

**NC COASTAL RESOURCES COMMISSION (CRC)**  
**November 29-30, 2007**  
**City Hotel and Bistro**  
**Greenville, NC**

**Present CRC Members**

Courtney Hackney, Chairman  
Doug Langford, Vice Chair

Chuck Bisette	Bill Peele
Renee Cahoon	Wayland Sermons
Charles Elam	Melvin Shepard
Bob Emory	Joan Weld
Joseph Gore	Bob Wilson
James Leutze (arrived at 8:45 a.m.)	Lee Wynns
Jerry Old	

**Present Coastal Resources Advisory Council Members (CRAC)**

Bill Morrison, Chair  
Dara Royal, Co-Chair

Frank Alexander	Wayne Mobley
Bert Banks	J. Michael Moore
Joe Banks	Lee Padrick
Randy Cahoon	Spencer Rogers
Carlton Davenport	Frank Rush
Christine Mele (for Paul Delamar)	Robert Shupe
Webb Fuller	Harry Simmons
William Gardner, Jr.	Steve Sizemore
Renee Gledhill-Earley	Michael Street
Gary Greene	Ray Sturza
Judy Hills	Penny Tysinger
Al Hodge	William Wescott
Maximillian Merrill	Traci White
Travis Marshall	Rhett White
Gary Mercer	

**Present Attorney General's Office Members**

James Gulick  
Allen Jernigan  
Christine Goebel  
Amanda Little

## **CALL TO ORDER/ROLL CALL**

Chairman Hackney called the meeting to order and reminded Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act. Bob Emory stated that one of the attorneys in one of the cases that will be presented today is a good friend, but it would not affect his ability to participate. Joseph Gore stated that he has a possible conflict with Brunswick County. Lee Wynns stated that he would recuse himself from the Bradshaw variance.

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

## **MINUTES**

Joseph Gore made a motion to approve the minutes from the September 27-28, 2007 CRC meeting in Wilmington. Doug Langford seconded this motion. Joseph Gore also noted a correction to the draft minutes. A correction will be made to reflect Joseph Gore's attendance on September 28. He missed the roll call but was present at 9:22 a.m. Doug Langford agreed with the correction added to the motion. The motion passed with twelve votes (Bissette, Cahoon, Elam, Emory, Gore, Langford, Old, Peele, Sermons, Shepard, Weld, Wilson) (Wynns abstained from vote, Leutze absent for vote).

## **EXECUTIVE SECRETARY'S REPORT**

Jim Gregson, DCM Director, gave the following report.

### **Sandbag Letters**

Last week, DCM staff sent letters to 371 property owners with sandbag structures in preparation for the May 1 deadline for the removal of certain sandbag structures in communities seeking beach nourishment.

### **Stormwater Rule Changes**

Based on a determination by the Division of Water Quality that the coastal stormwater program is not effective in protecting coastal water quality, the Environmental Management Commission is considering significant changes to these rules. Recently they have conducted public meetings in various coastal communities to gather public input on the rule changes.

Currently, only projects disturbing more than an acre of land or requiring a CAMA major permit require a coastal stormwater permit. Under the proposed rules, all development activities within the twenty coastal counties that disturb 10,000 square feet (less than a quarter acre), including projects that disturb less than 10,000 square feet but that are part of a larger common plan of development that disturbs more than 10,000 square feet, must obtain a stormwater permit. This would impact our major permit program, since smaller projects, such as single-family homes, could require a stormwater permit under the new rules, which would bump them up from a minor to a major CAMA permit.

As currently projected by the EMC, the Proposed Rules will become effective on March 1, 2008.

### **Horse Shot in Corrolla**

A black stallion was found shot to death in an area off the Maritime Trail of the Currituck Banks National Estuarine Research Reserve. It is the seventh Corolla wild horse to have been shot to death in the past six years. An investigation by the Currituck Co. Sheriff's office is underway.

### **Rachel Carson Boardwalk**

The Rachel Carson component of the North Carolina National Estuarine Research Reserve has begun construction of a new boardwalk on Carrot Island. The boardwalk is a cooperative effort between the Town of Beaufort and the Rachel Carson Reserve, and should be open to the public by the end of the year.

Funding for this project comes from DCM's Public Beach and Coastal Waterfront Access Program, the Town of Beaufort, and a private donor.

### **New foal at Rachel Carson**

A new foal was born on the Rachel Carson reserve in late September. The female foal is the first to be born since last summer, and brings the total number of horses on the island up to 42. She has been named "Fiddler" after the native Fiddler crab.

### **Public Science Symposium**

The Marine Science Education Partnership hosted a public science symposium on local beach nourishment projects and research activities on Nov. 10 in Beaufort. Guest Speakers included Dr. Orrin Pilkey, Duke University; Dr. Charles Peterson, UNC Institute of Marine Science; Dr. Antonio Rodriguez, UNC Institute of Marine Science; and Greg Rudolph, Carteret County Shore Protection Office.

### **Clean Marina Workshops**

DCM and NC Sea Grant will hold three Clean Marina Workshops along the coast in December. These workshops aim to provide information and solutions to marinas and boatyards about current challenges and issues faced by the marine industry. Topics include information on the Clean Marina Program, available grant funding for marinas, hazardous waste management and stormwater regulations; along with afternoon sessions devoted to pressure washing discharge, including compliance information from the Division of Water Quality, business strategies and technology solutions. For more information, contact Jenny Webber, our Clean Marina coordinator.

### **Coastalization Conference**

Earlier this month, NC DENR and the UNC program on Public Life sponsored a seminar on Coastalization. The roundtable discussion focused on climate change; local land use planning regulations; and priority issues for both state and local governments. DENR Secretary Bill Ross, was in attendance, as were Assistant Secretary Robin Smith, Commissioner Joan Weld, Representatives Pat McElraft and Alice Underhill, Senator Jean Preston, former DENR

secretaries Bill Holman and Jonathan Howes, and several other representatives from DENR and the University of North Carolina system.

### **Offshore Wind Farms**

A notice published earlier this month by the U.S. Department of the Interior's Minerals Management Service is seeking proposals to test energy-generating technologies, including commercial wind farms, in offshore coastal waters.

Secretary of the Interior Dirk Kempthorne said that the Minerals Management Service is interested in the development of alternative energy projects within the 1.8 billion acres of the Outer Continental Shelf ranging from 3 to 200 nautical miles off the Pacific, Gulf and Atlantic coasts. Kempthorne estimated that the mid-Atlantic has 70 percent of U.S. offshore wind potential in water depths less than 60 meters.

Offshore wind farms located more than 3 miles offshore would not be subject to CAMA permitting, but would require consistency determinations.

### **Staff News**

Sr. Deputy Attorney General Jim Gulick will be filling in for Jill Hickey at this meeting.

Hope Sutton is our new Coastal Reserve Stewardship Coordinator and Southern Sites Manager in Wilmington. Hope has a BA in Environmental Studies from the University of North Carolina at Wilmington and a diverse background in land stewardship, environmental education, and program development and management. She comes to us from The Nature Conservancy. A long-time resident of southeastern NC, Hope is well versed in coastal ecosystems and issues.

Kelly Russell is a new Field Representative in the Elizabeth City office. Kelly is from Perquimans County and has been with the Albemarle Regional Health Service for the past eight years. Kelly brings with her experience with compliance, enforcement, inspections and she is very familiar with the district.

Paula Murray, one of the Reserve's Research Specialists located in Wilmington, gave birth to Paisley Graham on November 3 at 8:55am. She weighed 5 lb 10 oz, and was 18 ½ inches long. Both Mom and baby are both doing great. Congratulations to Paula and Johnny!

### **CHAIRMAN'S COMMENTS**

Chairman Hackney noted two agenda changes for this meeting. The sand ownership/right of access has been pulled from the Implementation and Standards Committee meeting. The global warming item has been pulled from the Planning and Special Issues Committee meeting.

Chairman Hackney stated that since this is his last meeting, he would like to respond to some of the things that he has heard from the Commission and some of the constituencies. He stated that he does have some regrets of leaving the Commission, as this has been such a phenomenal group to work with. He said that he has absolute confidence in the CRC. He was first appointed in

1989 and stated that there has never been a Commission that would put themselves out and bring what they know to the table and shown an incredible willingness to think about everyone else's opinions prior to making a decision. He said that he commends the Governor for appointing this group. He said that he appreciates the CRAC's willingness to take up the challenge to come early and stay late. There seems to be a doom and gloom concept out there the CRC is facing challenges that are worse than any we have ever had. Having been on the Commission for a while, we have never had to be escorted in by Sheriff's deputy's and never had the animosity aimed at us that the early Commission had to deal with. What has happened is now the local governments have appreciated the fact that we can help them solve some of their problems. He stated that local governments are allies, even though they still have their own self-interests to look at. That will make the future job of this Commission far easier than the earlier Commission had. He further stated that he does not find that the General Assembly does not support what we do; in fact, all of his conversations with members of the General Assembly have been exactly the opposite. He finds that the General Assembly is almost in total support of the aims of CAMA and supports what the Commission does. We work for the General Assembly. Chairman Hackney stated that the issues were largely the same now as the issues the Commission was dealing with when he first came on (sandbags, hard structures on the shoreline). What has changed is the large number of people in North Carolina and the density of development. Redevelopment will be a future issue as we look at retreating from the shoreline or in the face of rising sea level. The greatest danger to the coast of North Carolina is the estuarine shoreline. The science tells us that it is the little edge of marsh along all of the shore that is most important for fish and shellfish. That has been going away. Also, the staff of the three Commissions have been successful over the past ten years. We have missed some of the success of those efforts because we have had to deal with hurricanes (1996, 1997 and 1999). Lastly, CHPP has tied together all of the concerns that we have on the coast including water resource management upstream. This is why the SAV has improved so much because water quality has been improved and that will continue even despite the density of development. He is not pessimistic about the future.

## **VARIANCE REQUEST**

### **Town of Oak Island (CRC-VR-07-18) Town Facility and Static Line**

Christine Goebel of the Attorney General's office representing the Division of Coastal Management reviewed the stipulated facts for the variance request filed by the Town of Oak Island. Eric Braun and Charlotte Mitchell of Kennedy Covington Lobdell & Hickman, LLC represented Petitioners. Portions of the Petitioner's proposed project did not meet the large structure setback measured landward from the static line. Petitioners were granted a major permit subject to a condition that specifically disallowed the portion of the project which did not comply with the large structure setback. Petitioners seek a variance from the permit condition and the CRC's rule in 15A NCAC 7H .0305(f) that requires use of the pre-project vegetation line to determine the location of the setback.

Ms. Goebel stated that Staff and Petitioners agree on all four criteria although not entirely on the same basis. Charlotte Mitchell reaffirmed the agreement of the four criteria and highlighted some facts that she contended supported the granting of the variance.

Wayland Sermons asked Ms. Mitchell about stipulated fact #53 and asked if there would be a mandatory hook-up to this system. Ms. Mitchell affirmed this would be a mandatory hook-up.

**Doug Langford made a motion to support Staff's position that strict application of the rules, standards or orders issued by the Commission cause the Petitioner unnecessary hardships. Charles Elam seconded this motion. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bissette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

**Doug Langford made a motion to support Staff's position that hardships are a result of conditions peculiar to the property. Joseph Gore seconded this motion. This motion passed unanimously (Shepard, Gore Leutze, Old, Peele, Emory, Langford, Bissette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

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

**Jerry Old made a motion to support Staff's position that the variance request will be consistent with the spirit, purpose and intent of the rules; secure public safety and welfare; and preserve substantial justice. Charles Elam seconded this motion. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bissette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

**This variance was granted.**

Bradshaw (CRC-VR-07-13) Bertie County, Enclosed Deck in the Buffer

**\*\*Lee Wynns recused himself from this variance\*\***

Tom Moffitt, Special Deputy Attorney General, represented the Division of Coastal Management and reviewed the stipulated facts for this variance request filed by Phyllis Bradshaw. The Petitioner proposes to build a roof over an existing deck on the back of her house that faces the Chowan River and to screen the roofed deck. This proposed deck is inconsistent with the CRC's 30-foot buffer rule, 15A NCAC 7H .0209(d)(10)(f). Mrs. Bradshaw's property is located in Colerain in Bertie County.

Mr. Moffitt stated that none of the variance criteria are met by this variance request. The Staff's position is there are other options available (for example awnings or umbrellas) for the comfort of Mrs. Bradshaw.

Mrs. Bradshaw stated that she does not have an engineer for this project and needs this deck for medical purposes. She stated there is no erosion where her property is located and will take any measures the CRC suggests to protect the Chowan River.

Jim Leutze asked Mrs. Bradshaw why the umbrellas or awnings would not be a more practical solution to the problem. She stated that she had spoken to Kelly Spivey and he was not sure if she could put awnings up, and it would be a possibility but would prefer the porch.

**Joan Weld made a motion to support Staff's position that strict application of the rules would not be an unnecessary hardship. Melvin Shepard seconded this motion. This motion passed with twelve votes (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bisette, Sermons, Elam, Cahoon, Weld) and one opposed (Wilson).**

**Jim Leutze made a motion to support Staff's position that difficulties or hardships do not result from conditions which are peculiar to the property. Jerry Old seconded this motion. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bisette, Sermons, Elam, Cahoon, Weld, Wilson).**

**Bob Emory made a motion to support Staff's position that hardships are a result of actions taken by the Petitioner. Jerry Old seconded the motion. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bisette, Sermons, Elam, Cahoon, Weld, Wilson).**

**Jerry Old made a motion to support Staff's position that the variance would not be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; would not secure the public safety and welfare; and would not preserve substantial justice. Bill Peele seconded this motion. This motion passed with twelve votes (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bisette, Sermons, Elam, Cahoon, Weld) and one opposed (Wilson).**

**This variance was denied.**

Craig- (CRC-VR-07-14) Holden Beach, Enclosed Deck in the Buffer

Tom Moffitt, Special Deputy Attorney General, represented Staff and reviewed the stipulated facts for the variance filed by John and Kerry Craig. Petitioner Craig owns an undeveloped lot in Holden Beach. Petitioners currently have a CAMA permit to build a new house with an uncovered deck, however, they are seeking a variance to build the new house with a screened, roofed deck which is inconsistent with the CRC's 30-foot buffer rule 15A NCAC 7H .0209(d)(10)(f).

Tom Moffitt stated Staff and Petitioners agree on criteria one and four. Mr. Moffitt explained why Petitioners have not met the second and third criteria. After questions from Joan Weld, Jim Leutze, and Melvin Shepard, DCM Asst. Director Ted Tyndall answered these questions by saying that this project could be redesigned so that a variance would not be necessary.

Petitioner John Craig stated that he had been issued a minor development permit for a house and an unroofed deck. He stated he would like to cover this deck. Mr. Craig addressed the facts that he feels are supportive to granting this variance.

**Wayland Sermons made a motion that strict application of the applicable rules, standards or orders issued by the CRC do not cause the Petitioner unnecessary hardship. Melvin Shepard seconded the motion. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bisette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

**Wayland Sermons made a motion to support the Staff's position that difficulties or hardships do not result from conditions which are peculiar to the property. Joan Weld seconded the motion. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bissette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

**Wayland Sermons made a motion to support Staff's position that the hardships result from actions taken by the Petitioner. Renee Cahoon seconded this motion. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bissette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

**Wayland Sermons made a motion that the variance requested by the Petitioner is not consistent with the spirit, purpose, or intent of the rules, standards or orders issued by the Commission; do not secure the public safety and welfare; and do not preserve substantial justice. Jim Leutze seconded this motion.**

Bob Emory spoke against the motion saying that on the assumption that the Petitioner would not have to put in a stormwater management system if he were not granted a variance, the benefits greatly outweigh the two feet of deck in the buffer and he cannot support this motion.

**This motion passed with ten votes (Shepard, Gore, Leutze, Old, Peele, Langford, Sermons, Wynns, Cahoon, Weld) and four opposed (Emory, Bissette, Elam, Wilson).**

**This variance was denied.**

Colington Harbour Association (CRC-VR-07-07) Dare County, Handicap Access in Buffer

Renee Cahoon stated that she is familiar with the attorney that is representing Colington Harbour, but has no conflicts. Wayland Sermons, Doug Langford, Joan Weld, and Jim Leutze stated that they also would make the same disclosure.

Christine Goebel of the Attorney General's Office, representing the Division of Coastal Management, reviewed the stipulated facts for the variance request filed by Colington Harbour Association, Inc. Petitioners propose to construct a walkway on their common-area property located in the Colington area of Dare County. Charles Evans of Kellogg and Evans, P.A. represented Petitioners. The proposed project is inconsistent with the CRC's 30-foot buffer rule 15A NCAC 7H .0209 (d)(10) and the design did not meet the exception of 7H .0209(d)(10)(D).

Ms. Goebel stated that Staff and Petitioner agree on all four criteria to a degree. Staff agree with the factors up to a walkway that is six-feet wide, but not the entire ten-foot wide as proposed by the Petitioners. Ms. Goebel further stated that Staff would encourage the CRC, if the variance were approved, to require the walkway to be designed to direct or contain stormwater runoff away from the adjacent Colington Harbour.

Charles Evans reiterated the agreement of the four criteria and discussed facts which he feels are relevant to granting the variance. Mr. Evans stated that ramps have been installed for handicapped access however they need a boardwalk. It would be constructed of grassy pavers, which is ADA approved.



**Doug Langford made a motion to support Staff's position that strict application of the applicable development rules, standards, or orders issued by the Commission cause the Petitioner unnecessary hardships. He stipulated that the boardwalk only be six-feet wide, that it would use grassy pavers that would be underplayed with gravel according to DWQ standards and be slightly sloped away from the Harbour or any estuarine area.**

**Bill Peele made a friendly amendment that would replace "slightly sloped away" with the language "minimizes movements of water into adjacent water bodies". Doug Langford accepted this amendment. Jerry Old seconded this motion. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bisette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

**Melvin Shepard made a motion to support Staff's position that hardships result from conditions peculiar to the Petitioner's property. Joseph Gore seconded this motion. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bisette, Sermons, Wynns, Elam, Cahoon Weld, Wilson).**

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

**Bill Peele made a motion to support Staff's position that the variance will be consistent with the rules, standards or order issued by the Commission; will secure public safety and welfare; and preserve substantial justice. This motion was seconded by Joan Weld. The motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bisette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

**The variance was granted subject to conditions.**

### **CONTESTED CASES**

#### **H. Johnston Sifly (07 HER 0040)**

H. Johnson Sifly filed a Contested Case Hearing contesting a decision by the Division of Coastal Management denying a CAMA Major Permit for a pier, platform, gazebo, floating docks, boatlift, and boathouse structure in Pages Creek in New Hanover County. The permit was denied for several reasons including the pier length requirements and the one-quarter rule, navigation issues and interference with access to and use of public trust and estuarine waters.

Christine Goebel of the Attorney General's Office stated that Mr. Sifly is not present for this Contested Case proceeding before the CRC, did not request to make oral arguments, nor did he file any exceptions in this matter. Ms. Goebel stated that Staff would ask that the CRC affirm the Administrative Law Judge's order, and Staff's denial of the permit.

**Bob Emory made a motion to affirm the ALJ's decision. Lee Wynns seconded this motion. The motion passed unanimously (Shepard, Gore, Old, Peele, Emory, Langford, Bisette, Sermons, Wynns, Elam, Cahoon, Leutze) (Weld, Wilson absent for vote).**

B & D Investments, LLC (CRC-VR-06-22)

Bob Emory disclosed that Mr. Frank Sheffield is a personal friend, but it will not affect his ability to participate. Wayland Sermons stated that he represents a client who has hired Mr. Sheffield's New Bern firm to handle an administrative matter, but it will not effect his consideration of this matter.

James Gulick, counsel for the CRC, stated this contested case arises from a variance. Initially B&D Investments sought a variance for a pier. The Division of Coastal Management opposed the variance, the CRC granted the variance, and then judicial review was sought by neighboring property owners who contended they deserved the right to be heard. The Superior Court determined they should be heard and it came back to the CRC with contested facts. The CRC Chairman sent this matter to the Office of Administrative Hearings with a request that they hear the matter and find facts only.

Frank Sheffield, Ward and Smith Law Firm, represented B & D Investments. Mr. Sheffield stated this is a request for a variance. Mr. Sheffield discussed findings of fact that he deemed essential to this variance request and Petitioner's position of the four variance criteria. Mr. Sheffield stated that Staff and Petitioner agree on criteria one, two and three but disagree on criteria four.

Christine Goebel of the Attorney General's Office represented Staff. Ms. Goebel addressed the four variance criteria and reiterated that Staff and Petitioners do agree on the first three criteria. The Staff's position on criteria number four is that the purpose of the 15-foot riparian setback rule is to protect navigation for both the general public and the adjacent neighbors and this is the reason that this variance should not be granted. Ms. Goebel addressed facts that Staff feel warrant this variance being denied, specifically rule 7H .1204(c).

Bill Raney, Attorney representing the Town of Wrightsville Beach, stated that he supports the Staff's ultimate position but contends that there is another standard that is not met, being the question of unnecessary hardship. Mr. Raney stated that it is not a hardship to purchase a lot that is clearly not suitable for building a pier to deep water. Mr. Raney addressed the variance criteria that the Town feels are supportive to denying the variance.

John Newton, Attorney for Deborah Walker an adjacent property owner, addressed the facts and variance criteria that he contends support denying this variance. He stated that he agrees with Mr. Raney that the Petitioner has caused his own hardships. Mr. Raney stated that he also agrees with Staff's position on the fourth criteria.

**Lee Wynns made a motion to support Staff's position that strict application of the rules, standards or orders issued by the Commission will cause the Petitioner unnecessary hardship. Renee Cahoon seconded this motion. The motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bissette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

**Lee Wynns made a motion to support Staff's position that hardships result from conditions peculiar to the Petitioner's property. Renee Cahoon seconded this motion. The motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bissette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

**Bob Wilson made a motion to table this variance until January 2008 for Staff to review an alternative design just proposed by Petitioner at this hearing. No second was received. The motion died.**

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

**Bob Wilson made another motion to table this variance. Charles Elam seconded the motion. The motion failed with four votes (Peele, Sermons, Elam, Wilson) and ten opposed (Shepard, Gore, Leutze, Old, Emory, Langford, Bissette, Wynns, Cahoon, Weld).**

**Lee Wynns made a motion to support Staff's position that the variance request will not be consistent with the spirit, purpose, and intent of the rules, standards, or orders issued by the Commission; will not secure the public safety and welfare; and will not preserve substantial justice. Renee Cahoon seconded this motion. The motion passed with nine votes (Gore, Leutze, Langford, Bissette, Sermons, Wynns, Cahoon, Weld, Wilson) and five opposed (Shepard, Old, Peele, Emory, Elam).**

**This variance was denied.**

*At this time, DENR Asst. Secretary Robin Smith presented to Chairman Hackney the Order of the Longleaf Pine on behalf of Governor Easley.*

*Doug Langford, CRC Vice-Chairman, presented to Chairman Hackney the Eure Gardner Award for outstanding service in the coastal area on behalf of the Coastal Resources Commission.*

## **PRESENTATIONS**

Beach and Inlet Management Plan Update (CRC-07-10)

Jeff Warren

Jeff Warren gave a brief history of the Beach and Inlet Management Plan (BIMP). The Fisheries Reform Act of 1997 gave us the CHPP, which was adopted by the tri-Commission in 2004. In the CHPP, it talks about creating a comprehensive BIMP for the coast. It looks at addressing ecologically based guidelines and taking into account socio-economic concerns and underscores the importance to fish habitat. In the appropriations bill in 2000, there is a charge for DENR to develop a BIMP and report back to the General Assembly. There are thirteen variables that must be met when the resources permit. The resources have not been there to do this. The Division of Coastal Management and the Division of Water Resources started talking about how we can achieve this BIMP. John Morris, Director of DWR, was very successful in getting \$500,000 into the Governor's budget last year and \$250,000 this year. It was decided that the best way to start a BIMP was to get more staff. This money was channeled into a contract and an engineering consulting firm was hired to help get started. Moffitt and Nichol was hired and their contract

began on September 10, 2007 and this is an eighteen-month project. There is a very short time window to produce something that is solid and what needs to be done in the future. Beach and inlet management needs to become a philosophy and how we manage the coast as a system and not on an island-by-island basis. This will help us understand how the system works in the natural processes, how the sand moves, how the coastal processes work and interact with each other and manage it from a science-based perspective. There will be towns fighting for sand resources and there are already towns fighting for financial resources. During the initial eighteen months, an advisory committee has been assembled. This committee is almost twenty members strong and represents a broad, diverse stakeholder group from federal agencies, local governments, and other state agencies. They have met twice. There is also an internal working group within DENR; primarily to identify what needs could be fulfilled with a BIMP. One of our biggest partners is the U.S. Army Corps of Engineers. They are the holders of most of the coastal data and they drive most of the coastal projects. Most recently they have been dealing with regional sediment management. In 2005, DCM allocated \$120,000 to do some high-resolution inlet surveys at Bogue and Beaufort Inlet. The Mobile district was the first to implement this for the Gulf Coast States. In doing so, they created the E-Coastal GIS system (a database). Mobile has been very successful in developing this. One of the early challenges is that you cannot manage a system until you know how it works. You don't know how it works until you study it and you can't study it until you have the data. So that takes us back to our fundamental issue. One of the big pushes in the BIMP is to find out what data are out there and how we get them and make them accessible. The Corps has the lion's share of a lot of these data and it is difficult to go in as an outsider and dig through their filing cabinets. The Wilmington District realizes that they need to get up to speed as the Mobile district did, but they just do not have the money. In addition to DCM and Moffitt and Nichol going to Mobile to learn about E-Coastal and making the decision to adopt this as our database and format, we also came up with an idea to write a proposal for national money. With that money, the Mobile district could go to Wilmington and start the data mining process. We have a high certainty that this project will be funded. It is a huge beginning.

## **PUBLIC HEARINGS**

### **15A NCAC 7H .0305 – General Identification and Description of Landforms**

Charles Baldwin (Village of Bald Head Island Attorney) and Stephen Coggins (Rountree, Losee & Baldwin, LLP) stated that the Village is a unique municipality located on a peninsula at the mouth of the largest navigable river in our state. It has a history of channelization and treatment that dates back to 1829 and there has been extraordinary activity in the past five years. Mr. Coggins stated they have concerns about the dramatic expansion of the inlet hazard way. He stated that the new expansion would go in an extra 4,500 feet. He stated that there is a proposal in the static line rule that needs clarification on whether a hurricane-dredging project would qualify the activities at the Village of Baldhead. He said where there has been repeated, substantial beach nourishment activity, and when establishing a static vegetation line one may look also at the general trends which have been brought at the consequence of these actions. There are very few geological places along the N.C. coast that have had that kind of activity other than the Village. With the setback changes the CRC is doing dramatic changes to the vegetation line definition. The CRC is mandating that licensed permitting officials of the Village make visual observations to determine plant composition and density. But in doing this, the CRC is asking if the vegetation is planted and if there is natural vegetation. The LPO would have to determine if the plants have stems and rhizomes (which are underneath the ground) and

if none of the visual observation works, the LPO would be allow to look at photography that was taken from miles high and use interpolation as opposed to extrapolation. The proposed draft regulation is devoid of any description of the two things to which the LPO should look at for the interpolation of the line. The static vegetation line is of critical importance to the Village of Baldhead for structures within particular zones. (written comments provided)

Meyressa Schoonmaker, Oak Island property owner, stated that she was speaking out for the public. She stated that if these exemptions are passed the way they are presently in line lots in Oak Island will become buildable that have not been buildable in several years. Also, in Oak Island there have been comments that 80% of the beachfront is not buildable presently. If these guidelines are allowed for Oak Island every lot will become buildable. A public sewage system has been started in Oak Island and it will coordinate at about the same time as these exemptions. She stated there are other ways for Oak Island to deal with hurricanes and lots to be brought up to standard. Specifically, there are problems with provision (f) which states that an LPO shall determine the stable and natural vegetation – the basis on how this is determined is difficult situation and open to misconception. She disagrees that either the Division or an LPO can do this. This is a serious issue that requires a high level of expertise and should not be left to a LPO. In local areas, there are persons who are not as qualified and there is local pressure on permit officers and on the Town itself. In provision (g) it states that a static vegetation line shall be established in coordination with the Division of Coastal Management which conflicts with the previous statement of LPO or the Division of Coastal Management. She stated that she is not in favor of the exemptions and is specifically opposed to these issues. (written comments provided)

Grier Fleishhauer, resident of Topsail Beach, addressed stable and natural vegetation. The current proposed rule does not effectively control or take into account what is being experienced in Topsail Beach which is being seen as an abusive, unnatural and unstable manipulation of the vegetation line. Currently the rules allow for the local permit officer to define what is stable and natural. Our LPO's primary criterion was that any planted stems must have seasoned one hurricane season. While this may seem reasonable at first glance, the regulation can be left to wide interpretation from LPO to LPO. The current criteria is not working and the proposed criteria will probably not work either. There is a developer in our Town who is aggressively planting, fertilizing, and watering the dunes. He placed a 10-foot section of sand fencing on the frontal dune, planted and established his vegetation crop then placed another section of 10-foot fencing in front of the first and planted this area too. This is mostly flat sand, seaward of the toe of the existing frontal dune. (Christy Goebel, Attorney General's Office, interrupted at this time and stated that due to current litigation of this matter this must be spoken about generally about the rule change and not the specific issue). Mr. Fleishhauer continued by saying that the irrigation of sand dunes does not create stable and natural vegetation. He proposed that a little modification and clarification to how the vegetation line is established is needed. Under paragraph (f) language needs to be added which states, "the vegetation shall not be considered natural or stable in the event that the Division of Coastal Management or the LPO finds that the vegetation is being raised as a crop through unnatural and unsustainable irrigation and fertilization. Also, in areas where there is no stable or natural vegetation present, or in areas where it is evident that an artificial provitory has been created through sand farming in establishing a vegetation crop, this line shall be established by interpolation between the adjacent areas. This clause has been weakened by currently saying, "may be established". (written comments provided)

Dara Royal, Town of Oak Island, presented comments on behalf of the Town. She addressed the definition of the vegetation line. The rules change as set forth in .0305 (f) and (g) staff has informed the Town that the change in definition will not lead to a change with respect to the way the vegetation line is determined in the field, which currently relies on the LPO field guide. The Town would like greater certainty of this as interpretations can change over time. (written comments provided)

Debbie Smith, Mayor of Ocean Isle Beach, spoke on behalf of the Town of Ocean Isle. In regards to rule .0305, the Town does support the 1998 vegetation line being the alternate line. She stated that they appreciate all of the work that has been done by the CRC.

Hiram Williams, realtor and builder at Topsail Island, stated that he has a lot of concern about the vegetation line. The way the sand moves, if you can get any vegetation in front of your house you should be able to take advantage of it. If you don't you will lose a tremendous amount of value on these ocean front properties. They are expensive and the Towns rely heavily on the tax base that comes with the homes and ground. If we lose the right to use the ground then we lose the homes in cases of fire or hurricanes. He stated that we need to be very careful about this, including the static vegetation line. He feels that the definition (of professional) needs to be written better.

Tom Burns, resident of Oak Island, stated that he is in favor of this proposal. He further stated that "static line" is a bad term and should be called a "dynamic line". He is in favor of having the ability to move this line. When an issue like renourishment is considered, the line should be able to be moved. He stated that he appreciates all of the effort. He has witnessed renourishment and is in favor of it. He requested that the CRC find the static line exception appropriate.

Jim Stephenson, North Carolina Coastal Federation, stated that he was not presenting a position on this rule. But he was seeking additional information on the impact of the rule. Specifically, he stated that he was curious about the exception for Oak Island and Ocean Isle Beach in terms of the impacted number of lots that would be determined buildable and the lots that would no longer be non-conforming. This is a vital piece of information that is relevant to the decision.

Chairman Hackney advised all in attendance that comments would be accepted until December 31, 2007.

#### 15A NCAC 7H .0306 – General Use Standards for Ocean Hazard Areas

Charles Baldwin (Village of Bald Head Island Attorney) and Stephen Coggins (Rountree, Losee & Baldwin, LLP) stated that a unique perspective on the setback line is being brought by the Village because as a municipality we have an obligation to protect its citizens and their safety. There are two provisions in particular that will overnight threaten the Village's ability to carry out its function to its citizens. There is a separate rule in the setbacks regarding transportation infrastructure and utilities. He stated that he has heard some talk that transportation and utilities are exempted from this rule. That is not what this rule says. The rule says that with respect to roads and particularly roads with more than 5,000 square feet the setback must be 60 times the erosion rate. With respect to utilities, it must be 30 times the erosion rate. This has caught the attention of the Village because if this rule is adopted, overnight all of the infrastructure in one area (slides were shown) would be rendered non-conforming. There should be a grandfathering

provision. An illustration was shown which indicated that 30,432 linear feet of right-of-ways would fall within the erosion setback in the proposed rule. The water and sewer infrastructure and lift stations would be rendered non-conforming. Total square foot living space will include roof-covered porches. The way the rule is read it is unclear if the requirement for the roof covering, since it follows the language for walkways and then structurally- attached parking, it is unclear if a roof is required to be included in the living space. “Building” is not defined. “Structure” is not defined. “Structurally attached” is not defined. “Parking” is not defined. This is a big deal because the municipalities have extremely detailed zoning and subdivision regulations that specifically define these terms. To avoid impossible situations of determining what this meaning is, regarding the total square footage, it should be made consistent after surveying all of the local governments within the CRC’s twenty-county jurisdiction as to how to define the terms. The devil is in the details. There would be houses that are now conforming that would be rendered non-conforming overnight. Lots that are now buildable would be rendered unbuildable because of whether or not to include roof-covered porches, driveways, walkways or parking. The buildings that would be affected by this kind of footage are critical to the safety of the people of Bald Head Island. It is not a question of value or dollars; they are essential to whether someone could get on or off of the island in a particular event. We want the uniqueness of the Village to be taken into consideration. A request was made for grandfathering language.

Tom Burns, resident of Oak Island, stated that he made comments during .0305.

*Bobby Roberson, City of Washington, signed up for public hearing but was not present when called upon by the Chairman.*

Meyressa Schoonmaker, Oak Island property owner, stated that for the provision of .0306 she is not in favor of changing the exemption of the static line. Under (a) building or other structures less than 5,000 square feet: She stated that she recalls reading that at one time that would be 2,000 square feet rather than 5,000 square feet. She stated that the CRC review this option again. She said that one local politician said, “that if it would fit the lot then why put additional restrictions?” She said that she feels that this is not in the best interest of the beachfront and that this is not in the best interest of the Town. When looking at the figures of this rule (a through j) it looks like the numbers were just pulled out of the air. She wonders if someone had some statistical information from which they determined if it was a certain size then it needed to be a certain distance back from the water. She said she gets the feeling that it did not come from any particular information but rather that someone was trying to come up with a grid that progressively changed it. She noted that on this particular issue, there are three main purposes for setback justifications (1) prevent building from interfering with recreational use of the beach, (2) to provide storm protection for the buildings and the community infrastructure and (3) to avoid the need for expensive erosion management. We are already into the erosion management; hopefully we can keep in mind the other aspects of the other justifications for the setbacks. The turtle project for Oak Island, which has been successful and has been a boom for the beach, the citizens of Oak Island also paid for the beachfront nourishment and were glad to do it, but Ms. Schoonmaker stated that she will not do it for there to be full scale development on the beachfront.

Rosemarie Gabriele, Wrightsville Beach resident, said that what is written up in these amendments would knock out a parking lot that is beside her house that hundreds of beach goers

use on a daily basis. She stated that the other parking lot on the other end of the North side would probably be taken out as well if we were to look at the figures. She stated that being a resident, she knows that the ocean moves in and moves out. She feels that there was not a lot of forward thinking about what has transpired in the past and we need to catch up. She stated that the CRC has an awesome responsibility and she knows that all that stands in between the ocean and her house is the CRC. She agrees that something needs to be done, but it needs to go further than this amendment. She stated that this would take out tens of thousands of homes in North Carolina. There are not a lot of people in North Carolina that understood about this meeting. She stated that the CRC needs to do a better job in getting that communication out, because the Charlotte Coliseum should be filled and not one little room. She said that she hopes that her house would not be taken away from her because of these rules or a natural disaster. This State and everybody involved in it needs to make a total commitment to renourishment. Something needs to be done for the fairness of everybody. We need grandfather clausung.

Susan Bulluck spoke on behalf of the SunSpree Hotel and Blockade Runner Hotel. She thanked the CRC for the work and effort put into the proposed rules. She is here to ask the CRC to table this set of regulations and the static line regulations. She is asking because they have worked very hard to be a good steward of our oceanfront property. Bertha came through in 1996. The membrane roof on the old building had a gap; they did not know that the gap existed. A new membrane roof was needed to meet the environmental requirements of updating the facility. September 26, Fran came through. They did not take sea surge and did not take heavy damage from water coming through the building, however the membrane roof blew off and they were the victims of unintended consequences. The Town had earlier put up a rule that no one was allowed on the Island after a hurricane until a thorough assessment had been done. Hurricane Fran ended within 24 hours, but what occurred was 16 inches of rain during the next three days and that is what took out the old Holiday Inn. It is an example of a good rule which in application had unintended consequences. All of the rules were followed, but what this set of rules would do is wipe us out unless a grandfather clause is included. We want to work with the CRC and want to be part of the solution. We want a rule that works not only to help the CRC protect what exists, but also in the future to provide prevention. We cannot live with these rules. A memo from Mr. Mack Pearsall (part owner and representative of the collective ownership of the Holiday Inn SunSpree at Wrightsville Beach) was read to the CRC. Ms. Bullock continued by saying that if this proposed regulation is passed as is, it will immediately impact thirty percent of the tax value of Wrightsville Beach making it non-conforming. It will then impact its insurability and in our current economy we don't see the fact that this would be an asset to our State by removing thirty percent of our tax evaluation. We want to work together and would ask that you stay this, not vote it down, but to table it so that industry and the communities can work with you in building a grandfather clause that works for everyone. (written comments provided)

Grier Fleischhauer, resident of Wrightsville Beach, stated that modifications to this regulation need to be done. It seems that in recent years no part of the country has escaped natural disasters that threaten life and property. In the coastal areas hurricanes and storms have reshaped the coastline and in some instances forced the retreat of homes from prior stable land. Mr. Fleischhauer stated that his proposed modification to the use standards of the ocean and inlet hazard zone recognizes the dynamic nature of the dune system in the velocity zone and its function as a buffer of the destructive forces of moving water. The foremost concern for CAMA in this regard should be the protection of the integrity of those landforms which minimize the impact of storms and floods on property. This is where our coastal dune system plays an



important part. Beaches, dunes, barrier beaches and coastal banks are made up of unconsolidated sediment materials which change in form when subject to wave action. In doing so, they dissipate some of the energy of moving water and reduce its more destructive actions. Setbacks as determined by CAMA regulations from coastal banks recognizes that construction in these areas risk disturbing and/or altering the dune system's ability to function as they should. In the case of a dune system in a velocity zone, the primary feature that allows them to function is their unconsolidated nature. Unconsolidated sediment, such as sand, gives way when acted upon by moving water but in doing so dissipate the water's energy. The allowance of hard structures in these unconsolidated sediments can cause significant reduction in their function. When hard structures such as septic tanks, peat moss septic systems, stormwater management systems, or other hardened structures like sandbags are placed in the dune system of velocity zones they change the natural flow and energy dissipation and will cause substantial scouring and erosion down current from the structure, which otherwise would not have taken place. Another obvious concern is that the contents of any septic system should be kept from the possibility of spilling onto the surface or surface waters and therefore presenting a public health hazard. These hardened structures should be prohibited in the dune system. Since the intent of the mission of CAMA as stated in .0303 is to mitigate the loss of life and property to these forces, these proposed rule changes would help to protect the unconsolidated nature of the dune system and the public well being. What I am proposing is under paragraph (b) of .0306 an additional paragraph should be added. "Such that no development shall be allowed that permits the installation of septic tanks, peat moss septic systems, composting type systems, stormwater management systems or any other similar type hardened structure in a velocity zone that is part of a coastal beach, barrier beach or dune system defined as any part of the primary dune, frontal or secondary dune." On another topic, modifications to cantilevering regulations, it was a pretty good regulation to begin with but over the course of time exemptions were allowed. The CRC stated that if no primary or frontal dune exists in the AEC or landward of the lot on which development is proposed, the development shall be landward of the erosion setback line. A simple addition to this rule could be to add that any impervious roof area into the setback is not allowed.

Adam Papp, homeowner in Emerald Isle, stated that he is a stakeholder as he has property that is in the affected area. He stated that he is in complete support of the beach renourishment program that it is in place. He thanked the CRC and DCM staff for taking this head on. He further stated that his house is over 30 years old. The big concern is the time lapse and being able to update his house. Not being able to replace a structure or rebuild in case of a disaster does place an undue burden on homeowners. Mr. Papp requested that the CRC look at the recommendations regarding some of the limitations regarding size and footprint. Five thousand or below is the setback guideline but there are sections in .0306 which say it is two thousand square feet. This does not encourage people to replace or update their structures. A good solid approach needs to be taken to encourage people to use the latest building codes to protect their property and make sure they have good sound structures in these areas.

Jim Bailey, Anchorage Marina in Atlantic Beach, stated that he has a couple of concerns primarily with the graduated oceanfront setback proposals. The Town of Atlantic Beach has been working for a number of years on redeveloping their Circle area, many plans have been made, lots of property has been assembled by several different individuals that will be severely impacted if these graduated rules are put into place. The CRC has to do something in these proposed rules to take into account people who have projects underway, they have not applied

for any CAMA permits because that is the last thing you do. If property is purchased under one set of rules it may not be able to be developed under this new set as they are proposed. Something needs to be done to grandfather existing structures. To make them non-conforming will be burdensome and will lead to a lot of economic problems. He stated that he also has a question as to why graduated setbacks are based on the size of the roof-covered area? This sounds like zoning under another name. He stated that he would be against the changes to the proposed setback rule.

Debbie Smith, Mayor of Ocean Isle Beach, stated that in general the Town does support these graduated setbacks based on structure size. Like Bald Head Island, she is concerned with the roads and utilities. These are generally continuous structures and she fears that they will always be considered large structures and will always require a much larger setback. Most of our coastal communities are already designed with specific land plans, our roads are in place, and our right-of-ways have been acquired. She stated that she hopes the CRC would consider some other restriction for roads and utilities. It will prevent the CRC from listening to numerous additional variances. She stated that she would encourage the CRC to look at that provision. She would also like to see a grandfather clause for the large structures that exist today and also for single-family homes. Reconstruction on the same footprint is allowed in the rules now and other AEC's, she would like to allow for reconstruction in the ocean hazard area. Deeming these structures non-rebuildable in case of a fire or other loss would affect the value of the property, it will affect the tax base of the municipalities and in our depressed housing market it is important to protect the tax bases. She stated that she has seen lenders fail to make loans on non-rebuildable units. She has several concerns in regard to the square foot limitation. Two thousand square feet limitation on total square footage is unrealistic. The average size home in the United States in 2004 was between 2,350 and 2,500 square feet. The average home in 1970 was 1,500 square feet. A 2,000 square foot limitation that includes covered porches, will take the standard house size back 37 years. A sixty foot setback under the draft rule language proposed today allows a structure up to 5,000 square feet in a non-renourished area of our beaches. She employed to CRC to consider a more reasonable square footage of allowance somewhere around 3,000 square feet, as 2,000 square feet is very restrictive and people are going to have covered porches.

Dara Royal, Town of Oak Island, stated that generally speaking the Town of Oak Island supports the static line exception concept and is encouraged by the willingness of the CRC to embrace this concept. Also, we appreciate Staff's efforts to work with the various stakeholder groups throughout this process. It is important to recognize that while the proposed rules eliminate some existing inequities that impact homeowners on the coast, they do not allow development to advance towards the ocean. The following comments seek to clarify certain aspects of the rules to ensure certainty and avoid potential unintended consequences. We would like for the rulemaking process to proceed expeditiously and believe these comments will not compromise that goal. The section on long-term commitment: the rules require that the local government or community provide evidence of a long-term commitment to maintain the beach. The criteria for the long-term commitment under these rules should be identical to those set forth in the procedural rules which have been proposed separately. Also these rules should recognize that a plan satisfying the USACE requirements for a design construction and maintenance of a hurricane protection project also satisfies all the criteria for the long-term commitment under the proposed rules. Additional development conditions in the rule: The rules limit of total floor area of a building to 2,000 square feet. The total floor area limitation set forth in the rules appears to

be inconsistent with similar restrictions established elsewhere in the oceanfront development rules. In the regulatory provisions setting forth conditions under which development may occur oceanward of applicable setback lines, the footprint of the structure must be limited to 1,000 square feet or ten percent of the lot size, whichever is greater. It seems appropriate to apply this same approach in the context of the static line exception. The proposed rules also provide that no portion of a building's floor area may extend oceanward of the landward-most adjacent building. The adjacent structure limitation will be difficult to implement and will result in considerable inequities in terms of the location of a structure on a lot. The Town recognizes and acknowledges a construction line must be established, however local conditions make a one size fits all solution impractical and unworkable. A possible solution would be the local government and DCM could work together to formulate an average line of construction that represents the general trend of oceanfront development oceanward of which development would not be allowed. The definition of total floor area: The rules define the total floor area as a total square footage of living space plus all roof-covered porches, walkways, and structurally attached parking. Including roof-covered porches in the total floor area calculation is a disincentive to construct such porches. In order to encourage architectural diversity and maintain the character of our beach communities, roof-covered porches should not be considered in the total floor area calculation. Redevelopment of existing structures: 2,000 square foot limit applies to all structures including existing ones. This rule is a disincentive to redevelop existing structures to higher base flood elevations and better coastal construction standards because owners with older structures that exceed the 2,000 square foot limit would be unlikely to redevelop them. The current regulatory provision that establishes conditions for non-conforming development in 7J .0211 provide that replacement of non-conforming development shall be allowed if a structure will not be enlarged beyond its original dimensions. This approach seems consistent with the intent of the static line exception and would encourage redevelopment built to standards that would significantly reduce storm damages. The graduated setback concept: In general the Town supports the graduated setback concept, however as applied to transportation structures and utility lines the concept may be problematic. By defining and regulating transportation structures in terms of square footage, the rules treat transportation structures in an impractical manner. As roads and utility lines are set in rights-of-way, it seems reasonable that the setback distance would be the same for both. The Town advocates the sixty-foot setback for transportation structures and utility lines. An express exception should be made for utility lines that cannot meet the sixty foot setback requirement but that nevertheless are necessary in order to service oceanfront development in the interest of public health and safety. Existing roads and utility lines: Existing roads and utility lines should be expressly exempt from the setback requirements as set forth in the rules.

(written comments received)

Bud Cooper, member of a LLC which has a project underway in Atlantic Beach, stated he has a concern about the applicability of these rules to the project and also the known and unforeseen consequences that these rule changes could create. There is a concern about the premise that one size fits all. The proposed rule establishes a graduated setback based on the size of the structure and published erosion rate for a particular section of oceanfront shoreline. While this approach may be appropriate for areas along the coast that have relatively low erosion rates, it unfairly creates greater financial impacts on property owners as well as local governments in areas that have higher erosion rates. We would suggest amending the rule to develop a cap on the setback for larger structures in areas presently experiencing a rate of erosion higher than the State's average. This would be consistent with the framework of the present large structure rule. In

1983, the CRC recognized the same inherent problems and modified the noticed rule after hearing comments from seven different public hearings. The CRC's approach at that time was to double the existing setback for all parts of the coast which had an average annual erosion rate of equal to or less than the average for the entire coast. The average erosion rate for the coast at that time was 3 ½ feet per year. For areas with erosion rates higher than the state average an additional setback was added to the existing small structure setback and was used for the siting of large structures. That setback increase was computed by multiplying the average erosion rate of 3.5 by 30, which came up to 105 feet. A similar type provision should be incorporated into the currently proposed rule. This would help minimize instances in which a taking of property rights might otherwise occur. In order to achieve the goal of increasing the setbacks of large structures, the geographic coverage of the ocean hazard areas of environmental concern will be increased in most areas. This will increase the regulatory jurisdiction of CAMA and perhaps have unforeseen consequences for local governments and the regulated public. To our knowledge, there has apparently been no analysis of what these consequences could entail. The proposed setback rules should not be adopted until additional public hearings are held that would address the potential impacts of the resulting AEC expansion. This would allow the CRC and the public to understand in context the impacts of increasing the large structure setback in the different geographical areas of the coast. If and when the proposed increase to the large structure setback is approved by the CRC a provision should be included in the rule that would grandfather projects that are actively being pursued at the local, state or federal level from the more stringent setback requirements. Larger types of projects require significant amounts of up-front planning, design and coordination with local governments before they are able to apply for CAMA permits. In these cases a considerable amount of time and money have already been invested well before a CAMA permit has been applied for. We have been working on our project for three years. In many cases a property owner may have already acquired vested rights in a project through local permit and zoning approval before submitting a CAMA permit application. Projects that have submitted plans to a local jurisdiction or permit applications to other state or federal agencies should be grandfathered if and when the proposed setback rule changes are adopted. In order to provide fair treatment for projects that are currently being actively developed, the CRC should also delay the effective date for the implementation of the new rule for one year after its adoption. This would allow those projects that have already expended significant time and money in the pre-CAMA application phase the opportunity to apply for and obtain CAMA permits under the rules existing at the time the projects were developed. We also feel that the complete prohibition of cantilevering any portion of a structure within the setback is not based on sound science or engineering practices. A one-size fits all approach is not appropriate. Allowing a small amount of structure to be cantilevered into the setback but not harm the structural integrity of a building or increase its vulnerability to erosion, cantilevering can allow some property owners the use of their property and limit the takings issue. Relatively recent cantilevering of significant distances, primarily for single-family dwellings, should not preclude legitimate cantilevering that does not threaten the integrity of the structure or pose other hazards. He requests that the CRC study this matter further to determine those instances in which cantilevering is appropriate including cantilevering of decks and other non-habitable structures.

David Hill, property owner in Ocean Isle Beach, stated that his property is in a renourishment area and that his family has owned this lot for many years. He stated that he has five sons and goes to this lot and wants to be able to build a house on it. The two thousand square foot limitation does not seem to be fair. Thanks to the effort of the CRC and Ocean Isle Beach, we

have over two hundred feet of vegetation in front of our lot and around 500 feet from the high tide mark to our lot line. Restricting us to such a small house would not seem fair having that much land in front of us. He stated that he would like the CRC to reconsider the figure of 2,000 feet and especially the part about the porches. Mr. Hill stated that he would need all of the 2,000 square feet house with no covered porches as he would need the bedroom space. With this much land, he feels he should not be restricted to 2,000 square feet.

Steve Ambrose, Emerald Isle property owner, stated that his property is in a section of the beach which would be affected by the new rule. He is extremely pleased with the new proposal, which allows for lots in this section to be rebuilt. This is a positive move, which will allow a lot of the older structures to be brought up to code and made safer for residences and their guests. There is one section of the proposal, which he would respectfully ask the CRC to reconsider. This section is (a).7.d regarding the redevelopment and the size of the structures. What he would propose is the total floor area of the building be raised to somewhere in the neighborhood of 3,500 square feet based on a number of factors. Since the initial Emerald Isle beach fill project which occurred in 2003, the majority of the lots in this section of the beach have continued to build up the beach and the dune structure and have grown and established very stable vegetation lines. On the lot that he is on, the dune structure and the vegetation structure is in the neighborhood of 90 to 100 feet and in some sections of the beach it is even larger than that. The beach fill projects have continued to allow the ocean side to build up as well and has sustained itself through two hurricanes over the past two years. Since these houses have survived for thirty plus years through all of the hurricanes, the downside risk of building larger structures would be a minimal risk to people and property. The size of the structure will fit well into the current limitations for sixty-foot setbacks which show that a house can now be 5,000 square feet. The proposed limit of 3,500 square feet would be consistent with the size of other single-family homes and duplexes in our stretch of Emerald Isle and other Towns that have been represented. Please allow the residents of N.C. and other states to enjoy our seashore and also contribute significantly to the Town base and the economy of N.C. In conclusion, we are very supportive of these rule changes and hope the CRC will consider increasing the size limit on the house, which may be redeveloped or developed from scratch to 3,500 square feet.

Jerry Hardesty yielded his spot to Ann Bowman. Ann Bowman, Home Owner Association Management Company owner in Carolina Beach and has 16 associations which have buildings on the oceanfront. She would like a clear grandfather clause that could be structured in a way that if a property has a known history of being endangered by the ocean that they could not be grandfathered. However, that doesn't seem to suit any of the buildings that she is here to talk about. She stated that she is here to talk about a 24-unit structure that is three stories high. All the lots on the north end of Carolina Beach are 125 feet in depth. Carolina Beach has a known history of doing beach renourishment. Carolina Beach has just recently redone all of its zoning wording for non-conforming structures. It says that they can rebuild in cases of 50 percent or more destruction, but only if they can meet the CAMA requirements, use their present footprint and allowed to exceed the new height requirements that exist in the residential areas but only if it is required because of the flood zone. The one building that she is most concerned about is a Place at the Beach. It is a three-story "L" shaped building and is located on four lots. Further north of Carolina Beach Avenue, the erosion is more severe. The north end has had more renourishment. There is not a lot of beach to work with from about the 1500 block to the 1700 block where two of the buildings she is talking about are located. South of this, where most of the buildings are, she is concerned if the CRC goes through with the proposed graduated setback

lines it will be considered a taking of land by the owners. If you own commercial oceanfront property, the state wind and hail program has just instituted a 41% increase in their wind and hail insurance rates. Then take into consideration the fact that the federal government is now stopping the renourishment funds and the fact that reassessment has occurred in her county and the ordinance for non-conforming uses has been re-written, these owners feel like someone is trying to push them off of the ocean. They wish that somebody would tell them that they don't want any oceanfront dwellers. She stated that she appreciates the work that the CRC has done. She said that she supported the rules for stormwater and has no problem with the stormwater rule changes, but she has a lot of problem with the homeowners land becoming unbuildable which will make it unsellable which will not diminish the lenders requirement for insurance on the property, but will make insurance almost unobtainable. The entire north end of Carolina Beach would be considered to be undevelopable. She is concerned about the tax base of the Town and asks the CRC to table this issue and think it through carefully. She stated that a one floor 2,000 square foot building has no difference in the ocean coming on it than a three story 6,000 square foot building other than the wind and hail insurance. There is no reason to set the square footage variations.

Frank Rush, Town Manager of Emerald Isle, stated that the Town of Emerald Isle supports the proposed rule change pertaining to the static line exception, however, with one minor modification. This modification pertains to the size of the structure. Currently the rule is proposed with at 2,000 square foot size limit that would be allowed if the static line is removed. In Emerald Isle there is a total of 171 properties that are negatively affected by the static line and are non-conforming. Of those 171 properties, 160 of them have existing homes on them. The main goal of supporting this rule change is to allow those homes the ability to be reconstructed if they are damaged by a fire or a storm. Also, this would encourage redevelopment that might occur so that old housing stock can be replaced with newer housing stock and improve the aesthetics of our community. The 3,000 square foot limit that the Town suggests is based on the fact that of the 160 structures in Emerald Isle, 143 of those are 3,000 square feet or less. Eighty-six of those are 2,000 square feet or less. For a lot of reasons already mentioned by other speakers, our community feels that 2,000 square feet is a very small house in this day and age and would ask the CRC to consider something larger.

Jim Stephenson, N.C. Coastal Federation, stated that there are parts of this rule that some like and other parts that others like. The static line is an important provision of coastal rules. It has been in effect for some time and was put into place to set a line that makes it clear where the beach was and where the vegetation was prior to beach nourishment. That also means that the high water mark was also much higher and the ocean was at the doorsteps at some of the dwellings that are under consideration in the rule. We do support the graduated setback and the provisions of the rule which incorporate greater setbacks for development. The rule that deals with the static vegetation line, the CRC should know that there are a number of towns that support the static vegetation line without change. Some communities who have expressed this include Atlantic Beach and Pine Knoll Shores. The concern of creating exceptions to the static vegetation line clearly means there would be significantly more development significantly closer to the ocean than would otherwise be allowable under the rule. We recognize that the rule does include a number of exceptions and tests that beach towns would be required to meet. We feel that those tests are by and large appropriate but at the same time, the Commission has to ask itself whether it makes sense to approve exceptions to the static vegetation line in an era of rapidly increasing sea level rise and in an era of potentially more intense hurricanes. I think in

part the fact that we have not had a intense hurricane hit the N.C. coast in several years may put us into a lull of thinking that everything is o.k. and we can put structures as close to the ocean as the structures that are remaining there now. We think that may be a mistake and deserves serious consideration by the Commission. It is also ironic that some beach towns are requesting permission to build the houses closer to the ocean and at the same time are expressing concerns that other portions of their towns are in dire straits of erosion that they need the radical step of considering hardened structures. When beach renourishment is constructed, it is important to note that there is a survey conducted and the highest point of the beach renourishment becomes under state control. Homes should not be built on state land and a prohibition should be included if appropriate. Another concern is if there are more structures then there will be more of a call for beach renourishment which will cost more money and go deeper into the tax payer's pockets. There is an economic impact associated with putting structures closer to the beach.

Harry Simmons, Executive Director of NCBIWA, stated that on the past two rules there would be written comments submitted. He stated that there is no intent to march towards the ocean. He stated that we are not looking to put houses on state property in any way, shape or form.

Hiram Williams, home builder/realtor/property owner on Topsail Island, stated that if they would be so lucky to have beach nourishment on Topsail Island it would throw every structure over 2,000 square feet (including covered porches and parking structures) and make them non-complying. If Topsail Island was renourished and a static vegetation line was established and there were homes within the AEC and it is larger than 2,000 square feet would they would be non-complying. If we go back to 5,000 square feet and take away the residential exemptions, personally he would not have been able to build the last three oceanfront homes that he built on Topsail. Homes are growing, the value of the property is growing and it is not good business to take a lot that you paid a million dollars for and put a small house on it. It would be difficult to move a 4,000 square foot single story house. A 5,000 square foot, three-story home on piles would be difficult to move. Moving is not a reason to change the residential exemption. He stated that it should be larger. If you have a large home (6,000 or 7,000 foot house) and it burned, then you couldn't put it back. There needs to be some grandfathering. He stated that he knows there has been some abuse of cantilevering, but he was able to build a home that was cantilevered and the CRC is starting to play with the rights of use of real property. That is one of the basic rights of Americans to use their property. For the utilities and road issues, if we lose our infrastructures and we can't put them back then everybody is in trouble including the municipalities. Beach nourishment is vital to our beaches. There are places on Topsail Island that he built houses thirty years ago that have more beachfront in front of them than they had thirty years ago. If you take the right away to use my property, then you need to pay me for it.

Doug Brady, beachfront property owner in Pine Knoll Shores, stated that he would like to see the CRC slow down on this. He has heard a lot of comments that bring up a lot of questions. The one thing that concerns him as a developer is the definitions and how firm they are. Is the parking under a building considered floor area? He stated that he is not sure how clear the definitions are and when you are doing construction, they need to be clear and not up to interpretation. He said that he is surprised at the number of people that are not here. Most of the municipalities may agree with these rules, but he is not sure if a lot of the property owners know about these rules. He stated that he would encourage more public hearings and more broad based distribution of these rules. In terms of development, in the changing rule environment you work to get to a stage and then the rules change overnight and you have to go back to the

drawing board. Beachfront property owners in a lot of the municipalities pay a disproportionate amount of taxes for beach nourishment. If rules or regulations are implemented that may impact the loss of those through a non-conforming use or if you diminish people wanting to rebuild, the municipalities will lose the tax base that helps nourish the beaches for all the citizens.

Parker Overton of Greenville stated that he grew up boating on the Pamlico River. He said that he has owned property on the Pamlico River, in Washington on the water and owns land on Figure Eight Island. His next-door neighbor has a house that is less than 5,000 square feet and he has sandbags in front of it. He stated that his house is more than 7,000 square feet and he also has sandbags. He was told he has to take his sandbags up by May 2008. His next-door neighbor could only keep his bags for two years because his house is less than 5,000 square feet. He has heard people talk about their commercial properties and people that have 16,000 or 20,000 square feet for rentals. This is a very serious issue. There are unhappy people. He stated that he is also a pilot and anyone that tells you that sand migrates from north to south is wrong. If that was true all the sand would be in Miami and it isn't there. There are beaches with jetties that are about three foot high and stair-stepped down the beach that have saved people's property. Right now his house at Figure Eight cannot be sold, but he has to pay a \$7,000 per year bill. He is still assessed \$6,000 per year. These people are property owners and tax payers.

*Written comments will be accepted until December 31, 2007, for this rule.*

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

*There was no one signed up for this public hearing and no one came forward.*

Chairman Hackney stated that written comments would be accepted until December 14, 2007 for this rule.

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

*There was no one signed up for this public hearing and no one came forward.*

#### 15A NCAC 7H .0209 Urban Waterfronts

Linda Staab, Planning Director for the Town of Morehead City, stated that they have been an avid supporter of the CRC's urban waterfront regulations allowing existing structures the opportunity to expand vertically and expand water dependant uses to change to non-water dependant uses over the years. This provided a framework that created environmentally sound and economically feasible development in our waterfront downtown. It makes the waterfront downtown able to compete better with the commercial development on the outskirts of town. As currently written and enforced the regulations balance protection of the environment while preserving the economic viability of the downtown waterfront as outlined in the CAMA management objectives for the urban waterfront. The proposed changes do not achieve the same balance and seem to infringe upon the city's statutory authority as it relates to planning and zoning. Under 7H .0209 (g)(4)(b)(i) existing structures over coastal wetland, estuarine waters, or public trust areas may be used for commercial non-water dependant purposes provided that the structure promotes, fosters, enhances or accommodates public benefit. Commercial non-water dependant uses shall be limited to restaurants and retail services, and expressly does not allow lodging, new parking areas and residential uses. Morehead City supports that existing structures



located over the water should provide a public benefit. We feel this could be accomplished by requiring a public area such as a walkway or rooftop viewing area to be part of the redevelopment plan for the structure. We do object to the proposed rules identifying specific uses that would be allowed in existing structures. Beyond saying that non-water dependant uses are permitted what authority is CAMA using to justify that uses such as restaurant and retail services be allowed, but the others not? What about a clinic, a beauty shop, a church, library, museum or office? What impact do these uses have that make them less desirable than the specific uses in the proposed language? The General Statutes give local governments the authority to zone property under 160A381 and under that section it says for the purposes of promoting health, safety, morals or the general welfare of the community any city may regulate the use of buildings, structures and land. Deciding what specific uses are appropriate and structures located in a central business district should remain with the local government as specifically stated in the General Statutes. Under 7H .0209(g)(4)(b)(ii) for the purposes of this rule, existing enclosed structures may be replaced or expanded vertically provided that vertical expansion does not exceed the original footprint of the structure, is limited to one additional story over the life of the structure and is consistent with local requirements or limitations. The first question that we have is what does over the life mean? Again, we refer to statutory authority which states that for the purpose of promoting health, safety, morals or the general welfare of the community any city may regulate and restrict the height, number of stories, and size of buildings and other structures. If you were to imagine that all the chairs in this room represent the waterfront of North Carolina, I would dare say that one chair represents the area of the urban waterfront. When you consider that all these chairs represent the Town of Morehead City, at least 25% would represent how important the urban waterfront area is to the towns and municipalities in North Carolina. If a city council is elected by local citizens, adopts zoning regulations that allow for existing buildings over the water in a central business district to exceed two stories and allows uses beyond restaurants and retail, what authority does the appointed CRC and CRAC have to restrict it? If looking at the scope of the North Carolina shoreline compared to the location and size of existing structures in urban waterfronts the environmental impact is negligible. Conversely, if a city chooses to limit building height to one-story, how can the CRC justify exceeding the local jurisdiction's height limits and under what authority?

Susan Bulluck spoke on behalf of the Holiday Inn SunSpree. Issues with regard to the urban waterfront are of concern to the hospitality industry. She stated she is here to ask the CRC to look as you develop the urban waterfront rules at what the new floodplain maps indicate. The problem is that we are encouraging waterfront development in floodplain areas while at the same time we are suggesting a pullback from the oceanfront. There seems to be a disconnect in the goal of protection. We would ask the CRC to take a look at these things as the urban waterfront rule moves forward. In Wilmington, we have voted to put a public-paid-for building in a waterfront floodplain while at the same time we are suggesting that we should protect our property holders who have oceanfront property.

Doug Brady, property owner in Morehead City and board member of the downtown revitalization association. Morehead City has a number of structures over the water in its downtown business district. It has worked hard over the past few years trying to encourage redevelopment in this area. Personally, he owns a permit to build a structure over the water. Since this rule was done five, six, or eight years ago it has gotten out of hand. The few urban waterfronts in a municipality that have structures over the water and have been there for years would be allowed, with the consent of the municipality, to rebuild and build up with the way the

rules are in place now. This rule has gotten out of that scope and applicants out of the areas of municipal control are applying for permits. This is a very small area of N.C. shoreline and in many cases it is in the business district of towns where there are existing structures over the water. The rules now encourage those people to rebuild out of the flood hazard area. The rule that the CRC is implementing does not encourage anybody that has an existing building over the water to rebuild or bring it up to standards. The intent was to be specific to urban waterfronts in areas that were already existing over the water in incorporated areas. That is not a very large area. Try to reinforce the language that it has to be in a municipality, the municipality has to agree to the use, has to agree to the height and cannot put new structures over the water.

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

*There was no one signed up for this public hearing and no one came forward.*

### **COMMITTEE REPORTS**

#### CRAC Report

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

The CRC took the following action:

**Jim Leutze made a motion to forward a resolution from the CRC to the leaders of the N.C. House and Senate as well as the Governor's office in support of increased funding for N.C. Sea Grant. Doug Langford seconded this motion. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bissette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

#### P & SI Committee Report

Bill Peele presented the minutes from the P & SI Committee meeting. (SEE ATTACHMENT FOR WRITTEN REPORT).

The CRC took the following action:

**Bill Peele made a motion to approve certification of the Brunswick County Land Use Plan. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bissette, Wynns, Elam, Cahoon, Weld, Wilson) (Sermons absent for vote).**

**Bill Peele made a motion to approve certification of the Town of Carolina Beach Land Use Plan. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bissette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

**Bill Peele made a motion to approve certification of the Southport Land Use Plan. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bissette, Sermons, Wynns, Elam, Weld, Wilson) (Cahoon absent for vote).**

**Bill Peele made a motion to approve certification of the Washington Land Use Plan. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bisette, Sermons, Wynns, Elam, Weld, Wilson) (Cahoon absent for vote).**

**Bill Peele made a motion to approve certification of the Indian Beach Land Use Plan with one correction noted in the minutes. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bisette, Sermons, Wynns, Elam, Weld, Wilson) (Cahoon absent for vote).**

**Bill Peele made a motion to approve certification of the Kure Beach Land Use Plan. This motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bisette, Sermons, Wynns, Elam, Weld, Wilson) (Cahoon absent for vote).**

**Bill Peele made a motion to bring the proposed wording for shared piers which would be added to the latest version of 7H .1200 (which has previously been approved by the CRC for public hearing) before the full Commission to be approved for public hearing. Melvin Shepard made an amendment to the motion to send this back to the P&SI Committee for revision. Doug Langford seconded this motion.**

Bill Peele stated that the Committee has looked at this rule and the full Commission needs to be involved in this rule.

**After discussion, Melvin Shepard withdrew the motion.**

Jim Gulick, CRC Counsel, stated that there should be documentation that there was a written agreement binding on any successors and the parties that they had waived any objection they had to the invasion of their riparian area. Mr. Gulick further stated that the existing language now says: *(iv) The property owners of the shared pier shall not be required to obtain a 15 foot waiver from each other as described in subparagraph (q) of this rule as it applies to the shared riparian line...* He suggested adding "provided that the title owners of both property have executed an enforceable shared pier agreement that becomes part of the permit file".

**Charles Elam made a motion to send this rule to public hearing with the amendment (documentation of a shared pier agreement) discussed. Jim Leutze seconded this motion. The motion passed unanimously (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bisette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson).**

### I & S Report

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

The CRC took the following action:

**Bob Emory made a motion to send the new rule language of 15A NCAC 07H .0205 to public hearing. Melvin Shepard made a motion to amend which eliminates (A) from the rule and modify (B) which changes "six inches" to a height of no less than two feet measured from the Coastal Wetland substrate. Doug Langford seconded the motion. The**

**motion failed with three votes (Shepard, Langford, Sermons) and nine opposed (Gore, Leutze, Old, Peele, Emory, Wynns, Elam, Cahoon, Weld) (Bissette, Wilson absent for vote).**

**Jim Leutze made a motion to table this rule and bring it back to the full CRC. Jerry Old seconded this motion. The motion passed with eleven votes (Shepard, Gore, Leutze, Old, Peele, Langford, Wynns, Elam, Cahoon, Weld, Wilson) and three opposed (Emory, Bissette, Sermons).**

Jim Leutze requested that Staff bring back any compelling arguments that would make marsh alteration a good idea. Chairman Hackney added that the Staff could bring back rule language that stated burning and cutting could not be done. Then the Commission could look at both and decide which way this rule should go.

**Bob Emory made a motion to send 7H .0208 to public hearing, but do not advertise it for public hearing until the SAV definition has been resolved. The motion passed with thirteen votes (Shepard, Gore, Leutze, Old, Peele, Emory, Langford, Bissette, Sermons, Wynns, Elam, Cahoon, Weld) and one opposed (Wilson).**

### **PUBLIC COMMENT AND INPUT**

*Ross Edwards (Oak Island property owner) was signed up for public comment, however was not present when called upon by the Chairman.*

Charles Baldwin, Attorney for the Village of Bald Head Island, presented comments on the inlet hazard area designation. There is a substantial proposed expansion of the inlet hazard area at Bald Head Island. The purpose of my comments is not to suggest that the challenges are insurmountable, rather we attempt to raise some policy and regulation issues that we think require further study and consideration. The Village wants to work with the CRC in this process and would like to become a participant in the BIMP process so that we can assist the CRC. We believe that we are joint regulators and policy makers with the CRC and would like to work in collaboration on these issues. At Bald Head Island, this proposed expansion raises some interesting points. It encompasses 5.76 miles of roads, 30,000 feet of sewer and water line, 24 fire hydrants, and 9 lift stations. This expansion would also increase the property values of developed and undeveloped lots to half a billion, which is about 10 times the current valuation of areas included within the present inlet hazard area. If the marina is included, the Village has a concern that if it were non-conforming and not built, then the Village would be cut off from its only transportation and logistics facility. Additionally, the marina facilitates the arrival of about 70-80 people per day. Relative to the inlet hazard area, Bald Head Island is not a traditional barrier island subject to the whim of nature. There is a man maintained shipping channel immediately adjacent to the island. With that shipping channel comes the opportunity to have a sand management plan to make sure that our beaches and resources stay in place. There is a dredged material management plan to facilitate the sand being placed on the beaches. There is a significant commitment to federal, local and state cost sharing regarding the beaches so the shoreline can be maintained. The Village and Bald Head Island are very in tune to environmental matters. The Village would like to offer their engineer, Eric Olson, as a resource to Staff as the BIMP planning process begins. The effect of the inlet hazard area will work in tandem with the two regulations that were heard yesterday. In the final analysis we are talking about what can be built on certain lots. To paraphrase Mr. Warren, in order to enact good

regulation you have to be able to understand how the system works; in order to understand how the system works you have to study it; and in order to study it you have to get the data. It seems that we are now at the data gathering stage and we would like to help with that. This presents a rare opportunity and privilege for the CRC to enact cohesive, long-term coastal management regulation. Cohesive regulation which is capable of being understood, capable of reasonable and practical application will be better and have much greater traction in the long-term. Regulation should be based on fact and based on the science but be flexible enough to accommodate different circumstances. Through this regulation on inlet hazard areas and yesterday's regulations on setbacks, we are talking about what can be built on particular lots. That puts the local permit officers on the front line. This sounds like zoning. Although with zoning you get notice and an advertisement. Mr. Baldwin stated that he doubts that many people will realize that 15A NCAC 7H .0305 might affect Aunt Bessie's beach house and are not aware of the significance of the regulations being contemplated. Notice should be given, to publicize and obtain public input and support to these efforts. Rather than have a vegetation line, an erosion rate or a fifty-percent damage rule be determinative of buildability, we might consider a list of factors with a decision on buildability to be made by state and local officials in collaboration. Mr. Baldwin stated that he urges the CRC to take no action at this time on 7H .0305, 7H .0306, or the inlet hazard area designation until the facts and science are in. At the September 27-28 meeting, there was motion for the CRC to accept and approve the draft report as a basis for drafting rules related to the inlet hazard zone. It appears we are a long way from the drafting stage; we are still in the data gathering and study stage. The Village looks forward to working with the CRC and would like to be a part of the BIMP process and think these issues are important to the coast.

## **PRESENTATIONS**

### **Sea Level Rise and CRC Legal Authorities (CRC-07-12)**

#### **Tancred Miller**

What is the authority the CRC has to address sea level rise? There are two things to think about (1) common law and (2) Constitutional law. Common law, particularly the public trust doctrine, is both enabling and prescriptive. Most of our program is based on public trust doctrine. Constitutions establish the property rights and prohibit regulatory and legislative takings. Then there is the CZMA (Coastal Zone Management Act) that is the federal umbrella legislation that establishes the coastal programs in all coastal states in the U.S. CZMA doesn't say a whole lot about sea level rise. There is a short passage that advises states to anticipate and plan for it. CZMA is being reauthorized and we anticipate that more direction will be given once this is complete. CAMA is silent on sea level rise, but it does give the CRC the authority and the mandate to protect public trust.

There are not a lot of states that have sample responses. There has been some at the regional and federal level, but not a lot at the state agency level in response to sea level rise. Maryland had a response strategy written seven years ago. Rhode Island is the first state in the nation to adopt rules for sea level rise, however when you look at their document there are no rules in the document. It is just a policy document. Maine has some public education on their website. Florida has done some studies of the economic impacts that they anticipate over the next seventy years. California has also done some studies. It will be up to us to be on the front of the wave in trying to figure out what to do. Holland is a presumed leader in coastal engineering. There is a

barrier island and a lot of land that is below sea level. There are beaches and dunes. Dikes and dune reinforcement has been done through coastal engineering on the beachfront. Dams and levies are used as armored protection. Just about every waterway that goes in has some type of barrier to prevent the water from flooding inland. (A presentation was shown displaying Holland's engineering efforts).

The Commission could establish a policy position. The CRC will be looked to by the State of N.C, the citizens and residents of N.C., but also other states and countries that are struggling with what to do to figure out sea level rise. This is a good opportunity. There would be a need to tap the collective knowledge of everyone in the state (other agencies, private sector and conservation groups). There will be a need for a lot of public education. There will be a need for interagency cooperation. Interstate and federal cooperation would also be needed. There is probably also a need for legislative action and incorporate into the CRC's existing rules and policies (both marginal and substantial).

### **CAMA and Takings Issues**

**Dave Owens, Gladys Hall Coates Professor, UNC School of Government**

The takings issue derives from this provision in the U.S. Constitution, "Nor shall private property be taken for public use without just compensation". The law of the land clause in the State Constitution incorporates the same requirements. Most of the law on this issue is federal constitutional law. There are three context issues that arise, focused largely on the third issue (1) involuntary acquisition (2) exactions related to development approval and (3) regulatory takings.

Involuntary acquisition is fairly straight forward. The government has the power to acquire people's property. If the government needs your land for a road, a prison, or a school and you are not willing to part with it, the government can seize your property and pay you a fair price for it. Dealing with that issue is where the taking clause comes from and that is why it is in the U.S. Constitution. The government did seize titled people's property for public use and this sets out a fair process and fair compensation. The government has to be taking your property for a public purpose. How broadly defined is public purpose? The Kelo case, a city in Rhode Island seized property for economic development purposes (assembling a large tract, demolishing the houses and constructing a hotel) is not an issue which arises in North Carolina because our legislature has not given local governments the authority to use condemnation, eminent domain for economic development purposes. The purpose has to be authorized by statute. If the Commission decided it would like to acquire somebody's land without that person's approval, the Commission would have to go to the statute to find some place that the General Assembly had explicitly given the authority to acquire the land and to use the condemnation power to do so. Then the issues are very straight forward. Were proper procedures followed? Is the amount of compensation proper? If a conclusion cannot be met, a jury will decide.

Exactions are the requirement that a person convey title to land or build improvements to property as a condition of development approval. We have long used this in government and subdivision regulation is the most common. If you build a new subdivision, you have to put in streets, water, and sewer lines and give them to the government as a condition of development approval. There are two major constitutional issues, the nexus issue and the proportionate scale. This is acquiring a new interest. If the public already has an interest in the land and you are

acquiring that existing property interest to be preserved or protected, it is not an exaction. An example would be a road that was not a public road; it was an accessway as part of development approval. If you wanted to acquire that road to be maintained, protected or dedicated to the public, you are not acquiring a new road. You are protecting an existing legal right of access. Often it is an intensive factual inquiry as to whether a prescriptive easement exists or whether the public has some right. You have to look at what existing property rights the public may have. If you are simply protecting an existing right, that is not an exaction and is not a taking. Assuming you are requiring somebody to donate land or construct an improvement, the two tests you have to meet are (1) a rational nexus: is the development you are approving causing the impact that you are getting the exaction to deal with? (2) Is there a reasonable relationship? The coastal case that brought this up in the U.S. Supreme Court was Nollan. Mr. and Mrs. Nollan had a small cottage between the road and a narrow stretch of beach in California. They wanted to demolish that cottage and put the development on the right hand side (looking from the ocean back on that lot). The State said there is a small beach with a seawall and we want as a condition of approval to demolish the house and build a new house that the Nollan's dedicate an easement to the public to allow people to walk up and down the beach along the shoreline in front of your house. Mr. and Mrs. Nollan said no. The Supreme Court agreed with them. The Supreme Court said if you tear down a house and put a larger house on it, that has nothing to do with the need for people to walk up and down the beach. These are unrelated issues and the fact that you have to get a permit to demolish a house does not give the State the right to acquire an unrelated easement laterally along the beach. If the State had said you have to build an observation deck on your lot because you are blocking the view with your new development that would be a different issue and there may be a rational nexus. Whatever you acquire as an exaction has to be no more than that which is roughly proportional to the impacts generated by that particular development. The U.S. Supreme Court case that illustrates this is a creek in Oregon. There was a hardware store on the site. The store wanted to expand into the adjacent lot. The city was agreeable and would give them the permit to do it, but they had to dedicate an easement along the creek to provide a greenway and walking path for the development. The Supreme Court said expanding a home improvement store has nothing to do with creating the need for a greenway and bike path along the creek. What they were asking for was not proportional to the impact generated by this development. If you wanted to require a turn-in off of the street or something related to the traffic generated by the development that would be fine. Another important issue with exactions is you have to have the statutory authority. If you are going to require as a condition of development approval that somebody convey a condition of interest in land to you, you must have authorization from the General Assembly. A classic example in North Carolina: local governments can require dedication of land for streets, public enterprise functions (water and sewer), but you cannot require a subdivider to dedicate land for a school site. You can require them to reserve the land for future purchase. It wouldn't be a constitutional problem if you have a 1,000-lot subdivision that would create the need for a school site to require them constitutionally to dedicate land for a school, but there is no statutory authority to do that.

Regulatory takings are an area where the law has been confused, but is increasingly clear. There was no such thing as a regulatory taking originally in the Constitution. The Court in 1922 adopted a rule that says a regulation of land can be so restrictive as to be the functional equivalent of seizing the title to the property. It is almost the same thing as acquiring that piece of property. The takings clause will require if the regulation goes too far, then compensation must be paid. The Supreme Court announced this decision in 1922 in a case involving removal of coal as a separate mineral right under property and promptly abandon the field for fifty years

leading to a great deal of confusion and uncertainty as to what they meant and how far is too far? The Supreme Court attempting to define this further in the 1970's, 1980's and 1990's, issued about a dozen decisions. This further confused the issue for about two decades. In the last five or six years, the Court has clarified things and things are coming together in a much more coherent fashion. The purpose of this rule is to prevent individuals from bearing a public burden that should be borne by the public as a whole. There are also non-legal dimensions, particularly as a regulatory body, in deciding this issue. What is fair, reasonable and appropriate as a public policy looking at economic impacts, fairness to land owners, fairness to neighbors, and good public policy? Mr. Owens stated that his experience in working in this field for the past thirty years is that local governments and state regulatory agents almost always reach the limits of what they think is appropriate from a policy standpoint well before they get to the legal limit of what is permissible as a Constitutional matter. What are the legal limits? There are two simple rules and one not-so-simple rule. The two simple rules are that compensation is always required if you have a physical invasion or your regulation renders the property completely worthless. A physical invasion example is the Loretto case from 1982. Mrs. Loretto had an apartment building and the City of New York adopted a regulation that said if you own an apartment building, then you have to allow someone to put a cable TV line on top of the building and small equipment about the size of a shoe box to let people have access to cable television within the building. Mrs. Loretto said you can't make me do that without paying me, you are physically invading my property with this power line and cable line and I want compensation for it. Clearly this was an economic issue that would benefit the property. The rule was that as a property owner she could get a cut of the cable company fees if she could negotiate with the cable company. The regulation took that ability away from her and allowed the company to put the cable on the roof. The Court said that even if it were a modest, minimal invasion, it would require compensation. The second rule that always requires compensation is if your regulation renders the property completely, totally valueless. In that situation, compensation is always required. The Courts said that this would be an extremely rare circumstance. This does not mean a substantial reduction in value this means no (zero) value. Even a ninety-five percent reduction in value is not the same as a total reduction in value. If your property cannot be sold or it would even be difficult to give it away, then you have a taking. This is an exceptionally rare circumstance. The Lucas case from South Carolina involving a setback regulation is an example. The setback line was on the rear of the property and the regulation allowed essentially no use of the property. By contrast, when North Carolina which adopted a setback regulation which was more restrictive than South Carolina's regulation, the Commission was very careful in adopting the setback regulation to look at what economically productive uses could be made of the property that were consistent with the purposes of the regulation. When you look at North Carolina's setback rule it says that it only restricts permanent, substantial structures and if you can do something like parking lots, tennis courts, gazebos, swimming pools, etc (some economic use of the property) this should be allowed. This allows the owner to make as much use of the property as possible in recognition of the Constitutional issue. There are two exceptions to the totally valueless rule. One is if the regulation is preventing a nuisance. You can prevent the use of the property in a way that will harm others. Even if their property is rendered totally valueless, this is not a taking. Second is if the regulation effects background principles of state property law. An example in North Carolina would be if your regulation were protecting public trust doctrine rights and even if the property were rendered totally valueless it would not be a taking. You are preventing them from doing something that they did not have the authority to do anyway by violating the public trust doctrine. If you do not have one of these two categories, you fall into the Penn Central analysis, which is where 99% of regulatory takings cases are going



to fall. Grand Central Station in New York City was the case that brought up the issue. Penn Station and a couple of other historic landmarks had been demolished and destroyed. The Penn Central Railroad Company owned the building, a national historic landmark, and to make more money they wanted to take the air rights above the building and construct a modern office building of 60 or 70 stories above Grand Central Station. The City adopted a historic preservation regulation that said you couldn't use the air rights above the building for this purpose. You have to leave the building in its current, grand state. There was substantial economic value in mid-town Manhattan to these air rights. The City had a provision that allowed some transfer of the development rights to other places, but it was unclear whether it was a real issue or not. When the case came to the Court, it was questioning whether the City could take away the railroad company's right to sell the air rights, recoup the money and use it elsewhere. The Court said this is the test, the analytic framework, we will use in analyzing whether the regulation that significantly diminishes the value of that property is a taking or not. We will look at balancing the economic impact of the regulation on the owner with the character of the governmental action with some particular focus on the regulation's impact on distinct investment backed expectations. The first factor is looking at the economic impact on the owner. One thing that is abundantly clear in this case is that the economic impact to be considered a potential taking must be severe. A moderate economic impact does not raise a takings issue. How severe is severe is not precise. Most cases indicate that until you get to 85 or 90% reduction in value, you do not have even a claim for a taking. There is clearly no Constitutional protection for the most economically productive use of a piece of property. The restriction of the value of a piece of property is not a taking. It is not a taking under any formulation of the Constitution. It may be a legitimate public policy argument, someone may say it is unfair or unreasonable to do it, but it is not unconstitutional. A significant reduction is not compensable. The character of the governmental action is also a factor in this analysis. An action taken to protect public health and safety will probably justify a more substantial impact on property values than something else. If you are protecting public health and safety the Court has generally upheld substantial reductions nearing complete reduction in value. If you are looking at something like an aesthetic objective or protecting character of the community – not public health and safety related, be more cautious about how far you go in substantially reducing a person's property value. The character of the governmental action analysis usually comes up in the notion of a bad faith action by the government. If the government is denying a permit over and over again as a pretext with no good reason (just holding up development or personal animosity towards the developer) or the government is trying to use the regulation to reduce the value of the property to buy it at a cheaper price. This kind of bad faith would lead to the Court saying that it is a taking. Lastly, you look at a person's reasonable investment backed expectations. This is an area where the law is still emerging. One of the key factors is how heavily regulated is the property? If you are an investor and you are investing in something that is heavily regulated, the Courts are going to say that you know there is some risk. You are making a speculative investment and the Courts are not going to protect the land investment business because it is not a regulated utility. You do not have a guaranteed rate of return and you know going into it that the rules may change. The examples the Court frequently uses are things like adult entertainment businesses, businesses selling alcohol and most coastal development. These are all heavily regulated activities. The notice factor is important. One of the issues where the takings claim is most likely to arise is when there is a dramatic and sudden shift in the regulations. In the Lucas case, South Carolina had essentially no setback regulations and they went to a fairly severe one. Property owners had already acquired the land, the houses on both sides were built, and they were ready to go with the permits then all of a sudden the regulations

changed. Effecting someone's expectations is an important factor. When a person buys land, how heavily regulated it is at the time they acquire it is also a factor. It is not determinative in and of itself, but it is an important factor. We had a recent Supreme Court case where a person owned some land, Rhode Island adopted coastal regulations that greatly restricted the development and wouldn't allow them to fill in a salt pond and some marsh land. The person brought a takings claim. In between the time the person first acquired it and the time the regulation was adopted, the form of ownership changed. But the Court said that since the title of the property changed, they would add that as a factor to be considered. In the North Carolina context, if someone acquired a piece of property on the oceanfront ten years ago that is subject to the setback regulations or the estuarine shoreline piece of property that has some limitations on the amount of development they can do, the fact that they bought it knowing there are regulations would be a factor and probably significantly reduce the chances that they could be successful in a takings claim. When you do this analysis, you consider the parcel as a whole and not just the regulated portion. For example with a buffer regulation you don't just look at the economic impact on the buffer, you look at the entire parcel of land over time. A temporary restriction, even if it is a total restriction such as a six-month development moratorium, does not raise a takings issue because you have the potential for future development and the Court will consider the potential for future development as giving value to the property. The North Carolina standard is substantially similar. Three key cases in North Carolina that address the same issue are the 1938 Parker case in which the Court said that a reduction in value is not a taking, but the bottom line was taken from the Responsible Citizens case in 1983 where an Asheville floodplain zoning case said the owner must have some practical use of the property to have some reasonable value left. The Finch case in 1989 was a down zoning case in Durham where the property was originally zoned for single family development, rezoned to allow commercial development, and then zoned back to single family. The owner said if I could develop it as a motel it is worth \$500,000 to \$700,000. If it is a single-family residence it is worth \$25,000. The Supreme Court said that is not a taking.

## **ACTION ITEMS**

### Approval of CHPP 2007 Annual Report (CRC-07-11)

Jimmy Johnson stated the 2006-2007 annual report was provided to the Commission. This is a statutory requirement that the CHPP be reported to the Environmental Review Commission and the Seafood and Aquaculture Commission annually. The three commissions involved (EMC, CRC, and MFC) all need to approve the annual report. Mr. Johnson requested approval of the annual report from the CRC.

Doug Langford had concerns about the controversial stormwater rules proposed by DWQ and asked if by approving this document is the CRC endorsing these rules? Jimmy Johnson stated this is a reflection of the activity that has been going on.

Renee Cahoon requested that minutes of the CHPP steering committee meetings be provided to the Commission.

**Melvin Shepard made a motion to approve the CHPP 2007 Annual Report. Jerry Old seconded this motion. The motion passed with ten votes (Shepard, Gore, Old, Peele, Emory, Bissette, Sermons, Elam, Weld, Wilson) and two against (Langford, Cahoon) (Leutze, Wynns absent for vote).**

Adoption of 15A NCAC 7J .0409 Civil Penalties

**Doug Langford made a motion to adopt 15A NCAC 7J .0409 as presented at public hearing. Wayland Sermons seconded this motion. The motion passed unanimously (Shepard, Gore, Old, Emory, Langford, Bissette, Sermons, Elam, Cahoon, Weld, Wilson) (Leutze, Peele, Wynns absent for vote).**

**OLD/NEW BUSINESS**

Review of CRAC Recommendations

**Jerry Old made a motion to postpone the CRAC recommendations until the strategic planning session in January 2008. Joseph Gore seconded this motion. The motion passed unanimously (Shepard, Gore, Old, Peele, Emory, Langford, Bissette, Sermons, Elam, Cahoon, Weld, Wilson) (Leutze, Wynns absent for vote).**

Interim Report on New Urban Waterfront Developments

Doug Huggett stated that this is an update on Senate Bill 732, which was passed by the legislature in 2004. This Senate Bill was labeled an act to authorize the Coastal Resource Commission to implement a pilot program under which a county may designate an area as a new urban waterfront under the Coastal Area Management Act. This specifically relates to what ultimately became the Sandy Point project in Chowan County.

The Senate Bill that was passed in 2004 found that development in coastal areas should occur in a manner that will conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic and economic values. The Bill further found that the new urban waterfront development which combines residential, commercial and recreational uses in a publicly accessible, pedestrian friendly traditional neighborhood community that preserves natural shorelines in other critical areas has the potential to benefit the environment and quality of life in the area in which the development occurs. Finally the Bill found that the greatest potential benefit of new urban waterfront development lies in coastal counties that do not border the Atlantic Ocean and are also less densely populated than counties that because of their proximity to ocean beaches have experienced greater economic development.

The initial step was to have a county that wanted to participate in this pilot study, update their land use plan subject to several criteria and have the Coastal Resources Commission approve the plan. Ultimately Chowan County in August 2004 came before the CRC to update their land use plan to designate an area as a new urban waterfront area.

There were some requirements in the Senate Bill that tried to restrict where the new urban waterfront could be. It had to be in a county that had a population of no more than 150 persons per square mile, the new urban waterfront area should not be greater than 500 acres in size and should have at least one mile of natural shoreline. There were some requirements about the water classifications next to where the new urban waterfront could be as well. Mr. Huggett covered the criteria for the new urban waterfront area.

Because this was a pilot program of the Legislature it included a section that stated that in order to determine whether additional new urban waterfront area development should be allowed and whether the rules governing the development should be modified, the CRC shall evaluate the impacts on water quality and other environmental impacts from the new urban waterfront area development authorized by this Act and evaluate the costs and benefits from the development of the area in which the development is located. The CRC shall annually report its interim findings and recommendations including any legislative proposals to the Environmental Review Commission beginning in October 2005. The CRC shall report its final findings and recommendations including any legislative proposals to the ERC no later than October 1, 2010. The development has not taken off yet as permits have only recently been issued. A description of Sandy Point was given. The permit history was given. After state and federal review and a SEPA document, the CAMA permit was issued in September 2006. This permit did not include the excavation of the channels into the high ground basins because of SAV impacts. There had always been sparse SAV growth in the area of these channels, however whenever one of the field staff was doing a routine aerial over flight of the area they determined that the entire waterbody from the mouth to the head was fully covered to about the five foot depth with sea grass. That led to issues with environmental agencies changing their opinions during the review course and we had to turn the request for SAV dredging down. In January 2007, the applicant presented a variance request before the CRC. The CRC granted the variance and subsequently the CAMA permit was amended in March 2007. Included in the permit was a provision that a proposed SAV mitigation plan had to be implemented in its entirety to offset the impacts associated with the dredging. A water quality certification was also issued in November 2005 which had significant conditions included. A stormwater permit was issued in April 2006. The Corps of Engineers, who has permit authority over both wetlands and work in navigable waters, issued a permit in October 2007. There were numerous conditions on their permit.

The Legislature required a report back to them starting in 2005 on the lessons learned from this pilot program. Because the project just got their last permit in place only a month ago, no development has begun on the project. They will be doing so in coming weeks. At this point in time, there is nothing of substance to report. DCM does believe it is necessary to make a report to the Legislature during the next session. What we recommend is that Staff prepare a report for CRC signature that could be presented to the ERC which states that because of the permit history and the fact that development has not taken place, in the future we will be in a better position to assess water quality impacts and other environmental impacts. Also, we may have potential legislative changes or potential CRC rule changes that may be necessary.

**Bob Emory made a motion to adopt the recommendation that the new urban waterfront report be sent to the General Assembly. Jerry Old seconded this motion. The motion passed unanimously (Shepard, Gore, Old, Peele, Emory, Langford, Bissette, Sermons, Wynns, Elam, Cahoon, Weld, Wilson) (Leutze was absent for the vote).**

#### CRC Meeting Schedule/Strategic Planning (CRC-07-13)

Jim Gregson stated there was a request at the last meeting that a strategic planning session be scheduled in January. The CRC was asked to prioritize the list of topics provided. A trained facilitator could be available at the January meeting to help with the discussions. Current initiatives, new topics and potential changes to meeting format and schedule were passed out for CRC review and input. Bob Wilson requested at the last meeting that staffing issues be

discussed and this will also be done at the January meeting. An update and cost of litigation will also be covered. Mr. Gregson stated that to facilitate in completing an agenda, a sub-committee of CRC members and Staff could meet prior to January to get the agenda prepared. Chairman Hackney stated that he would request that the new Chairman appoint that committee.

Chairman Hackney announced that the Governor and the Secretary had asked him to introduce the next chairman. At this time, Dr. Hackney announced that Bob Emory had been appointed as the Chairman of the Coastal Resources Commission.

With no further business, the CRC adjourned.

Respectfully submitted,

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James H. Gregson, Executive Secretary

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Angela Willis, Recording Secretary