees that strict application of the applicable development rules, standards, or orders issued by the CRC cause the Petitioner unnecessary hardships. She stated that the proposed dredging for the water-dependant use is not allowed by the rules because this area is within a Primary Nursery Area (PNA). However, according to Division of Marine Fisheries (DMF) it is not functioning as a PNA at this site due to several factors. Ms Goebel stated that most importantly there is very little shallow water habitat in the proposed dredging

area because of the close proximity of the 40-foot deep channel to the shoreline. She stated the area has been used for industrial purposes for many years and there is currently a steel ramp covering much of the area to be dredged that is used for off-loading. Ms. Goebel noted that the alternative of constructing a pier in this area would raise substantial public trust and navigation issues.

Ms. Goebel stated Staff agrees that the hardships result from conditions peculiar to the property. She stated the close proximity of the deep-water channel to the proposed dredging site, reduces the shallow bottom habitat and related characteristics and functions of a typical PNA, and makes this a PNA in name only.

Ms. Goebel stated that Staff agrees the hardships do not result from actions taken by the Petitioner. She stated that while the Petitioner's lot is in a designated PNA, Petitioner has proposed the boat basin and access channel to be located in the most industrial and heavily used area which currently has minimal typical PNA habitat. Petitioner's change from an industrial use for off-loading to boat maintenance facility is not a dramatic change, and Petitioner has minimized the impacts to the site by its proposed design, and so has not caused the hardship.

Ms. Goebel stated the Staff agrees that the variance would be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the CRC, secure public safety and welfare. She stated the CRC's rules recognize the importance of PNAs by prohibiting new boat basins within them. However, this area is not functioning as a PNA because of water depth, fast current speeds, minimal shallow bottom habitat, and the cover necessary to afford protection to post-larval and juvenile organisms, typical of most PNAs. Ms. Goebel stated that allowing a variance from the prohibition on dredging in PNAs would also preserve substantial justice in this case because a permit was issued in 1984 for essentially the same project, and staff believes that permit was issued because of the marginal PNA value of this same site at the time.

Jim Leutze made a motion, seconded by Bob Wilson to support the staff's position that strict application of the rules, standards, or orders issued by the CRC does indeed cause the Petitioner an unnecessary hardship. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Sermons, Peele, Old, Shepard, Weld, Wilson, Wynns).

Lee Wynns made a motion seconded by Bob Wilson to support the staff's position that the hardship results from conditions peculiar to the Petitioner's property. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Sermons, Peele, Old, Shepard, Weld, Wilson, Wynns).

Melvin Shepard made a motion, seconded by Joseph Gore to support the staff's position that the hardships do not result from actions taken by the Petitioner. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Sermons, Peele, Old, Shepard, Weld, Wilson, Wynns).

Melvin Shepard made a motion, seconded by Bob Emory to support the staff's position that the variance request would be consistent with the spirit, purpose and intent of the rules, standards or orders, secure public safety and welfare and preserve substantial justice. The motion passed by a unanimous vote (Elam, Cahoon, Emory, Leutze, Bisette, Gore, Langford, Sermons, Peele, Old, Shepard, Weld, Wilson, Wynns).

The Variance Request was granted by a unanimous vote.

PUBLIC INPUT AND COMMENT

Bill Ferris – Mr. Ferris stated that he was hired to assist in re-appraising properties in Brunswick County. He stated the appraisers are having difficulty appraising properties without documentation of the current vegetation line. Mr. Ferris stated there is no documentation and therefore they have difficulty establishing value of properties that are classified as unbuildable properties under the CRC's rules and regulations. He encouraged communication between the CRC and the local Tax Office. Mr. Ferris encouraged the CRC to address the current vegetation line issue, and to receive comments from the Tax Office in order to make appropriate decisions. He encouraged the CRC to develop a documented map where the current vegetation line is located.

Jack Spruill – Mr. Spruill stated he was the Vice President of the Pender Watch & Conservancy organization. He stated the organization has 400 members in Pender County. Mr. Spruill stated they monitor activities at the Pender County Planning Department and the Pender County Planning Board to ensure that the rapid growth in this area is done as environmentally responsibly as feasible. Mr. Spruill stated that the organization observed a developer, of a large project in Pender County, cut down the vegetation within the agreed 30-foot buffer area. He stated that it was reported to DCM, but was informed that the State of NC regulatory authority over the 30-foot buffer does not extend to native, existing vegetation, only to the extent that the soil is disturbed or new soil is added. Mr. Spruill stated that the problem of destroying native vegetation in the buffer zone has become more threatening with the advent of special heavy-duty drum grinding equipment designed just to do this. He stated that this machinery is so heavy and maneuverable that it cannot avoid disturbing at least the upper levels of the soil and damaging root structures, even if it does not deliberately cut below the surface. Mr. Spruill encouraged the CRC to review current regulations to take account of this new technology, to guard against even unintended damage to the coastal soils.

Bill Hark – Mr. Hark stated that he is an elected supervisor of the New Hanover Soil & Water Conservation District. He encouraged the CRC to schedule a presentation from the Currituck District, who is dealing with water shed improvement districts. Mr. Hark stated House Bill 2129 was passed by both houses unanimously. It creates a Community Conservation Assistance Program statewide. He stated that it allows a match up to \$75K of state money per landowner. This will allow districts to deal with individual water quality improvement projects per landowner. Mr. Hark stated that it also creates a 15 member advisory committee that the DCM Director, or designee, is a member of this committee. He urged the CRC to get a periodic report from the DCM Director to use that information as a way of communicating interests to the advisory committees of the districts in order to have some leadership and guidance. Mr. Hark also notified the CRC of the Stewardship Awards Program. He stated the intent is to find developers to put developments on the land in a caring manner. Mr. Hark urged the CRC to have DCM inform permit applicants under the Coastal Area Management Act to inform developers of the existence of the program. He also informed the CRC of the annual meeting of their State Association in Wilmington in January 2007 to discuss three topics; 1) public benefits from private land, 2) the Community Conservation Assistance Program, and coastal resource management. Mr. Hark requested assistance from the CRC in finding speakers and panelists that would be able to address the coastal resource issues in a positive way.

Veronica Carter – Ms. Carter represents the Brunswick Citizens for a Safe Environment. She stated that this group is fighting the proposed Sims Hugo Neu landfill, which would be located in the Town of Navassa. Ms. Carter stated that this 750-acre, 350-foot tall landfill would be located in a coastal community prone to flooding and hurricanes. She stated the landfill would consist of primarily auto shredder residue (ASR). The ASR can come from all 50 states and the European Union per a business agreement with Sims Hugo Neu and the Town of Navassa. Ms. Carter stated that ASR has been classified as hazardous waste by the state of California because it is known to spontaneously combust. This will put things like PCB, Mercury and Dioxins in both the air and water. Ms. Carter reminded the CRC that this is a community along the coast. She stated the proposed method of getting the ASR to the Town is on a barge that will stop at the new barge off-loading ramp that the Town will have to build. Ms. Carter showed concern that the CRC has not addressed mega landfills and their impact on coastal communities. She also notified the CRC that the 750 acres is wetlands. Ms. Carter encouraged the CRC to look at the placement of mega landfills in the coastal communities that are prone to hurricanes, flooding and stormwater runoff into the Cape Fear River and eventually into the ocean. This runoff can go into wells in the small communities that would have an adverse effect on the health of humans and fish and wildlife in the area. She, again, encouraged the CRC to add this issue to a future agenda.

Robin Smith – Ms. Smith stated the Legislative Session with respect to water quality and coastal habitat issues was very successful. She stated several things were accomplished; there are 4 new Coastal Management compliance positions, legislative funding received for mapping submerged aquatic vegetation and shellfish resources, completion of the Phase II Stormwater. She thanked the CRC, MFC, DCM and DMF for the groundwork that was laid in order for all these issues to be accomplished.

PUBLIC HEARINGS

15A NCAC 07B .0801 – Public Hearing & Local Adoption Requirements

No comments were received.

15A NCAC 07H .0306 – General Use Standards for Ocean Hazard Areas

No comments were received.

15A NCAC 07H .0312 – Technical Standards for Beach Fill Projects

SEE ATTACHMENT FOR VERBATIM AND WRITTEN COMMENTS RECEIVED.

COMMITTEE REPORTS

CRAC Report

Bill Morrison presented the minutes from the CRAC meeting. (SEE ATTACHMENT FOR WRITTEN REPORT).

The CRC took no action.

P&SI Committee Report

Bill Peele presented the minutes from the P&SI Committee meeting. (SEE ATTACHMENT FOR WRITTEN REPORT).

The CRC took the following action:

Bill Peele moved that the CRC approve the certification of the Wrightsville Beach Land Use Plan. The motion passed with a vote of 12 in favor (Elam, Emory, Leutze, Bissette, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns), 1 opposed (Cahoon) and 1 abstention (Sermons).

Melvin Shepard made a motion, seconded by Renee Cahoon to have the P&SI continue discussion on the recommendations of the Multi-slip Docking Facility Advisory Group before making recommendations to the full CRC. The motion passed with 11 in favor (Elam, Cahoon, Leutze, Gore, Langford, Old, Peele, Sermons, Shepard, Weld, Wynns) 2 opposed (Bissette, Wilson) and 1 abstention (Emory).

Melvin Shepard made a motion, seconded by Joan Weld to table the proposed changes to the current CAMA variance rules until a future meeting to give the Variance Committee Group more time for discussion. The motion passed with a unanimous vote (Elam, Cahoon, Emory, Leutze, Bissette, Gore, Langford, Old, Peele, Sermons, Shepard, Weld, Wilson, Wynns).

PRESENTATIONS

Update on New Civil Penalties Authority

Roy Brownlow informed the CRC that the General Assembly passed legislation that allows the Commission to increase the maximum amount it can assess for civil penalties for CAMA violations. Mr. Brownlow stated the new legislation increased the maximum penalties to \$1,000 for minor development violations and \$10,000 for major development violations beginning December 1, 2006. He stated the legislation also allows the CRC to weight how much the violator saved by noncompliance as a factor in determining the amount of the fine. Mr. Brownlow stated this authority allows the CRC to recover some costs related to investigation and documentation of a violation that results in a civil penalty assessment. In summary Mr. Brownlow stated the new penalty eliminates the incentive to violate by recouping any money the violator saved by noncompliance, and it creates an additional incentive to comply by adding a "gravity-based" penalty which makes noncompliance cost more than compliance would have, and allows recovery of cost to the State of the enforcement procedures. Mr. Brownlow stated that DCM staff will be conducting an extensive review and revamping of CRC rule 15A NCAC 07J .0409 – Civil Penalties, in order to implement the new legislation. DCM staff hopes to present a first draft of the proposed rule change at the CRC's November 2006 meeting.

Review of LUP Rules for Certification

Presentation removed from agenda due to lack of time to present. Will present at a future meeting.

Offshore Issues Update

Mike Lopazanski stated DCM reviews projects associated with a federal activity or an activity that requires a federal permit. When it comes to offshore energy development, the State has the ability to at least comment on the project under several authorities. The OCS Lands Act outlines the provisions under which the Governor comments on a Plan of Exploration (POE). CAMA and the Coastal Program provide the authority for making consistency determinations and the CRC rules outline the information needs and issues of importance in making the consistency determination. Mr. Lopazanski stated it's important to note that while LUPs are part of the NC Coastal Program and are factored into consistency determinations, they cannot block OCS proposals. LUP policies can be a useful tool in guiding the siting of support facilities, much as they can be used to guide other types of development by local government.

The State used the federal consistency provisions of the CZMA to review and comment on Mobil's proposal to drill an exploratory well in the late 1980's. The State was also prepared to once again review an OCS exploration proposal when Chevron announced its plans to drill. Chevron engaged the state in discussions much earlier than Mobil had. Chevron began their discussion with the State in 1997 while they were not planning submitting a POE to Minerals Management Service (MMS) until 1999. It's likely that they were trying to avoid the controversy faced by Mobil and were also interested in providing some of the information that was lacking from Mobil's proposal. The State's inconsistency determination in Mobil's case was largely based on a lack of complete information. The experience with Mobil had set some changes in motion (an ocean policy analysis) that led the State to be better prepared for the OCS proposal from Chevron.

The ocean policy analysis led to a strengthening of the CRC's Coastal Energy Policies, which were enacted by Gov. Hunt through an Executive Order. The MMS also funded several studies to better define the importance of the "The Point" area offshore. It was also during this period that the unleased areas of the Atlantic OCS fell under a moratorium through Presidential action. The effect of the President's Executive Order was to remove all unleased areas of the Atlantic OCS from consideration until 2012. With declining oil prices of the late 1990's, and the resolution of the law suit between Mobil and the federal government, all the oil companies eventually relinquished their leases offshore NC.

The focus of attention has been on what's known as the Manteo Unit or lease blocks approximately 40 miles off the coast of NC. There are 21 Blocks in the Manteo Unit, each about 9 square miles in size. Mobil held a lease on Block 467 while Chevron held a lease on block 510. The proposed drill sites in both Blocks were about a mile apart. The coast of NC and this area in particular are unique because the enhanced ocean productivity makes the offshore areas of NC important to fisheries. The National Marine Fisheries Service through Fisheries Management Plans (FMPs) manages fisheries in federal waters. The FMPs contain Essential Fish Habitat designations which area of particular importance to various species. The area of

interest to the oil companies is about 40 miles offshore in 2,200 feet of water. It is a Late Jurassic - Early Cretaceous shelf-edge carbonate reef located 11,000 – 15,000 below the seafloor. The reef structure has the potential for storing hydrocarbons. Chevron estimated that there was a 7% chance of finding hydrocarbons in this area with a 2% chance of a commercial find. The area has the potential to hold 5 – 6 trillion ft³ natural gas and could be largest domestic discovery since Prudoe Bay, Alaska. In the Mobil days, drilling at 2,200 feet was frontier for the technology. It's not the case today as Chevron recently announced a significant find 175 miles in the Gulf of Mexico, in 7,000 ft of water, more than 20,000 ft below the seafloor. There has been increased legislative activity relative to oil and gas development – most notably in the Energy Policy Act of 2005. The Ocean State Option Act has also received a lot of attention since it would allow the states to decide if oil production would occur off their coasts. The incentive is an increase in the state's share of royalties. 2005 also saw the introduction of the Outer Continental Shelf Natural Gas Relief Act to be introduced by a PA Congressman. The Act would also increase revenues for states that opt out of the moratorium and would also set money aside to help the poor pay their heating bills.

Most recently, two pieces of federal legislation have been introduced that DCM is currently tracking. The first is the Deep Ocean Energy Act (DOER) Act passed by the House and the Gulf of Mexico Energy Security Act passed by the Senate. The DOER Act provides that a state may enact a permanent moratorium within 50 miles, state authority to ban activities out to 100 miles, and a restriction on states from banning activities beyond 100 miles. The DOER Act continues the theme of incentives, but based on how close to shore the activity is allowed. Out to 12 miles the States receive 75% of the royalties, 50% for activities beyond 12 miles. The incentive provisions are what caused a great deal of debate in Congress regarding what this would do to the federal budget.

The Gulf of Mexico Energy Security Act was passed by the Senate is primarily focused on an area in the eastern Gulf of Mexico known as the Lease Sale 181 area. This piece of legislation has obviously been of great concern to the State of FL. In an effort to appease their concerns, drilling activity is prohibited from within 100 miles of the FL coast for 16 years. The incentive provisions in this Act are geared mainly toward the producing States, which would receive 37.5% of revenues from the 181 area and then the same amount in adjacent area 10 years from now. The Act would also kick 12.5% of the revenues from this area into the Land and Water Conservation Fund (LWCF). The LWCF assists States in planning, acquisition and development of recreation resources and finances new Federal recreation lands

There has been a lot of speculation about what these incentive provision would mean for State budgets and whether or not it would be worth to endorse OCS activities. The speculation has been so varied that it's best to look at what the current royalties share is now, and how it may change.

Another offshore issue for NC has been the US Navy's proposal to create a sonar range off the coast. The range is 500 square miles, 47 mi from Onslow County in Water depths of 120 – 900 ft. The need cited by the Navy is to practice tracking modern diesel/electric subs in an area with a variety of topographic features, and a mix of sonar signals. Evidently offshore NC meets this criterion. A draft EIS has been circulated by the Navy and DENR has transmitted the collective comments of the State's resources agencies. In general, it was found that critical topics seem to be omitted, prematurely dismissed, or incompletely described. NEPA places the burden upon the

action agency to undertake sufficient research and analysis to make reasonable findings of potential impacts. As a consequence, neither reviewers nor decision makers can have confidence in findings based upon this draft.

The Energy Policy Act of 2005 also gives Dept of Interior authority to manage alternative energy sources in the OCS. The Division is tracking this issue as well. While there have been no formal offshore proposals, there have been some inquiries into the regulatory environment in NC when it comes to siting windfarms. The interest in the "Hatteras area" is due to the prerequisites for windfarms given the current technology. Offshore winds match peak demand time; deep water port for construction and service; as well as access to cranes and trains.

2005 saw the introduction of the National Ocean Aquaculture Act, which authorizes aquaculture in the US EEZ 3-200 miles. The Act is a response to the US Commission on Ocean Policy, which called for legislation to regulate the activity. The legislation was also included in the President's US Ocean Action Plan. Proponents cite offshore aquaculture as having a greater potential due to deeper water, with stronger currents – make it environmentally more desirable. If enacted by congress, the Act would create a Permit System (10-yr) administered by the Dept of Commerce (DOC). The DOC would develop two permits – a Site Permit and an Operating Permit. There are also requirements for other federal permits from the US Army Corps of Engineers – for structures and the US EPA – for effluents. The legislation has NOAA as the coordinating agency, and while offshore aquaculture has its potential there are also significant concerns. Each pen can have 50,000 – 100,000 fish with the potential for rapid spread of disease. As in many large-scale animal farming, disease control could lead to the introduction of antibiotics in the water column.

The large concentration of animals as well as automated feeding may also increase TSS entering the water. Escape of non-natives are a concern– Atlantic Salmon are now in Pacific Waters. This could lead to competition for spawning grounds, and also interbreeding with wild populations. The use of hybrid species may also lead to the introduction of transgenics to the wild.

While much of the Division's and Commission's attention is quite appropriately focused on the State's near shore areas, we need to also be mindful of these issues:

The North Carolina Coastal Reserve: Site-Based Research, Stewardship, and Education to Inform Coastal Management

Rebecca Ellin stated the purpose of 15A NCAC 070 is to protect representative coastal NC ecosystems, conduct relevant research, increase understanding of coastal ecosystems, their importance, and the effects humans have on them and to accommodate compatible traditional uses. She familiarized the CRC with the current locations of the reserve offices. Ms. Ellin stated the benefits of researching and monitoring is to address scientific gaps, identify and predict short-term change and long-term variability in estuarine health, and utilize sites as references. She also stated that stewardship of the Reserve Program is to maintain the natural integrity and processes of sites. The Reserve Program provides education for K-12 students and teacher, community outreach and coastal training programs. Ms. Ellin informed the CRC of upcoming workshops, multi-slip docking facilities education, minor permit education supplement, CHPP implementation and coastal explorers.

ACTION ITEMS

Adopt Single-family Residences Exempted: 15A NCAC 07K .0208

Bob Emory made a motion, seconded by Jerry Old to adopt amendments to 15A NCAC 07K .0208. The motion passed by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissette, Gore, Langford, Old, Peele, Sermons, Shepard, Weld, Wynns). (Wilson absent during vote)

Approval of CHPP Annual Report

Bob Emory made a motion seconded by Jerry Old to approve the 2005-2006 Annual CHPP Report. The motion passed by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Gore, Langford, Old, Peele, Sermons, Shepard, Weld, Wynns). (Wilson, Bissette absent during vote)

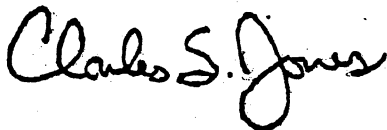
OLD/NEW BUSINESS

Doug Langford made a motion seconded by Jerry Old to send 15A NCAC 07H .1102, .1202, .1302, .1402, .2002, .2102, .2202, .2402, and .2702 to public hearing in order to extend the time allowed for construction from 90 days to 120 days for certain types of projects. The extension was requested by permittees who have been unable to complete their projects within 90 days, forcing them to apply and pay for renewal permits. **The motion passed by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Gore, Langford, Old, Peele, Sermons, Shepard, Weld, Wilson, Wynns). (Bissette absent during vote)**

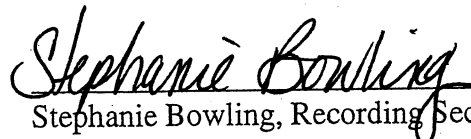
Renee Cahoon requested a report on stormwater systems to show how they are functioning, are they working, are they making a difference, and is there a good monitoring system in place. Also she requested a copy of Ocean Isle Beach's Stormwater Ordinance, why Ocean Isle Beach enacted theirs and to what purpose they intended when they did it. Was it to protect the 30-foot buffer or was it to get stormwater off their roads.

With no further business, the CRC adjourned.

Respectfully submitted,



Charles S. Jones, Executive Secretary



Stephanie Bowling, Recording Secretary

PUBLIC HEARINGS

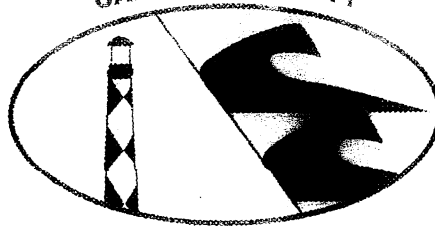
Public Comments Received on 15A NCAC 07H .0312 – Technical Standards for Beach Fill Projects

Michele Duvall – Environmental Defense. I'm sure it will probably shock everyone to hear me say that I agree with several of the points that Rudy just made. I think it's going to be very difficult to implement the "naked eye assessment." I'd rather see something where there is an increased bore size for on beach sampling that could capture sediment fragments greater than 3 inches in diameter. One thing that I've mentioned in previous comments is that need for some kind of end of the pipe or on the beach sampling. I believe that, that was done on the Emerald Isle Project, same day sampling for the material that's going on the beach so that we at least have some idea as to whether or not the cities that were done at the borrow site have adequately characterized the material. Again, I agree in terms of the issuance of the "white paper" would have been really helpful to have had that prior to the March meeting. It would have been, it would have allotted for more adequate public comment in review of that. Then with regard to biological monitoring I appreciate the Division not wanting to put something like this in a rule, however one of the things that I have said for a long time is that we do need to set up some kind of standardized sampling protocol in terms of biological monitoring. It doesn't need to be in rule, but there needs to be some protocol that's been reviewed by both statisticians and biologists so that these communities have something that they can go to and it would allow for a comparison of any kind of monitoring results between different projects. It gives communities a tool by which they can assess what the biological communities looked before the fill materials placed on the beach and then also be able to determine how any recovery, if there is recovery or not is going on, on the beach phase. So that any mitigative measures such as those that are presently being funded by the Town of Emerald Isle with regards to *Donax sp.* can be properly applied. I would encourage you all to pursue that.

Jim Stephenson – NC Coastal Federation. The initiative for these rules came out of the number of beach projects that we would characterize as poorly planned and executed, the US Army Corps of Engineers in the year 2000 did not adequately characterize the sediment at Yellow banks Boroughs site and then proceeded to place boulders on to the beach of Oak Island as part of a sea turtle restoration project. Those rocks are still there unfortunately. The Town of Oak Island has used all techniques within their power to try to remove them, but they are very deep. This is really a direct result of poor characterization of the beach, poor planning, poor protocol for conducting a beach nourishment project. In 2001 in Pine Knoll Shores similarly poorly planned and executed project put shell hash, a covering, on the beaches of Pine Knoll Shores. In 2002 we had a similar episode along a portion of Emerald Isle beaches part of Phase II of the Bogue Banks Beach Renourishment Project. Because of these episodes these rules became apparent to you and to members of the Science Panel and to the staff of the Division. For many years the Science Panel wrestled with the wording of these rules, the concepts within these rules. January of 2005 the Science Panel presented a report to you the Commission making recommendations on what sediment criteria should be included in rulemaking. Staff of DCM then met the Stakeholders over the course of 2005 and presented draft rules, which the Commission approved in January 2006. Staff then made revisions to the draft rules that you approved in January 2006 and presented some modifications in March of 2006. Our position is that we need some rules. It's been 5 years since 2001; 6 years since the Oak Island renourishment. It will probably take another few months at least before these rules are put into place. We had hoped that these rules would be in place for this beach renourishment season, which will begin in about 32 months. But they will not be. We definitely would like to see something in place that will help to better plan these projects by this time next year at the latest. Let me say that these rules I think present an excellent planning tool for Towns, for Engineers, for dredging company's to look at how to assess the beach and how to assess the borough area. I think it is the strongest points of these rules, and aspects of these rules and really a job well done all in all.

We would quibble with some of the numbers and if the rules do come up for reconsideration we will surely do that as I'm sure others will. But it does provide uniform method for determining what's on the beach and what's in the borough area and making some comparisons between those two. That said let me say that I think those are the rules, but let me say that, and we recommend your approval of the rules at your meeting when you consider this today or tomorrow. At the same time I wanted to say that the job is half done. These are merely rules; these are merely characteristics that must be part of the plan for a beach renourishment project. There is nothing in these rules that directly addresses, there is actually one provision, but very little in this rules that directly addresses the need for geological monitoring as these projects are being constructed and after they are constructed. With the exception of that one provision that can be found at 4D, the last provision in the rules, there is nothing in the rules that addresses geological monitoring and mitigation. These issues of geological monitoring and mitigation don't necessarily have to be in the rules but there does need to be a protocol that Towns and citizens understand what will be done, what is expected and what is required and what will be the responsibility of a town if a beach renourishment project goes south. We had a pointing example of why this is necessary last year when the ACOE did not adequately assess the sediment in the Brant Island Storage Site near Atlantic Beach and proceeded to pump mud on Atlantic beach for weeks. Agencies such as the corps and the DCM really didn't know quite what to do. The project was stopped for a short duration but if you can image the cost of having a dredge out there sitting, not operating, not pumping on the beach it's an economic disincentive to fix the problem right there. What happened? They stopped it for a while and more mud was pumped on the beach because the project was not adequately characterized and because there was no protocol for how to deal with the situation when you are putting bad material on the beach. This needs to be dealt with. The staff of the Division of Coastal Management is the appropriate entity to take a look at this, but it needs to be done. There also needs to be some thought and protocol for mitigation in situations where a beach can be mitigated once inappropriate material has been put on the beach. And if it can't be mitigated because the material is there, as in the case say of Oak Island where the rock is very deep and cannot be pulled out, then there needs to be some protocol for some alternative in-kind mitigation. Something else needs to be done to enhance the ecosystem that has been comprised through the beach fill project. We are certainly willing to participate in any such development of any such protocol to make sure that these rules will work. Right now they are just rules. There needs to be a monitoring and mitigation policy to make sure the rules actually have some effect.

Harry Simmons - NC Beach Inlet and Waterway Association. We really appreciate your efforts to build better beaches in NC. We think that's a lofty goal and one with really working hard towards accomplishing. We hope to see this sediment criteria rule be the goal standard for sediment criteria rules anywhere in the county. It seems like an extremely great thing that this body has taken on. I do have question about the inclusion of biological monitoring in a sediment criteria rule but with that one exception we think this is great and we urge you to support and adopt this as soon as possible.



SHORE PROTECTION OFFICE

714 0312

September 21, 2006

Public Hearing

Proposed adoption for 15A NCAC 07H.0312
Technical Standards for Beach Fill Projects

- (1) **The "naked eye assessment" verbiage stipulated in (1)(h) and (4)(d) should be removed from the proposed rules altogether.** - A naked eye assessment is not a qualitative measurement that can be readily reproduced, especially in light of the remaining body of the rules that are statistically-driven and compares borrow site with pre-project beach sediments. Project sponsors need to be able to justify projects and pass "straight-face" tests with their constituents, resource agencies, and the general public. Naked-eye assessments are completely contradictory to this tenet and even the spirit of the proposed rules. The amount of subjectivity introduced by this stipulation will make any matters of conflict almost impossible to reconcile, i.e., my naked-eye assessment (guess) of the background 3-inch diameter pieces of shell/sediment along any 50,000 ft² section beach is 5%, but the NCDCCM's guess is 3%. As a colleague in Carteret County replied, "My naked eye thinks this rule is not going to work."

While it is understood that NCDCCM staff feels obligated to address exceedingly coarse material in rule language and should be commended for doing so, there are other instruments in place that have been successful in the past to remedy similar circumstances. In May 2006, the Town of Holden Beach was issued a NOV (#06-34D) by NCDCCM for exceedingly coarse material (>3 inches) that also included a remediation plan. Similarly, a NOV (#03-20C) was issued to the Town of Emerald Isle in 2003 - also with remediation/mitigation requirements. There were no statutory rules in place for either of these circumstances but a solution was reached within the present authority of NCDCCM. This approach is much better than subjective "naked eye" assessments that could be mandated in the proposed rule. Also provisions for exceedingly coarse-material can be discussed during the SEPA - NEPA review processes for projects.

- (2) **Proposed rules are compromised by a series of last minute revisions in 2006, subsequent to an unprecedented amount of stakeholder input in 2002 - 2005.** - The naked-eye assessment provision mentioned above was introduced to the public and the CRC **the day of** the CRC's March 2006 meeting session (the 23rd) and accordingly, provided no time for stakeholders or the CRC to assess the scientific merit of the stipulation, its applicability, and practical impacts for enforcement. The CRC adopted the rules for public hearing the following day on March 24th. Likewise, the white paper presented by NCDCCM staff was also presented to the public and CRC on March 24th (the day the CRC adopted the rule for public hearing). While the white paper is a useful summary of the methodology utilized to generate the sediment

criteria rules, the white paper should have been released several months or even years earlier to serve as a guidance and resource document for the public, NCDRC staff, the State's Science Panel on Coastal Hazards, and the CRC to make decisions concerning the sediment criteria rules. In essence the white paper became an "after the fact" document because of the timing of its release, which was literally hours before the CRC was requested to adopt the sediment rules for the public hearing process. And finally, the calcium carbonate tolerance percentage listed in (3)(h) of the proposed rule was also a last minute provision released the day of the CRC's January 2006 meeting session (Jan. 26th). In fact, the information provided at the media table on this day even had an older version of the proposed calcium carbonate percentage. At first, there were no provisions regarding calcium carbonate percentage, then 40% above the pre-project beach, then 25%, and arriving at a number of 15% above the pre-project beach. The staff's logic for the calcium carbonate threshold at the end of the process was to account for the natural variability of calcium carbonate along the State's native beaches and not to exceed this level of natural variability, which is a logical approach. However, the last-minute nature of the changes outlined above are most troubling, especially considering the tremendous amount of outreach staff performed in 2002 - 2005 to gain widespread consensus on the approach and rule language.

The CRC is presently considering fundamental and likely controversial changes to oceanfront setback, static vegetation line, and sandbag rule language, and the last minute changes that became characteristic of the sediment criteria rule can simply not become standard operation procedure for rule making. This compromises trust among stakeholders and weakens final rules, increasing the possibility of constituents to ultimately approach the General Assembly to seek changes.

- (3) **Monitoring biological impacts in regards to beach nourishment activities should not be codified in this rule or future language as it dilutes the NEPA/SEPA process, creates a one-size fits all quandary, and discourages any type of proactive initiatives or other potential research.** Public comments in the past and comments by members of the CRC have addressed the biological monitoring aspect (or lack thereof) of beach nourishment and the possible incorporation of monitoring requirements into rule language. The main impetus for the sediment criteria rule were related to concerns regarding incompatible beach nourishment material and its deleterious effects on benthic invertebrates along the beach. Members of the Science Panel and NCDRC staff agreed early in the development of the rules that if nourishment material is a close match to the pre-project or native beach, then the biological response and recovery should occur in a predicted manner that has been documented by research in North Carolina and other States. Therefore, because the proposed sediment criteria rules are aimed to match native beach conditions, then biological monitoring in this regard would not be necessary.

Moreover, project sponsors spend hundreds of thousands of dollars to generate EAs or EISs for projects that involve a comprehensive review by State and Federal resource agencies. The reviews are project specific and are tailor made to address particular threats germane to each project or provide opportunities to migrate away from traditional monitoring requirements and begin answering new questions. For example, the Town of Emerald Isle is currently sponsoring a study that investigates the feasibility of harvesting, reproducing, and possibly re-introducing *Donax spp.* (the coquina or surf clam) to nourished beaches. The

philosophical foundation of this study is to begin pro-active mitigation that helps species recover subsequent to a beach nourishment project, rather than performing the same type of monitoring that yield expected and predictable results with little benefit to the species or the science community at large. This type of pro-active mitigation would almost be impossible to codify in a rule, but is best discussed during the regulatory review process for a given project. It could reasonably be contended that stipulating blanket biological monitoring provisions in this or any future rule subvertly weakens the SEPA/NEPA process and provides no incentive for creative, pro-active mitigative efforts like those described above.

- (4) **The sediment criteria should be codified as guidelines, not rules at this juncture, or a mandatory review period should be incorporated into the rules to allow time for the proposed thresholds to be ground-truthed with upcoming beach nourishment projects.** While this request is admittedly unrealistic at this stage, the sediment criteria thresholds presented in the proposed rules are a very good "educated guess" rooted in scientific analyses performed by NCDRCM staff. However, the differences between 4% plus native beach, or 5% plus native beach, or 7% plus native beach, etc. are not well known, nor can anyone predict the impacts of moving the threshold increments up or down. While there is probably good agreement that the thresholds have been established in a scientifically justified manner, the rules may still allow a nourishment project that will be deemed incompatible by the public, or vice-versa, it could unnecessarily limit borrow sources causing the cost of nourishment projects (both planning and construction) to rise upward. If either of these scenarios presents themselves, then it will be difficult and time-consuming to modify the rules as adopted. It would be beneficial to adopt the rules as guidelines or have a mandatory review period (five years?) incorporated into the rule to allow a comprehensive assessment of the rule's success and shortcomings.



North Carolina Department of Environment and Natural Resources
Division of Water Resources

Michael F. Easley, Governor

William G. Ross Jr., Secretary
John Morris, Director

September 20, 2006

Mr. Courtney Hackney, Chair
NC Coastal Resources Commission

Dear Mr. Hackney,

I am writing to provide comments from the Division of Water Resources on the Technical Standards for Beach Fill Projects (15A NCAC 07H .0312) that the Coastal Resources Commission has issued for public review and comment, including a public hearing during your September 2006 CRC Meeting in Wilmington.

Overall, the Division of Water Resources supports the adoption of this rule (07H.0312) that will set technical standards for beach fill projects. We find this rule to very thorough, comprehensive and science-based, and for the most part, very clearly worded. We do have the following comments:

- 1) The portion of the Rule, .0312 (1)(i), regarding beaches that have received beach fill prior to the effective date of the Rule and where sediment data for the recipient beaches prior to beach fill were either not collected or are unattainable, is rather vague as to how sediment characteristics of the existing beaches would be determined. What does "be developed in coordination with the Division of Coastal Management mean"? Will DCM be able to set target characteristics that are different from the sediment characteristics of the existing beaches?
- 2) The portions of the Rule, 0312 (3) (e - h), that set the standards for compatibility of the borrow site using four characteristics - the average percentages by weight of fine-grained sediment, granular sediment, gravel, and calcium carbonate - appear to be based on judgment of how close one would like to have the sediment in beach fill match the sediment in the existing beach. Considering the inherent errors in the calculation of these percentages, we would think that sediments where the percentages were only slightly higher than the standards shown in the rule should be allowed to be used as beach fill under the variance provision of the rules.

Thank you for the opportunity to comment on this rule.

Sincerely,

John Sutherland, Chief
Water Projects Section

cc: John Morris, Darren England

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**NORTH CAROLINA MARINE FISHERIES COMMISSION
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

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Edenton

29 September 2006

Dr. Courtney Hackney, Chairman
N.C. Coastal Resources Commission
c/o N.C. Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

Dear Dr. Hackney:

The N.C. Marine Fisheries Commission (MFC) has reviewed the Coastal Resources Commission's (CRC) proposed beach fill rules (15A NCAC 07H .0312) as approved for public hearing at the CRC January 2006 meeting (and modified since then). We greatly appreciate the presentation of the draft rules, including the reasons for the rules, given by Jeff Warren of the Division of Coastal Management to our Habitat and Water Quality Advisory Committee at the committee meeting in Washington on 13 March 2006.

While we will always be concerned with the negative effects of beach fill on fish habitat because the practice includes filling and loss of surf zone habitat of importance to economically important fishes (such as pompano, flounders, and sea mullets, as well as their prey), we strongly support the rule changes now under consideration. This rule should minimize negative impacts on the fisheries resources that may be associated with particle size and chemical composition of beach fill materials within the surf zone.

The proposed rules, for the first time, include quantitative standards that would greatly improve planning, performance, and evaluation of beach fill projects relative to ecological functions of beaches as they exist within the beach and inlet ecosystem. This approach meets well the cooperative management approach provided in the N.C. Coastal Habitat Protection Plan recommendation for a comprehensive approach to management of the beach and inlet system along North Carolina's coast. We look forward to continued cooperative work on beach and inlet management concerning rigorous scientific monitoring to fully evaluate effects of beach fill on the physical and biological components of the beach and inlet ecosystem.

Sincerely,

Mac Currin, Chairman
North Carolina Marine Fisheries Commission

cc: Preston Pate
Charles Jones

DRAFT

NC Coastal Resources Advisory Council Hilton Wilmington, NC September 20-21, 2006 Meeting Summary

Attendance

Bill Morrison (Chair)	Maximilian Merrill
Dara Royal (Vice Chair)	Wayne Mobley
Frank Alexander	J. Michael Moore (Thurs)
Deborah Anderson	Spencer Rogers
Bert Banks (for Eddy Davis, Thurs)	Robert Shupe
Joseph Beck	Harry Simmons
Webb Fuller	Stephen Sizemore (Thurs)
William Gardner Jr.	Lester Simpson
Renee Gledhill-Earley	David Stanley (for Don Yousey)
Gary Greene (Thurs)	Mike Street
V. Hansen (for Lee Padrick)	Ray Sturza (Thurs)
Judy Hills	Penny Tysinger
Al Hodge	Joy Wayman
Joe Lassiter	Dave Weaver
Travis Marshall	Ginger Webster
Gary Mercer	Traci White (Thurs)
Courtney Hackney (CRC)	Joan Weld (CRC)

Council Call to Order

Bill Morrison called the meeting to order with 28 members in attendance. The Council approved the March 2006 minutes without amendment.

Carolina Beach State Park Marina Tour

The Council toured the Carolina Beach State Park Marina to see the stormwater best management practices (BMPs) that had been installed. Several BMPs were in place, including a rain garden, grassed swales, and an oil filtration system to capture pollutants from the parking lot. Park staff noted that there had not been any pre- or post-installation water quality monitoring to measure the effectiveness of the BMPs.

Consistency-Equivalent General Permit for Local Governments

Doug Huggett explained that he was speaking because the CRAC had asked if the CRC could establish a general permit that would be the equivalent of a federal consistency determination for maintenance projects. The permit would be available to local governments. Doug stated that prior to beginning maintenance activities the Corps of Engineers has to prepare a determination that the proposed work will be consistent, to the maximum extent practicable, with the State's coastal

management regulations. The State needs to concur with the Corps' determination before work can begin.

Doug said that Corps' consistency determinations cannot be transferred, so local governments would need to secure new permits. The only option currently available is a major permit. Doug said he recognizes that local governments may not have time within a given dredging season to obtain a major permit if the Corps cancels its involvement in the project. Webb Fuller asked if local governments could use the Corps' data in their permit application. Doug replied that they could, provided that the data were still valid. Harry Simmons asked whether a local entity could transfer money to the Corps if the Corps were to suddenly lose its funding for a planned project. The Corps' Keith Harris replied that the Corps has no mechanism in place for receiving non-Federal money.

Courtney Hackney suggested that the Commission could design a GP for projects that received their consistency determinations later than a certain date, but that projects that received their determinations prior to that date would need to apply for a major permit. Spencer Rogers noted that even if a consistency determination is old, it would presumably have an updated situational analysis. Doug Huggett countered that neither emergency activities nor regular activities would necessarily have updated analyses. Spencer asked for an example of an emergency action that would not have a current analysis. Doug said that in the Spring of 2006 there were seven inlet crossing projects that were deemed emergencies. Permits were granted in a very short time, with no situational updates.

Courtney Hackney asked Keith Harris whether the Corps would go along with the general permit if it were adopted. Mr. Harris said that the Corps would not, but that they would issue a general permit allow, for example, a marina to dredge its entrance channel to the AIWW and do upland disposal, or beach disposal quality if the sand is compatible with State standards. Mr. Harris said that the Corps' GP requires a lot of internal, behind-the-scenes coordination, making it more like a major permit review. Mr. Harris said that the Corps has a mechanism to allow a State government to fund a project as if the Federal government were funding it, and also has a mechanism for private funding. Mr. Harris stressed, however, that these mechanisms take much longer than a typical GP review, and must be complete before work can begin.

Mr. Harris said that applications for this proposed GP could take as long as 6 months to review because of all the interagency coordination that would be required. Mr. Harris said that too much could go wrong environmentally and economically for reviews to happen quickly.

Doug Huggett said that he had prepared an early draft solely for discussion purposes, but that there were many complications. Doug said that the proposed GP would encompass three major components of the State's coastal management program:

1. Dredging. Timing when dredging is allowable is not consistent along the entire coast, makes one-size-fits-all GP difficult.
2. Hydraulic dredging with high ground disposal. Must consider shellfish beds, fish spawning and nursery areas, etc.
3. Beach disposal. Timing restrictions due to nesting seasons; sediment compatibility; easements; pipeline location; other considerations.

Doug said that the proposed GP would require a lot more interagency coordination than the current GP framework and timing allows for.

Keith Harris said that the 291 Corps/CAMA permitting process has been used a lot, but the key is that agency input is essential. Mr. Harris said that issues to be resolved include the equipment to

be used (sidecast would not work in the permitting arena), and disposal (who gets the beach quality sand from an inlet dredging project?).

Mr. Harris said that if a Federal project is authorized, local governments should identify, early on, which portion of the project they would like to take responsibility for.

Webb Fuller referred to Specific Condition (k) in the draft GP. Webb asked whether dredged sand "must be" placed on the beach if a project is funded 100 percent by a private entity or a local government. Courtney Hackney responded that by rule, public sand must remain in the littoral zone. Webb then referred to Specific Condition (l), and asked if every upland disposal site has to be individually permitted. Doug Huggett replied that these projects would all be hydraulic dredging, so slurry disposal would need stringent controls and each site would have to be permitted. Al Hodge added that DWQ would not issue 401 permits for upland disposal because of the risk of groundwater contamination from salt water infiltrating into the water table.

Courtney Hackney advised that all parties must together determine whether a GP would truly be helpful, and if not, why not? Dr. Hackney said that if the GP would be as complicated as a major permit, it might not be a feasible option.

Mike Street said that the range of projects is very wide. Mike suggested that DCM could start with a list of all possible projects, broken down by type. From there, staff might be able to determine which types of projects might be appropriate for a general permit.

Stormwater Overview

Al Hodge briefed the Advisory Council in preparation for a small group discussion. Al stated that if a development project requires a CAMA major permit or soil and erosion control permit (i.e. impacting an acre or more in a CAMA county), the project will also need to get a State stormwater permit. Al explained the Low Density development option: impervious cover cannot exceed 30 percent if the project is far from SA waters, or 25 percent if adjacent to SA waters. Otherwise, the project would require an engineered stormwater management system to treat the first flush (one inch) of rainfall. The engineered system must be designed to remove suspended solids.

Al referred to a study done by DWQ showing that the State stormwater program is not working adequately, primarily due to the Low Density option. Al said that DWQ scientists had recommended lower limits than 30%/25% when the rules were being developed. Al mentioned that the State's Phase II stormwater law passed in July 2006 set a 12 percent limit for Low Density development. Harry Simmons asked what the DWQ scientists had recommended when the rules were first being discussed. Al replied that they recommended 12%/10%, but now believe those numbers may still be too high—they believe that 10%/8% may be required.

Al commented on the use of grassed swales for stormwater management, saying that while they are intended to remove bacteria, they have actually be found to accumulation sites because, for example, they are a common place where pet owners walk their animals.

Shellfish Overview

Wayne Mobley briefed the Advisory Council in preparation for a small group discussion. Wayne stated that stormwater runoff is the number one reason for shellfish closures. The State must meet strict Federal water quality standards otherwise waters must be closed to harvest. Wayne said that the State has a management plan in place to close shellfish waters automatically after every rainfall of an inch and a half or more, and that the installation of a wastewater or sewage treatment plant

also causes an automatic closure. Wayne said that septic systems cause problems because of overflows or poor maintenance, and that waste from livestock, wildlife, waterfowl and domestic animals can also cause closures. Wayne said that the State is required by Federal law to close shellfish waters in a buffer zone around marinas. Wayne said that pesticides, paints, chemicals and other pollutants cause problems with shellfish spat and reproduction, even at levels that may not harm human consumers. Wayne added that the problems are magnified, resulting in more closures in small bodies of water that have less dilution ability.

Buffer Overview

Mike Street briefed the Advisory Council in preparation for a small group discussion. Mike stressed that human health comes before everything else, including jobs. Mike said that it is accepted by the EMC and the General Assembly that the current buffer framework is not effectively addressing the water quality problems in the State. Mike said that a lot of the State's buffers do function relatively well, but it is very site specific.

Group Discussions—CRC Recommendations

The Advisory Council broke up into three small groups to continue discussions on the subjects of stormwater management, shellfish closures, and buffers. The CRAC had been charged by Courtney Hackney to come up with specific recommendations for rule changes and other actions that the CRC could take to address issues that the CRAC felt should be State priorities. The CRAC had decided at their June meeting to focus on stormwater, shellfish and buffers, and to come up with a list of no more than five recommendations to present to the CRC in September. The groups each produced a list a recommendations, which the full Council then modified and selected the top five to present to the CRC:

1. Expand public education efforts to local governments, and provide them with a toolbox of best management practices to share with the public. Work through the Coastal Reserves Education and Outreach program.
2. Expansion of the 30-foot buffer. State experts have determined that a 30-foot buffer with up to 30 percent impervious cover has not stopped the increase in shellfish closures. No recommendation on width, rely on the expertise from other agency and academic sources.
3. Amend rules to give the equal protection to all shellfish waters, regardless of their status. The Commission's buffer rule, 7H.0209, allows development on small lots subject to several conditions. One condition is that the lots not be adjacent to approved or conditionally approved shellfish waters. This bias works to protect open waters, but can hamper the improvement of impaired waters by not offering the same protection.
4. The Marine Fisheries Commission has made a formal appeal to the Environmental Management Commission to take steps towards a net increase in open shellfish waters. Recommend that the Commission make a similar appeal to the EMC.
5. The EMC currently has a permitting program through DWQ, but it does not have an inspections and compliance program. Of the three CHPPs Commissions, the EMC is the only one without dedicated resources for inspections and compliance. Recommend that the CRC suggest to the EMC that they establish a program for inspections and compliance, with dedicated staffing and funding.

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Note: Recommendations 6-10 are not in priority order.

6. Re-establish natural buffers. Retrofit, cost share, education, technical assistance, tax credits.
7. Require DWQ controls when considering variances. Maintenance.
8. Request EMC do more studies to evaluate program effectiveness & compliance, look into other causes of shellfish closures. Expand on Reeder's study.
9. ID critical shellfish areas and acquire lands or easement adjacent to those waters. Could be buffers. Offer tax incentives. Can address through LUPs. Encourage conservation easements. State cost share.
10. Re buffer variances, consider allowing homeowner to contribute to area-wide SW system in lieu of on-lot SW management, where appropriate.

New Business/Old Business

With no further business, the Advisory Council adjourned.

##

NC Coastal Resources Commission
DRAFT
Planning and Special Issues Committee

Meeting Summary
September 21, 2006

Committee Vice-Chair Renee Cahoon called the meeting to order at 2:05 p.m.

Ocean and Estuarine Access Experiences in Surf City and Ocean Isle Beach

Michael Moore, Town Manager with the Town of Surf City presented an overview of the Soundside Park Estuarine Access as well as other access issues within the Town of Surf City. Through a series of access grants and cooperation by the Division of Coastal Management, the Town was able to convert an old mobile home park site into an estuarine access site providing piers for observation and fishing, as well as a boat ramp, parking facilities, outdoor amphitheater, restrooms and open space. The site is heavily used by citizens and visitors alike and has become a very popular site to launch boats, as well as for other outdoor recreational uses.

A particular challenge that the Town has observed is the parking of boat trailers. Large parking areas are needed to provide adequate parking for vehicles with boat trailers. Many times, boat trailers are being parked in areas not designated for boat trailer parking. Further, acquisition costs for land large enough to accommodate parking for vehicles with boat trailers is very expensive. Currently, the Town is working diligently to provide for more public access parking and has secured additional land for public parking for Soundside Park, as well as for public beach access. The Town is in the process of executing a new grant from the Division of Coastal Management for additional parking improvements at an adjacent site for Soundside Park. Moore noted that the Town does not currently charge for parking, but may at some point in the future to help defuse maintenance costs. The Town has also discussed the possibility of running shuttle services from the mainland and other parts of town to estuarine and oceanfront access sites.

Justin Whiteside, Planning Director for the Town of Ocean Isle Beach presented an overview of the Ocean Isle Beach Community Center, as well as other projects currently in progress to provide additional parking for public beach access. The Town of Ocean Isle purchased the oceanfront property for the Community Center in 2002 and was awarded two CAMA grants in 2003 for improvements to the site to provide public beach access, as well as provide for handicapped accessibility to the beach. One grant was utilized for the costs associated with the construction of the handicapped restrooms within the community center building and the other grant was used for the construction of the fully handicapped (wheelchair accessible) ramp from the parking area to the Community Center as well as the dune crossover to the sandy beach.

The Community Center provides not only fully handicapped accessibility to the sandy beach, but also a wide arrange of services for town's citizens and visitors alike. The Community Center building includes a snack bar, handicapped restrooms, offices for the children's programs, offices for the beach patrol and a covered area facing the beach for children's activities as well as for family reunions and other gatherings and activities. The kitchen in the snack bar may also be utilized by families and groups for food preparation and storage.

The Town has also provided additional parking adjacent to the Community Center for beach access by improving the right-of-way of the adjacent street to allow for additional angled parking. The Town of Ocean Isle Beach also recognizes the need to provide additional parking for public beach access. The Town is actively creating additional public beach access parking along other rights-of-way in town by making improvements to allow for additional angled parking as well as the construction sidewalks throughout town. CAMA grants have been awarded to help in the costs associated with these additional projects as well.

Questions were then raised about the wisdom of creating a consistent standard for public beach access such as requiring one access every half mile with parking for at least ten vehicles, as an example. Renee Cahoon noted that a standard should not just emphasize automobile parking, but should also consider other alternate modes of transportation, such as bike and pedestrian. It was noted that all beach towns are different and have different issues. A "one size fits all" standard may not be the best for all communities. Webb Fuller noted that a standard that simply focuses on adequate parking may not work for communities like Wrightsville Beach, which is located directly adjacent to a major metropolitan area. Fuller noted that Wrightsville Beach might never be able to provide adequate parking with such a large population center located directly adjacent to the Town.

Wrightsville Beach LUP Certification (P&SI-06-10)

Mike Christenbury, District Planner from the Wilmington Office, gave an overview of the Wrightsville Beach Core Land Use Plan (LUP) Update and noted that the Town of Wrightsville Beach is requesting Certification of the LUP.

The Town of Wrightsville Beach is located in New Hanover County in southeast North Carolina. The Town is located along the Atlantic Ocean and adjacent to the City of Wilmington. Like many beach communities in North Carolina, the Town has faced challenges such as changing land uses and skyrocketing land values. Also, being located in the most populated and urbanized county in eastern North Carolina has presented challenges for the Town as well. Despite these challenges, the Town has worked diligently to properly plan and manage the ever-changing needs within the community.

One particular challenge the Town faced when writing the plan was determining permanent population, seasonal population, as well as "day-tripper" population figures. Given the large influx of summer tourists and the corresponding impacts on the Town's infrastructure, services, and natural resources, the Town recognized the importance of having good estimates of the permanent, seasonal, and "day-tripper" population. While it is important for planning purposes to know these numbers, they are difficult to estimate with any precision and require making assumptions based upon experience and an understanding of the underlying population demographics, seasonal tourism industry, and the habits of beach goers. In making these estimates, the Town recognized the importance of using a variety of techniques whenever possible to help evaluate the reasonableness of the assumptions used by any one technique in determining the population figures.

Moreover, the land use plan recognizes that protecting and enhancing Wrightsville Beach's natural systems is critical to the quality of life of residents and visitors. The Town's previous land use plans demonstrate a strong commitment to preserving the beautiful and abundant natural resources located in and adjacent to Wrightsville Beach. Accordingly, the current 2006 Wrightsville Beach Core Land Use Plan continues in this endeavor.

The current Land Use Plan contains 100 policy statements with approximately 86 recommended actions. Of the 100 policy statements within the plan, nearly half are identified in the plan as exceeding state minimum standards.

Christenbury noted that the Board of Alderman of Wrightsville Beach voted to adopt the land use plan on August 10, 2006. The plan was prepared through a facilitated process utilizing a diverse Land Use Planning Committee. The goals and policies noted in the plan are a result of detailed analysis and discussion of key issues that confronted the Town of Wrightsville Beach. The policies in the document are reflective of the desires of the Town to guide future growth, development and redevelopment. To date, DCM has received no correspondence from the public regarding the Wrightsville Beach Land Use Plan.

Mr. Christenbury noted that Town staff has worked hard to assure that the LUP addresses the ever-changing issues that face the Town of Wrightsville Beach.

DCM staff has determined that the Town of Wrightsville Beach has met the substantive requirements outlined within the 2002 Land Use Plan Guidelines and that there are no conflicts evident with either state or federal law or the State's Coastal Management Program.

DCM staff recommends that the Committee forward the Wrightsville Beach Land Use Plan to the CRC for certification.

Mr. Christenbury then introduced Dr. Mark Imperial, Planner-in-Charge for the LUP update, who gave a brief overview of the planning process in the creation of the land use plan. Dr. Imperial noted that creation of the plan was through a unique partnership between the Division of Coastal Management, UNC-W, the Cape Fear Council of Governments and the Town of Wrightsville Beach. The plan was written through a facilitated process utilizing a diverse planning committee appointed by the town, lead by Dr. Imperial of UNC-W and graduate student (at the time) Melinda Powell-Williams, as well as town staff. The planning committee consisting of twelve volunteers was appointed to guide the planning process. The committee was made up of Planning Board Members as well as other interested citizens. Further, it was noted that more than 100 citizens attended each of the public input meetings and a consensus was reached with every policy and implementation statement. Renee Cahoon noted that she felt the policy in the plan prohibiting the expansion or intensification of existing marinas and the creation of new marinas goes against support for the preservation of working waterfronts and preservation of public access to the estuarine waters.

Steve Underwood noted that the partnership between the Town, DCM, UNC-W and the Cape Fear COG worked extremely well and congratulated the town and Dr. Imperial, planner-in-charge, on the outcome and completion of the plan.

A motion was made by Charles Elam, seconded by Webb Fuller, to recommend certification of the Wrightsville Beach Land Use Plan. The motion carried by an 8 to 1 vote with two abstentions. Renee Cahoon noted that her vote against certification was because the plan seemed to be contrary to the support of working waterfronts and estuarine public access.

Recommendations of Multi-slip Docking Facility Advisory Group (I&S-06-27)

Walter Clark, Legal and Policy Analyst for Sea Grant provided a summary of the conclusions and recommendations provided in the report that is in the CRC packet. He noted that in addition

to himself Joseph Kalo, UNC School of Law Center Co-Director and several Center Research Fellows assisted the advisory group.

Mr. Clark noted that continued development along North Carolina's coast has resulted in the fragmentation of property along the states' coastal areas. The result is the increase in the number of riparian owners, each with a qualified riparian right to erect pier(s) out to the deep water. A significant number of these piers have been erected in narrow coastal tidal streams and rivers. Some scientists and regulators believe that there is a relationship between the construction of multi-slip docking facilities and a number of environmental problems including: degradation of water quality; habitat impacts; and increased shoreline erosion.

While a permit is required to construct any pier or docking facility, smaller multi-slip docking facilities are subject to less stringent regulation than marinas with more than 10 slips. Concern about the cumulative impacts of smaller multi-slip facilities raises the question of whether a better management strategy is needed. Regulators also have expressed concern that often changes after the structure is in place occur which result in environmental problems originally not contemplated in the assessment and issuance of the construction permit.

The original task of this project was to assess the states coastal marina regulations. Coastal marinas are defined as facilities with more than 10 boat slips. The assessment was to include an examination of marina regulations. However, as the project began and matured, the original task was modified to focus on multi-slip docking facilities with more than 2 but less than 10 boat slips. The advisory committee urged this change believing that the regulatory structure for marinas is satisfactory and that an examination of the cumulative impacts of smaller, less-regulated multi-slip docking facilities is of greater need.

As an addendum to the study, in early 2006 the N.C. Coastal Resources Commission (CRC) requested that the project's investigators and advisory committee examine regulatory issues involving certain types of floating structures that might be used in association with existing docks and piers. In particular, the CRC was interested in a product distributed by North Carolina Floating Docks and Lifts, LLC (NC Floating Docks) called Jet Docks. Jet Dock manufactures floating boatlifts and vessel platforms.

The final product was to include a written report with draft policy and regulatory changes proposed. Please see the reports conclusions and recommendations found on the 6th page of the Summary Report in your CRC packet.

Mr. Frank Sheffield, attorney representing NC Floating Docks and Lifts, LLC and several representatives participated in the P&SI Committee's discussions that centered primarily on the jet dock issue.

In lieu of the existing rules, Mr. Sheffield and his clients he supports proposals for allowing jet dock facilities to be placed: within previous approved slip facilities where area cover is limited to 125% of the vessels hull; and only where water depth will be greater than 12 inches at low tide.

Web Fuller stated that if this is considered further that a variety of similar or other types facility products also be considered, not just jet dock.

Mr. Sheffield ask the committee to recommend to the CRC to ask DCM staff to revisit this item at the next CRC meeting including potential changes to the rules.

Several committee members stated that they did not feel comfortable with making a recommendation the CRC for an item they did not expect on their agenda.

Review of Variance Rules (P&SI-06-12)

Jill Hickey with the State Attorney Generals Office and Council for the CRC, gave an overview of proposed changes to CAMA variance rules. Major changes proposed include:

- a. the requirement that persons who wish to request a variance must conclude all permit appeals prior to requesting the variance;
- b. the provision of notice to third parties who commented on the permit application that the permit applicant has applied for a variance;
- c. the elimination of OAH as a fact finder for variances and the creation of a standing committee to review written evidence with respect to identified, disputed facts and to make recommended factual findings to the Commission; and
- d. a lengthening of certain time frames to give staff more time to perform its duties and to give the Commission more flexibility in scheduling variance hearings

After some discussion of the proposed changes, a motion was made by Dr. Jim Leutze and seconded by Webb Fuller to forward to the Commission for approval.

The meeting was adjourned at 5:10 p.m.

Implementation and Standards Committee
September 21, 2006
Hilton Hotel, Wilmington, NC

Bob Emory, Chair

DWQ Acceptance of Permeable Pavement Systems (I&S-06-26)

Tancred Miller informed the committee that the State's Phase II stormwater bill requires DWQ to give property owners and developers credit for using pervious paving materials. Tancred's memo and the included section of DWQ's Best Management Practices Manual outline the amount of credit that may be given for various pervious paving systems. Tancred noted that the CRC has historically given credit for pervious paving systems under the "innovative design" provision of our coastal shorelines rules. DWQ's BMP Manual includes requirements for maintenance and inspection of the pavement systems, and represents an improvement in regulation of these systems. Tancred informed the committee that DCM staff and local permit officers will be directed to apply the DWQ standards in our normal course of business. Property owners and developers will be advised that in order to receive credit from DCM for installing pervious paving systems, they must provide satisfactory evidence to DCM that their systems meet the DWQ guidelines for design and installation. Staff does not see the need for any CRC action on this item.

Water Depth and Pier Construction (I&S-06-24)

Rich Weaver presented an issue to the Committee pertaining to an increasing number of requests for boat slips in water depths that may be too shallow to support boating activity. Rich presented a brief description of the problem and then introduced a memo from the Division of Marine Fisheries requesting that boat slips proposed in water depths of less than 3 ft. (4 ft. in some cases) be elevated to the Major Permit process. Rich then suggested that prior to taking such action, staff wanted to compile and analyze the data and present it to the Committee for discussion. The data for 2006 (to date) was presented to the Committee showing the total number of boat slips issued and denied, the total number of boat slips issued in waters open to shell fishing, the total number of boat slips issued in Primary Nursery Areas, and the number of boat slips issued in each CAMA county. Rich then presented an aerial photograph example that demonstrated the issue. After suggesting a few options, he closed the presentation by asking the Committee for guidance in addressing the issue of boat slip requests in shallow water depths.

Bob Emory asked if the recommendations from the Multi-slip Docking Facility Working Group addressed the issue of water depths. Staff responded that it did and committed to communicating with that group for details. Mike Street then commented on the reasons that Marine Fisheries is concerned with the issue and mentioned that "prop kicking" is becoming a big problem in these shallow areas as well.

Ted Tyndall expressed concerns that pushing the piers into deeper water often causes navigational issues, so it becomes a balancing act in permitting such structures. Lee Wynns and Chuck Bissette expressed that they felt that the current coordination between DCM and DMF appears to be working well and would rather not implement new rules at this time. Staff also expressed concern that elevating the many GPs for full review would drastically increase the workload of the Major Permits staff.

Melvin Shepherd then moved to allow staff to continue dialogue with DMF, and look for a non-regulatory solution. Lee Wynne seconded the motion. The motion passed with one vote in opposition.

Wetland and Marsh Alteration (I&S-06-21)

Terry Moore gave a slide presentation to the Committee that showed evidence that the constant mowing, burning, seeding, planting, and general alteration of the marsh can change the plant species composition as pioneering and fugitive species colonize an area. Terry stated that interest in marsh mowing seems to have evolved for many reasons including beautification, view, habitat elimination, defacing of the resource, and for disguising the marsh. He posed two questions to the Committee. First, does the Commission believe that there is statutory authority under the CAMA to consider these activities as development? And second, if it does, what guidance should the staff use in developing standards for rule making?

After some discussion and clarification, including whether or not to refer the issue to the Division of Water Quality for potential rule change to their basin-wide buffer rules, a motion was made and seconded to refer the issue to the Attorney General's office to ask for an opinion on the question of authority to regulate the mowing and cutting of the marsh. If the answer from the AG's office is in the affirmative, then Staff could come back to the Committee to address the specifics associated with the regulating of such activities. The motion passed eleven to four.

Static Vegetation Line Discussion (I&S-06-20)

Jeff Warren informed the Committee that the intent of his presentations was to present numerous concepts on static vegetation lines and oceanfront setbacks. Dr. Warren underscored the point that the draft rule language presented in the memo was prepared by staff as a tool for strategic discussions and not meant to imply that rule language was being presented for adoption. Data were presented on coastal hazards to frame the need for discussion including expected population increases, higher frequencies and potential magnitudes of hurricane, relative sea level rise, and statewide erosion rates. Dr. Warren began by describing the static vegetation line and presented the current policy that defined such a line. To simplify the discussion, a list of four concepts were presented for consideration: 1) Should large-scale projects be redefined in existing rules? 2) Should the setback revert from the static vegetation line to natural vegetation when most or all of beach fill project sand has eroded, 3) Should the alternative vegetation line language in existing rules be amended to allow additional methodologies for developing the line?

4) If a static vegetation line has been established, and if setback measurements revert back to natural vegetation, should development be allowed and, if so, only under certain restrictions?

Ocean Development Setback Discussion (I&S-06-22)

Dr. Warren also reviewed existing policies on oceanfront development setbacks and described a concept of a graduated setback based on the size of a structure. Three major concepts were identified for discussion: 1) Should oceanfront setbacks be based on size, and not use, of the structure? 2) Should oceanfront setbacks be increased? 3) Is the graduated setback concept an appropriate management tool for the oceanfront? Chairman Emory suggested that the Committee offer DCM staff guidance by considering all seven concepts. Melvin Shepherd made a motion to consider setbacks based on the size of a structure and not the use (e.g., residential versus commercial) and Spencer Rogers seconded. Numerous concerns were voiced, including how to define the size of a structure (e.g., height, footprint, total floor area) and its use (residential versus commercial versus multi-family), but the motion was withdrawn after it appeared there were still many unknown variables the needed to be considered before decisions could be made. Bob Wilson noted the issue of re-development versus new development since the barrier islands were almost fully developed must be considered when reviewing existing and future policies. Mr. Wilson also stressed the importance of including the local municipalities in the process. Spencer Rogers and Harry Simmons commented that 30-year setback factors may not be enough and Melvyn Shepherd added that the high number of non-conforming lots along the oceanfront indicated the setback factors guiding the initial development were not doing their job. Joan Weld wanted more information from the CRC Science Panel on their recommendations regarding setbacks. Jeff Warren agreed to re-distribute the 1999 short-term recommendations that had been made to the CRC by the Science Panel. Joan Weld also felt that the Science Panel should discuss the static line and setback concepts and potentially report back to the Committee. Overall, it was agreed that more data and further discussion would be needed before the Committee could give DCM staff guidance on potential directions for rule making.

Update on Estuarine Shoreline Stabilization Subcommittee and the Biological & Physical Processes Workgroup (I&S-06-25)

Bonnie Bendell stated that the Estuarine Biological and Physical Processes Workgroup has completed their task of making recommendations on appropriate shoreline stabilization methods for different shoreline types. The recommendations are compiled in a report and included in the CRC packet. Bonnie also reported that the Estuarine Shoreline Stabilization Subcommittee met Wednesday to discuss the recommendations report in detail. Discussion centered around the direction that staff should take in drafting possible rule concepts. The Subcommittee will meet again in October. Bob Emory, chairman to the Estuarine Subcommittee commended the Estuarine Work Group for completing the report in a concise and timely manner.

Draft Exception to Buffer Rule for Stormwater Ordinance (I&S-06-23)

Due to the lack of time, this agenda item was rescheduled until the November meeting.

