

**NC COASTAL RESOURCES COMMISSION (CRC)
JANUARY 26-27, 2006
SHERATON
ATLANTIC BEACH, NC**

Present CRC Members

Courtney Hackney, Chairman
Doug Langford, Vice Chair
Joseph Gore
James Leutze
Renee Cahoon
Bob Emory
Chuck Bissett
Charles Elam

Bill Peele
Larry Pittman
Joan Weld
Bob Wilson
Lee Wynns

Jerry Old – Absent
Melvin Shepard – Absent

Present Coastal Resources Advisory Council Members

Bill Morrison, Chair
Dara Royal, Co-Chair
Joe Lassiter
Gary Greene
Rhett White
Penny Tysinger
Wayne Mobley
Ann Holton
Jimmy Spain (replacing Ann Holton)
Gary Ferguson (for Ginger Webster)
Judy Hills
Gene Balance
Mike Street
Lester Simpson
Joseph Beck
J. Michael Moore
Spencer Rogers
Lee Padrick

Brandon Shoaf
Travis Marshall
William Wescott
David Stanley (for Don Yousey)
David Nash
Deborah Anderson
Gary Mercer
Beans Weatherly
Dave Weaver
Harold Blizzard
Robert Shupe
Al Hodge
Eddy Davis
Frank Alexander
Traci White
Webb Fuller
Renee Gledhill-Earley

Present Attorney General's Office Members

Allen Jernigan
Jill Hickey
Merrie Jo Alcoke
Christy Goebel

CALL TO ORDER/ROLL CALL

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

Stephanie Bodine called the roll. Jerry Old and Melvin Shepard were absent. Bob Emory stated a conflict regarding the Petition for Rulemaking and stated he would excuse himself at the time a vote is placed.

MINUTES

Doug Langford made a motion, seconded by Joseph Gore, to adopt the November 16-18, 2006 minutes with a correction to a rule number under the Action Items. The motion passed unanimously (Cahoon, Emory, Bissette, Gore, Elam, Langford, Leutze, Peele, Pittman, Weld, Wilson, Wynns)

EXECUTIVE SECRETARY'S REPORT

After welcoming new CRAC members, Charles Jones gave a brief update on the following:

CHPP update

An update on CHPP implementation for each of the three commissions was included in mailout. Mr. Jones asked all to review and let the staff know if there were any questions.

Recreational fishing license

It is a little premature to discuss how the revenues generated from the sale of the new license will be used. Proceeds from the sale of this license will go into two marine resources funds managed by the state's Marine Fisheries and Wildlife Resources commissions. Revenues must be used to manage, protect, restore, develop, cultivate, conserve and/or enhance North Carolina's marine resources.

DMF is in the very early stages of developing a strategic plan to guide us in the administration of this money. A representative from DMF will give us an update at a future meeting.

Town of Duck

The Town of Duck has submitted a Letter of Intent to adopt a local implementation and enforcement plan to allow the Town to act as the permitting agency to administer a minor development permit program. The Town of Duck was incorporated in 2002. The Town is preparing the required implementation plan and will be conducting the required public hearings in order for the CRC to consider their request at the March meeting.

CELCP

In December, the Division submitted a competitive grant application to the Coastal and Estuarine Land Conservation Program (CELCP). The application is for funding assistance to acquire three parcels of land, one each in Gates, Tyrrell, and Pender Counties. The application is subject to congressional appropriations in FY2007, and to competition with similar grant applications from

other coastal states. If successful, the state could be awarded up to \$8.4 million, which would be used to purchase the lands for permanent conservation. NOAA will rank the applications from all states and inform us in the spring which, if any, of our projects have been recommended to congress for funding.

Stormwater projects

Seven communities have been selected to receive Coastal NPS Funds for stormwater projects to be completed by next March (2007). Funds were provided via DCM's Local Planning and Management Grant and DCM planners are playing key roles in getting the projects underway.

CZMA consistency rule revised

On January 5, NOAA published in the Federal Register the Final Rule revising certain sections of the Coastal Zone Management Act Federal Consistency regulations. The Final Rule becomes effective February 6, 2006.

The revisions to the federal consistency regulations should provide for more efficient approval of both energy and non-energy projects by providing greater clarity, transparency and predictability in the regulatory process.

Conference

Commissioner Leutze is heading up a technical conference to take place March 19-21. Conference topics will include Fish, Fisheries and Protected Species, Coastal Habitats, Pollution and Connections to Ecosystems and Human Health, Socio Economic Assessment of the of the Southeast Ecosystem, and Water Supply/Water Flows with regional and national speakers addressing issues related to the coastal states of North Carolina, South Carolina, Georgia and Florida.

Offshore drilling:

A recent report recommends that Virginia allow offshore exploration for natural gas and oil deposits. The study suggests that drilling take place only 50 miles or more from the coast and that no pipeline or infrastructure be built on Virginia's Eastern Shore. Any exploration would target both natural gas and oil on the outer continental shelf of the Atlantic Ocean.

The report noted that North Carolina found more than 10 years ago that possible exploration off Manteo was incompatible with its coastal zone management rules. It said that Virginia should make a similar analysis and said that safety measures should be carefully reviewed.

New reserve building

On December 7, Mr. Jones attended a groundbreaking ceremony for the a new building that will house the NOAA Coastal Center for Fisheries and Habitat Research and the North Carolina National Estuarine Research Reserve staff. The building will be located in Beaufort and should be completed late this year.

VARIANCE REQUESTS

Leo and Carolyn Nowak – Carolina Beach (CRC-VR-05-25)

Christine Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-05-25 stating that the petitioners proposed to build a single-family residence on a lot in Carolina Beach. She stated the current site is vacant with the exception of an existing bulkhead. Ms. Goebel stated that the Town of Carolina Beach requires a street setback of 20 feet from the property line and the side yard setback is 7 feet from the property line. She stated that the proposed home is 1452 sq. ft, the porches/decks/stairs on the front and backsides have a 485 sq. ft. footprint, and concrete driveways are 657 sq. ft. Ms. Goebel stated that the proposed development to be placed in the buffer includes approximately 356 sq. ft of decking on the first floor, 298 sq. ft of decking on the second floor, which totals 654 sq. ft of wooden decking with the buffer area. She stated the petitioner proposed an engineered stormwater system. Petitioners were denied a permit based on development not being inconsistent with 15 NCAC 7H .020(d)(10), which states that development shall be located a distance of 30 feet landward of the normal water level or normal high water level, and the decking exceeded the allowed 200 sq. ft. exception, and therefore seek a variance.

Ms. Goebel stated that strict application of the buffer rule in this case does not severely limit development on the lot so as to render it an exceptional situation. The buffer rule limits the maximum use of the lot for petitioners desired purpose and design. She stated the petitioners could have reduced the size of the decking to meet the 200 sq. ft exception, or design a smaller home to accommodate the desired decking. Ms. Goebel stated that because petitioners can make reasonable use of their property under existing rules, there is no unnecessary hardship in this case. Ms. Goebel stated that the alleged hardship does not result from conditions peculiar to the property. Although the lot has lost some depth due to erosion, this is a characteristic shared by many lots along the basin in Carolina Beach. She also stated that neither size, location, nor topography of this lot is peculiar. Ms. Goebel stated that any alleged hardships are the result of the petitioner's in that the petitioner can make changes to reduce the development in the buffer. She stated that the variance request would be consistent with the spirit, purpose and intent, secure public safety and welfare and preserve substantial justice due to petitioner proposing an engineered stormwater system, and if the petitioners are allowed to only build in-line with the 23 feet from the normal high water line, not the 9 feet 4 inches as requested.

Bob Emory made a motion, seconded by Bob Wilson to grant the variance on the condition that the proposed house is moved landward. The variance was granted with a vote of 11 in favor (Leutze, Cahoon, Emory, Bissette, Gore, Elam, Peele, Pittman, Weld, Wilson, Wynns) and 1 opposed (Langford).

Jesse & Myers Construction – Ocean Isle Beach (CRC-VR-05-28)

Petitioners were denied a variance in November 2005. This is a new petition for a modified project.

Ms. Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-0528 stating that petitioners proposed to build a single-family home on their lot in Ocean Isle Beach. The original home and deck design would have a covered footprint area total of 1966 sq. ft. Petitioners also proposed a 900 sq. ft. gravel driveway. Ms. Goebel stated that the propose house and covered deck on the original design would have been located 20 feet from the normal high water level of the canal. Approximately 720 sq. ft. of impervious covered surfaces would have been within the buffer. Petitioners were denied this variance request, but some members of the Commission noted that they would reconsider the project if it was redesigned to better meet the rules and more information was provided about the existing footprint versus the proposed footprint of the structures. Petitioners again applied for a permit to replace an existing single family home with a new single family home. Ms. Goebel stated the project was re-designed to uncover some of the decking on the street side of the house, allowing the uncovered portion to move into the Town's 25-foot street setback (town allows some uncovered decking in this area, but not covered decking). This allowed the home to move toward the street by an additional 4 feet. She stated that the petitioners offered to increase the capacity of the stormwater collection system from the first 1.5 inches to the first 3 inches of stormwater. The redesigned home and decking would have approximately 504 sq. ft of impervious surfaces within the buffer. Ms. Goebel stated that this is an increase of 366 sq. ft compared to the existing footprint. She stated that the increase was due in part to the removal of the concrete driveway. Ms. Goebel stated that the petitioner filed this second variance request, seeking a variance from 15 NCAC 7H .0209(d)(10), which states that new development shall be located a distance of 30 feet landward of the normal water level or normal high water level.

Ms. Goebel stated that strict application of the buffer rule in this case still yields a residence with a footprint of approximately 36' x 36' or 1296 sq. ft that could be constructed on the lot and a second story could be added to make 2592 sq. ft. Ms. Goebel stated that a house slightly smaller, 1200 sq. ft. would meet the small house exception rule and would only require a setback of 23 feet instead of 30 feet. Therefore because petitioner can make reasonable use of the property there is in unnecessary hardship. Ms. Goebel stated that the alleged hardships do not result from conditions peculiar to the property. The loss of 24' depth to the bulkhead is a common feature shared by many in this area. Ms. Goebel stated that the hardship is the result of the petitioner's proposed design and use. She stated that the variance request would be consistent with the spirit, purpose and intent of the rules by implementing an engineered stormwater system. Ms. Goebel stated the variance will preserve substantial justice only if the Commission finds in favor of the other essential factors.

Jim Leutze made a motion, seconded by Chuck Bissett to grant the variance as requested. The variance was granted with a unanimous vote (Leutze, Cahoon, Emory, Bissette, Gore, Elam, Langford, Peele, Pittman, Weld, Wilson, Wynns).

Darrigrand – Oak Island (CRC-VR-05-28)

Merrie Jo Alcocke reviewed the Stipulated Facts on Attachment B of CRC-VR-05-26 stating that petitioners propose to construct a single-family residence on their lot in Oak Island. She stated in 1994 a permit was issued to a prior owner allowing the construction of a single-family residence on the property. The Darrigrand's purchased the property in 1995 and at that time

there was a 25 foot building envelope on the lot sufficient to construct a single family residence in compliance with all applicable CAMA and local zoning setbacks. She stated by October of 2000 the vegetation line had moved landward such that the lot no longer had a building envelope. Petitioners applied for a permit in May 2003, where the proposed home was a two story pile supported four bedroom with a total heated floor area of approximately 2600 sq. ft. The permit was denied in July 2003 due to the application of the minimum 60-foot Erosion Setback to the property. In addition to the 60 foot setback the proposed development must also meet the 25-foot Town Setback. The petitioners requested a variance from the Town Setback, which the Town denied in April 2004. In August 2003 the petitioners filed a Petition for a Consolidated Contest Case Hearing and CAMA Variance Request. The ALJ issued a Decision in June 2005, finding that the petitioners had met the four criteria for being granted a variance. The CRC overturned the ALJ's decision and voted to deny the variance in November 2005. Ms. Alcoke stated that at the time of the November 2005 CRC meeting, DCM determined the site conditions on the lot had changed sufficiently since the original permit application to justify the consideration of a new permit application. The petitioners submitted a new application for a CAMA minor permit to the Town in December 2005. Ms. Alcoke stated that without a variance the petitioners would be unable to construct any residential dwelling on the property. Therefore the petitioners are seeking a variance from 15A NCAC 7H .0305(f), which requires use of the pre-project vegetation line.

Ms. Alcoke stated that strict application of the rules, standards or order do cause the petitioners a hardship in that application of the Pre-project line creates a negative building envelope. Thus petitioners cannot construct a residence that complies with the CRC's minimum oceanfront setback and a hardship exists. She stated that such hardships do result from the conditions peculiar to the property in that the location of the property is within the bounds of the marginal 933 Project, which was considered large scale by only eight one-hundredths of a cubic yard. She stated that hardships do not result in actions taken by petitioners and will be consistent with the spirit, purpose and intent of the rules because it will meet the 60 foot setback form the first line of stable natural vegetation on the beach today.

Jim Leutze made a motion, seconded by Doug Langford to grant the variance as requested. The variance was granted by a unanimous vote (Leutze, Cahoon, Emory, Bisette, Gore, Elam, Langford, Peele, Pittman, Weld, Wilson, Wynns).

Carol Ann Zinn – Wrightsville Beach CRC-VR-05-24

Ms. Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-05-24 stating that the petitioner proposed to construct a 10' by 15' swimming pool with a 2' wide concrete border on property contracted for purchase in the Town of Wrightsville Beach. She stated that the current site conditions include a three story single family piling supported residence with a 1672 sq. ft footprint, an attached porch and wooden deck outside the buffer, a wooden walkway and stairs within the buffer, an 800 sq. ft. concrete driveway, and an existing bulkhead. The proposed project is within the buffer area. The proposed wooden decking that connects the pool to the wooden walkway meets the 200 sq. ft. exception. Ms. Goebel stated the petitioner submitted an amended engineer-sealed stormwater management plan that increased the length of the

infiltration trench by 2 feet in connection with this variance request. Petitioner is seeking a variance from 15A NCAC 7H .0209(d).

Ms. Goebel stated that strict application of the rules, standards or orders do not cause a hardship as the buffer rule as been in place since 2002 and were in effect when petitioner contracted to purchase the house. She stated that staff felt that not having a pool, even for at-home medical treatment is not an unnecessary hardship as there are other options for water-therapy besides having a pool at this location. Ms. Goebel stated that alleged hardships do not result in conditions peculiar to the property. The lot does not meet the small lot exception. She stated lots of this size are common in Wrightsville Beach. Ms. Goebel stated that alleged hardship is the result from actions taken by the petitioners in that the buffer rule was already in effect several years prior to petitioners contracting to purchase lot. She stated that the variance request would be consistent with the spirit, purpose and intent due to the proposed stormwater collection system to collect the first 2-2.5 inches of rainfall. She stated that substantial justice will be preserved only if the CRC feels these facts meet the criteria for a variance.

Doug Langford made a motion, seconded by Renee Cahoon to deny the variance as requested. The variance request was denied by a unanimous vote (Leutze, Cahoon, Emory, Bisette, Gore, Elam, Langford, Peele, Pittman, Weld, Wilson, Wynns).

CONTESTED CASE

Gregory v. DCM

This case was filed by Terry and Penny Gregory, who are riparian lot owners. Terry Gregory is now deceased. DCM is the Respondent, and the Permittees Michael and Linda Swearingen are Intervenor-Respondents. This case is a third party permit appeal of a CAMA Emergency General Permit issued for repair/replacement of a pier and platform. DCM determined that the repair of an existing boathouse and catwalk, both of which were attached to the pier and platform, were exempt from the CAMA permit requirement because they were less than 50% damaged. The ALJ granted summary judgment in part for Petitioners, and in part for Respondent. The matter then came before the CRC for final agency decision at the CRC's regularly scheduled meeting on June 17, 2005 in Greenville, North Carolina. The CRC reversed the ALJ's decision that DCM erred in failing to consult the building inspector when it issued a repair exemption to the Swearingens, and the CRC upheld the ALJ's decision that DCM did not err when it considered the pier and boathouse as separate structures. The CRC remanded the case to the ALJ for a determination of whether the cost to repair the boathouse and associated catwalks exceeds 50% of the physical value of those structures. Specifically, the CRC found that "[b]ecause the CRC determined that Petitioners' motion for summary judgment should be denied, the ALJ never reached the issue of whether the boathouse and catwalks were more than 50% damaged. The issue must be remanded for hearing and decision by the ALJ pursuant to N.C.G.S. § 150B-36(d)." The ALJ found on remand that the cost to repair the boathouse exceeded 50% of the value of the boathouse and therefore DCM should not have issued a repair exemption for that work.

Ms. Alcoke stated that the ALJ's decision was arbitrary because it failed to consider the DCM's demonstrated knowledge and expertise in determining the physical value and cost of repair to the boathouse and it arbitrarily uses depreciation of 32% despite the preponderance of the evidence of a lower rate. Ms. Alcoke stated the ALJ's decision is erroneous as a matter of law because the ALJ used the 1995 construction cost instead of the 2003 replacement cost to determine the physical value of the boathouse before subtracting depreciation. She stated that therefore, the Respondents request that the CRC overturn the ALJ's decision and find that the decision to issue a repair exemption is affirmed and that the petitioners have not demonstrated that Respondent exceeded its authority or jurisdiction, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in determining that Respondent Intervenor was entitled to repair their storm damaged boathouse and catwalk as exempt work.

Joan Weld made a motion, seconded by Joseph Gore to adopt the ALJ's decision. The motion passed with 7 in favor (Leutze, Emory, Gore, Pittman, Weld, Wilson, Wynns) and 4 opposed (Cahoon, Bissett, Elam, Langford) (Peele was absent during vote).

DECLARATORY RULING

Harbor View at Arcadius – Carolina Beach

Petitioner Harbor View at Arcadius requested a declaratory ruling by the CRC on the applicability of the use standards in the CRC's Urban Waterfronts Rules, 15A NCAC 7H .0209(g)(4)(B), to the proposed redevelopment of the former Harbor Master Restaurant, a portion of which is an existing, enclosed structure located over public trust and estuarine waters within the Town of Carolina Beach's Urban Waterfront.

Ms. Alcoke reviewed the undisputed facts agreed upon by the Petitioner and DCM. She stated that the property is the site of the former Harbor Master Restaurant, originally constructed in 1971. The Town of Carolina Beach condemned the former restaurant in January 2004. Ms. Alcoke stated that the petitioner proposed to redevelop the property under the name Harbor View at Arcadius with a 5,000 sq. ft. restaurant space on the ground level and 16 residential condominiums above the restaurant space, as well as at least three transient docks, of which will be available free of charge for use by the general public. She stated the petitioner's plans to redevelop involve replacing the existing structure with an expanded structure vertically from one story to six stories. Ms. Alcoke stated that the proposed activities will require repair and replacement work in excess of 50% of the existing, physical value of such structures. She stated that DCM maintains that once the structure is replaced as proposed, the new structure is no longer considered an existing structure that could be expanded vertically over the water under the urban waterfront rules. Ms. Alcoke stated that if petitioner's plans did not include development over the water, then DCM could approve the development. She stated that there is currently no stormwater management on the property at present, and petitioner's design incorporates stormwater management features that must comply with applicable stormwater management regulations. Ms. Alcoke stated that the project will effectively reduce the amount of impervious surface now on the property, which is almost entirely impervious.

Ms. Alcoke stated that by allowing construction of both new structures and vertical expansion of existing enclosed structures over the water, the urban waterfront rules provide a significant exception to the CRC's general rule that new non-water dependent structures are not allowed over public trust areas. She stated the petitioner's proposal exceeds what is allowed under plain language of the rule, and exceeds what the CRC intended when it adopted the urban waterfront rules. Ms. Alcoke stated that if the CRC decides it is in the public interest to allow this type of development over public trust areas within an urban waterfront, then DCM recommends that this issue be addressed through the rule-making process since the existing rules do not enable them to permit it.

Frank Sheffield, attorney for the petitioner, stated that the existing structure is condemned and it is required to be either demolished or upgraded. He stated that the planned replacement building will stay within the original footprint of the existing structure on the waterside and on lateral sides; and will extend beyond the original footprint only on landward side. Mr. Sheffield stated that the project will further Management Objectives of Urban Waterfront Rules by redeveloping existing property with substantial aesthetic and economic benefits. He stated the project will improve stormwater management on the property, where none currently exist, by reducing the amount of impervious surface. In closing, Mr. Sheffield stated that the project will provide additional transient docks for use by the general public.

Doug Langford made a motion, seconded by Renee Cahoon to accept the DCM Staff's recommendation to deny the Declaratory Request. The motion passed by a unanimous vote (Leutze, Cahoon, Emory, Bissett, Gore, Elam, Langford, Pittman, Weld, Wilson, Wynns). (Peele was not present for vote)

PUBLIC INPUT AND COMMENT

Michele Duval, Environmental Defense, addressed the Commission regarding the proposed Anti Submarine Warfare Training Range. She stated that installation of the training range has the potential to impact hard bottom habitat. Ms. Duvall stated that hard bottom is the sixth major habitat type identified in the CHPP. She stated that the MFC submitted a short letter outlining their concerns that this project would have on hard bottom habitat. Ms. Duvall passed out a copy of this letter. She is requesting that the CRC consider writing a letter to the Navy endorsing and supporting the MFC comments.

Ms. Duvall also addressed the CRC regarding the Federal Consistency Regulations under the CZMA. She stated there were some revisions that were issued at the beginning of the month. Ms. Duval stated there are proposed major federal actions that could possibly impact coastal resources either in water or on land. She requested that DCM Staff, at a future meeting, could give a presentation on the kinds of activities that trigger consistency determination, and what that involves in terms of making a determination.

Pam Morris, Commercial Fisherman, addressed the Commission regarding the Land Use Plan for Carteret County. Mrs. Morris stated that she is speaking on behalf of the Grassroots Citizens Organization, "Downeast Tomorrow". She stated that she is also a member of the Carteret County Fishermen's Association. Mrs. Morris stated concerns about the proposed changes to the

Carteret County LUP. She stated that her community is currently going through development pressures that are currently pending. She stated that they rely on LUP, and CAMA regulations for protection of the wetlands. Mrs. Morris stated concern about the LUP requirements not being stringent enough because of the particularly sensitive environmental area. She stated that she sees a lot of degradation of the natural resources in eastern Carteret County and more are getting ready to take place. Mrs. Morris stated that the community has fought against relaxing current policies, particularly shellfish bottom, that is in the current LUP. She would like to see that stay in the LUP. Mrs. Morris stated this is important due to the wide expanse of marsh in the area. She stated that wetlands need to be protected and feels the current mitigation requirements in place are not sufficient to compensate for the loss of the wetlands once they are gone. Dr. Courtney asked her if the Downeast Tomorrow group had been involved in the LUP process. Mrs. Morris stated that she did go to meetings and other groups in the county as well that participated. She stated that she felt her and the other group's participation did not make a difference. She stated the Board stated that they needed only to meet minimum requirements. Mrs. Morris feels more than just the minimums need to be met.

Carolyn Mason, "Downeast Tomorrow" group, addressed the Commission regarding the Land Use Plan for Carteret County. Ms. Mason reiterated the concerns that Mrs. Morris stated earlier. She stated that the area they live in is an extremely unique and fragile area. Ms. Mason wanted to alert the CRC on following concerns: 1) the Plan fails to include policy that represents the interest of the majority of county residents to ensure a healthy future for the coastal communities; 2) the Plan does not include clear policy that would be necessary to truly guide future development to appropriate areas; 3) the Plan does little more than restate what is already required as the minimums in existing State, Federal and Local Policies; 4) the Plan does not meet the long time goal of CAMA to balance economic development with resource protection; 5) the Plan is contradicting in that it says protection in an area is important, yet it contains no policy to ensure this; 6) the Plan states that the county will initiate an education program aimed at promoting the aspects of the Downeast community that make it unique. Ms. Mason stated they need active protection, not an education program that may accomplish little or nothing.

Frank Tursi, NC Coastal Federation, addressed the Commission regarding the proposed Navy Sonar Range Project. He stated that there is a great concern concerning this proposal, not only among those that do this for a living, but also amongst the boat Captains. Mr. Tursi mentioned that the divers that dive the wrecks are also concerned. He mentioned the acoustical effects on marine mammals. Mr. Tursi stated there is not enough knowledge to make such a broad determination that there will be little or no effect on marine mammals. He stated there is a concern about the trash that will develop, as he believes that the Navy will only recover their torpedoes and everything else will sink to the bottom, including 7,000 sonar buoys every year powered by lithium batteries. He requested that the Navy find some way to recover the sonar buoys along with the torpedoes. He requested that the CRC get more involved, as other agencies have, in their comments regarding this proposed project.

COMMITTEE REPORTS

CRAC Report

Bob Shupe presented the minutes from the CRAC (SEE ATTACHMENT FOR WRITTEN COPY).

P&SI Committee Report

Renee Cahoon presented the minutes from the P&SI Committee (SEE ATTACHMENT FOR WRITTEN COPY). The CRC took the following action:

Renee Cahoon moved that the CRC approve the Town of Oak Island Land Use Plan Amendment. The motion passed unanimously (Leutze, Cahoon, Emory, Bissette, Gore, Elam, Langford, Pittman, Weld, Wilson, Wynns). (Peele not present for vote)

Renee Cahoon moved that the CRC send 15A NCAC 7B .0801 and 7B .0802 to public hearing. The motion passed unanimously (Leutze, Cahoon, Emory, Bissette, Gore, Elam, Langford, Pittman, Weld, Wilson, Wynns). (Peele not present for vote)

I&S Committee Report

Bob Emory presented the minutes from the I&S Committee (SEE ATTACHMENT FOR WRITTEN COPY). The CRC took the following action:

Bob Emory moved that the CRC send 15A NCAC 7I & 7H to public hearing. The motion passed unanimously (Leutze, Cahoon, Emory, Bissette, Gore, Elam, Langford, Pittman, Weld, Wilson, Wynns). (Peele not present for vote)

Bob Emory moved that the CRC send 15A NCAC 7H .0306 to public hearing. The motion passed unanimously (Leutze, Cahoon, Emory, Bissette, Gore, Elam, Langford, Pittman, Weld, Wilson, Wynns). (Peele not present for vote)

Bob Emory moved that the CRC send 15A NCAC 7H .0312 to public hearing. The motion passed unanimously (Leutze, Cahoon, Emory, Bissette, Gore, Elam, Langford, Pittman, Weld, Wilson, Wynns). (Peele not present for vote)

FOR THE RECORD COURTNEY HACKNEY LEFT THE MEETING AND DOUG LANGFORD IS ACTING CHAIR FOR THE REMAINDER OF THE MEETING

PRESENTATIONS

Review of Effectiveness of EMC Coastal Stormwater Rules

Tom Reeder, DWQ, reviewed the effectiveness of Coastal Stormwater Rules stating that existing programs have been in place 15+ years. He stated that shellfishing waters are sensitive receptors and there is a continuing loss of these waters in NC. Mr. Reeder stated that the existing

programs do not appear to have been effective in protecting designated shellfishing use and that additional shellfishing waters are closed every year. There is no evidence to indicate that these programs will be more effective in the future. Mr. Reeder stated that one identified shortfall of existing programs appears to be reliance on low density with no engineered stormwater controls. He stated that continued degradation of shellfishing waters would likely occur if existing programs remain in place. DWQ recommends the EMC to consider amending the existing stormwater programs for coastal counties that would require stormwater control structures with no low density waiver, which would be similar in concept to the Universal Stormwater Management Program.

Report on Costs, Benefits, and Management, Issues related to NC's Shallow Draft Navigation Channels

Johnny Martin, Moffatt and Nichol, presented a report of the findings of a study examining the costs, benefits, and management issues related to maintaining North Carolina's shallow draft channels. It examines the historical dredging of these waterways, the use and management of the dredged materials, and the economic impacts and safety related concerns of the State's shallow draft waterways. While the duty and cost of maintaining the shallow draft waterways has traditionally been undertaken by the United States Army Corps of Engineers (USACE) as part of the maintenance of federal channels, it is becoming apparent that the funding for such efforts is declining. The current administration has proposed to eliminate this responsibility from the federal budget. Upcoming budgets will provide some valuable information on whether Congress wants to reverse the administration's direction as well as whether the administration is sticking to this decision to eliminate funding for shallow draft navigation channels. With the decrease or elimination of federal funding, the State of North Carolina is faced with examining alternatives to keep the shallow draft waterways open. The key findings with regard to the costs, benefits, and management issues related to maintaining North Carolina's shallow draft navigation channels are: Over the last 30 years, over 800 dredging projects and 100 million cubic yards of material have been dredged to maintain the shallow draft waterways. The shallow draft navigation channels provide a significant impact on the State's economy. The shallow draft waterway's primary economic impacts are on recreational boating, commercial fishing, tourism and marine trades. Despite the lack of currently available economic data specifically linked to shallow draft waterways, the economic impact can be shown to be in the hundreds of millions of dollars annually. The people of North Carolina consider these shallow draft channels a part of their way of life and heritage. At present, the most straightforward option given the uncertainty regarding future federal funding and need to maintain these vital State waterways would be to enter into contractual agreements with the USACE to supplement their dredging budget as needed for projects of State interest. The economic and social importance of maintaining these waterways justifies the annual cost.

Variance Request

Joseph Diello – New Bern CRC-VR-05-10

Ms. Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-05-10 stating that the petitioner proposed to build a 13' by 20' sunroom addition where there is an existing deck on a

single-family residence in New Bern. She stated the project is inconsistent with the impervious limits rule. She also stated that the CRC's 30' buffer rules are not applicable because the EMC's buffer rules apply to this property per 7H .0209. Ms. Goebel stated that if a variance were granted, petitioner still would need a variance from DWQ's buffer rule. She stated the proposed development consists of converting part of the existing deck to 13' by 20' sunroom and putting a new 9' by 26' brick patio laid in sand. Ms. Goebel stated the total proposed impervious area is 3080 sq. ft. plus the brick patio. She stated that the petitioner was made aware that he could propose an innovative stormwater design, but has decided against this. Petitioner seeks a variance from 15A NCAC 7H .0209(d)(2) in order to construct a sunroom addition to the single-family residence as proposed.

Ms. Goebel stated that strict application of the rules, standards or orders does not contribute to the petitioner's hardship. She stated that currently the lot is highly developed with an existing home, garage, driveway, deck, bulkhead and dock. Any hardship is the result of the petitioner's design and use of the addition. Ms. Goebel stated that further, the petitioner could propose an innovative design to capture the additional stormwater over 30%, as provided in the rule, but has chosen not to do so. Ms. Goebel stated that any hardships are not the result of any peculiarity on the property. She stated that any hardships are the result of actions taken by the petitioner in the design and choice to not implement a stormwater system. Ms. Goebel stated that this variance request does not meet the spirit, purpose and intent of the rules. She stated that petitioner could simply propose a stormwater system and would not need a variance. Allowing an addition without requiring a stormwater system would not preserve public safety and welfare. Ms. Goebel stated that Substantial Justice would be preserved by requiring petitioner to get an engineer-certified plan for a stormwater system like other applicants who propose impervious surfaces over 30%.

Bob Wilson made a motion, seconded by Renee Cahoon to deny the variance as requested. The variance was denied by a unanimous vote. (Cahoon, Bissett, Gore, Elam, Weld, Wilson, Wynns), (Leutze, Peele, Pittman absent for vote), (Emory recused for vote)

PETITION FOR RULEMAKING

NC Floating Docks and Lifts, LLC – Proposed Modification of Pier Rules

Ms. Alcoke stated that NC Floating Docks and Lifts, LLC proposed to amend the use standards for docks and piers in 15A NCAC 7H .0208(b)(6), and the general permit provisions in 7H .1205 to eliminate the need for a CAMA permit for floating boat lifts under certain conditions. She stated that DCM currently issues permits for the type of floating boat lift presented in this case. Ms. Alcoke stated that a "JetDock" or similar floating boat lift must meet existing CRC rules that limit the number of slips and amount of platform space an applicant can have. Ms. Alcoke stated that permit "exemptions" are provided in another chapter of the rules. She stated it would be inappropriate to provide an exemption from CAMA permitting requirements within the use standards for docks and piers or within the conditions for general permits. Ms. Alcoke stated that even if the petitioner amended its proposed ruling to address the procedural issues, Staff still opposed the rule change. She stated that the rule change would relax regulatory review of floating docks in public trust and estuarine waters at a time when the CRC and other review

agencies have determined that such issues should be addressed more thoroughly. In 1998 the CRC amended the pier rules so that exemptions were no longer provided for such structures. Ms. Alcoke stated that it would be contrary to that amendment to now adopt an exemption for these structures, which function as both a platform and a boat slip. Ms. Alcoke stated that if the CRC were to consider these structures in their rules, then Staff recommended sending the matter to the I & S Committee for discussion of a rule and its consequences.

Frank Sheffield, Attorney for the petitioner, stated that at present DCM requires a permit be obtained for floating lifts and in the same manner as permanent fixed docks. He stated that in contrast to permanent fixed docks, JetDock products are floating lifts, which merely serve as a floating platform for jet skis and small vessels to sit atop. Mr. Sheffield stated that JetDock lift products require no pilings and are merely tied to a fixed dock in place of an existing slip or mechanical lift. Mr. Sheffield stated that the petitioner proposed that NC regulate these products as lifts and not docks. He gave several statements of reasons for adoption of this proposed rule. Mr. Sheffield stated that no slip is created, the legal mooring area is already present, as is the permission to use submerged lands. He stated that a floating boat lift does not become a fixture to the real property where it resides, is towed into place and attached rather than constructed like a pier or platform, and the area of placement would have already received environmental review and regulatory approval which allows for the operation, movement and storage of a floating vessel. Mr. Sheffield stated that the proposed rule amendment would reduce the administrative burden on the Division by eliminating the need to issue permits for floating vessel platforms and floating boat lifts. He stated that due to the popularity of this new product, requiring permits for each installation would impose a burden on the Division staff.

After discussion, **Bob Wilson made a motion, seconded by Joseph Gore to deny the petition for rulemaking and send the matter to the I&S Committee for discussion and recommendation to the CRC at a later date. The petition was denied and referred to the I&S committee by a unanimous vote. (Cahoon, Bissett, Gore, Elam, Weld, Wilson, Wynns) (Emory recused due to conflict of interest) (Leutze, Peele, Pittman absent during vote)**

ACTION ITEMS

Approval of 2004-2005 CHPP Annual Report

In accordance with the 1997 Fisheries Reform Act, the Marine Fisheries, Coastal Resources and Environmental Management Commissions are required to report annually to the Joint Legislative Commission on Seafood and Aquaculture on the Coastal Habitat Protection Plan (CHPP). The most notable accomplishment has been the completion of implementation plans for each of the commissions, their associated agencies as well as the Department. Other highlights include enhancements to the CHPP web site, preliminary discussion of Strategic Habitat Area criteria and continued progress mapping seagrass beds in the Albemarle-Pamlico system.

Bob Emory made a motion, seconded by Renee Cahoon to approve the 2004-2005 CHPP Annual Report. The report was approved by a unanimous vote. (Cahoon, Emory, Bissett, Gore, Weld, Wynns) (Elam, Wilson abstained from vote)

OLD/NEW BUSINESS

Doug Langford asked DCM Staff to look into issues of clearly identifying the boundaries of the Kill devil Hills and Nags Head Small Surface Water Supply Area of Environmental Concern. IT was pointed out hat the pond boundary fluctuates depending on the season and rainfall. This could mean that a project could be in the AEC in the winter but not in the summer. Staff will bring forth recommendations at a later meeting.

With no further business, the CRC adjourned.

Respectively submitted,

Charles S. Jones, Executive Secretary

Stephanie Bodine, Recording Secretary