

**COASTAL RESOURCES COMMISSION MEETING (CRC)  
NOVEMBER 16-18, 2005  
BLOCKADE RUNNER  
WRIGHTSVILLE BEACH, NC**

**REVISED**

**Present CRC Members**

Courtney Hackney, Chairman  
Douglas Langford, Vice Chairman  
Charles Elam  
Renee Cahoon  
Bob Emory  
Jim Leutze  
Chuck Bissett

Joseph Gore  
Jerry Old (absent 11/16/05)  
Bill Peele  
Melvin Shepard  
Joan Weld  
Bob Wilson  
Lee Wynns

**Present Coastal Resources Advisory Council Members**

Robert Shupe, Chairman  
Bill Morrison, Co-Chair  
Travis Marshall  
Edwin (Eddy) Davis  
Jimmy Johnson  
Spencer Rogers  
Ann Deaton  
Penny Tysinger  
Al Hodge  
Deborah Anderson  
Lee Padrick  
Frank Alexander

Gary Mercer  
Ann Holton  
Stephen Sizemore  
Ann Deaton (Mike Street)  
Joseph Beck  
Ginger Webster  
Harold Blizzard  
Webb Fuller  
Mark Etheridge (Wayne Mobley)  
Lester Simpson  
William Wescott  
Harry Simmons

**Present Attorney General's Office Members**

Allen Jernigan  
Jill Hickey  
Christy Goebel  
Merrie Jo Alcoke

**Wednesday November 16, 2005**

**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 was absent on Wednesday November 16, 2005. Larry Pittman was absent.

**VARIANCE REQUESTS**

*King – Nags Head (CRC-VR-05-06) was removed from the agenda and will be heard at a future CRC meeting*

**Smith – Carteret County (CRC-VR-05-08)**

Christine Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-05-08 stating that the petitioners propose to construct a single family residence and driveway on property located in Beaufort. She stated the site currently has a septic system installed, but there are no other structures on the lot. Ms. Goebel stated the subdivision covenants require structures to be setback 30 feet from the road, and side setbacks of 10 feet. She stated that there is a 30 foot wide drainage and utility easement on part of the south side of the lot. However the actual location of the ditch does not comply with the plat map. Ms. Goebel stated that in determining the 30-foot buffer it was noted that part of the ditch was a natural tidal creek and part was dug for drainage. In December 2004 the petitioners were issued a Notice of Violation due to the start of construction on the single-family residence within the 30-foot buffer without a permit. She stated that by January 2005 the petitioners had complied with the Restoration Plan and applied for a CAMA permit to begin the proposed project. Petitioners were denied a CAMA permit based on development not being consistent the CRC's 30 foot buffer rule. Ms. Goebel stated that the Petitioners proposed to install an engineer-designed stormwater collection system and request a variance from 15A NCAC 7H .0209(d).

Ms. Goebel stated that strict application of the buffer rule in this case would cause unnecessary hardships that cannot be fully overcome by design change. Location of septic tank and tidal creek, county and CAMA setbacks, limit the building area on the lot. Ms. Goebel also stated that the petitioner's hardship results primarily from the peculiarity of the tidal creek and drainage easement ditch. Ms. Goebel stated the hardships do not result from actions taken by the petitioner's due to the limited building area on the lot. She stated that petitioners have helped meet the spirit, purpose and intent of the rules when they completed the required restoration and then also proposed a stormwater system. Ms. Goebel stated public safety and welfare would be preserved because the public's interest in reducing runoff has been addressed by the stormwater collection system.

**Doug Langford made a motion seconded by Charles Elam to grant the variance request. The variance was granted by a unanimous vote. (Elam, Cahoon, Emory, Bissett, Gore, Langford, Peele, Shepard, Weld, Wynns)**

**Xenakis – Holden Beach (CRC-VR-05-11)**

Ms. Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-05-11 stating that the petitioners propose to construct an 11' by 25' in-ground pool with a ground-level surrounding 4' (176 sq. ft) wide deck. She stated that the petitioners also own the adjacent lot to the west of the site for the

proposed development. Ms. Goebel stated that the current site conditions include a single-family residence and covered porch, an attached deck, a gravel driveway, an existing dock, and bulkhead. She stated that there were no objections from the adjacent owners or the general public. The petitioners proposed project did not meet the CRC's 30-foot buffer rule because the pool and deck were proposed in the buffer areas. The proposed deck does not meet the exception in 7H .0209(d)(10)(F), because there is 157 sq. ft. of existing decking within the 30 foot buffer area. Therefore there is 133 sq. ft of decking in excess of the allowable 200 sq. ft. Ms. Goebel stated that since submitting their variance petition, petitioners have amended their petition to include an engineer sealed stormwater system with capacity to collect the first 1.5" of water off the roof of the house. She stated that the petitioners also agreed to re-design the 4' deck surrounding the pool by reducing some of the decking and replacing it with landscaping, in an attempt to meet the 200 sq. ft. of decking allowed. Petitioner seeks a variance from 15A NCAC 7H .0209(d).

Ms. Goebel stated that strict application of the buffer rule in this case will not cause any hardships. Petitioners purchased the property after the buffer rules were in effect. She stated that staff noted that petitioners have changed the design to better comply with the buffer rule. However, this lot already has an existing home, porch, and deck and staff feels that not being able to place a pool on this lot is not a hardship. Ms. Goebel stated that any alleged hardship does not result from condition peculiar to the property. The lot is not small enough to meet the "small lot" exception. She stated that lots of this size are very common in Holden Beach. Ms. Goebel stated that any hardship is a result of the petitioners proposed design and use of the lot. Ms. Goebel again stated that the petitioners proposed a stormwater collection system. Therefore, if the CRC believes that this plan will perform the same or similar function as the natural buffer, then staff agrees that the variance would be consistent with the spirit, purpose and intent of the rules. Public safety will be preserved because the public's interest in reducing runoff has been addressed.

**Melvin Shepard made a motion seconded by Bob Emory to grant the variance request. The variance was granted by a vote of 6 in favor (Elam, Emory, Gore, Langford, Shepard, Hackney (tie-breaker)) and 5 opposed (Cahoon, Bissett, Peele, Weld, Wynns)**

Town of Emerald Isle et al. – Emerald Isle (CRC-VR-05-13 through 19)

Meredith Jo Alcock reviewed the Stipulated Facts on Attachment B of CRC-VR-05-13 through 05-19 stating that the petitioners are the Town of Emerald Isle and six adjacent property owners on the western side of Emerald Isle (The Pointe). She stated there is a sandbag revetment protecting the Town right-of-way and six individual houses adjacent to Bogue Inlet. The sandbags were installed pursuant to several CAMA General Permits. Ms. Alcock stated that all of the sandbags in question are due to be removed either pursuant to the CRC's rules, or pursuant to a CRC Variance Order issued in 2003 that allowed them to remain until August 16, 2005. She stated that the sandbag revetment extends approximately 728 feet long across The Pointe. Ms. Alcock stated that NC Sea Grant published a study of inlets in 1999. Aerial photos of Bogue Inlet taken during the period of 1938 to 1996 reflect that the Inlet's eastern shoreline has migrated substantially back and forth since 1938, alternately eroding and accreting in response to the shifting location of the ebb channel. Prior to completion of the Inlet relocation Project, the eastern shoreline was in one of the most easterly positions it has ever been. The Inlet Relocation Project was completed on April 22, 2005 after a two and a half month construction period that began in early February 2005. Ms. Alcock stated that the completed project includes three main components: 1) construction of a new channel in Bogue Inlet; 2) nourishment of approx. 4.5 miles of oceanfront beach in western Emerald Isle; and 3) construction of a sand dike to prevent flow through the existing channel and redirect flow through the new channel. She stated that as the area stabilizes, the Town has committed to reopen public pedestrian and vehicle access points in this area. Petitioners seek a variance

15A NCAC 7H .0308(a)(2)(F) and from the CRC's Variance Orders which require that their bags be removed at this time.

Ms. Alcocke stated that staff agrees that requiring petitioners to remove their sandbags will cause unnecessary hardships. If the sandbags were removed the Town property and the petitioner's homes would likely suffer serious damage. Ms. Alcocke stated that this hardship may be unnecessary if in fact the Inlet Relocation Project succeeds in the way it was designed to and the beach accretes at this location. However staff acknowledged that this would not occur immediately and to require removal at this time would not allow the project to function as designed. Ms. Alcocke stated that hardships do not result from conditions peculiar to the properties. An engineering project is not in itself a condition peculiar to the properties. She stated that this requirement must be met by physical conditions associated with the property itself. Ms. Alcocke stated that the petitioners do not cause the hardships in that the shoreline has been moving toward the structures for the last 15 to 20 years. She stated that staff believes that the variance is consistent with the spirit, purpose and intent of the rules if the CRC considers the erosion at The Pointe to be a short term event in hopes that the Inlet Relocation Project is successful. She also stated that removing the sandbags might not necessarily improve public access or enhance other uses such as fishing. Ms. Alcocke stated the variance will preserve substantial justice because it will allow the Town and the individual property owners the opportunity to see if the Inlet Relocation Project relieves the erosion problem at The Point.

**Jim Leutze made motion seconded by Chuck Bissett to grant the variance request. The variance was granted by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Peele, Shepard, Weld, Wilson, Wynns)**

Jesse & Meyers Construction – Ocean Isle Beach (CRC-VR-05-21)

Ms. Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-05-21 stating that the petitioners propose to replace an existing single-family home with a new single-family home. She stated that the proposed home is 1462 sq. ft., the attached covered back deck is 360 sq. ft., and the attached covered front deck is 144 sq. ft. Petitioner also proposes a 900 sq. ft. gravel driveway. Ms. Goebel stated that the proposed home and covered deck would be located 20 from the normal high water (NHW) level of the canal. She stated the uncovered deck would also be located entirely in the buffer area, but meets the exception that allows a total of 200 sq. ft of uncovered decking in the buffer. The Town of Ocean Isle Beach requires a street setback of 25 feet from the property line. The side yard setback is 7 feet from the property line. Ms. Goebel stated that applying the 30-foot buffer from the NHW and the required street and side yard setbacks leaves a maximum building footprint area of approximately 1296 sq. ft. If a 1200 sq. ft home were constructed to meet the "small house" exception, it would only have to meet a setback of 23 feet instead of 30 feet from the NHW. The application was also denied because the request violates the Town of Ocean Isle LUP. Ms. Goebel stated that the Town of Ocean Isle Beach would require petitioner to install a stormwater management system that collects stormwater for all impervious surfaces on the lot. Petitioners see a variance from 15A NCAC 7H .0209(d)(10).

Ms. Goebel stated that strict application of the buffer rule in this case does not so severely limit development on the lot so as to render it an exceptional situation. A 1296 sq. ft home could be constructed on the lot and a second story could be added to make 2592 sq. ft. Ms. Goebel stated that petitioners could still make reasonable use of the property under existing rules and therefore there is no unnecessary hardship in this case. She stated that any alleged hardship does not result from conditions peculiar to the property. Although lots have lost approx. 25' depth to the bulkhead and canal, this is a feature shared by many lots along this canal. Ms. Goebel stated the hardship is a result of the petitioners proposed design and use of the property. She also stated that since the Town would require a

stormwater management system and if the CRC believes that this system will perform the same or similar function as the natural buffer, the variance would be consistent with the spirit, purpose and intent of the rules. The project will secure public welfare because the public's interest in reducing runoff has been addressed. Ms. Goebel stated the variance will preserve substantial justice only if the CRC finds in favor of the petitioner on the other essential factors.

**Bob Wilson made a motion seconded by Jim Leutze to deny the variance request. The variance was denied by a vote of 8 in favor (Cahoon, Leutze, Gore, Langford, Peele, Weld, Wilson, Wynns) and 4 opposed (Elam, Emory, Bissett, Shepard)**

## **OLD/NEW BUSINESS**

### Recommendations for CRC appointments to the CRAC

The CRC is responsible for 12 appointments to the CRAC. The CRC's internal operating procedures prescribe initial terms of two years for new members, and subsequent terms of four years for members that the Commission chooses to reappoint. In June 2005 Courtney Hackney appointed Joan Weld, Lee Wynns, Ginger Webster and Dave Weaver to serve as a nominations committee to recommend re-appointments and replacements. The Commission, with the assistance of DCM staff, solicited nominations from 65 local governments and the NC League of Municipalities, and received nominations for 19 individuals (17 male, 2 female). Counting these 19 plus the four incumbents who were not re-nominated, the committee worked with a pool of 23 individuals (21 male, 2 female).

The committee used several criteria in its decision making, including the qualifications of the nominees, attendance and participation over the past two years, geographic representation, and diversity.

The Committee recommended the following individuals:

#### Coastal Cities Representatives

Carlton Davenport (I)	<i>Hertford, Perquimans County</i>
Webb Fuller (I)	<i>Nags Head, Dare County</i>
William Gardner, Jr.	<i>Edenton, Chowan County</i>
J. Michael Moore	<i>Surf City, Pender County</i>
David Nash	<i>Oak Island, Brunswick County</i>
Dara Royal (I)	<i>Oak Island, Brunswick County</i>
Harry Simmons (I)	<i>Caswell Beach, Brunswick County</i>
Rhett White	<i>Columbia, Tyrrell County</i>

#### Marine Science/Technology Representatives

Gary Greene	<i>Gary Greene Engineers, Raleigh, Wake County</i>
Joe Lassiter (I)	<i>Quible &amp; Associates, Kitty Hawk, Dare County</i>
Spencer Rogers (I)	<i>NC Sea Grant, Wilmington, New Hanover County</i>

#### Local Health Director Representative

Don Yousey	<i>Health Director, Brunswick County</i>
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**Joan Weld made a motion seconded by Renee Cahoon to accept the Committee's recommendation. The motion passed by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Peele, Shepard, Weld, Wilson, Wynns)**

The meeting adjourned for the day.

Thursday November 17, 2005

**COMMISSION CALL TO ORDER**

For the record Jerry Old stated his presence and no potential conflicts.

**MINUTES**

**Doug Langford made a motion, seconded by Joseph Gore to accept the June 16-17, 2005 meeting minutes as written. The motion passed by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

**EXECUTIVE SECRETARY'S REPORT**

Charles Jones gave a brief update on the following items:

Hurricane season

North America is nearing the end of the most active hurricane season on record, with 24 named storms, 13 of which were hurricanes. Fortunately, Hurricane Ophelia was the only major storm to impact N.C. As of Nov. 2, DCM had issued nearly 150 CAMA emergency permits to repair and rebuild structures damaged during that storm. Majority of oceanfront damage to Topsail Island & Figure 8 Island, sound side damage to Bogue and Core Sound

The DCM staff worked with affected towns to get approval to either push sand and/or haul additional sand in to repair damaged frontal dune systems.

CHPP Update

The Commissions all approved their CHPP implementation plans by July of this year. The implementation plans will be combined into one document to be distributed by the Department later this year. All three divisions have committed to regular updates on implementation progress. A document outlining the latest progress has been handed out this morning. Also we included a document describing the legislative actions.

NC Budget

In the budget bill passed last month by the General Assembly, DCM's operating budget was reduced by \$16,200; a minor amount compared to our initial forecast and the proposed reductions to other DENR agencies. The budget also provided for a 10% salary increase for all Coastal Management employees. Unfortunately we were not provided enough money to cover these raises. The General Assembly appropriated \$112,000 for this salary increase, but we needed over \$333,000 – a shortfall of \$220,000. This money is being taken out of our operating funds (i.e. travel, supplies) We also saw a \$40,000 decrease in our federal grant which marks the first time that there has been a decrease in federal support for the program

NC Legislative Update

1) The coastal hazards disclosure bill introduced by Pricey Harrison was not ratified during the past legislative session. While it is still being considered, it may change to be a more general disclosure form. Rather than containing lot specific data, the form would have general information on permits, the range of erosion rates, setback requirements and vegetation lines. Also submitted was the Beach and Coastal Waterways Conservation Act that was also not ratified this session. The Beach and Coastal Waterways Conservation Act, sponsored by Representatives Jean Preston, Bill Culpepper, Bonner Stiller

and Bill McGee, would create an advisory council to study beach and waterways issues and make recommendations to the Secretary of the DENR. Both bills, or a combination, may be re-introduced in May 2006.

2) The Department also submitted an enforcement bill, which would raise the maximum civil penalties for Major CAMA violations from \$2,500 to \$10,000, & minor CAMA permits from \$250 to \$1000. The bill would have also allowed the ability to recoup the cost of investigations from violators.

### Federal Legislation

President Bush had signed a comprehensive energy bill that, among other things, calls for an inventory of offshore oil and gas deposits.

However, a solid phalanx of Republican moderates last week drove House GOP leaders to drop from the US budget bill a hotly contested plan to open an Alaskan wilderness area to oil drilling, and to allow states to lift a moratorium on oil drilling off the Atlantic and Pacific coasts. However, the Senate has included Arctic National Wildlife Refuge exploration in its version of the budget bill, which means it could be revived when the two versions are reconciled by a conference committee.

The Department of Interior Minerals Management Service is seeking a public comment on the preliminary development of its 2007-2012 five-year leasing plan for energy development on the Outer Continental Shelf (OCS) and accompanying environmental impact statement. This announcement is the first step in a two-year process to develop the leasing plan. It does not include proposals for new lease sales but instead asks the public for general information and comment on energy development as well as other economic and environmental issues in the OCS areas. MMS is also asking for comments specifically on whether the existing withdrawals or moratoria should be modified or expanded to include other areas in the OCS, and whether the Interior Department should work with Congress to develop gas-only leases. Presidential withdrawals or congressional moratoria have placed more than 85 percent of the OCS off the lower 48 states off limits to energy development. The area off North Carolina is currently covered by a moratorium until July 2012. At the request of Governor Easley, DENR Secretary Bill Ross provided comments to MMS on behalf of NC. The Secretary's comments identified relevant state laws, goals and policies related to OCS oil and gas activity and the coastal management program. In addition to supporting the current moratorium, the Secretary presented a broad overview of relevant issues specific to NC that should be considered by MMS in this preplanning stage.

### Public Beach and Coastal Waterfront Access Grants

DCM awards about \$1 million a year in matching grants to local governments for projects to improve pedestrian access to the state's beaches and waterways. Funding for the Public Beach and Coastal Waterfront Access Program comes from the NC Parks and Recreation Trust Fund. A total of \$1.4 million will be awarded to 15 local governments for 21 projects. Since the program's inception in 1983, over 300 access sites have been constructed.

### Workshops

DCM conducted a Coastal Wetland Training Course on June 22-23 in Morehead City. A total of 37 people attended the first day of the training course, including 31 DCM staff members, 5 guest speakers, and the coordinator of the NC Coastal Non-Point Source Program, and 32 people attended the second day of the training course, including 30 DCM staff members, a representative from the NC Attorney General's Office, and the coordinator of the NC Coastal Non-Point Source Program. This two-day course was funded by a program improvement grant from the NC Coastal Non-point Source Program, and covered wetland ecology, wetland policy, plant identification, and coastal wetland delineation.

The Rachel Carson NERR hosted a **Docks and Piers Train-the-Trainer** session in August. Both coastal managers from NC and SE regional NERR Coastal Training Program Coordinators attended. NOAA's Office of Ocean and Coastal Resource Management developed training materials on the management of small docks and piers. Twenty people attended, including staff from DCM, DMF, DWQ, Shellfish Sanitation and NC Sea Grant as well as NERR Coastal Training Program Coordinators from South Carolina, Florida and Mississippi. The NC Coastal Training Program plans to take the information presented at the training, adapt it to address local issues (with the help of state regulatory experts), and present the information to coastal decision-makers in our 20 coastal counties.

The **First Annual CAMA Kick-off Land Use Planning Workshop** was held Oct 25-26, 2005 in Morehead City at the Train Depot for local governments preparing their first LUPs under the new 7B Guidelines. The overall goal of the workshop was to create an annual event for communities embarking on the two-year CAMA planning process that would motivate, educate, and coordinate stakeholders to more effectively address coastal nonpoint source issues at the site, jurisdictional, and watershed levels. The workshop featured presentations on the benefit of land use planning, recent experiences of local governments, an overview of Basinwide planning and linking land use to water quality.

The first of a series of **Promoting Sustainable Communities Using Smart Growth Principles** workshops was held November 15<sup>th</sup> at the UNC-CH Institute of Marine Sciences in Morehead City. These workshops will help coastal communities integrate smart growth principles into their land use practices helping to mitigate cumulative and secondary impacts on coastal resources. Additional workshops will be held December 1<sup>st</sup> in Wilmington and December 6<sup>th</sup> in Manteo. More information is available on the Coastal Reserve display board in the back of the room.

#### Giampa case

The N.C. Court of Appeals, in a unanimous decision issued October 18, affirmed a trial court's 2003 dismissal of all claims against the State in a lawsuit by Currituck County landowners who sought to exclude the public from the beach in front of their homes. The lawsuit, brought in 1998 by landowners in the Whalehead Subdivision near Corolla, in part challenged the right of the public to use the dry-sand beach -- the area between the wet sand and the dune line.

#### Staff News

**Wanda Gooden** is our new Field Representative/DOT Project Coordinator in Elizabeth City. Wanda's previous experience includes teaching at the high school level, and as an assistant professor at the university level. She has served in the US Air Force and left this service with the rank of Captain. She has also worked on NOAA funded salt marsh restoration, with the EPA's Health Effects Research Laboratory, and the U.S. Army Corps of Engineers Regulatory Branch.

**Debbie Wilson** is our new Field Representative in Wilmington. Debbie is a Wilmington native. She was a hospital corpsman with the US Coast Guard 1975-1978. 1978-1991 worked at various hospitals and labs as medical assistant and staff trainer. 1991-1993 owned and operated an unfinished furniture store in California and did custom furniture finishing and design. Moved back to Wilmington in 1994. Graduated from UNCW in 1998 with a BS in environmental studies. Worked for DCM as a paid intern from 1997-1998. Worked for Eco Science Corp. in 1999 conducting wetland delineations for Wilmington Bypass. Went to work for New Hanover County in 1999 as Local Permit Officer and Assistant Chief Zoning Enforcement Officer until August 2005.

**Bonnie Divito** has joined our Raleigh office as DCM's first-ever coastal engineer. Bonnie received a BS Degree in Ocean Engineering from the University of Rhode Island in 2002. She recently served as Lead Project/Field Engineer on a project that assessed and mapped various shoreline structures located along

the urban waterfront of New York City. She has worked closely with various state, federal, local agencies and citizens regarding shoreline construction projects and permits. Her expertise and perspective will be a great asset to our overall mission.

**Patrick Limber**, our 2005-2007 NOAA Coastal Services Fellow, has joined the Coastal Hazards program in Raleigh. He will be working on a project entitled "Assessment of the North Carolina Shoreline Datum: Implications of Evolving Methodologies and Technologies." Patrick is a coastal geologist and will be working closely with Jeff Warren and Bonnie Devito.

Our Public Information Officer, **Michele Walker**, and her husband Jeff, are the proud parents of Miles Edward Walker, born Aug. 12.

Congratulations to our attorney **Merrie Jo Alcoke**, on her Oct. 1 wedding to Tom Wilson in New Bern.

And congratulations to our Reserve Education Coordinator **Doug Coker** on his marriage Oct. 8 to Justina Grady.

## **VARIANCES**

### Fisherman's Cove OIB, LLC – Ocean Isle Beach (CRC-VR-05-20)

Ms. Alcoke reviewed the Stipulated Facts on Attachment B of CRC-VR-05-20 stating that the Petitioners propose to construct 150 square feet of open decking attached to a recently permitted house. She stated the decking exceeds the 200 square feet of decking that is allowed within the buffer as an exception to the rule. The LPO denied this permit because it is inconsistent with the CRC's 30-foot buffer rule exceptions in 15A NCAC 7H .0309(d)(10)(F), which provide that decks in the buffer shall not singularly or collectively exceed 200 square feet. Ms. Alcoke stated that approximately 350 square feet of the proposed decking would be located within the 30-foot buffer. The Petitioner seeks a variance from this rule in order to construct the deck.

Ms. Alcoke stated that strict application of the rules, standards or orders issued by the CRC do not cause an unnecessary hardship to the Petitioner. She stated that applying the buffer rule and the Town's 25-foot street setback still yields a substantial building envelope. Ms. Alcoke stated that a single-family residence with 200 square feet of decking could be constructed on the lot without difficulty. Ms. Alcoke stated that any alleged hardships result from the design and siting of the home not conditions peculiar to the property. She stated that the Petitioner purchased the lot in question along with 10 other lots. The Petitioner has built houses on several of these other lots and sold them. Thus, Petitioner must have been aware of the limitations on this particular piece of property. Ms. Alcoke stated that nonetheless the Petitioner still designed the house so that it is immediately adjacent to the 30-foot buffer making it necessary that a significant part of the desired amount of decking would be located within the buffer. Ms. Alcoke stated that variance request would not be consistent with the spirit, purpose and intent of the rules unless the CRC believes that the implementation of the required stormwater management system will perform the same or similar function as the natural buffer, and that Petitioners additional 150 feet of decking will have little or no impact on the buffer. Ms. Alcoke stated that the project would secure public welfare if the reduction of runoff has been addressed.

**Bill Peele made a motion seconded by Renee Cahoon to deny the variance request. The variance was denied by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

Ms. Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-05-22 stating petitioner was granted a permit to construct a pier, gazebo, floating dock and two boat lifts in Masonboro Sound. However the permit limited the total length of the pier to comply with the “one-quarter” rule. Ms. Goebel stated that the proposed pier would extend into the waters of Masonboro Sound approx. 345’ from the waterward edge of the coastal wetlands vegetation. This would place the waterward end at the western edge of the USACE’s Right of Way line. The permit was conditioned to allow the pier to extend to a point of approx. 45’ landward of the USACE’s right of way. Ms. Goebel stated that there is an existing pier to the north which extends to the right-of-way of the AIWW and is located within 200’ feet of the proposed pier. She stated there is a peninsula 196’ feet to the south that extends to the right-of-way of the AIWW. Ms. Goebel stated that the “one-third exception” of 15A NCAC 7H .0208(b)(6)(J) does not apply as the proposed pier is not within 200’ feet of longer piers to each side. Petitioner seeks relief from application of the one-quarter rule in 15A NCAC 7H .0208(b)(6)(J)(iii) and seeks permission to build out to 345’ feet, approx. 30% across the width of the water body, and no further than the USACE’s right-of-way line.

Ms. Goebel stated that strict application of the rules, standards or orders by the CRC do cause a hardship in this case. The limit on pier length in 15A NCAC 7H .0208(b)(6)(J) requires that petitioner’s pier not exceed one-fourth the width of the water body. In this case, one-fourth of the 1145 foot water body allows petitioner to build out to 286 feet. Ms. Goebel stated that the low water depth at this distance out will certainly inconvenience the petitioner and probably rises to the level of unnecessary hardship. She stated there is some difficulty associated with shallow water at the end of the pier, and no deeper options further landward that would provide adequate access. Ms. Goebel stated that the location of the peninsula to the south of the proposed site makes navigation in this area unique. She stated that while the peninsula does not qualify as a pier structure for purposes of this rule, the effect of the peninsula is similar to a pier in that they both make navigation closer to the shore unlikely. Ms. Goebel stated that the bulk of the hardship is caused by natural conditions not by the petitioner. She stated that the proposed development is probably a length necessary to reach adequate depth, and it will not be farther out relative to the USACE’s channel setback and the right of way than neighboring piers. Therefore, staff believes that the variance would be consistent with the spirit, purpose and intent of the rules. Ms. Goebel stated that substantial justice would be preserved by affording petitioner a similar opportunity to access deep water as it’s similarly situated neighbors.

**Doug Langford made a motion seconded by Jim Leutze to grant the variance request. The variance was granted by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

### **CONTESTED CASE**

#### **Darrigrand vs. DCM (Oak Island)**

The case was filed by Charles and Ellen Darrigrand, who are property owners. The NC Department of Environment and Natural Resources, Division of Coastal Management is the Respondent. The case was heard November 30, and December 1-2, 2004.

Petitioners appealed the Local Permit Officer’s denial of their request for a minor CAMA permit to construct a single-family residence on their property in the Town of Oak Island, Brunswick County, NC. The minor permit was denied based on the proposed development not meeting the 60-foot minimum erosion setback for oceanfront property.

In light of stipulated conclusions of law numbers (1) and (2) of the Stipulations filed October 27, 2004, the issues to be determined were whether (a) Petitioners' hardships result from conditions peculiar to the property, such as the location, size or topography of the property; and whether (b) the requested variance is consistent with the spirit, purpose and intent of the CRC's rules, standards, or orders; will secure public safety and welfare; and will preserve substantial justice.

Ms. Alcocke addressed the CRC stating that the Respondent's exceptions were too numerous to address individually. She highlighted several exceptions, that DCM believed to be of most importance and presented argument in opposition to the ALJ's decision.

Petitioner presented argument in favor of the ALJ's decision and reminded the CRC of the standard that must be met in order to overturn the Decision.

After extensive "question and answer" with the parties, the CRC debated the issue for several hours and the following action took place:

**Bob Emory made a motion seconded by Melvin Shepard to adopt the facts as proposed by the Respondent. After a lengthy discussion on how to address this particular task, the First and Second both agreed to withdraw the motion as stated.**

**Bob Wilson made a motion to table the decision until further thought could be put into a decision. The motion failed by a vote of 4 in favor (Elam, Gore, Wilson, Wynns) and 9 opposed (Cahoon, Emory, Leutze, Bissett, Langford, Peele, Pittman, Shepard, Weld).**

**Melvin Shepard made a motion seconded by Renee Cahoon to adopt the Respondent's exceptions to the Findings of Facts and proposed alternative facts with the exception of Findings of Facts 109 & 115. The motion passed unanimously (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Pittman, Shepard, Weld, Wilson, Wynns).**

**Jim Leutze made a motion seconded by Renee Cahoon to deny the variance as requested. Doug Langford made a substitute motion seconded by Chuck Bissett to grant the variance as requested. The motion to accept the substitute motion failed by a vote of 6 in favor (Elam, Bissett, Gore, Langford, Old, Wilson) and 7 opposed (Cahoon, Emory, Leutze, Peele, Shepard, Weld, Wynns). The original motion to deny the variance as requested passed by a vote of 7 in favor (Cahoon, Emory, Leutze, Peele, Shepard, Weld, Wynns) and 6 opposed (Elam, Bissett, Gore, Langford, Old, Wilson).**

**Melvin Shepard made a motion seconded by Bob Emory to accept the Respondent's exceptions to the Conclusions of Law and proposed alternative Conclusions of Law. The motion passed by a vote of 7 in favor (Cahoon, Emory, Leutze, Peele, Shepard, Weld, Wynns) and 6 opposed (Elam, Bissett, Gore, Langford, Old, Wilson).**

## **PRESENTATION**

### Navy Sonar Range

Captain Bill Tody and Eileen Smith, representatives of the U.S. Navy, gave a brief presentation on a proposed undersea warfare training range (USWTR). To construct the proposed undersea warfare training range, the Navy would instrument a 500-square-nautical mile area of the ocean offshore of the east coast of the United States. The range would be equipped with undersea cables and sensor nodes, and would be connected by a single trunk cable to a landside cable termination facility. The Navy would

use the area for anti-submarine warfare (ASW) training that would typically involve up to three vessels and two aircraft on the site at any one time. The USWTR would require logistical support for ASW training, including the launch and recovery of non-explosive exercise torpedoes and submarine target simulators. As technology improves, modern submarines are becoming increasingly quiet. Sonar continues to be the best way to detect a quiet submarine before it's close enough to fire a torpedo.

The Navy used an extensive site selection process to first identify areas that would meet water depth and operational requirements, eliminate any portions of these areas not proximate to Fleet's homeport and training resources and select candidate sites from the remaining areas, and evaluate candidate sites against specific criteria.

Potential site alternatives that resulted from this process included a site offshore of southeastern North Carolina in the Cherry Point Operating Area (OPAREA) called Site/Alternative A, a site offshore of northeastern Virginia in the Virginia Capes OPAREA, called Site/Alternative B, and a site offshore of northeastern Florida in the Jacksonville OPAREA called Site/Alternative C. Site/Alternative A is the Navy's preferred alternative.

Under certain circumstances and conditions, use of active sonar can have an effect on some marine species. Research shows that the three main factors that need to be considered are how close the animal is to the sound, how long the sound lasts, and other characteristics of the sound itself. The Navy used computer modeling to combine this knowledge with information about the types and number of marine mammals that live on or travel through each of the possible sites to determine how sonar activities on the new range might affect marine animals. Results show that injury of marine mammals from sonar is not expected at the new range. To further ensure marine mammal safety, the Navy will implement protective measures during training and conduct a long-term monitoring program.

The EIS includes an evaluation that found that ecological effects from installing range equipment and using the range would be minimal. The permanent cabling and other equipment that will be installed on the ocean floor will not harm fish habitats. Effects to plants and animals on land from the cabling that connects the training range instruments to the facility on shore will also be minimal.

Prior to conducting exercises with the USWTR, the Navy would issue notices to mariners prior to operations. A delay or immediate hold on the exercise will occur if any commercial fishing or other vessel enters the operations area. The Navy would avoid scheduling exercises during large offshore fishing tournaments whenever feasible, consistent with National Security needs.

The final decision on the location of the new training range will be made in a Record of Decision, which will be published in the Federal Register.

## **PUBLIC INPUT AND COMMENT**

Carol Bower Johnson addressed the CRC regarding Navy Sonar Range presentation. Ms. Johnson stated that she believes this sonar range is no different than building a high-speed eight lane underwater highway on the bottom of the ocean. She questions the need for such a project. She questions if this project will drive away NC's major business of real estate development, and the retirement industry. Ms. Johnson stated that the potential harming of marine mammals might keep people from coming to NC. She stated that she believes this project can be built elsewhere, if it is needed, in a safe area not disturbing critical marine life. Ms. Johnson stated that she is part of the Cape Fear Region Group Sierra Club and the NC Coastal Caucus, both of which will be making a statement in opposition at the public hearings.

## **PUBLIC HEARINGS**

### **15A NCAC 7B .0801, 7B .0802, 7B .0901- CAMA Land Use Planning Guidelines**

Lauren Kolodij addressed the CRC questioning how the public knows that they have the opportunity to submit comments. She questioned as to how it is publicized to inform the public. Ms. Kolodij also suggested the CRC reinstate the criteria for plan certification that calls for plans to be internally consistent.

### **15A NCAC 7H .0207 – Definition of Public Trust Areas**

No comments were received.

### **15A NCAC 7H .0308 – Building Code Standards in Ocean Hazard Areas**

No comments were received.

The meeting adjourned for the day.

**Friday November 18, 2005**

## **COMMITTEE REPORTS**

### **CRAC REPORT**

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

### **P&SI COMMITTEE REPORT**

Bill Peele presented the minutes from the P&SI committee (SEE ATTACHMENT FOR WRITTEN COPY). The CRC took the following action:

**Bill Peele moved that the CRC approve the Emerald Isle LUP Amendments Certification. The motion passed unanimously. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

**Mr. Peele moved that the CRC approve the Topsail Beach LUP Certification. The motion passed unanimously. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

**Mr. Peele moved that the CRC approve the Gates County LUP Certification. The motion passed unanimously. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

## **I&S COMMITTEE REPORT**

Mr. 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 CAMA General Permit fee adjustments to public hearing. The motion passed unanimously. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

**Mr. Emory moved that the CRC send proposed changes to 7K .0208, Use Standards to public hearing. The motion passed unanimously. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

## **PRESENTATIONS**

### Hurricane Ophelia Overview

Ted Tyndall presented an overview on Hurricane Ophelia and her effects to the Coast of NC. Mr. Tyndall stated the most affected CAMA counties were Brunswick, New Hanover, and Carteret. He stated that after the storm, more than 120,000 homes and businesses were without power in eastern NC. Ophelia left behind plenty of damage along NC's coast, including beach and sound side erosion, ravaged homes and businesses, but overall the coast was spared the devastating blow that some feared.

Some of the impacts for the southern coast, Brunswick, New Hanover and Pender counties included more than 12 inches of rainfall on Oak Island at the mouth of the Cape Fear River, and sound side storm surges. Beach erosion caused several structures to be condemned and on Ocean Isle Beach, south of Carolina Beach, heavy surf washed out a 50-foot section of beachfront road.

Impacts on the Central Coast, Onslow, Carteret, Craven & Pamlico Counties included flooding, estuarine shoreline erosion, beach erosion, numerous sound side structures damaged or destroyed, houses condemned, and commercial structures in Salter Path were destroyed.

The CAMA Emergency General Permit was activated to allow quicker replacement of estuarine structures such as pier, docks, bulkheads and waterfront buildings. This emergency permit was effective in responding to those affected by the storm damages.

### Hurricanes Katrina & Rita

Spencer Rogers, Sea Grant, presented an overview on Hurricanes Katrina & Rita and their effects on the Gulf Coast. Mr. Rogers stated that Katrina first hit Florida and was the path of the highest winds. As Katrina continued into Louisiana, Mississippi, and Alabama the storm widened with increased winds of 150+ mph. Mr. Rogers stated that Katrina was the highest storm surge in US history. New Orleans was the worst place in the country for water surge. There was also severe wind damage across all three states, but was not a major cause of damage. Mr. Rogers stated that failures and near failures of structures were due to erosion of shallow pile foundations. He stated that higher and deeper foundations performed well. Mr. Rogers stated that on the MI coast, things were different. He said beaches were sea walled. There was a beach fill project in the 50's. It was wide and used heavily for recreational purposes. The project had little or no effect; the water level came in fast and high at about surface elevation. All beachfront was publicly owned and accessible. Many buildings were gutted by waves.

Mr. Rogers stated that floating casinos were a major liability since the tourist economy was casinos. As a result of Katrina the industry has been shutdown. At this time Mr. Rogers showed several photos of damaged casinos and hotels.

Mr. Rogers stated that water levels were as much as 2 stories high. He stated that there was so much damage and very little success stories. The focus is now on buildings that remained and what was done right to keep them there.

### Universal Stormwater Management Program

Tom Reeder, DWQ, gave a presentation on the Universal Stormwater Management Program (USMP) stating that it is an optional stormwater program of local governments, would satisfy most existing stormwater requirements with a single program, and it would not establish new stormwater control requirements where none currently exist. Mr. Reeder stated that the need for this program is that there are too many conflicting stormwater programs, multiple programs and requirements create difficulties for local governments, many existing programs are dated, decreasing effectiveness of older programs, and latest advances suggest a new approach. Mr. Reeder stated that the USMP would satisfy all the post construction stormwater requirements within the local governments jurisdiction with a single program, reduce local government confusion, improve water quality, and it would be simpler to administer, understand, and implement - but more protective. He stated that some advantages include less untreated run-off, empowers local governments, and no high density limits. Mr. Reeder stated that the USMP would not affect 50-foot buffers. He stated that some potential incentives for adoption may include discounts on National Flood Insurance Premiums, US Fish and Wildlife recognition that USMP may meet Section 7 requirements for Non-point Sources, and a CRC exemption from the CAMA buffer. Mr. Reeder stated that feedback to date includes USMP website available since June, discussions with approximately 60 Local Governments, and Environment groups and other stakeholders.

### Shellfish Sanitation Rules and Management Plan Criteria

Shannon Jenkins, DEH, gave a presentation on shellfish rules and management plan stating that the program started in 1925 following outbreaks of typhoid fever in Chicago, New York, Washington and several other cities linked to tainted shellfish. He stated the program is responsible for the way shellfish are produced, stored, transported, processed, sold and served. Mr. Jenkins stated that NC Shellfish Sanitation classifies waters for safe shellfish harvesting, recommends to DMF through State Health Director to open or close shellfish waters, inspects and certifies shellfish and crustacean processing plants. Mr. Jenkins reviewed some pathogens, viruses and toxins that can be present in shellfish to include Hepatitis A and B, and Salmonella. He stated that a written management plan is required. There must be identification of the specific event that will cause closure; there must be a description of the implementation and enforcement and a description of the criteria that must be met prior to reopening. Mr. Jenkins showed a chart of acres closed to shellfishing in saltwater areas that recorded an increase of 9,000 acres closed from 1984 to 2004. He stated that management plans are reevaluated annually and changes are made as necessary.

### Sandbag History and Overview

Mike Lopazanski gave an overview of the history of sandbags. He stated that since the CRC developed rules prohibiting the placement of permanent shoreline stabilization structures along the oceanfront in 1985, sandbags were allowed to be used as temporary means of protecting imminently threatened structures. Mr. Lopazanski stated that the protection was temporary until the owner could make arrangements to move the structure or until the beach and dune systems could naturally repair themselves. Over the next eight to ten years, the CRC started hearing complaints that the sandbags were

not being used as a temporary measure but as a permanent solution to shoreline erosion. Mr. Lopazanski stated that some sandbags were blocking pedestrian access along the beach and some were being fortified to become massive immovable structures. In 1995 the CRC amended the rules to address size of sandbags and time limits as to when they would have to be removed. Mr. Lopazanski stated that while a majority of the sandbag structures remain in areas that have been included in beach nourishment projects and studies, many would need to be removed by their owners prior to May of 2008. He reviewed the current Temporary Erosion Control Structures rules as they relate to sandbags.

### **ACTION ITEMS**

#### **15A NCAC 7H .0304 - Unvegetated Beach Designations**

**Melvin Shepard made a motion, seconded by Renee Cahoon to adopt 15A NCAC 7H .0304. The motion passed by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

#### **15A NCAC 7H .0309 – Use Standards for Ocean Hazard Areas: Exceptions**

**Joseph Gore made a motion, seconded by Renee Cahoon to adopt 15A NCAC 7H .0309. The motion passed by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

#### **15A NCAC 7O .0105 – Coastal Reserve Components**

**Lee Wynns made a motion, seconded by Doug Langford to adopt 15A NCAC 7O .0105. The motion passed by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

#### **15A NCAC 7B .0801, .0901 - CAMA Land Use Planning Guidelines**

**Joseph Gore made a motion, seconded by Bob Wilson to adopt 15A NCAC 7H .0801, and .0901. The motion passed by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

#### **15A NCAC 7B .0802 - CAMA Land Use Planning Guidelines**

**After discussion regarding the language of this rule the CRC, by consensus, tabled 7H .0802 for a future meeting to amend the language that was proposed.**

#### **15A NCAC 7H .0207- Definition of Public Trust Areas**

**Melvin Shepard made a motion, seconded by Jerry Old to adopt 15A NCAC 7H .0207. The motion passed by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

#### **15A NCAC 7H .0308 – Building Code Standards in Ocean Hazard Areas**

**Jerry Old made a motion, seconded by Melvin Shepard to adopt 15A NCAC 7H .0308. The motion passed by a unanimous vote. (Elam, Cahoon, Emory, Leutze, Bissett, Gore, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

With no further business, the CRC adjourned.

Respectively submitted,

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Charles S. Jones, Executive Secretary

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Stephanie Bodine, Recording Secretary