

**NC COASTAL RESOURCES COMMISSION (CRC)
MAY 17-18, 2007
CITY HOTEL AND BISTRO
GREENVILLE, NC**

Present CRC Members

Courtney Hackney, Chairman
Doug Langford, Vice Chair

Charles Elam
Bob Emory
Joan Weld
Bob Wilson
Jerry Old
Melvin Shepherd

Bill Peele (arrived at 9:00 a.m.)
Wayland Sermons
Chuck Bisette
Joseph Gore
Lee Wynns
Renee Cahoon (arrived at 8:45 a.m.)

Present Coastal Resources Advisory Council Members (CRAC)

Bill Morrison, Chair
Dara Royal, Co-Chair

Frank Alexander
Deborah Anderson (Phil Harris)
Joe Beck
Randy Cahoon
Carlton Davenport
Eddy Davis
Paul Delamar (Christine Mele)
Webb Fuller
William Gardner, Jr.
Judy Hills
Maximillian Merrill
Joe Lassiter
Travis Marshall
Gary Mercer
Wayne Mobley
J. Michael Moore

Spencer Rogers
Frank Rush
Robert Shupe
Harry Simmons
Lester Simpson
Michael Street
Ray Sturza
Tim Tabak
Penny Tysinger
David Weaver
William Wescott
Traci White
Don Yousey (David Stanley)

Present Attorney General's Office Members

Jill Hickey
Allen Jernigan
Merrie Jo Alcoke
Christine Goebel

CALL TO ORDER/ROLL CALL

Chairman Hackney called the meeting to order and reminded Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act.

Angela Willis called the roll. Jim Leutze was absent. Based upon this roll call, Chairman Hackney declared a Quorum.

MINUTES

Joseph Gore made a motion to accept the minutes of the March CRC meeting with no corrections noted. Doug Langford seconded this motion. Motion passed unanimously (Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Old, Bissett, Sermons, Elam) (Cahoon and Peele absent for vote).

EXECUTIVE SECRETARY'S REPORT

Coastal Resources Advisory Council Changes:

Ginger Webster, the CRAC's Currituck County representative for the last 9 years, has resigned from her position on the CRAC. She began serving on the council in January 1998.

Two new members have been appointed to other vacant CRAC positions. Tim Tabak is the new member from Craven County, replacing Harold Blizzard, and Emerald Isle Town Manager Frank Rush has been appointed to the vacant Coastal Cities seat.

CELCP Award

NOAA has awarded North Carolina a competitive Coastal & Estuarine Land Conservation Program grant for fiscal year 2007. The grant provides \$400,000 to purchase 935 acres of forested wetlands on the Albemarle Sound, adjacent to the Palmetto Peartree Preserve in Tyrrell County. Tyrrell County will hold the title, and The Conservation Fund will hold a conservation easement and manage the property for public use and recreation. The grantees are expecting a matching grant from the Clean Water Management Trust Fund.

Our two other grant applications for tracts in S. Topsail and Chowan Swamp were not funded, but are on the contingency list. I would like to recognize the hard work that Tancred Miller performed in preparing our grant request and in such a fine manner that we were awarded funds.

LPO Workshops

DCM recently conducted two training workshops for Local Permit Officers in the 20 coastal counties. Seventy-one LPOs attended the workshops in Morehead City and Kill Devil Hills. During the 2-day workshops, Local Permit Officers received interactive field training in staking Normal High Water and Normal Water Levels and identifying coastal wetland plants on the estuarine shoreline; as well as, identifying frontal and primary dunes and locating the first line of stable, natural vegetation on the oceanfront.

Access Study Committee

The North Carolina General Assembly is among the 2007 winners of the BoatUS Recreational Boating Access Awards, for its creation of the state Waterfront Access Study Committee. Study committee chair Michael Voiland accepted the award at a National Symposium on Water Access held in Norfolk, Va.

During the symposium, Michael Voiland presented an overview of the issues leading up to the North Carolina study committee, as well as the 21-member committee's approach and public input process. The committee's 27 final recommendations are now under review by the General Assembly, the CRC, MFC and EMC.

Navy OLF

Language inserted last week into a larger federal military spending bill may mean the end of the Navy's preferred location of an Outlanding Field site. The language would prevent the Navy from building the training strip at its preferred site in Washington and Beaufort counties.

Hurricane Season

As you know, hurricane season officially begins in a few weeks. Researchers at NC State University have predicted 12 to 14 named storms forming in the Atlantic Basin this year. Of those storms, eight to nine may become hurricanes, and four to five could become major storms.

William Gray of Colorado State University also forecasts an above-average hurricane season, with 14 named storms and three category 3 or stronger hurricanes.

E-Live

EstuaryLive at the Rachel Carson Estuarine Research Reserve was a great success last week, highlighting topics such as estuaries, sea turtles and rip currents, along with special sessions celebrating the 100th birthday of naturalist Rachel Carson and the 200th anniversary of NOAA. The event was live for three days, with an audience of 69 total classrooms -- 47 from NC and the rest from 10 other states, including Kansas, Maryland, Maine, New York and Texas.

Clean Marinas and Pumpout Grants

The Duke University Marine Lab marina in Beaufort and the Northwest Creek marina in New Bern are the latest facilities to be certified as North Carolina Clean Marinas through the clean marinas program administered by DCM.

We have also been awarded \$118,500 from the US Fish & Wildlife Service through the Clean Vessel Act to continue our pumpout grant program.

Staff News

Lynn Mathis is the new Compliance and Enforcement Representative for the Elizabeth City District Office. Lynn has been a Field Representative in that office for over 11 years.

Kim Hedrick is the new Compliance and Enforcement Representative for the Washington District. Kim was a Field Representative in our Elizabeth City Office for the last three years.

Trent James is our new Compliance and Enforcement Representative for the Wilmington District Office. Trent comes to us from the Division of Land Resources where he worked in the permitting and monitoring of projects requiring Sedimentation and Erosion Control Plans.

Anthony Snider, manager of the southern coastal reserve sites, will be leaving the Coastal Reserve this fall to take a position at UNCW.

Chairman's Comments

Chairman Hackney thanked Charles Jones for his years of dedicated service in such a thankless job. He stated that Charles had recently received the Order of the Longleaf Pine from Governor Easley. On behalf of the CRC, Chairman Hackney presented Charles with the North Carolina Resources Commission Eure Gardner Award.

The General Assembly asked that the CRC look at water access. Chairman Hackney stated that he is a member of the study commission that is looking at this issue through public hearings. Local governments have begun to work on these issues, but development is occurring at such a fast rate that it is hard for the State to provide the funds and keep up with it. We need to think about the estuaries and the sounds and the effects that development in these areas will have.

At this time Chairman Hackney introduced Robin Smith, Asst. Secretary for the Department of Natural Resources.

Robin expressed her thanks to Charles Jones for his years of service on behalf of the Department. She stated that there are several house bills pending which will be coming up in Committee soon and will be of interest to the Coastal Resources Commission.

Wayland Sermons asked Robin about a part of the House budget that provided money for the acquisition of the old Southpoint fish house on Ocracoke as part of the waterfront access. She stated that she did not know about this. He also asked about local governments who are suffering with wastewater needs. Is there a possible wastewater bond separate from the clean water trust fund or any negotiations currently ongoing? She stated that there is a comprehensive wastewater bond package in the works. She further stated that the Department agrees with the need for this type of bond.

Chairman Hackney asked Robin about the sewer situation in New Hanover County. He stated that this is what happens when development occurs without appropriate infrastructure. She stated that there has recently been a meeting between water quality staff and Wilmington and what the right conditions would be for a special order by consent. She stated that it would take a year to complete the improvements needed.

Joseph Gore asked Robin about a water system in Brunswick County. He stated there are a lot of contaminants in the water. There are a lot of areas that cannot even use the water for washing. The local government does not have the money to address this issue with the clean water act. He asked if anything is being done or could be done. Robin stated that legislation that passed last session, and is beginning to be implemented, will require for new private drinking water wells to have a permit from the local health department before the well construction begins and then there would be water quality testing of the well before it is actually put into use. The water quality testing would initially be focused on bacteria. This bill would only effect new well construction and not existing wells. It is a first step to address these issues. The health department will look at the well location through the permitting process to be sure that it is appropriately setback and meets all requirements.

VARIANCE REQUEST

Goforth (CRC-VR-07-06) Static Line – Oak Island

Merrie Jo Alcoke of the Attorney Generals' Office, representing staff, reviewed the stipulated facts for the variance request filed by William Hicks Goforth and Betty Goforth. The Goforths sought a variance from the "static line" rule in order to construct an oceanfront residence in the Town of Oak Island.

Ms. Alcoke stated that staff's position in this case is that a variance is not warranted. Ms. Alcoke explained why petitioners have not met the second and fourth statutory criteria that must be met in order for the CRC to grant a variance.

Eric Braun of Kennedy Covington Lobdell and Hickman Law firm spoke on behalf of the petitioners. Mr. Braun reviewed some of the key facts that he contended supported the granting of the variance and then Mr. Braun addressed the variance criteria. Mr. Braun noted other similar variances the CRC had granted.

Commissioners Cahoon, Wilson, Peele, Weld, and Emory made comments or asked questions of the parties. The CRC then voted as follows:

Doug Langford made a motion to support Staff's position that strict application of the applicable development rules, standards or orders issued by the CRC does cause the Petitioner unnecessary hardships. Motion was seconded by Jerry Old. The motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Doug Langford made a motion to support Staff's position that difficulties and hardships do not result from conditions which are peculiar to the property. Joseph Gore seconded the motion. The motion passed with eleven votes (Cahoon, Weld, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam) and two against (Wilson, Wynns).

Doug Langford made a motion to support Staff's position that hardships did not result from actions taken by the Petitioner. Motion was seconded by Jerry Old. Motion passed unanimously (Cahoon, Weld, Wynns, Wilson, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Doug Langford made a motion to support Staff's position that the variance would not be consistent with the spirit, purpose and intent of the rules, standards, or orders issued by the CRC; would not preserve public safety and welfare; and would not preserve substantial justice. Bob Emory seconded this motion. Motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

The variance was denied.

East Carolina Radio – (CRC-VR-06-36) – Radio Tower and Road in Buffer – Wanchese

Christine Goebel of the Attorney Generals' Office, representing staff, reviewed the stipulated facts regarding East Carolina Radio's request for a variance from the thirty-foot buffer rule. Petitioner requested a variance in order to replace a radio tower, access road and associated structures in Wanchese, Dare County. Parts of the proposed development intrude into the 30-foot buffer from Croatan Sound.

Both Staff and Petitioner agreed on the four factors in this case. Bobby Outten, attorney for Petitioner, provided comments on the factors.

Melvin Shepard made a motion to support Staff's position that Petitioners would have unnecessary hardship due to the strict application of the rules. Jerry Old seconded this motion. This motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Melvin Shepard made a motion to support Staff's position that difficulties or hardships result from conditions which are peculiar to the property. Bill Peele seconded this motion. This motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Melvin Shepard made a motion to support Staff's position that the hardships do not result from actions taken by the Petitioner. Jerry Old seconded this motion. This motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Melvin Shepard made a motion to support Staff's position that the proposed development is consistent with the spirit, purpose and intent of the rules; will secure public safety and welfare; and preserve substantial justice. Renee Cahoon seconded the motion. The motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

The variance was granted.

LeNeave – (CRC-VR-07-03) – Two Canal Lot Buffer Issue –Ocean Isle Beach

This variance was withdrawn by the Petitioner.

Generation Builders, Inc. - (CRC-VR-07-08) – Pier Length Rules – Wilmington

Christine Goebel of the Attorney Generals' Office, representing staff, reviewed the stipulated facts regarding Generation Builders' request for a variance from the CRC's rules regarding pier length in order to construct an 8-slip community dock in association with a new 22-lot subdivision adjacent to Whiskey Creek off Masonboro Sound Road in Wilmington. If the proposed dock were relocated landward to meet the CRC's pier length rules, the water depths at that location would be -1 foot mean low water and would result in objections from Division of Marine Fisheries due to causing significant adverse impacts on the shallow bottom habitat. Petitioners redesigned to avoid these impacts.

Staff and Petitioners agreed on all four factors in this case. Steve Coggins, representing petitioner, stated that Petitioner worked closely with Staff over the course of this application and has received feedback which has resulted in various iterations of the proposal that he believes does in fact meet the spirit and intent of the rules.

Chairman Hackney and Commissioners Elam, Sermons, Wilson, Shepard, and Weld made comments or asked questions of the parties. The CRC then voted as follows:

Wayland Sermons made a motion to support Staff's position that difficulties or unnecessary hardships would result from strict application of the rules. Doug Langford seconded this motion. This motion passed unanimously (Cahoon, Weld,

Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Wayland Sermons made a motion that the difficulties or hardships do not result from conditions which are peculiar to the property involved. Charles Elam seconded this motion. This motion passed with twelve votes (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Peele, Old, Bissett, Sermons, Elam) and one opposed (Emory).

Wayland Sermons made a motion that the hardships result from actions taken by the Petitioner. Melvin Shepard seconded this motion. This motion passed with eleven votes (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Peele, Old, Sermons, Elam) and two opposed (Emory, Bissett).

Wayland Sermons made a motion that the proposed development is not consistent with the spirit, purpose and intent of the rules, standards or orders; and does not preserve substantial justice. Renee Cahoon seconded this motion. Motion passed with eleven votes (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Peele, Old, Sermons, Elam) and two opposed (Emory, Bissett).

The variance was denied.

PRESENTATIONS

Sand Bag Discussion – (CRC-07-02)

Mike Lopazanski

Mike Lopazanski began his presentation with the history of sand bags and where we stand currently. When the CRC began to develop the ban on oceanfront hardening, the Commission in accordance with the Outerbanks Erosion Task Force recommendations made allowances for the use of temporary means to protect imminently threatened structures. These temporary measures included beach nourishment, sand bags, beach pushing or beach bulldozing. The intent was to allow these temporary measures to protect the structure for a short period of time until it could be relocated or the effects of short-term erosion were reversed and the beach repaired itself. The term temporary should mean that there is a time limit applied to these projects, however, due to staffing considerations at the time and limitations on the types of structures that were allowed to be protected by sand bags, it was determined that the nature of the bags themselves and the material they are constructed of would eventually fall apart and go away.

In 1985, the first rule was developed and contained some of these provisions. The definition of imminently threatened is to be within twenty feet of the structure. There is a twenty-foot seaward limit of the sandbag structure. The bags could extend no more than twenty feet beyond the sides of the structure. The sandbag structure could be no more than fifteen feet wide, and was later changed to twenty feet wide at the base and be

located above the high tide mark. The rule also stated that if the bags were not covered with sand for more than six months they were to be removed, but this became an enforcement issue for DCM as it would require continuous monitoring and it was unclear how continuous the exposure needed to be before the bags would be required to be removed.

By 1987, the use of erosion control structures became prolific enough that the CRC began to investigate the effects of sandbags and considered requiring the relocation or demolition of structures within two to three years within its designation of being imminently threatened. During the 1990's the CRC began to get numerous complaints about sand bags and that they were not being used as a temporary measure but as a permanent solution to oceanfront erosion problems. In addition to their appearance, citizens were complaining that these bags were interfering with their public use of the beach and that they were becoming fortified to become massively immovable structures. In 1994 Division staff did an inventory which showed that we had about 15,000 linear feet of ocean shoreline protected by sandbags and some of these bags have been in place for as long as eight years. While most of these structures complied with the standards, others did not and were often constructed without authorization. The analysis that was done for the CRC outlined some of the problems with the sandbag rules including what types of structures could be protected, when do sandbags interfere with the public use of the beach, monitoring the burial, as well as limitations on the width but not on the height and the meaning of "temporary". The 1995 amendments to the rules address the size and physical location of the bags as well as burial (six month provision was removed). The amendments also addressed the temporary issue and that sandbags could remain in place for two years if the sandbags were protecting a small structure (smaller than 5000 square feet) or five years for large structures (greater than 5000 square feet) to include roadways. The rules also allowed for the bags to remain in place for five years if they are located in a community that was actively pursuing a beach nourishment project. The Commission further restricted the use of sandbags to one time per property. Although most of the beachfront communities qualified for beach nourishment extensions, some sandbags were in unincorporated areas and were subject to removal and staff was successful in having some of these structures taken out. This occurred mostly in Dare and Currituck counties. The hurricanes in 1996 and 1998 caused the CRC to extend the deadline to September 1998 to counties that were declared disaster areas. The CRC also began to grant some variances to property owners (particularly in Onslow county) extending their deadline to August 2001. Since most of the sandbags were required to be removed in 2000, staff began to notify these property owners of the requirement. Records at that time indicated that there were about 141 sandbag structures subject to the removal requirement but staff believe that this number is low since prior to 1995 local governments were processing sandbag permits and staff found that their records were lacking. After hurricane Floyd, an inventory was done by staff that found that there were 236 sandbag projects out on the beach. In January 2000, Dare county submitted a petition for rulemaking to request from the CRC that properties protected by sandbags in communities who were pursuing beach nourishment be given an additional extension until 2006. This was also the recommendation of the CRC's science panel to grant this extension, but only to sandbag structures which conformed to the size limits. The CRC also refined what it meant for a

community to actively be pursuing a beach nourishment project. The CRC granted a coast-wide date of May 2008 for removal. So now there are varying sandbag expiration dates. Statistics were given for sandbag permits which had been issued as follows: 269 structures have been permitted, approximately 97 that have been permitted prior to 1996, for a total of 366 structures on the coast.

As May 2008 approaches, staff is seeking guidance from the Commission as we prepare to notify property owners that sandbag structures need to be removed. Particularly how aggressively we should pursue removal of buried bags (bags that are buried but not covered with vegetation). How aggressively do we need to pursue bags which have become exposed? How long do they have to be exposed?

Melvin Shepard asked Mike if there were any sandbag structures which need to be removed prior to May 2008. Mike stated there are bags that are subject to removal, but there was no count taken. The focus has been on the massive numbers that need to come out in May. Commissioner Shepard stated that he thought giving guidance on this issue to staff would be premature. His concern was for hurricanes and tropical storms, which are coming soon, and this issue should be put on hold until October or later. Mike stated that the first task on hand is locating all of these structures. A list of notifications will need to be compiled by this fall or winter.

After discussion Chairman Hackney stated that this issue would be added to the July CRC agenda and the full Commission, with the input of the CRAC, will discuss this and make a decision.

Urban Waterfronts (CRC-07-04)

Steve Underwood

Steve Underwood stated that Urban Waterfront rules have been around since April 2001. We have had a couple of declaratory rulings relating to these rules (April 2003 and January 2006). There have been concerns raised by some of the Commissioners about the sizes and uses being proposed for these structures that could be developed under this rule and that the sizes and uses may be different than the original intent of the Urban Waterfront rules. DCM staff was asked to take a look at these rules in March 2006 and the P&SI Committee has had several meetings about this. P&SI wanted to hear from local governments. Presentations were given by Morehead City, Beaufort, Elizabeth City, and Columbia. There have been discussions on limiting the uses or excluding specific uses (parking decks). Discussions have been held about whether vertical expansion should be determined by the CRC or by local governments. There were concerns about water views and scenic resources and the idea of whether multi-story, mixed-use structures were anticipated and compatible with the original intent of the Commission with regards to non-water dependant uses. The interpretation of the rules governing several structures over the public trust waters have been subject to declaratory rulings as well as the importance of these policy decisions, the subcommittee recommended that their concerns be brought to the full Commission for discussion.

One particular issue needs to be discussed. This is “existing and enclosed structures may be expanded vertically provided that it is done within the structure’s footprint”. There are concerns over public trust issues about the ultimate size and uses being proposed.

With regards to the spirit, purpose and intent of the Urban Waterfront rules and the relationship to the public trust doctrine, we find in the original rule language of 1997 “preserve historical and cultural significance of these areas, promote economic development and enhance public access to these coastal waters, protect the biological and public trust values”. What are the uses that the CRC would find acceptable? What are the vertical expansion limitations?

A responsibility of the CRC is to strike a balance between the impacts of public trust waters and allowing for meaningful development along the urban waterfront. A primary consideration is upholding the public trust doctrine. Management objectives of the coastal shorelines are to ensure that any development is compatible with both the dynamic nature of these shorelines as well as the values and management objectives of the estuarine ocean system. Uses on the coastal shoreline shall be limited to those type of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system.

Steve turned to the CRC for discussion and direction on allowances or constraints on building heights and uses. What are the uses and vertical expansion limitations that the CRC would find acceptable for these areas over the public trust waters?

Chairman Hackney began the discussion by stating that initially there were structures built over the water that were grandfathered in and the Commission allowed these grandfathered structures to operate. The thinking at the time was that these structures would fall into disrepair or be knocked down by hurricanes, but since that time there has been huge development of the coast. These grandfathered facilities that are out over the water were generally public facilities in the sense that the public used them. The Commission has been relatively happy with allowing that to continue, but what we are seeing happen is the older structures that are built on public trust water are being converted into varying kinds of uses, which are not always public (converting restaurants into condominiums). This is not what the Commission envisioned public trust water being used for, but with the value of public trust water and public trust rights, to both the public and the private sectors, the Commission needs to look at what we want to allow to be done with the structures.

Bob Emory stated that legacy restaurants were what was envisioned and the Commission didn’t want inflexible rules to be an impediment to having vital downtowns on the water, so the Urban Waterfront rules were developed. The intention for height (vertical expansion) was allowing an existing restaurant to offer rooftop dining. There was the ability to provide second level dining, but multiple stories are not what was intended. Commissioner Emory further stated that getting to the public access issue, incorporated

walkways around the exterior of these buildings enabled the public to still have access to the water. Public access and very limited vertical expansion is what was in mind.

Bill Peele stated that limited vertical expansion was the intent of the Urban Waterfront rule when it was created. The public should still have access to the public trust water.

Doug Langford stated that he does not think residential and commercial are acceptable mixed uses for an Urban Waterfront and that no more than one additional level should be allowed, as this was the intent to enhance public access and use of public trust waters. He stated that there is a fire hazard, a traffic hazard, noise hazard, etc. when you mix restaurants and residential structures. If a mixed use is to be utilized, it should be retail shops that existed previously with one extra level or a walkway around, as these will add to the public access and use of the public trust waters.

Wayland Sermons stated that currently we are allowing private uses over the water to be maintained and not expanded, except in urban areas. In the current waterfront rules, there is no distinction between private and public uses. Commissioner Sermons further stated that Steve made a particular point to address the duty of the Commission to the public is separate and apart from the duty of local governments. Commissioner Sermons agreed that even if the local government has zoning for urban waterfronts and has specific limitations on heights and allowances, the Commission should be more restrictive in their rule for the urban waterfront. Commissioner Sermons added that he feels that the Commission should consider that a use that has been public should never be allowed to be converted to a private use over public trust water. Chairman Hackney instructed staff to bring back language that incorporates this discussion along with vertical expansion limitations. Chairman Hackney asked the Commission about vertical expansion, will the CRC require that these structures maintain the same size or footprint (plus or minus ten percent) or not restrict it? Doug Langford stated that he wanted it restricted to one-story above or a restaurant with a deck on the top. The Chairman pointed out that when you talk about height additions, often it revolves around rebuilding the structure in various ways (put new pilings in), at what point is it a new structure versus an old structure? Melvin Shepard stated that the intent was nothing more than rooftop dining. Renee Cahoon stated that we need to preserve the public use, but vertical expansion of eight to ten stories is excessive. Commissioner Elam stated that there are two issues involved. One is the use. Some of these structures could be parking decks. Secondly, if the structure is out over the public trust waters, no storm water permits are required. We have to figure out a way to address this.

Jill Hickey stated that the current rules regarding new structures limit what can be done. The rule states that new structures built for non-water dependant purposes are limited to pile-supported, single story, unenclosed decks and boardwalks. While none of the rules touch on the private versus public issue, she stated that she did not think that the rules were that far off.

Mike Lopazanski stated that over the course of trying to modify the Urban Waterfront rules, looking at other rules complicates the focus. The issue at hand is the expansion and use of urban waterfront structures.

Bob Emory asked if it would be possible to have a rule that lists acceptable uses, like with non-conforming lots. Anything that is not on that list would require a variance.

Shading Impacts on Wetlands

Dr. Carolyn Currin, NOAA

Dr. Currin is presenting the impact of docks on light, marsh plants and fish production in North Carolina Estuaries. The emphasis is on light and primary production of marsh plants (to include spartina and algae). You cannot see the algae, but it is an important part of the food web that supports fishery production and may be more susceptible to the effects of shading than spartina. Dr. Currin then spoke about the local literature on the role of marsh plants and algae in supporting fish production. Another role of marsh plants are their role in shoreline stabilization and sediment accretion. She stated that when she covers dock shading, there are other adverse impacts but in the interest of time, she would briefly touch upon these other impacts.

Dr. Currin showed pictures of the marsh and the algae via a PowerPoint presentation. Salt marshes, which are dominated by spartina, are the most productive marine ecosystem in the world and their production rivals some agricultural systems in their annual primary production. Most spartina production enters the food web as detritus. She stated that in a lot of places where you have to build a long dock, these areas are primary nursery areas. Algae have higher concentrations of nitrogen, sugars and lipids. Although you don't see the algae, this microscopic community provides over half of the primary production to the food web supporting fisheries production in estuaries.

For plants, more light means more primary production. The more light you give the plants, the more carbon production you get. While in lab settings you can maximize the amount of light that you give the plants and see a leveling productivity, in the field there is no leveling out. More light means more primary production. In estuarine habitat, when light reaches the bottom this primary plant production has both food and refuge value.

Inter-tidal habitats also play a very important role in shoreline stabilization and water quality. Their roles in these things, along with fish production, are also directly related to the primary production or biomass of the plants. The reduction of wave energy by plants and oyster reefs is well known. An illustration of marsh sediment accretion was shown. Stem density enables to marsh to keep up with sea level rise. The edge of the marsh is an important part of the ecosystem and crucial fishery habitat.

Docks, both fixed and floating, have four main impacts on vegetation. The first is the short-term construction impact. The second are the chronic impacts from shading. A

path of destruction is left through the substrate that does not recover very quickly when building a dock. An illustration was shown which illustrated the percentage reduction in light for a three-foot tall dock. Only twenty percent of the available light is getting to the bottom and will have a dramatic reduction on marsh production. Eighty percent light will be possible with a four or five foot high dock. Data on the average stem density reduction under docks was provided. There is significant data that indicates that the height of the dock is relative to the amount of light that is allowed to filter to the bottom. Dr. Currin stated that a fixed, higher dock would be better than a floating dock that will be lower. A floating dock needs to be floating. There are direct impacts of shading and disturbance when a dock is resting on the bottom. Less light due to shading causes decreased biomass, which causes less sediment re-suspension that has adverse impacts on water quality in the area. Dr. Currin gave a website where literature can be found: www.coastalmanagement.noaa.gov

The inner-tidal and sub-tidal estuarine plant communities are a vital part of the estuarine ecosystem. They exhibit very high rates of primary production. Shade has a direct impact on primary productivity, reducing biomass and/or the stem density of the plants. Some of the ecosystem services are reduced as a consequence of this reduction in biomass that is caused by the shading. Primary nursery areas and other shallow systems are particularly susceptible to disturbance. The lower and wider the dock is built, the greater the impact.

Draft Amendments to GP 7H .1200 & 7H .0208(b)(6) Docks and Piers (CRC-07-05)
David Moye

David Moye began his presentation by stating that the issue of floating docks has been addressed since the last meeting. A minimum of eighteen inches is required between the substrate and the bottom of the floating structure during mean low water. The wording inserted was on the direction of the Commissioners and was two-fold. The first was the issue of shading of coastal wetlands. The second was allowing pier width differences from four, five or six feet wide as opposed to the strict four-foot width which was originally proposed and how it would relate to platform square footage.

The rule language was provided to Commissioners. The Commission wanted to look at square footage, so new language was inserted to indicate a maximum of eight square feet per linear foot of shoreline with a maximum of eight hundred square feet for structures with no piers or piers up to four feet wide. For a pier width greater than four feet wide up to five feet wide, six square feet per linear foot of shoreline with a maximum of six hundred square feet. For piers that are greater than five feet up to a maximum of six feet wide the total square footage will be four square feet per linear foot of shoreline with a maximum of four hundred square feet. The wider the pier width would limit the amount of platform you can have (to include a boathouse or boatlift). For new development associated with existing pier and docking facilities, the rule will be more restrictive.

Elevation over wetlands has three scenarios. The current rule states no dock will be wider than four foot with a thirty-six inch elevation measured from the substrate to the bottom of the decking. Three separate proposals were given to Commissioners for discussion. (1) States piers up to four feet wide will be elevated up to thirty-six inches (2) Greater than four feet wide up to five feet wide then it must be elevated to four feet from the bottom (3) Greater than five feet wide up to the maximum of six feet wide then the elevation must be five feet above the substrate.

Doug Langford made a motion to send this draft amendment back to the P&SI committee for final language, which incorporates all discussions on this rule. Melvin Shepard seconded this motion. This motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

PUBLIC HEARINGS

There were no public hearings scheduled for this meeting.

COMMITTEE REPORTS

CRAC Report

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

Bill Morrison presented a trophy on behalf of the Coastal Resources Advisory Committee to Charles Jones to thank him for his unparalleled service to the State of North Carolina.

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 made a motion to approve the Currituck County land use plan for certification. This vote passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Bill Peele made a motion to approve the Cape Carteret land use plan for certification. This vote passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Wayland Sermons made a motion to vote on the amendment to 7B .0802 to delete the requirement that a local government official must appear before the CRC to present their land use plan. Jerry Old seconded this motion. This motion passed

unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Bill Peele made a motion to approve the amendment to 7B .0802. This motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Bill Peele made a motion to send the amendments, as presented by Steve Underwood, to 7M .0300 to public hearing. This motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

I & S Report

Bob Emory presented the minutes from the I & S Committee meeting. (SEE ATTACHMENT FOR WRITTEN REPORT).

The CRC took the following action:

After discussion, it was determined that Chairman Hackney would send a letter to Jill Hickey requesting an advisory opinion from the Attorney General's office on the limitations of the CRC to permit access to private islands.

PUBLIC COMMENT AND INPUT

There were no participants for public comment or input during this meeting.

Remand of B & D Variance to CRC

CRC Counsel Jill Hickey introduced the topic to the Commission. She stated that the CRC has granted B & D two variances from the CRC's riparian setback rules allowing construction of a pier in Wrightsville Beach. The Superior Court issued an order to the CRC that both Ms. Walker and the Town have riparian rights that might have been affected by the variance decision, that these riparian rights are property rights under North Carolina law, and that they should have been afforded notice and an opportunity to participate in the variance proceeding. The judge then remanded the matter to the CRC with instructions to reconsider B & D's variance request after providing Ms. Walker and the Town with notice and the opportunity to participate in the variance proceeding.

Ms. Hickey advised that the CRC must figure out what procedure to employ in order to allow the Town and Ms. Walker to present their evidence and for B & D to rebut it. Ms. Alcoke will be the attorney for the State on remand.

Comments to the CRC were made by Frank Sheffield, attorney for B&D Investments,

by Bill Raney, attorney for the Town of Wrightsville Beach, by John Newton, attorney for Deborah Walker, and by Merrie Jo Alcoke, attorney for the Division of Coastal Management. The CRC debated then voted as follows:

Bob Wilson made a motion to send this issue to the Office of Administrative Hearings and have an administrative law judge assigned to conduct a .0701(b) hearing pursuant to the statutory authority of G.S. 7A-758. Renee Cahoon seconded this motion. The motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

ACTION ITEMS

15A NCAC 7J .0210 Replacement of Existing Structures

Renee Cahoon made a motion to adopt 15A NCAC .0210. Doug Langford seconded this motion. Motion passed with twelve votes (Cahoon, Weld, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam) and one abstention (Wilson).

15A NCAC 7K .0209 Exemption/Accessory Uses/Maintenance Repair/Replacement

Doug Langford made a motion to adopt 15A NCAC .0209. Melvin Shepard seconded this motion. Motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

15A NCAC 7M .0303 Guidelines for Public Access

Doug Langford made a motion to adopt 15A NCAC 7M .0303. Joseph Gore seconded this motion. Motion passed unanimously. (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

15A NCAC 7M .0306 Local Government and State Involvement in Access

Doug Langford made a motion to adopt 15A NCAC 7M .0306. Motion seconded by Jerry Old. Motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

15A NCAC 7M .0307 Grant Eligibility and Selection

Chuck Bissett made a motion to adopt 15A NCAC 7M .0307. Doug Langford seconded the motion. The motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

15A NCAC 7H .1102, .1202, .1302, .1402, .2002, .2102, .2202, .2402, .2702
Increase Time Allowance for Construction Under General Permits

Jerry Old made a motion to adopt 15 A NCAC 7H .1102, .1202, .1302, .1402, .2002, .2102, .2202, .2402, and .2702. Joseph Gore seconded the motion. The motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Doug Langford made a motion to accept the changes as recommended by Staff in 15A NCAC 7H .0308 and send to public hearing. Jerry Old seconded this motion. Motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

OLD/NEW BUSINESS

Bob Wilson made a motion to adopt the amendments to the CRC internal operating procedures. This motion was seconded by Charles Elam. This motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Jerry Old stated that there are several comments which have been heard lately on sea level rise. He stated that to the best of his knowledge the CRC has no policy on this issue. He requested that the latest information be brought to the CRC so that it may be discussed and see if there is a policy position that the CRC needs to take. Chairman Hackney stated that for the next meeting, a presentation can be put onto the agenda.

Melvin Shepard requested that the CRC formally support a resolution of House Bill 1128 "Funds for Ocracoke Fishing Facility" and send it to the General Assembly.

Melvin Shepard made a motion to draft a resolution in support of House Bill 1128 to the General Assembly. Doug Langford seconded this motion. The motion passed unanimously (Cahoon, Weld, Wilson, Wynns, Shepard, Gore, Langford, Emory, Peele, Old, Bissett, Sermons, Elam).

Renee Cahoon stated that seventeen coastal communities are getting ready to lose their CRS rating (automatically back down to an 8) which means that these coastal communities, which include Wilmington and all of Dare County are going to have an increase of at least ten percent in the flood insurance premiums. She stated that we need to make those communities aware and talk to our legislators about putting someone other than builders on the building code council. Chairman Hackney asked the CRAC to add this as an action item for their next meeting and discuss the implications of this, what has happened and take it home to their individual Counties and Municipalities. Spencer Rogers stated that the building code council has reviewed the issue based on reports out of Florida and has judged that their regulation needs to be strengthened but not to the level of the international building code. He stated there are two ways to fix it. Either at

the State level or at the Federal level, and FEMA is unfairly using the building code rating system in the way that they set things up and is destroying the incentive program that CRS has been so successful.

With no further business, the CRC adjourned.

Respectfully submitted,

James H. Gregson, Executive Secretary

Angela Willis, Recording Secretary