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**NC Coastal Resources Advisory Council
Clarion Hotel
Kill Devil Hills, NC
March 26, 2008
Meeting Summary**

Attendance

Dara Royal, Chair	Y	Wayne Mobley (Alan Saunders)	Y
Penny Tysinger, Vice Chair	Y	J. Michael Moore	Y
Deborah Anderson	Y	William Morrison	Y
Eugene Ballance		Elwood Padrick	Y
Bert Banks	Y	W. Burch Perry	Y
Joe Beck		Spencer Rogers	Y
Randy Cahoon	Y	Frank Rush	Y
Carlton Davenport	Y	Robert Shupe	Y
Eddy Davis	Y	Harry Simmons	Y
Anne Deaton	Y	Lester Simpson	Y
Christine Mele	Y	Paul Spruill	
Webb Fuller		Ray Sturza	Y
William Gardner, Jr.		Tim Tabak	Y
Renee Gledhill-Earley	Y	Reid Thomas	
Gary Greene		Joy Wayman	Y
Judy Hills	Y	Beans Weatherly	Y
Al Hodge	Y	David Weaver	Y
Maximilian Merrill		William Wescott	Y
Joe Lassiter	Y	Traci White	Y
Travis Marshall	Y	Rhett White	Y
Gary McGee		Don Yousey (David Stanley)	
Gary Mercer			

Wednesday 26th

Call to Order

Dara Royal called the meeting to order at 2 pm and the Council approved the January 2008 minutes. Royal announced that the Town of Wrightsville Beach had purchased Beach Access #33 with help from the Surfrider Foundation. The Advisory Council had supported action to preserve the access. Spencer Rogers added that the Surfrider Foundation would probably welcome donations to help with the costs.

Changes to CRC & CRAC Meeting Structure

Royal reported that a joint CRC-CRAC made several recommendations to the meeting structure. One meeting (January) will probably be eliminated to reduce the total number of meetings for the year to five. Depending upon caseload, the CRC may on occasion hear some variance requests on Wednesday afternoons, with the CRAC meeting slightly earlier to accommodate that. Bob Emory

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said that the advantage would be to allow more time for other work on Thursday and Friday. The Advisory Council approved a motion to support the recommendation, scheduling CRAC meetings so that they do not conflict with variance proceedings, and retaining flexibility on start and end times.

Royal said the subcommittee will recommend a seating change to integrate the CRC and CRAC during committee meetings. They will recommend that I&S and P&SI only meet as needed and that Thursday afternoon meetings generally be run as a committee of the whole. In meetings as a committee of the whole the CRAC will be invited to participate in discussions, but will not be allowed to vote. The Advisory Council approved a motion to support these recommendations.

Royal said that the subcommittee will recommend that land use plans be reviewed by the Advisory Council, who would issue a recommendation to the CRC on whether to certify the plans. The Advisory Council approved a motion to support this recommendation.

Royal said that the subcommittee will recommend that the CRC Executive Committee meet at the conclusion of the regular business meeting on Friday to frame the next meeting's agenda. They will also recommend that I&S and P&SI committee chairs remain on the Executive Committee. The Advisory Council approved a motion to support these recommendations.

CRAC Guidebook Revisions

Dara Royal, Penny Tysinger, Harry Simmons, Bob Shupe and Tim Tabak volunteered to serve on a subcommittee to update the CRAC Guidebook.

Hyde County Land Use Plan Review

John Thayer presented background on Hyde County and a summary of their Core Land Use Plan. Thayer noted that Hyde County is one of the oldest counties in the state and the second least populated. The County has less than 5,800 persons and no incorporated communities. Over 78% of the County is either in federal or state ownership, commercial forestlands, or wetlands. This Land Use Plan is a substantial update of their approved 1998 plan and most notable is the plan's attempt to point to the future development of countywide zoning and other development related ordinances. There are no notable policy statements that are more stringent than the State's CAMA rules "Minimum Use Standards".

Thayer said that the new plan includes disclosure statements recognizing that some of the stated policies may be unenforceable and/or rejected by NOAA for consistency purposes. Thayer stated that DCM staff believes that the plan meets the substantive requirements of the 7B Land Use Planning guidelines and there are no conflicts with other State or Federal rules or the State Coastal Management Program. Staff recommended that the plan be brought forward to the full CRC for certification.

Frank Rush questioned why a local government could not include a statement saying, for example, that they would not allow an outlying landing field (OLF). Thayer replied that NOAA usually rejects statements that are that specific because they may be counter to the national interest. DCM typically recommends more generic language, such as not allowing large airports. Thayer said that communities can be very broad in their discussion sections, but there is a higher threshold for approving policy statements. Rush asked what if a community did not want a new bridge or a widened highway? Thayer said that those policies could be enforceable, but in those cases it is a good idea to do early coordination with NCDOT. Travis Marshall added that NCDOT reviews draft land use plans to see if they conflict with existing NCDOT comprehensive transportation plans, and NCDOT also reviews certified land use plans before they develop a new transportation improvement program (TIP) plan.

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Harry Simmons requested a follow up discussion about land use plans in the context of the CZMA and CAMA consistency, particularly as it relates to dredged material disposal.

Penny Tysinger asked whether NOAA has certified any of NC's local land use plans. Thayer responded that since the new 7B rules took effect DCM has submitted one set of certified land use plans to NOAA as a routine program change (RPC). NOAA is requiring a higher standard of analysis of the changes than previously, so the plans are still under review.

Dave Weaver noted that the CRC was split on certifying the City of Wilmington's land use plan in January, and questioned what the standards are for denying certification. Thayer said that certification can be denied if there are any conflicts with the state's coastal program, or possibly with other agencies, but the CRC has to be very clear about what the conflicts are or why the plan is otherwise inadequate. Spencer Rogers recalled that the issue with the City of Wilmington's plan was not the CRC's preference on building height or size, but the fact that some of the proposed large new structures were to be built inside of a designated flood plain. Thayer offered to write a memo to the CRC reiterating the standards for non-certification. Bob Emory asked Thayer to review the standards with the CRC before they vote on the Hyde County plan.

Eddy Davis offered that the three counties that he works with are all in the process of revising their plans, and all three county governments are strongly opposed to the new coastal stormwater rules. Spencer Rogers made a motion to recommend certification. The motion was seconded and unanimously approved.

Enhancing Public Access through CAMA Permitting

Jim Gregson introduced the subject by saying that public boating access is oftentimes lost when a marina is privatized. Gregson said that CAMA permits could possibly be conditioned to preserve some public access. Ted Tyndall said that privatization is increasingly common, and pointed out troubling instances where developers promised public access during the environmental review process, but reneged on that promise later on. Joe Lassiter added that retaining public access is often a point of negotiation during the permitting process, but is not currently a requirement. Gregson said that while staff supports the use of incentives and negotiated agreements, staff feels that if public access is not preserved by rule it will ultimately be lost. Penny Tysinger suggested that another possibility would be to require public access through subdivision ordinances or land use plan policies.

Gregson posed two core questions:

1. Does the CRAC think it is appropriate, when a public marina is privatized, to attach permit conditions requiring that some percentage of the slips, or launching and parking facilities, be made available to the public at reasonable rates?
2. Should the State consider Army Corps type access requirements on beaches that are nourished entirely with local funds?

The Advisory Council discussed the tradeoffs between loss of public trust versus private property rights. Joe Lassiter pointed out a functional conflict in the State's efforts to preserve access. Lassiter said the State's written policy is to preserve and expand public access, but in practice it facilitates privatization through simple and inexpensive general permitting. Lassiter said that a better policy would be to cluster private and commercial development and preserve other areas for public access.

Frank Rush said that Emerald Isle has created incentives for public access in zoning districts where they are likely to see redevelopment activity. A developer can negotiate to provide public access in exchange for a higher density allowance. The developer would also have to mitigate for the higher density.

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Al Hodge said that we can separate short-term and long-term issues. In the short term, if a developer commits to preserving public access, DCM and DWQ can condition the permits to ensure that promise is kept. In the long term, Hodge suggests it is necessary to address the conflict that Joe Lassiter identified.

Tim Tabak asked what would trigger DCM or other agencies to re-open a permit, which might then allow the agency to attach new conditions for access. Joy Wayman said that a simple change in ownership would not be sufficient. The State Property Office would ask DCM to look into transferring the permit once the title and submerged lands easement transfer, but that alone would not enable regulatory agencies to add permit conditions. Ted Tyndall added that permit transfers usually require just a transfer of existing operational conditions, so it would take a application to modify the permit, or a new permit application, to allow agencies to attach conditions.

Bob Shupe asked whether this push to preserve access was a CRAC initiative. Gregson replied that it is a response to the Waterfront Access Steering Committee's recommendations to protect and reclaim some public boat slips and ramps.

Judy Hills asked whether the conditions to provide access would include adequate parking. Al Hodge wondered if regulatory agencies could offer incentives to NCDOT (such as mitigation credits) if they provide parking. Hodge noted that this would require regulatory changes. Doug Huggett noted that DCM cannot require that NCDOT provide access facilities if there was no existing or traditional access at the site; if there were, then NCDOT could not take it away.

Christine Mele asked who would be liable for public losses in a privately owned and maintained marina, and who would be responsible for maintenance and repair of the public access portion. Mele said that the ideas seemed to be all regulatory in nature, and that more incentives are needed. Gregson asked whether it is reasonable, when a developer wants to turn a marina from 100% public to 100% private, to require that developer to set aside a percentage for public access, possibly leased at a reasonable rate.

Spencer Rogers said that if regulations get too onerous then developers will be more inclined to avoid complications and simply build condos, as is often the case with ocean fishing piers. Gregson disagreed, saying that the water is the more important feature, therefore building condos without providing slips and access is not a likely scenario.

Dave Weaver asked why the state does not charge private interests for usurping public trust waters. Mike Lopazanski replied that the CRC debated this question extensively in the 90s, and made a request too the General Assembly to take action, but only received token response. Frank Rush asked if the state were to begin charging marinas for leases, should it also charge homeowners for their private piers. Dara Royal felt it would be fair to do so.

Tim Tabak asked whether marine pumpouts could also be privatized. Mike Lopazanski said that if a pumpout is funded using a DCM grant then it has to remain available to the public for at least five years, but could be privatized after that.

Penny Tysinger suggested a study of how to preserve access through permitting, looking at other state agencies' limitations. Tysinger asked if it's possible to survey in public access rights of way. Joe Lassiter asked whether it is feasible to trade impacts for access. Gregson replied no, that state agencies had already looked into this, and still gets those types of requests from developers. Gregson said that the agencies concluded that it is not a viable approach.

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The CRAC expressed a strong consensus that where a public marina is privatized, particularly in public trust waters, the private owners should be required to reserve some portion of the facilities for public use. The Advisory Council acknowledged that there will be additional issues to work out, such as liability for public facilities within a private marina, providing consistent pumpout service, and compliance monitoring, but felt that these issues can be resolved.

Gregson asked for the Advisory Council's thoughts on access requirements associated with locally funded nourishment projects. Harry Simmons asked if access can be clustered, i.e. fewer number of accesses with more space and better amenities per facility. Gregson asked whether it is worthwhile to look at using the Army Corps' access guidelines when permitting locally funded nourishment projects. Simmons cautioned that the Corps' program is not perfect, and might not be a good model. Steve Underwood added that DCM has in the past looked into recommending specific requirements for access density and spacing, but concluded that a one size fit all approach was not feasible. Frank Rush acknowledged the importance of the goal, but told members to remember private property rights and be wary of takings and exactions. Rush said that incentives would be preferable.

The Advisory Council passed a motion to ask the CRC to direct staff to return as soon as possible with a suite of ideas, including permit conditions and incentives, for preserving and reclaiming some public access. The Advisory Council agreed to hold off on further discussion about oceanfront access for the time being.

Pier House Rules

Tancred Miller said that at the January meeting Commissioner Renee Cahoon mentioned that Jennette's Pier in Nags Head, which is owned by the NC Aquariums, would like to replace its existing pier house with a two-story structure that would be able to accommodate aquarium exhibits, classrooms, and research space. That development would not be permissible under the CRC's current rules, so the Aquariums would only be allowed to do this via a variance or changes to the rules.

Aquariums Director David Griffin was in attendance and explained that the Aquariums would like to replace the pier house in its existing location. The Commission's rules allow existing pier houses to be replaced under certain conditions, including the new structure having the same dimensions as the one being replaced. Vertical expansion is therefore not currently permissible. Another potential complication is that the existing pier house is oceanward of the high water line, and therefore stands over public trust waters. The CRC's rules do not currently allow for non-water dependent structures to be built over public trust waters.

Despite the potential challenges, the Advisory Council supported allowing two-story replacements, but was not unanimous about whether they should be handled through variances or rule amendments.

This request from the Aquariums came in their effort to fulfill the Waterfront Access Study Committee recommendation that the State own and operate three oceanfront fishing piers, one near each of the three aquariums. The State acquired Jennette's Pier for \$5 million in 2002, including the pier house and several adjacent bungalows that are rented out. In addition to replacing and expanding the pier house, the State proposes to build a new concrete and steel pier, 100 feet long, and elevated 25 feet over the water. The expected project cost is \$13 million, which would come entirely from door receipts.

Given the configuration of the high ground, the Advisory Council agreed with Mr. Griffin that it would be difficult for a new pier house to be built onshore and provide the same educational experience

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and access opportunities as the house being replaced and expanded in its current location. Moving the house onshore would also create problems with providing adequate parking and septic disposal.

Spencer Rogers cautioned that the safest place for any structure is as far back on the beach as possible. Spencer said that at \$13 million the pier and house might be storm resistant but will not be storm proof, and even the much touted Johnnie Mercer's Pier had structural failures prior even to its completion.

The Advisory Council debated the pros and cons of restricting the vertical expansion ability to state-owned pier houses, since it seems more certain that State-owned properties would be maintained for the public benefit. Another way to ensure access would be in regulating structures by use, rather than by ownership. A majority of the CRAC felt that it would be equitable to allow vertical expansion regardless of ownership, as long as the piers and pier houses are for the public use and benefit. Staff concurred with this position, and felt that the added space could help make privately owned fishing piers more economically viable and increase their prospects for survival. The Advisory Council thought that the provision should be available to all piers, and we agreed that a rule change would be more efficient than a multitude of variance requests.

A motion was made and seconded to recommend that the CRC amend its rules as necessary to allow all pier houses, whether new or existing, and whether publicly or privately owned, the option to expand vertically to a maximum of two stories. The rules should allow vertical expansion whether the pier house is over land or over public trust waters. The motion carried by a vote of 17-6.

New Business/Old Business

With no further business the Council adjourned at 5 pm.

Thursday 27th & Friday 28th

Advisory Council met in session with CRC.

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