

NC COASTAL RESOURCES COMMISSION (CRC)
January 17-18, 2008
Sheraton Hotel and Marina
New Bern, NC

Present CRC Members

Bob Emory, Chairman
Doug Langford, Vice Chair

Charles Elam	Joseph Gore
Joan Weld	Lee Wynns
Wayland Sermons	Jim Leutze
Chuck Bissette	Melvin Shepard
Bill Peele	
Renee Cahoon (arrived at 1:30 p.m. 1/17/08)	

Present Coastal Resources Advisory Council Members (CRAC)

Dara Royal, Chair
Penny Tysinger, Co-Chair

Deborah Anderson	William Morrison
Joe Beck	Spencer Rogers
Randy Cahoon	Frank Rush
Carlton Davenport	Robert Shupe
Eddy Davis	Harry Simmons
Paul Delamar (Christine Mele)	Lester Simpson
Webb Fuller	Steve Sizemore
Renee Gledhill-Earley	Tim Tabak
Gary Greene	Joy Wayman
Judy Hills	David Weaver
Al Hodge	William Wescott
Joe Lassiter	Traci White
Travis Marshall	Anne Deaton
Wayne Mobley	
J. Michael Moore	

Present Attorney General's Office Members

James Gulick
Allen Jernigan
Christine Goebel
Meredith Jo Alcoke
Tom Moffitt

CALL TO ORDER/ROLL CALL

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

Angela Willis called the roll. Chairman Emory stated that he knows some of the attorneys appearing before the CRC, but it would not affect his ability to participate and is not a conflict. Wayland Sermons also stated that he knows most of the attorneys appearing before the Commission, but it is not a conflict. Jim Leutze stated that he owns property on Bald Head Island and may have to recuse himself from the New Hanover County LUP discussion. Bob Wilson and Jerry Old were absent. Renee Cahoon was absent for the roll call, but arrived at 1:30 p.m. and stated no conflicts. Based upon this roll call, Chairman Emory declared a Quorum.

MINUTES

Doug Langford made a motion to approve the minutes of the November 29-30, 2007 Coastal Resources Commission meeting in Greenville. Joseph Gore seconded the motion. The motion passed unanimously (Elam, Weld, Sermons, Bissette, Langford, Peele, Gore, Wynns, Leutze, Shepard).

EXECUTIVE SECRETARY'S REPORT

Jim Gregson, DCM Director, gave the following report.

Stormwater Rules Passed

The state's Environmental Management Commission approved amendments to current coastal stormwater rules at their meeting last week. The amendments are subject to review by the state legislature before they take effect, but could become effective as early as August 2008.

New residential projects that disturb less than an acre will not be required to have a stormwater permit. However, those residential projects that disturb more than 10,000 square feet but less than an acre will be required to control and capture stormwater on site. They can use a combination of rain gardens, cisterns, rain barrels and pervious pavement or other approved methods to control the run-off.

Commercial projects that disturb 10,000 square feet or more will require stormwater permits under the new rules, bumping them up to a CAMA major permit, rather than a minor permit.

For those projects that require permits, the low-density impervious surface threshold that signals the need for engineered stormwater controls has decreased. For projects within one-half mile of shellfish waters, the threshold has decreased from 25 percent to 12 percent. Projects with greater than 12 percent impervious surface will be required to manage run-off for the 1 year – 24 hour storm.

For those projects farther than one-half mile from shellfish harvesting areas, the low-density impervious surface threshold has decreased from 30 percent to 24 percent. Projects with greater

than 24 percent impervious surface will be required to have engineered stormwater controls to manage run-off from 1.5 inches of rainfall.

The approved amendments also increase vegetated waterside buffers from 30 feet to 50 feet for new development. Redevelopment sites that do not increase impervious surface on the site will still come under the 30-foot requirements.

The amendments incorporate modifications recommended by hearing officers who were charged with holding public hearings last fall to collect public comments on the rule changes. Those modifications include eliminating the requirement for a stormwater permit for smaller residential projects (less than 1 acre); the provision requiring stormwater management devices in residential development that disturbs less than an acre of land but more than 10,000 square feet; and changes to allow stormwater controls other than infiltration for high-density projects.

Sandbag Update

As you may recall, in November DCM sent letters to all property owners with active sandbag permits to inform them of the May 1 deadline for removal of certain sandbag structures. To date we have received phone calls, and about 18 emails and letters, mostly from property owners who believe they received the letter in error, either because there are no sandbags currently installed on the property, or because the bags are covered and vegetated.

CELCP Plan Approved

North Carolina's Coastal and Estuarine Land Conservation Program (CELCP) Plan has been approved by NOAA. Each state is required to have an approved plan to be eligible for CELCP grants after 2008. NC has requested a CELCP grant of \$3 million to help acquire 6,600 acres along the Chowan River in Gates County. However, the grant is subject to congressional appropriations, which have not yet been finalized.

CRAC Resignation

Washington County representative Frank Alexander has resigned from the Coastal Resources Advisory Council.

Staff News

Sr. Deputy Attorney General Jim Gulick will continue to fill in for Jill Hickey at this meeting.

Shaun Simpson has been promoted to the position of Environmental Technician for the Division in our Wilmington office. Previously, Shaun was employed as Administrative Assistant to the DCM-Wilmington District office staff. Shaun holds an Associate in Applied Science degree from Cape Fear Community College and has extensive experience in the administrative functions of DCM.

DCM's attorney, Merrie Jo Alcoke, will be leaving the Attorney General's office at the end of this week, and therefore will no longer represent DCM.

Fred Landa, planner in our Washington office, will be leaving DCM to take a job with the New York State Division of Coastal Resources.

Our Clean marina program coordinator, Jenny Webber, will be leaving DCM at the end of January, due to a loss of funding for this position. We are looking for other options to fund the clean marina program, but right now it is uncertain what the future of clean marina will be.

CHAIRMAN'S COMMENTS

Chairman Emory stated the Coastal Habitat Protection Plan (CHPP) steering committee, which is an inter-agency group, met earlier this week. Estuarine shoreline stabilization was on the agenda. When the CRC was trying to develop rules on bulkheads, we ran into a conflict with the Division of Water Quality's buffer rules. There was a good discussion about this issue at the CHPP steering committee meeting, but not a lot of progress was made and more discussions are needed. Renee Cahoon had requested at the last meeting that the CRC be provided a copy of the CHPP steering committee meeting minutes. These were included with this meeting's mailout packet and will continue.

This meeting will be a little different from the format of other meetings. After the variances and the contested case have concluded, the meeting will switch over to a strategic planning session which has not been done for six or seven years. The structure of this meeting will be different and the standing committees will not meet. A facilitator will be here to guide us through this session. Chairman Emory stated that it would take a lot of discipline on the part of each Commissioner.

VARIANCE REQUEST

The Riggings (CRC-VR-06-33) Kure Beach, Sandbags

***Chairman Emory stated that it had been requested that additional time be allowed to present this variance since there was an extensive history. He approved this request. Attorneys for staff and petitioner will be allowed twenty-five minutes each.*

Christine Goebel of the Attorney General's Office, representing staff, stated that this variance request was filed by the Riggings Homeowners Association and are represented by Gary Shipman and Matt Buckmiller. The property is located in Kure Beach, New Hanover County. This property is an oceanfront condominium complex composed of four structures and has been granted four prior variances from the Commission to allow sandbags in front of their property. The Homeowners Association is seeking a variance from 15A NCAC 7H .1705(a)(7) to keep their sandbags longer.

Ms. Goebel reviewed the stipulated facts for this variance request and stated that staff's position in this case is that another variance is not warranted. She further stated that staff and petitioner do not agree on any of the four statutory criteria and petitioners have not met any of the criteria in order for the CRC to grant the variance.

Gary Shipman of Shipman and Wright, LLP Attorneys at Law spoke on behalf of the Petitioners. Mr. Shipman reviewed some of the key facts that he contended supported the granting of the variance to include the “Registered Natural Heritage Area” designation, the Kure Beach renourishment project, and the Fort Fisher State Park revetment. Mr. Shipman addressed the four variance criteria.

Melvin Shepard made a motion to support staff’s position that strict application of the rules, standards or orders issued by the Commission will not cause the petitioner unnecessary hardships. Jim Leutze seconded this motion. The motion passed unanimously (Elam, Weld, Sermons, Bisette, Langford, Peele, Gore, Wynns, Leutze, Shepard).

Melvin Shepard made a motion to support staff’s position that hardships do not result from conditions peculiar to the petitioner’s property. Joseph Gore seconded this motion. The motion passed unanimously (Elam, Weld, Sermons, Bisette, Langford, Peele, Gore, Wynns, Leutze, Shepard).

Jim Leutze made a motion to support staff’s position that hardships result from actions taken by the petitioner. Joseph Gore seconded this motion. The motion passed with eight votes (Weld, Sermons, Langford, Peele, Gore, Wynns, Leutze, Shepard) and two opposed (Elam, Bisette).

Doug Langford made a motion to support staff’s position that the variance will not be consistent with the spirit, purpose and intent of the rules, standards or orders; will not secure public safety and welfare; and will not preserve substantial justice. Joan Weld seconded the motion. After an amendment to the motion failed*, this motion passed with eight votes (Weld, Sermons, Langford, Peele, Gore, Wynns, Leutze, Shepard) and two opposed (Elam, Bisette).

***Melvin Shepard made a motion to amend the previous motion removing the sentence in staff’s position that says, “the continued existence of the sandbag structure on the public beach area and the increasing encroachment of the buildings impedes the public’s right of access and use to the beach area”. Jim Leutze seconded the motion. The motion failed with one vote (Shepard) and nine opposed (Elam, Weld, Sermons, Bisette, Langford, Peele, Gore, Wynns, Leutze).**

This variance was denied.

BBS Beaufort, LLC (CRC-VR-07-17) Beaufort, Thirty-Foot Buffer

Thomas Moffitt of the Attorney General’s Office, representing staff, stated this variance request was filed by BBS Beaufort, LLC who is represented by Clark Wright of Davis Hartman Wright, PLLC. Petitioners propose to build an access road connecting a two-house subdivision to the public street. This proposed access road is inconsistent with the CRC’s thirty-foot buffer rule 15A NCAC 7H .0209(d)(10). The property is located in the Town of Beaufort, Carteret County, and is triangular in shape.

Mr. Moffitt reviewed the stipulated facts and stated that staff and petitioner agree on all four criteria which must be met to grant the variance. Mr. Moffitt stated that due to the unique shape of this property, which contains two upland areas suitable for development that meet the Commission's rules, the only access would come across a narrow neck which is almost entirely subject to the thirty foot buffer rule.

Clark Wright spoke on behalf of the Petitioners. Mr. Wright discussed the stipulated facts which he contends support the granting of the variance adding that the property is the same shape as it was when it was purchased. For safety reasons, the access road must be twelve to eighteen feet wide. There is a one-year time clock on the guaranteed reservation of the public sewer.

Jim Leutze requested of the petitioner to consider an attempt for remediation to pick up more buffer area for the area that is lost during development.

Mr. Moffitt stated that some questions had been raised about where the sewer lines would go. Mr. Wright stated that the plans and drawings show the sewer lines underneath the road and the Town of Beaufort is satisfied with this proposal. Ted Tyndall, DCM Asst. Director, stated that the application needs to request a sewer and water line and would need a variance as well as these lines would also be located in the buffer area. Mr. Wright stated that he requests this be addressed today. Commissioner Bissette pointed to stipulated fact #14 which indicates that Petitioner's minor permit application included utility lines running to the street along and under the proposed driveway.

Doug Langford made a motion to support staff's position that strict application of the rules, standards or orders issued by the Commission would cause the petitioner unnecessary hardships. Joseph Gore seconded the motion. The motion passed unanimously (Elam, Weld, Sermons, Bissette, Langford, Gore, Wynns, Leutze, Shepard) (Peele absent for vote).

Doug Langford made a motion to support staff's position that the hardships result from conditions which are peculiar to the property. Joseph Gore seconded the motion. The motion passed unanimously (Elam, Weld, Sermons, Bissette, Langford, Gore, Wynns, Leutze, Shepard) (Peele absent for vote).

At this time Counsel for both parties stipulated to the fact that this variance includes the utilities in addition to the road. These utility lines would run to the public street and be located under and along the proposed driveway and within the buffer.

Wayland Sermons made a motion to accept the stipulation of the Counsel for the State and the Counsel for the Petitioner that the variance request includes a request to place the utilities within the buffers and these utilities would be placed along and under the road as stated in stipulated fact #14. Commissioner Sermons further added that, if approved, this would apply for consideration under the first and second criteria. Jim Leutze seconded this motion. The motion passed unanimously (Elam, Weld, Sermons, Bissette, Langford, Gore, Wynns, Leutze, Shepard) (Peele absent for the vote).

Jim Leutze made a motion to accept staff's position that hardships do not result from actions taken by the Petitioner. Joseph Gore seconded the motion. The motion passed

unanimously (Elam, Weld, Sermons, Bissette, Langford, Gore, Wynns, Leutze, Shepard) (Peele absent for vote).

Doug Langford made a motion to support staff's position that the variance will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; secure the public safety and welfare; and preserve substantial justice. Jim Leutze seconded the motion. The motion passed unanimously (Elam, Weld, Sermons, Bissette, Langford, Gore, Wynns, Leutze, Shepard) (Peele absent for vote).

This variance was granted.

NCDOT (CRC-VR-07-21) Kill Devil Hills, Stormwater Outfall

Thomas Moffitt of the Attorney General's Office, representing staff, stated this variance was filed by the N.C. Department of Transportation. NCDOT controls and maintains a stormwater ocean outfall structure located at milepost 9.75 adjacent to Lake Drive in Kill Devil Hills. NCDOT requests to repair and extend the structure seaward by 40 feet due to storm damage and seeks a variance from 15A NCAC 7H .0306(a) and .0309(a) because the ocean outfall repair and extension would be seaward of the oceanfront erosion setback line.

Mr. Moffitt reviewed the stipulated facts and addressed the four statutory criteria which must be met in order to approve this variance. Staff and Petitioners agree on all four criteria. Following the initial variance request, NCDOT requested to rebuild the outfall only to its original design specifications and not extend it further.

Scott Conklin of the Attorney General's Office represented NCDOT and stated that Petitioners agree with Staff on all four criteria. Mr. Conklin addressed the stipulated facts he contends warrant the granting of the variance with emphasis being placed on NC Highway 12 being a primary emergency evacuation route. Slides were shown of the outfall drainage area.

Charles Elam asked if the stormwater was treated prior to being discharged into the ocean. Mr. Conklin deferred to Clay Willis, environmental officer for NCDOT. Mr. Willis stated that Moffitt and Nichol was hired to conduct a study for several ocean outfalls on the outer banks to collect data on the chemical parameters of the water with the intent of designing an inline filter system that can be used to handle some of the runoff. Sterling Baker, Division Maintenance Engineer for NCDOT, was also present and stated that a trial would be done at one outfall. The installation costs for this device will be 1.2 million dollars and cheaper alternatives are being looked at. The maintenance costs have been estimated at \$100,000 per year.

Doug Langford made a motion to adopt staff's position that strict application of the rules, standards or orders issued by the Commission cause the petitioner unnecessary hardships. Joseph Gore seconded the motion. The motion passed unanimously (Elam, Weld, Sermons, Bissette, Langford, Gore, Wynns, Leutze, Shepard) (Peele absent for vote).

Doug Langford made a motion to adopt staff's position that difficulties or hardships result from conditions which are peculiar to the property. Joseph Gore seconded the motion. The motion passed unanimously (Elam, Weld, Sermons, Bissette, Langford, Gore, Wynns, Leutze, Shepard) (Peele absent for vote).

Doug Langford made a motion to adopt staff's position that the hardships do not result from actions taken by the petitioner. Joseph Gore seconded the motion. The motion passed unanimously (Elam, Weld, Sermons, Bisette, Langford, Gore, Wynns, Leutze, Shepard) (Peele absent for vote).

Doug Langford made a motion to adopt staff's position that the variance request by the petitioner will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure public safety and welfare; and preserve substantial justice. Joseph Gore seconded this motion. The motion passed unanimously (Elam, Weld, Sermons, Bisette, Langford, Gore, Wynns, Leutze, Shepard) (Peele absent for vote).

This variance was granted.

CONTESTED CASES

Lawson v. DCM (06 HER 0981)

Christine Goebel of the Attorney General's Office represented Staff who are the Respondents in this case. Ms. Goebel stated that summary judgment was awarded to the Lawsons on the issue of whether their permit was timely processed. In CAMA, Statute 113A- 121(c) provides that if a minor permit is not processed within 25 days, then it is automatically granted. The ALJ found that it was not timely denied and was therefore automatically issued.

Ms. Goebel stated that Staff has filed exceptions to the ALJ's order which awarded summary judgment to the Lawsons. Staff argues that the permit was timely denied on the 25th day. She stated the ALJ and the Petitioners argue that it was not timely denied. The difference between these positions is when should the clock be started and Staff feel that once a complete application is received, the clock starts. Petitioners believe that once application materials are submitted (incomplete or not), then the clock starts.

Frank Sheffield of Ward and Smith, P.A. Attorneys at Law represented Petitioners Howard A. Lawson, et. al. Mr. Sheffield stated that Petitioners submitted written arguments supporting the Administrative Law Judge's decision approving the CAMA permit. Mr. Sheffield addressed the timeline which is in dispute with emphasis that a feasible disposition did not occur within 25 days and the permit should have been issued. Mr. Sheffield further stated that the clock started on March 3 when the permit application was received by the Town.

Wayland Sermons made a motion that the finding of the Administrative Law Judge was erroneous, the CRC should adopt Staff's exceptions to the ALJ's decision, overturn the ALJ's decision and find that the agency did timely deny the Petitioner's permit application. Doug Langford seconded the motion. The motion passed unanimously (Elam, Weld, Sermons, Bisette, Langford, Gore, Wynns, Leutze, Shepard) (Peele absent for vote).

At this time, James Gulick Division Chief of the Attorney General's Office stated that he has accepted the resignation of Meredith Jo Alcock. He thanked her for her public service and gave

her a gift on behalf of the Attorney General's Office. Allen Jernigan, Section Chief of the Attorney General's Office added his sentiment and best wishes.

The CRC held a strategic planning session led by Kathi Parker, Organizational Development Consultant from the Office of State Personnel. (See notes attached)

PRESENTATIONS

Town of Oriental Workbook LUP Certification (CRC-08-02)

Maureen Will, DCM District Planner, addressed the Commission stating that the Town of Oriental is requesting certification of the workbook land use plan which is a simplified version of the core land use plan. Mrs. Will stated that DCM Staff has determined that the Town of Oriental has met the substantive requirements outlined within the 2002 Land Use Plan Guidelines and that there are no conflicts evident with either state or federal law or the State's Coastal Management Program. Wyatt Cutler, Town Manager, and Dee Sage, former planning board member, were both present.

Melvin Shepard made a motion to certify the Town of Oriental workbook land use plan. Bill Peele seconded the motion. The motion passed unanimously (Elam, Weld, Cahoon, Sermons, Bissette, Langford, Peele, Wynns, Leutze, Shepard) (Gore absent for vote).

New Hanover County LUP Amendment (CRC-08-03)

Mike Christenbury, DCM District Planner, addressed the Commission stating that New Hanover County is requesting an amendment to their 2006 Wilmington-New Hanover County joint land use plan which was certified by the CRC on June 23, 2006. Mr. Christenbury covered the change in two policies and change in part three of the land classification map. DCM Staff has determined that the Wilmington-New Hanover County joint land use plan amendment has met the substantive requirements outlined within the 2002 land use plan guidelines and that there are no conflicts evident with either state or federal law or the State's Coastal Management Program. Chris O'Keefe, Planning Director for New Hanover County, and Jane Daughtridge, Senior Planner for New Hanover County, were both present. Chris O'Keefe answered questions from Bill Peele, Doug Langford, Charles Elam, Jim Leutze, Lee Wynns, Wayland Sermons and Melvin Shepard.

Jim Leutze asked if he should recuse himself from this issue, as he is a resident of New Hanover County. James Gulick stated that there is no conflict because there is no personal stake in the property.

Melvin Shepard made a motion to certify the New Hanover County Land Use Plan Amendment. Wayland Sermons seconded the motion. The motion passed with six votes (Weld, Cahoon, Sermons, Bissette, Gore, Shepard) and five against (Elam, Langford, Peele, Wynns, Leutze).

15A NCAC 7H .0305 Public Comment and Staff Recommendation (CRC 08-01)

Jeff Warren, Coastal Hazards Specialist for the Division of Coastal Management, reviewed the process that this rule change has been through. There were many comments that were received on this rule which also commented on 7H .0306. In July 2006, the state of the coast and the

pressures to develop were discussed. The CRC was interested in making changes to the setbacks in light of sea level rise, development pressures, and the size of buildings on the coast. In July 2007, draft rule language was presented to the CRC and the CRC voted to send the draft rule language to public hearing. After being published in the N.C. Register, a comment period spanned November 1 through December 31, 2007. A public hearing was held at the November 2007 CRC meeting. All written comments received by DCM were provided to the CRC for review.

The CRC has the option of adopting the rule language as published in the N.C. Register. DCM has made some minor modifications to the rule language, so the CRC could adopt the minor amendments. The final option would be not to adopt the rule at all. Dr. Warren reviewed the rule language and recommended that the CRC adopt the modifications to the rule language that was published in the Register. DCM feels that this rule meets the spirit of the requests of the Commission and addressed the stakeholder concerns.

James Gulick stated that at the public hearing there were comments made by an individual (Mr. Fleishauer) which referred in detail to a specific development project. Photographs were presented. This matter is involved in a contested case that will eventually come before the CRC. Mr. Gulick stated that he did not think it was appropriate to redact a public record of a public hearing, but did advise the Commissioners not to consider site-specific information because during a contested case proceeding before the Commission only the official record can be considered.

15A NCAC 7H .0306 Public Comment and Staff Recommendation (CRC 08-04)

Jeff Warren, Coastal Hazards Specialist for the Division of Coastal Management, reviewed the history of this rule. The changes to this rule are a result of development pressures on the coast, the natural pressures on the coast, sea level rise, potential increase of frequency and intensity of storms, and the changing face of development. The CRC felt there were concerns with future development and what needed to be put into place. Lots of people have broken this into two issues (static vegetation line and setbacks). This rule deals with setbacks; the static vegetation line is just a different way to deal with setbacks behind a beachfill.

Twenty people spoke at the public hearing, 110 written comments were received and provided to the CRC. Three-quarters of the comments were about the static line and a majority of these comments were from Brunswick County. Only 25 percent of the comments were about the setbacks.

Dr. Warren discussed the recommended amendments that have been made to the rule language which was published in the N.C. Register based on the comments that have been received (appendix A). Bill Peele added that when looking at Emerald Isle, the total floor area of 2,500 square feet is a better option than 2,000 square feet. Renee Cahoon and Charles Elam agreed with this change to the rule language. Staff recommends the amendments that have been made to the rule be sent for public hearing.

Bill Peele made a motion that the 2,000 square foot maximum be changed to 2,500 square feet in 7H .0306(a)(7)(D). Charles Elam seconded this motion. The motion passed unanimously (Elam, Weld, Cahoon, Sermons, Bissette, Langford, Peele, Wynns, Leutze, Shepard) (Gore absent for vote).

Wayland Sermons made a motion to send 7H .0306 with amendments as proposed by Staff to public hearing. Renee Cahoon seconded this motion. The motion passed with nine votes (Elam, Weld, Cahoon, Sermons, Langford, Peele, Wynns, Leutze, Melvin) and one opposed (Bissette)(Gore absent for vote).

15A NCAC 7H .0209 Public Comment and Staff Recommendation (CRC-08-05)

Steve Underwood, Asst. Director for the Division of Coastal Management, reviewed the history of this rule. After going to Committee, it was brought back to the CRC to discuss height and use restrictions. There was guidance given to staff that incorporated three main pieces of information (1) the CRC wanted staff to look at potential uses and that any potential uses should recognize cultural, historical and economic significance (2) preserve the public's use rather than sacrifice public benefit for private gain and (3) limit vertical expansion to one additional level above the existing structure. Mr. Underwood pointed out in "Use standards (B)" the rule language where these three concepts had been addressed.

The comments received were all received at the public hearing. No written comments were received. Some of the concerns received during public hearing were that this would be an infringement on the city's statutory authority as it relates to planning and zoning. There were issues raised about the use. The comments received indicated that they do not want to limit to only restaurants and retail stores. The building height limits were also questioned. It was expressed that they wanted that to be decided by local governments. It was also stated that this rule does not encourage anybody that already has an existing building over the water to rebuild or bring it up to standards. One suggestion was that when someone submits a permit, it should be left up to the municipality. The municipality should have the right to agree to the use by the applicant and they have the right to agree to the height limitations and cannot put new structures over the water. One final comment indicated that these rules encourage waterfront development in floodplain areas, and yet we are trying to pull back from the oceanfront in other rules.

Staff's opinion is that there were not any comments received that were substantive enough to warrant any changes.

PUBLIC HEARINGS

There were no public hearings scheduled for this meeting.

PUBLIC COMMENT AND INPUT

Mack Paul of Kennedy Covington Law firm stated that he was here on behalf of a number of homeowners who live on the coast of North Carolina who have received notices sent by DCM to remove sandbags in May 2008. There were about 370 notices that went out and a number of those recipients no longer have sandbags, they have no structure on them, or the bags have been covered by sand and have vegetation on them. Nevertheless, there are many properties where removal of the sandbags will result in the immediate loss of the residence. The impacts of such a loss are clear. The public will have to contend with the environmental impact of debris on the beach, failing septic systems, loss of infrastructure and cost of clean-up. Communities which depend on tourism and tax base will have to absorb one more blow to the local economy. Lastly and most importantly individual owners face devastating repercussions. Many have invested

their life savings in these properties and many have a lifetime of memories tied to the properties and many will have loans that cannot be repaid leaving financial institutions having to contend with the fallout. Because of these impacts, particularly to the individual property owners, it is folly to think that the sandbags and protected homes will magically disappear on May 2, 2008. That is why we respectfully request that the CRC direct DCM staff to work with owners to see if there is a long-term solution. We understand the CRC's desire to enforce its rules, however any rule that has embedded in it a fixed date without addressing the larger policy implications requires some attention. Addressing this rule will entail some time and effort, however this effort will save significant staff resources and these are resources that are already stretched very thin in dealing with the fallout after May. The current situation in the Isle of Palms in South Carolina should be a lesson on the importance of being proactive with respect to sandbag deadlines. We see two trains heading down the track in opposite directions. We would like to work together to avoid a crash. (written comments provided)

Michelle Pharr, Landmark Hotel Group, stated the Landmark Hotel Group owns and operates several oceanfront properties. Two of them are in Dare County. One of them is the Comfort Inn in South Nags Head. The Comfort Inn is one of several large oceanfront hotels and commercial properties that would be affected by the May 2008 sandbag removal deadline. These properties are a viable economic structure to their towns and to the county. Protected, these facilities still have a considerable life left as value-economic properties. Removing the bags would considerably shorten their lives. What is really important to note is the fact that when we start removing bags in May, under current CRC rules, permits will continue to be written for newly threatened structures meaning bags will still be on the beach. We will be submitting to you a petition for rule change for the March CRC meeting (draft copy provided). This petition for rule change will strengthen the State's ability to manage sandbag alignments by providing the State with the tools to enforce compliance. This petition allows threatened properties the ability to continue to protect with sandbags provided they maintain compliance with their permits. This petition is also asking the CRC to pass an emergency temporary rule change that would extend the approaching deadline of May 2008 allowing the CRC time to review and enact the petition for rule change. This rule change does come with a summary on the draft to make it easier to read.

Susan Bartlett, homeowner that received a sandbag notification letter, stated she loves the Outer Banks and has put her life savings into a home on South Nags Head. After doing research, we felt that the house was safe and that it had a good dune with vegetation and moved in. A freak storm on Thanksgiving two years ago wiped out our dune and sandbags were the only way to salvage our structure. She begged the Commission to please rethink this absolute deadline. There are many of us that are planning to retire but also folks who have lived their lives on the Outer Banks and this decision is going to seriously impact us. If our sandbags are removed the next storm will seriously damage our house. It may result in septic tank exposure, it may result in a condemned house, it will possibly result for us a personal loss as well as impact on financial institutions because of our loan. All of the things the first speaker (Mack Paul) stated about the impact on the community as well as impact on the individual are going to be a direct result of this deadline. She requested that the CRC see if there are other solutions that will not only protect the coastline but will also protect the individual and the community.

Jo Massino stated that he came all the way from Richmond Virginia to his home in the Outer Banks and is here to address the CRC about the suggested proposal for removing sandbags on the first of May. He stated he wanted to express what concerns they have, hardships they have endured and how they have persevered in working with the Town of Nags Head to get where they are today. Our journey began in July 2003 when we purchased an older oceanfront home in South Nags Head. We purchased this house in the midst of the real estate frenzy that was going on. The house was a four bedroom three full bath handicapped accessible home with solid rental history that appeared to be a great investment for my family. We had to sign paperwork that was given to us that beach nourishment would definitely be taking place and we would be assessed an average of \$5,000 per year in taxes to help pay for this. Knowing this would substantially improve the value of our property, we were in favor of this and this information helped us decide that this was a wise purchase. Two months after purchasing our home Hurricane Isabel hit the Outer Banks and the nightmare began. Our first floor was destroyed, we lost a full bath, bedroom, game room and laundry room. A significant portion of our paved driveway was also taken away by the storm. We lost six weeks of fall rentals to recover some of the losses that we had endured as well as an eighteen month battle with FEMA to recover some of these losses. We were given an insurance settlement of \$7,800 dollars to cover what FEMA estimated was our loss. We were still under the 50% rule. We were unable to salvage the first floor, so we met with engineers and decided to raise our home enough to allow the second floor to be rebuilt. We were given the o.k. by Nags Head to do this and hired a contract engineer as well as a mover to do the job. We were also advised to have our house moved back thirty-five feet. This was suggested in discussions with Charles Jones, who at the time was involved in some capacity the head of CAMA. We also had to go through a variance process to honor the setback limits of this home. Several months waiting and an incredible amount of money later, the house was raised and new pilings were placed. Bids were received to complete our first floor and although the Town of Nags Head was willing to support us, CAMA denied our involvement. It would be nice if we were told this ahead of time and up front. The next issue, which is why I am here, we were advised about removing sandbags by May 1. As already heard by previous individuals, if we were to remove our sandbags it would be absolute suicide to us. It would be a financial burden and by all means a loss of tax revenue to the Town as well as a financial burden to our family and the community. I ask you to please reconsider and give us time to work and come up with some type of solution to solve this problem. Surely each one of you sitting here today has the power to think long and hard.

Bob Richubaugh stated he came here in 1989 and bought a house with a road and a dune in front of it. He stated he had no idea about sandbags and thought everything was safe. In 2001, we had several storms, the road disappeared and he applied for an application to put sandbags in. At the time, we were two feet short (22 feet from the house) and bags could not be put in until the following year. This house sits up on a hill with a 12-15 foot drop to the beach. Since I have put sandbags in, everything has been fine. I have been able to bring sand in and the tops of the bags are covered and vegetation is on them. If the bags were to be removed it would be a short period of time before there would be no dune there because it is a straight wall. I would hope the CRC would reconsider taking the sandbags out. It would be less than six months or the next storm before my house would be in danger.

Richard Murphy stated that he was not speaking for a group but he was speaking for himself individually. I am a native of North Carolina and love all the beaches along the coast especially in Dare County. I have been a property owner since 1978. At one point I owned 9 oceanfront

homes, 5 second or third row homes, 3 condos and a commercial office building. I have since sold quite a bit of property. I still own an oceanfront house that is in Nags Head. I am an environmental engineer, done some subdivision development on the outer banks, a builder and have a real estate broker's license. A lot of the issues the CRC deals with, I have dealt with. I have been a planning commissioner and have been on the city council. Yesterday, I set through the strategic planning session and the two main objectives were (1) beach preservation and (2) beach access. I think everybody in this room and maybe in North Carolina is on the same page. Those are the two most important issues at hand. The CRC has a huge responsibility to the N.C. citizens to develop a strategic plan to protect and preserve our beaches. Beach erosion is not an isolated problem specific to certain areas of the coast, it is a North Carolina problem. There is a massive erosion problem. Because of the development this erosion problem is going to continue to be at the forefront. We are at a critical junction now and something has to be done. Dealing with variance applications and issuing sandbag permits are nothing more than short-term methods. They are not a solution. The CRC must lead the battle against beach erosion. You have been appointed to be the first line of defense to formulate a long-term solution. Laws and rules are set in place to protect the people of North Carolina. If the laws and rules no longer work, those laws and rules need to be changed or amended. I strongly suggest that the CRC be the motivating factor behind changing and revamping any laws including sandbag removal and rules that are not working. The ban on hardened structures is handicapping your effort to protect our beaches. We have two groin or revetment projects in the State. One at Fisher Island and one at the South end of Oregon Inlet Bridge. Both of those projects have had positive impacts. The one at Bonner Bridge, the federal government spent \$17 million to move a Coast Guard station on the opposite side of the bridge next to the Oregon Inlet fishing center. Had that groin gone in place earlier they could have saved that money because the beach is 3-4 times wider than it was at the time the Coast Guard station was moved. Comments were made yesterday that the groin put in at Fisher Island showed initial erosion on the South side of it but has since showed a positive impact. We have some things that we need to think about. The CRC should implement some things that will be a long-term solution to our problems. This is something the legislative people have laid in place, but the CRC can have a positive impact in at least loosening that hardened structure law and maybe getting it changed or at least have several pilot programs up and down the coast that will allow (whether it will be called a groin, a jetty, a revetment, or a geotube) to be in place. We need to have some engineering studies done that give us some substantial background so you can make informed decisions on how we are going to attack the long term problem of beach erosion. It is not going to go away. A lot of the municipalities have approved subdivisions in the past where the lots were too close to the beach or too shallow to build. This is placed on private property owners now. These owners are suffering because of what municipalities have placed in place and they are not getting any satisfaction as to whether our governmental officials are taking a proactive stance in abating or doing something about long-term erosion. The Senate approved to put a groin in at Figure Eight Island and it still hasn't gone through legislative approval for this to be done. The two groins that were allowed to be put into place were on State or Federal property and are exempted from doing what private property owners would like to do. These groins show positive impact. One issue that will probably come up is an environmental impact because of jetties or revetments. Do not let that have an impact on your decisions. The microscopic organisms that form on these rocks or pieces of concrete are the basis for all fisheries and would be a massive source of food for fish. There is not a negative aspect to it. Any sand that would erode on one side of the jetty and deposit on the south side could be moved. Obviously beach renourishment is something that is on everybody's tongue. How it is going to be funded is another issue. I tend to agree with the distinguished doctor that it

is probably unlikely that the federal government is going to do it. We need to plan accordingly. If we do not do something fast, our tourism will start declining and the financial sources of income will no longer be available to support beach renourishment. There are extensive engineering studies conducted by Old Dominion that Renee Cahoon has received a copy of and I highly recommend that everybody read it. It shows that the positive economic impact can actually pay for beach renourishment. It shows that local sources can actually fund a beach renourishment project. I would hate for you to stick your head in the sand and think that retreat is an option. It is not an option at this point unless the State is willing to come up with the funds to buy all of the oceanfront houses along the entire outer banks and turn it into a state park. The tax revenues that are going to be lost by towns like Nags Head and Onslow and New Hanover counties would devastate their sources of income. They would have to start downsizing. From an engineering viewpoint on sandbags, the uncovered torn sandbags are unsightly and they need to be cleaned up and removed. The correct installation of an engineered bag line is a vital tool against erosion. The bag line must utilize the proper basemat to circumvent the sinking of the first row of bags which results in the collapse of the bag line. Let us not forget that the main objective in utilizing sandbags is a temporary method of protecting property until a long-term solution can be implemented to work on approving, monitoring and reviewing requests for various sandbag projects. Without a total commitment from the CRC to demand support from the State for implementation for a long-term solution is a waste of time.

ACTION ITEMS

Adopt 15A NCAC 7H .0305 General Identification and Description of Landforms

Melvin Shepard made a motion to adopt 7H .0305. Wayland Sermons seconded the motion. The motion passed unanimously (Elam, Weld, Cahoon, Sermons, Langford, Wynns, Leutze, Shepard) (Bissette, Peele, Gore absent for vote).

Adopt 15A NCAC 7H .0308 Ocean Shoreline Erosion Control Activities

Mike Lopazanski, Policy Manager for the Division of Coastal Management, stated that in June 2006 the CRC made some amendments to the repair/replace rule (7J .0210). As this rule moved through to public hearing in March 2007, Bald Head Island raised some concerns about whether their project for erosion control (groin field) would be affected by the repair/replace provision. Their particular project is subject to a variance and is incorporated into CAMA, but to address their concerns staff has included the statute language regarding their variance in .0308 where the other exceptions to shoreline stabilization projects are located.

Doug Langford made a motion to adopt 7H .0308. Charles Elam seconded the motion. The motion passed unanimously (Elam, Weld, Cahoon, Sermons, Bissette, Langford, Peele, Wynns, Leutze, Shepard) (Gore absent for vote).

Adopt 15A NCAC 7B .0802 Presentation of CAMA Land Use Plans to CRC for Certification

John Thayer, Senior Planner for the Division of Coastal Management stated that the specific requirement that the local government be in attendance to present the plan has been amended to say that they must only submit the plan and not be in attendance. Additionally, staff will provide a written report that will not be required to be presented orally. Finally, the comments on the plan must be in writing from the citizenry or anyone having a problem with the plan. No public comments either written or verbal were received.

Wayland Sermons made a motion to adopt 7B .0802. Doug Langford seconded the motion. The motion passed unanimously (Elam, Weld, Cahoon, Sermons, Bisette, Langford, Peele, Wynns, Shepard) (Gore, Leutze absent for vote).

Adopt 15A NCAC 7H .0209 Urban Waterfronts

Doug Langford made a motion to adopt 7H .0209. Charles Elam seconded the motion. The motion passed unanimously (Elam, Weld, Cahoon, Sermons, Bisette, Langford, Peele, Wynns, Shepard) (Gore, Leutze absent for vote).

Adopt 15A NCAC 7H .0312 Technical Standards for Beach Fill Projects

Jeff Warren, Coastal Hazards Specialist for the Division of Coastal Management stated that no public comments were received. There were minor amendments to this rule. Clarifications, adjusting some distances for the sampling of the native beach, clarifications were made on how to sample in a shallow borrow areas and alternative sampling methods were detailed, and a math error was also corrected.

Wayland Sermons made a motion to adopt 7H .0312. Renee Cahoon seconded the motion. The motion passed unanimously (Elam, Weld, Cahoon, Sermons, Bisette, Langford, Peele, Wynns, Leutze, Shepard) (Gore absent for vote).

OLD/NEW BUSINESS

Chairman Emory stated that two committees need to be set up (1) variance and contested case procedure committee and (2) meeting structure committee.

Variance and Contested Case Procedure Committee: Wayland Sermons, Renee Cahoon, Lee Wynns, Christine Goebel, Tancred Miller

Meeting Structure Committee: Charles Elam, Jim Leutze, Dara Royal, Penny Tysinger, Webb Fuller, Joan Weld, Mike Lopazanski

Chairman Emory asked for a consensus from the Commission to draft a thank you letter and send it to Kathi Parker. It was agreed.

With no further business, the CRC adjourned.

Respectfully submitted,

James H. Gregson, Executive Secretary

Angela Willis, Recording Secretary