

**COASTAL RESOURCES COMMISSION (CRC)
CRYSTAL COAST CIVIC CENTER
MOREHEAD CITY, NC
APRIL 28-29, 2004**

MEETING: COASTAL RESOURCES COMMISSION (CRC)

LOCATON: Crystal Coast Civic Center
Morehead City, North Carolina

DATE: April 28-29, 2004

Present CRC Members

Eugene Tomlinson, Chairperson
Courtney Hackney, Vice-Chairperson

Bob Barnes	Jerry Old
Renee Cahoon	Bill Peele
Bob Emory	Larry Pittman
Peggy Griffin	Melvin Shepard
Mary Price Harrison	Joan Weld
Doug Langford	Lee Wynns

Present Coastal Resources Advisory Council (CRAC) Members

Bob Shupe, Chairperson

Frank Alexander	Jim Mulligan	Wayne Teeter
Joseph Beck	Bill Price	Penny Tysinger
Carlton Davenport, Jr.	Spencer Rogers	Dave Weaver
Webb Fuller	Dara Royal	Ginger Webster
Joe Lassiter	Lester Simpson	Calvin Wellons
Wayne Mobley	Mike Street	
Bill Morrison	Raymond Sturza	

Wednesday April 28, 2004

COMMISSION CALL TO ORDER

Chairperson Gene Tomlinson called the meeting to order at 8:30 a.m. He advised that Executive Order One mandated that CRC members avoid conflict of interest or the appearance of conflict.

ROLL CALL

Eugene Tomlinson, Bob Barnes, Renee Cahoon, Bob Emory, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Jerry Old, Larry Pittman, Bill Peele, Melvin Shepard, Joan Weld, and Lee Wynns all present with no appearance of conflict. Bob Wilson was not present.

EXECUTIVE SECRETARY'S REPORT

Charles Jones reported the following to the CRC:

New positions filled: Charles Jones, Director; Ted Tyndall, Assistant Director; Stephanie Bodine, Director's Secretary - MHC; Tere Barret, Assistant Major Permits Coordinator - MHC; Stephen Lane, MHC Field Representative; Robb Mairs, Wilmington Field Representative; Gale Stenburg, Wilmington Field Representative; Maureen Meehan, MHC District Planner; Charlan Owens, Elizabeth City District Planner – will start in June; Stephen Rynas, MHC Consistency Coordinator; Steve Sollod, Raleigh Transportation Projects Coordinator; Jeff Warren, Raleigh Coastal Hazards Analyst; and Tony Zahaireus Elizabeth City Field Representative.

Tancred Miller has relocated from the Raleigh office to the MHC office. Doug Huggett will relocate from Raleigh to MHC later this summer. There still are 8 vacancies in the Division of Coastal Management (DCM). Sheila Green has left DCM for a position at NC Department of Justice, and Steve Benton will be retiring at the end of May. Dave Heeter, with the AG's office, retired and his replacement is Christine Gobel.

In June eight CRC members will reach the end of their terms and a letter to solicit nominations is being sent out from the Governor's office.

DCM has received a \$51,000 grant from the NC Natural Heritage Trust Fund to assist in acquiring land for the Buxton Woods Reserve.

Operational grants have been submitted to the federal government for 2004-2005.

The U.S. Commission on Ocean Policy issued its preliminary ocean policy report on April 20 and the Governor's comments are due on the draft by May 21. (The Commission has since extended the comment deadline to June 4)

CHPP update: the Intercommission Review Committee has reduced more than 100 possible actions to less than 20 final recommendations. The draft plan will be submitted to the

Department of Environment and Natural Resources in May. The full draft plan will be available online at the Division of Marine Fisheries (DMF) website in July. Public meetings will be held in July and August and the draft will be presented to the CRC, Marine Fisheries Commission and the Environmental Management Commission on September 9, 2004.

President Bush's FY 2005 budget proposal contains drastic reductions in the amount budgeted for beach nourishment projects nationwide. The reduction is 26% less than proposed last year. Because of the law banning hard structures on the beach, some alternatives to beach restoration are not allowed in NC.

The Outlying Landing Field (OLF) continues to spark statewide debates and national media coverage. Activities are at a standstill due to a preliminary injunction granted to halt Navy action on the OLF until all legal arguments are heard in a civil trial. Despite an agreement to a 60 day halt on OLF activities, the Navy has continue landowner negotiations that began prior to March 30, finalizing purchases for a total of 1,158 acres. A 19-member study group has been implemented to examine the OLF plan and will report back to the Governor next month.

PRESENTATIONS

Beach Processes

Dr. Stan Riggs from East Carolina University presented a lecture on the overall geological differences between the northern and southern parts of the NC coast. He also touched on the importance of storm processes to the availability and longevity of these systems; man's influences on these natural systems; erosional hotspots and their correlation to the underlying geology; and the importance of sea-level rise in shaping the future of coastal barrier island systems.

Coastal Habitat Protection Plan – Wetlands and Soft Bottom Habits

Steve Underwood completed the presentations on the CHPP habitats and their associated threats. A presentation on wetlands and soft bottoms were the remaining 2 of the 6 habitats defined in the CHPP. An overview of their importance in terms of their ecological and biological significance was presented. The extent of acreage of these habitats and their locations, the threats to these areas and potential management options were also discussed. The next CRC presentation will include the CHPP recommendations on how to potentially address the fishery habitat threats.

History of Sandbag Rules 15A NCAC 7H .0308(a)(2)

Mike Lopazanski stated that the rule as it was originally written included some of the current provisions. In 1987, the CRC requested information on the effects sandbags were having. In 1991 the CRC considered requiring the relocation or demolition of a threatened structure 2-3 years from its designation. In the early 90's the CRC began hearing complaints that sandbags were not being used as a temporary measure but as a permanent solution to shoreline erosion. The complaints were that the sandbags were blocking pedestrian access along the beach and in

some cases sandbags were being fortified to become massive immovable structures. In 1994 an inventory of sandbags showed that most complied with the rules, however some were installed without authorization and did not comply with standards. DCM staff provided the CRC with an analysis of the problems. In 1995 the CRC amended the rules to limit sandbag structure time to two years for small structures, and five years for larger structures to start day after approval. The CRC then began to receive variance requests for extensions on sandbag removal. In 2000 a petition was submitted, by Dare County, requesting properties protected by sandbags in communities pursuing beach nourishment be given an extension until 2006. Given time needed to complete beach nourishment projects, the CRC granted a coast-wide extension on sandbags in these areas until 2008.

PUBLIC INPUT AND COMMENTS

Buck Fugate, Mayor of Indian Beach, addressed the CRC. He stated that he enjoyed Dr. Riggs presentation on beach processes. He expressed concern about the navigational dredging of Beaufort Inlet, and felt there was an adverse affect to the beaches of Bogue Banks. He appreciated the CRC mandating the process of getting sand back on the beaches but the outer channel material still continues to go offshore. He invited the CRC to look into what is going on in Beaufort Inlet, and in addition he encouraged the CRC to remain steadfast and do more for the Inlet.

PUBLIC HEARINGS

15A NCAC 7H .0304(4)(b) Unvegetated Beach Areas

Bob Barritt lives in Richmond, VA and owns a cabana in Hatteras Village. He stated that hurricane Isabel was devastating to this area. He stated that the ability to rebuild this area is imperative to the economic well being of Hatteras Village. He requested that the CRC allow them to rebuild in order to achieve stabilization and growth of the area.

Mark Kirkman lives in Dublin, Ohio and owns a cabana in Hatteras Village that he and his family use for annual vacations. He stated that the vegetation line that has been set in Hatteras Village would create a financial hardship. He stated that if current setbacks are used, up to 16 cabanas could not be rebuilt and the remaining 24 owners would experience financial problems that could include bankruptcy. He stated the impact would also be a hardship on the local business owners. He feels the existing line would result in a worse financial disaster than Hurricane Isabel already created.

Matt Desroches lives in Virginia Beach and owns a summer home in Hatteras Village. He presented some photos taken in February of 2004 that showed some existing vegetation. He commended the CRC and DCM staff for the work being done. He requested that the vegetation line be moved so that rebuilding could take place.

Beth Midgett praised the CRC and staff for moving forward. She stated she is proud of the professional courtesies and asked the CRC to move as quickly as possible on the current situation.

15A NCAC 7H .0306(a)(5) Enclosure of Porches Exemptions within the Oceanfront Setback

There was no public comment on this proposed rule.

15A NCAC 7H .2700 General Permit for the Construction of Riprap Sills

Bill Zaist is a licensed professional engineer in NC. He lives on the Newport River north of Beaufort. He has worked on six shoreline protection projects with the NC Federation in the last three years. Three of those projects were designed to replace existing remnants of bulkhead that have failed. As a waterfront property owner, Mr. Zaist is requesting the CRC adopt a General Permit method for shoreline projects consisting of stone-sill with a coastal marsh backup. He stated that some of the pros of such a permit are that sills provide shoreline protection, construction is not more complicated, and stabilizing and maintaining coastal marsh provides a home for all the animals that are essential to the ecological balance of the coast. The con, he stated, would be that a permitting process could be cumbersome and expensive.

Meg Rawls, representing Carteret Community College, stated that they have received a grant from the Clear Water Management Trust Fund to do a 1000-foot project using sills, breakwaters and marsh. The project is anticipated to result in the planting of over an acre of marsh. The marsh filters stormwater runoff on the campus and provides fish habitat; something that concrete bags cannot claim. She feels riprap sills are easier for people to do and it would boost natural resources. Ms. Rawls stated that more and more sills projects are being seen by the citizens, and they like what they are seeing.

Jim Mulligan, Regional Water Quality Supervisor in Washington, stated that the Division of Water Quality has discussed this issue internally for several months. Discussions were shared with DCM staff and the Implementation and Standards Committee. He stated that DWQ is opposed to the development of a general permit for this activity. He stated that riprap sills couldn't be recommended as a general solution for all areas. The DWQ feels strong enough in their opinion that they intend to develop a separate certification for this activity, if this proposed rule changes is endorsed by the CRC. Mr. Mulligan requested that the CRC not adopt the general permit but require each proposal to obtain an individual permit based on the positive features of each project for a specific location.

Sam Bland, Hammocks Beach State Park, stated that several years ago the park participated in an administration project where they replaced deteriorating bulkhead with stone sills. A lot of great benefits resulted. This type of alternative, for this agency, produced a significant financial difference in maintenance. He stated that he encourages the stone sill permit.

Tracy Skrabal, Senior Scientist with the NC Coastal Federation (NCCF) supports the adoption of the temporary rule for authorization of a general permit for the construction of stone sills for wetland enhancement protection along estuarine shorelines in NC. Ms. Skrabal stated the NCCF supports regulatory and non-regulatory options to encourage building away from the critical edge of estuaries and allowing the natural migration of wetlands and buffers to continue. She commended the CRC and the DCM for considering this issue and its impacts. Ms. Skrabal stated

that by default the current permit system has created a disincentive for property owners who might consider a shoreline project that will stabilize their property and still preserve many of the functions of natural coastal marsh. She stated that adoption of this permit is a way for the CRC and DCM to encourage more natural alternatives for erosion control. Ms. Skrabal looks for the continued support from the CRC in this process of evaluation.

Jim Stephenson, NCCF, stated that there were two letters that he received that requested submission into the record:

- A letter from Marjorie Green stated that she has a sill in place of her sound front property and is very satisfied with it. She stated that about five years ago a bulkhead was placed on a lot about 100 feet of hers and that a once vibrant ecosystem has been systematically destroyed. She stated that once her neighbor lost all of his marsh she became very worried as the destruction of her marsh accelerated. She did not want to be forced to put in a bulkhead to save her shoreline. She stated that she heard about sills and the NCCF assisted her in the permitting process for her and three contiguous property owners. They started this process in the fall and it took until mid May to be granted the permit. This delay prevented the work from being done in a timely manner and the time lost did not allow sufficient time for the marsh seedlings to catch hold and grow. With assistance from the NCCF they have been nursing them along and the marsh has started to return. She added that the neighbor who initially extended the bulkhead has since had to put in riprap to protect his bulkhead. Ms. Green commended the NCCF for their efforts to speed up the permitting process to at least compare to bulkheads.
- A letter from Scott Stroh, Executive Director for the Roanoke Island Festival Park (Park), stated they enlisted the assistance from the Army Corps of Engineers, Division of Water Resources, Forest Resources, DMF, multiple federal, state, and local agencies, and volunteers and organizations to implement a plan for shoreline stabilization and aquatic habitat restoration. The project consisted of a 1300-foot granite rock sill, replenishing 1000 cubic yards of shoreline sand, planting marsh and sea grasses, developing a 1-acre oyster reef and vegetative management of 1.3 acres of wooded uplands and wetlands. Mr. Stroh stated that shoreline had experienced severe shoreline erosion, and much of the habitat had been destroyed. He stated that the implementation of a rock sill has provided shelter for wildlife, and a stand of vegetation is now quite visible along with an increase of marine life and the shoreline itself. He supports the construction of rock sills and sound methods to preserve and enhance coastal marsh and estuarine areas.

15A NCAC 7H .2600 General Permit for Construction of Wetland, Stream and/or Buffer Mitigation Sites

There was no public comment on this proposed rule.

Thursday April 29, 2004

VARIANCE REQUESTS

Sea Trail Corporation, Sunset Beach (CRC-VR-03-17)

Merrie Jo Alcoke stated that the petitioner is the owner of Sea Trail Plantation and Golf Resort in Sunset Beach. The petitioner obtained a CAMA Major Permit in 1998 for a multi-family residential development with a community pier. The permit has been renewed once since it was issued. Prior to expiration, the petitioner applied to DCM for another renewal. DCM denied the request based on the CRC's rule regarding development period extensions [7J .0404(b)]. DCM found that "substantial development" had not occurred on the project since the last renewal. Petitioner therefore seeks a variance from the CRC's "substantial development" rule in order to continue the project under the original permit.

Ms. Alcoke reviewed the Stipulated Facts contained in Attachment B of CRC-VR-03-17. She also advised of the DCM staff's position stating that Petitioner will experience a hardship in obtaining a new stormwater permit. Yet, this hardship is caused by the Petitioners failure to move forward with any development whatsoever on the property. Ms. Alcoke also stated that the variance request would be consistent with the spirit, purpose, and intent of rules, secure public safety and welfare, however, it does not preserve substantial justice in that the Petitioner has not presented a truly peculiar situation for which a variance should be granted.

Amos Dawson, attorney for Sea Trail Corp., stated that if a variance was not granted, and the Petitioner was forced to apply for a new permit and meet the new 30-foot setback requirement, re-engineering would have a significant impact on cost. In addition a number of structures would have to be relocated. These hardships are attributable to the particular location, size and topography of property. Mr. Amos stated that the Petitioner has in good faith expended substantial amounts on the permitted development. He stated that to deny the Petitioner a variance due to factors beyond its control (downturn of economy) would be a substantial injustice. Mr. Amos is requesting a variance be granted by the CRC.

After a discussion by CRC members, **Mr. Hackney made a motion, seconded by Mr. Pittman, that the CRC grant this variance request with the stipulation that the two structures (see Attachment B, #25 & #26 on CRC-VR-03-17) be removed. Mr. Shepard proposed an addition to the original motion to include only the wetland detention system be allowed as part of that variance. Both Mr. Hackney and Mr. Pittman accepted the amendment. The variance was granted with a hand vote of 11 in favor (Barnes, Emory, Griffin, Hackney, Langford, Old, Pittman, Peele, Shepard, Weld, Wynns), and 1 opposed (Cahoon).**

NC Department of Transportation (DOT), Hwy. 12 Kitty Hawk (CRC-VR-04-03)

Ms. Alcoke stated that Petitioner proposes to extend an existing 1,300-foot sandbag revetment protecting the highway and to expand the dimensions of the proposed bags from the allowable height of six feet to a height of eight feet. Petitioner proposes to add 600 additional feet of bags. Petitioner seeks a variance from rule 7H .1705(a)(1), which limits dimensions on sandbags.

Ms. Alcoke reviewed the Stipulated Facts on Attachment B of CRC-VR-04-03 and stated that though the additional 600 feet of sandbags will be installed entirely within DOT's right-of-way, Scott Patterson of Pelican's Perch is objecting to the additional placement of sandbags. Mr. Patterson feels that a previous project last year caused a washout of his septic system, rendering his house uninhabitable.

Lisa Glover, DOT Attorney, provided pictures of how the structure requested in this variance would look. She stated that the increase from six feet to eight feet would provide maximum protection.

Mr. Peele questioned if this road was a vital evacuation route. Mr. Langford and Ms. Cahoon stated that it is vital as it is the only way off the island.

Mr. Old made a motion, seconded by Mr. Shepard that the CRC grant this variance as requested. The variance was granted with a unanimous hand vote of 12 in favor (Barnes, Cahoon, Emory, Griffin, Hackney, Langford, Old, Pittman, Peele, Shepard, Weld, Wynns).

Gates and Julia Hoover, Holden Beach (CRC-VR-04-01)

Ms. Alcoke stated that the Petitioners propose to build a single-family residence on two adjacent lots they own in Holden Beach. The development will be inconsistent with the CRC's 30-foot buffer rule. Petitioners seek a variance from rule 7H .0209(d)(10), which requires all new development be located a distance of 30-feet landward of the normal high water level.

Ms. Alcoke reviewed the Stipulated Facts on Attachment B CRC-VR-04-01, and stated that the petitioners have proposed a stormwater management plan to capture 100% of stormwater for all the impervious surfaces on the lot. This plan exceeds the Town's requirement. Ms. Alcoke also states that if a variance is not granted it would cause a financial loss for the petitioners, however it is not enough to establish unnecessary hardship. She stated that application of the buffer rule does not limit development on the lot as to deem it an exceptional situation. A smaller residence can be constructed without a variance by the CRC.

Julia Hoover addressed the CRC and stated that when they purchased the double lot they were not informed of the limitations concerning residential construction on it. As a matter of fact the company that sold the petitioners the double lot also led them to their architectural firm who designed the proposed home. Ms. Hoover stated that it was only after the home was designed and the architectural firm was paid for services that they were informed the proposed design would not be able to be built within CRC regulations. She stated that a septic system is needed to build a home and though it will extend into the buffer zone 6-9 feet, it is made up mostly of porches. Ms. Hoover stated that a stormwater runoff plan for 100% of the runoff currently exists. She is requesting a variance on the buffer rule so her family may enjoy the summer home they designed, will not suffer financial hardship of money already invested, and in exchange will provide a stormwater runoff plan that exceeds town's requirements.

After discussion by the CRC, **Mr. Shepard made a motion, seconded by Mr. Old to deny the variance as requested. The variance request was denied by a hand vote of 8 in favor (Barnes, Cahoon, Griffin, Langford, Old, Shepard, Weld, Wynns), and 4 opposed (Emory, Hackney, Pittman, Peele).**

Jim McSwain, Holden Beach (CRC-VR-04-02)

Ms. Alcoke stated that the Petitioners propose to build a single-family residence on two adjacent lots they own in Holden Beach. The development will be inconsistent with the CRC's 30-foot buffer rule. Petitioners seek a variance from rule 7H .0209(d)(10), which requires all new development be located a distance of 30-feet landward of the normal high water level.

Jim McSwain stated that with the new setback rules from CAMA, there is no room available on which to build a reasonably sized home that matches other homes on the street. Mr. McSwain also stated that a hardship results from the lot being platted too small for today's regulations. He stated that his lot would not be allowed to be platted under today's zoning laws. Mr. McSwain stated that he is proposing a stormwater management plan that will capture 100% of stormwater for all impervious surfaces on lot.

Mr. Shepard made a motion, seconded by Mr. Old to deny the variance as requested. The variance request was denied by a hand vote of 8 in favor (Barnes, Cahoon, Griffin, Langford, Old, Shepard, Weld, Wynns), and 4 opposed (Emory, Hackney, Pittman, Peele).

Gary Porter, Oak Island (CRC-VR-04-04)

Ms. Alcoke stated that the Petitioner proposes to build a single-family residence on a lot owned in Oak Island. The development will be inconsistent with the CRC's 30-foot buffer rule. Petitioners seek a variance from rule 7H .0209(d)(10), which requires all new development be located a distance of 30-feet landward of the normal high water level.

Ms. Alcoke reviewed the Stipulated Facts on Attachment B CRC-VR-04-04, and stated that the lot was purchased in 1997 and is located on a manmade canal known as "Montgomery Slough" that connects to the Atlantic Intracoastal Waterway, which is currently closed to harvest of shellfish at this location.

Gary Porter stated to the CRC that if given the opportunity to build his house, he would do whatever the CRC requires.

Mr. Langford made a motion, seconded by Ms. Cahoon to grant the variance as requested. The variance was granted by a unanimous hand vote (Barnes, Cahoon, Emory, Griffin, Hackney, Langford, Old, Peele, Pittman, Shepard, Weld, Wynns)

P&SI COMMITTEE REPORT

Ms. Griffin presented the minutes from the P&SI Committee. (SEE ATTACHMENT 1 FOR WRITTEN COPY). The following are actions items taken from the P&SI Committee Report.

Town of Bath/CAMA Authority

Ms. Cahoon made a motion, seconded by Mr. Pittman that planning authority be granted to the Town of Bath. The motion carried by a unanimous hand vote (Barnes, Cahoon, Emory, Griffin, Hackney, Langford, Old, Peele, Pittman, Shepard, Weld, Wynns).

I&S COMMITTEE

Mr. Emory presented the minutes from the I&S Committee. (SEE ATTACHMENT 2 FOR WRITTEN COPY).

CRAC REPORT

Bob Shupe presented the minutes from the CRAC meeting. (SEE ATTACHMENT 3 FOR WRITTEN COPY). No action was required from the CRC on this report.

APPROVAL OF JANUARY 28-29, 2004 MINUTES

The minutes were approved, as corrected, by a unanimous vote.

ACTION ITEMS

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

Mr. Tyndall reviewed the rule with the CRC.

A motion was made by Mr. Courtney, seconded by Ms. Weld to adopt 15A NCAC 7K .0209. The motion carried by a unanimous hand vote.

15A NCAC 7H .2700 General Permit for the Construction of Riprap Sills (Temporary Rule)

After some discussion and some minor changes from public comment, **Mr. Emory made a motion, seconded by Ms. Weld to approve 7H .2700 as temporary rule and to proceed with permanent rule process. The motion carried by a unanimous hand vote.**

OLD/NEW BUSINESS

Resolution Requesting Review of Coastal Management in NC (CRC-04-01)

Chairperson Tomlinson stated that this issue will be put on hold until after the hurricane season. He requested the CRC & CRAC keep an informal journal about the effects of the hurricane for their particular area and share that with DCM staff.

Variance Related Issues Related to Buffer Rules Since Approval in August 2000 (CRC-04-03)

Tancred Miller summarized the number and types of variances that the CRC has considered since the buffer rule came into effect. Mr. Miller reported that the CRC has granted 26 of the 34 requests for relief from the buffer rule since the rule took effect in August 2000. Mr. Miller noted that the Commission has generally moved towards granting variances for new development in the buffer once the proposed development includes an engineered stormwater management system. Installed and operational stormwater control systems offer increased protection from runoff and variances granted on this condition has resulted in more stormwater being captured than would normally be required. However, it was pointed out that DCM and LPO's do not have the resources to monitor these systems once they are installed and DCM does not have the authority to require property owners to have systems periodically inspected at the owner's expense. Mr. Miller also stated that another area of concern is what happens to the systems when property ownership changes. He stated there is no assurance that the new owner will be able or willing to keep the system operational.

Ms. Weld requested feedback on what happens to variances once the CRC grants them. Mr. Jones confirmed such information will be available at the June meeting.

With no further business, the CRC adjourned.

Respectfully submitted,

Charles S. Jones, Executive Secretary

Stephanie Bodine, Recording Secretary