

**COASTAL RESOURCES COMMISSION (CRC)
HILTON GREENVILLE
GREENVILLE, NC
JUNE 22-24, 2004**

Present CRC Members

Courtney Hackney, Vice-Chairperson

Bill Peele	Joan Weld
Bob Emory	Bob Wilson
Peggy Griffin	Lee Wynns
Doug Langford	Bob Barnes (present at 10am on 6/23, not present on 6/24)

Present Coastal Resources Advisory Council (CRAC) Members

Bob Shupe, Chairperson

Frank Alexander	Joe Lassiter	Lester Simpson
Joseph Beck	Wayne Mobley	Mike Street
Gordon Cashin	Bill Morrison	Raymond Sturza
Carlton Davenport, Jr.	Jim Mulligan	Penny Tysinger
Joe Dooley	Spencer Rogers	Beans Weatherly
Webb Fuller	Dara Royal	Dave Weaver
Rick Gardner	Bob Shupe	
Ann Holton	Harry Simmons	

Wednesday June 23, 2004

COMMISSION CALL TO ORDER

Vice Chairman Courtney Hackney called the meeting to order at 8:30 a.m. He advised that Executive Order One mandated that CRC members avoid conflict of interest or the appearance of conflict.

ROLL CALL

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

APPROVAL OF APRIL 28-29, 2004 MINUTES

The minutes were approved, as written, with a hand vote of 6 in favor (Emory, Griffin, Langford, Peele, Weld, Wynns) and 1 abstention (Wilson).

EXECUTIVE SECRETARY'S REPORT

Charles Jones reported the following to the CRC:

House Bill 141, an act to designate certain areas of Hatteras Island as unvegetated beach area, passed both the House and Senate and was signed into law by Gov. Easley on May 26. This bill will remain in effect until the CRC's rule amendment on this issue is in place. The Commission held a public hearing on this issue in April and can consider adoption of a permanent rule.

Sen. Culpepper is expected to introduce a potential amendment to CAMA that would allow coastal counties to designate areas not within the corporate limits of a municipality as New Urban Waterfront. The Foundation for Renewal of Eastern North Carolina, and its proposed Sandy Point development in Edenton, is the primary force behind the bill. The Dept., particularly Robin Smith, has been engaged with the proponents of this legislation. Robin has done a good job in relaying the concerns of DCM along with DWQ so that the bill language will be specific and narrow in scope.

Reps. Danny McComas, R-New Hanover, and Bonner Stiller, R-Brunswick, have included a special provision in the House budget that would allow 24-hour vehicular access to Fort Fisher State Park to members of the public who pay a fee. DENR does not support this measure to require the Division of Parks and Recreation to reopen the beach to vehicles 24 hours per day, all year round. This action would be very detrimental to the nesting birds and turtles and would be a step backward in the management of this important area. Fort Fisher is the only state park that provides 24-hour access. This measure passed the House.

The Senate has given final approval to legislation that would allow the state to borrow up to \$520 million without statewide voter approval to purchase land tracts for parks or buffer zones for military bases. The bill will now go to the House. DENR is in favor of this legislation.

DCM Staff News

Shery Keel, formerly the receptionist in Morehead City, is the new Permits & Consistency Units Secretary.

Mark Hardeman has joined the Morehead City Office as a field representative. Mark has been a marine contractor in the Craven and Pamlico Co. areas.

DCM is reactivating the Policy Analysis Manager position, which has been vacant for about three years. With the upcoming recommendations for CHPP, it is essential to increase staff who are able to do rule analysis and development.

With the activation of this position, DCM will have 8 vacant positions, a significant decrease from the 20 vacancies in March.

Other News

CHPP update – The Department completed the draft plan for long-term enhancement of the habitats that support North Carolina's coastal fisheries. Members of the public will have an opportunity to comment on the draft later this summer. The first public meeting will be held Tuesday July 13, at 7 p.m., at the NC Aquarium in Manteo. On Sept. 9 in Raleigh, all three commissions will meet to receive and discuss the CHPP.

In 2003, DCM and the N.C. Shore & Beach Preservation Association announced a joint initiative to fully map all of North Carolina's public beach accessways, including those not funded through grants from the Division. The project is nearly complete, and a new guide to public beach access sites will be available on DCM's web site in early July. Through this project, about 350 locally funded accessways were added to the web listing. Staff will present a live demonstration of the new web-based public access site locator at the August CRC meeting.

Ocean Committee Report – Gov. Easley submitted his official comments on the preliminary report from the U.S. Commission on Ocean Policy.

In a related matter, the Bush administration has decided to postpone consideration of rule changes to the Coastal Zone Management Act until after the Commission on Ocean Policy issues its final report to Congress and the White House later this summer.

The proposed rule changes would alter a CAMA provision requiring that federal offshore activities comply with state coastal zone management programs, including activities such as permitting of oil and gas development, establishment of fishing moratoria or designating lands and species as federally protected.

CRC appointments – In April, the Governor’s office sent letters to local governments asking for nomination for the eight CRC positions that will become available. The nomination period is now closed. A decision on new appointments is expected after July 1. Current commissioners’ terms of service will be extended past June 30 until Gov. Easley appoints new commissioners.

EMPLOYEE RECOGNITION

Vice Chairman Hackney presented Bob Stroud with a recognition plaque. Mr. Stroud is retiring after 32 years of service.

PRESENTATIONS

Coastal Beach Processes

Dr. Stan Riggs presented a lecture to the CRC on sediment supply and transport, the second such presentation focusing on coastal beach processes specific to North Carolina. He stated that while some North Carolina beaches are in a building mode, most are sediment starved and in a state of general recession in part due to a slow, yet gradual, rise in relative sea level. Several pictures were shown of beaches throughout the state, and Dr. Riggs pointed out the differences between the northern and southern provinces (i.e., north and south of Cape Lookout), linked the two regions to different coastal processes, and described how these processes were defined, in part, by sediment supply, wave energy, tidal fluctuations, underlying geology, and associated river systems. These physical factors, in turn, control the amount and types of sediments observed on NC beaches, i.e., grain size and composition, as well as their transport and fate. The same physical parameters also affect the shape and orientation of the barrier islands and their inlets. Dr. Riggs also pointed out that sand resources on the continental are related to the last ice age usually related to river channel deposits when sea level was over 300 feet lower than present. These beach-quality sands on the shelf are neither ubiquitous nor infinite and create a challenge for coastal management. If sediment-starved beaches do not see sand come back on its own, as is expected, the sand will have to be placed there. Dr. Riggs challenged everyone to consider from where this sand will come.

Overview of Installation and Performance of Stormwater Infiltration Systems

Bradley Bennett, from the Division of Water Quality presented an overview on state and coastal stormwater programs. He touched on source reduction improvements to include using bio retention areas and using underground sound systems; infiltration practices to allow runoff to move through soil, route larger storms around systems, and provide ongoing operation and maintenance; design issues to have suitable soil for infiltration, separation from groundwater and surface water, and separation from water supply wells; and other issues to include systems being designed by professionals, impacts on disturbed areas and large versus small project areas.

Coastal Habitat Protection Plan – IRC Recommendations

Steve Underwood gave a brief history of the CHPP process. He stated that primarily six commissioners –two each from the EMC, MFC, and the CRC – who serve as the IRC, developed

the recommendations. Mr. Underwood stated that the recommendations were centered on four general goals, with a series of recommended actions to reach each goal. He also stated that these recommendations were based on scientific studies cited in the CHPP document, deliberations of the EMC, CRC and MFC, and citizen input from public meetings. Mr. Underwood stated that the public has cited coastal development as the issue most needing immediate attention, followed by enforcement of statutes, rules, and permit conditions, and then environmental education and research. Mr. Underwood then gave a summary of recommendations, which were handed to the CRC members.

PUBLIC INPUT AND COMMENTS

Michelle Duval addressed the CRC regarding Phase II Stormwater rules. Ms. Duvall made mention of the lawsuit filed by the Environmental Management Commission (EMC) against the Rules Review Commission (RRC). Ms. Duvall stated that development of these rules was a long public process and the EMC was very responsive to the concerns of the RRC on several occasions. She stated that despite this, the RRC returned the rules on extremely questionable grounds. Ms. Duval informed the CRC that the Marine Fisheries Commission (MFC), in May, voted unanimously to demonstrate support of the EMC's case through the filing of amicus brief. She urged the CRC to consider taking similar action for several reasons. Ms. Duval stated passage of an effective Phase II Stormwater program would go a long way toward fulfilling the mandate that all three Commissions have with regard to implementation of the CHPP. Furthermore she felt that the CRC supporting the EMC would also demonstrate solidarity amongst the three major rulemaking commissions of NC. Ms. Duval feels the legislature needs to know that the CRC, EMC, and MFC are serious about working together to protect and effectively manage coastal resources and the Phase II rules is a key step in this process.

Thursday June 24, 2004

VARIANCE REQUESTS

John S. Bone, Jr., and Myra-Ladd Bone (CRC-VR-2003-10)

Merrie Jo Alcoke stated that David Heeter prepared this petition and a hearing was not heard on the matter because the Staff Recommendation included certain facts that the parties were not ultimately able to agree upon. Ms. Alcoke stated that it has been resubmitted as it was before, but with disputed facts omitted.

Ms. Alcoke reviewed the Stipulated Facts, on Attachment B of CRC-VR-2003-10, stating that John and Myra-Ladd Bone own duplex unit A on an oceanfront lot. There is a pool with decking in front of duplex unit B. The Bones applied for a CAMA minor permit to construct a second swimming pool with decking to serve their unit. The pool and decking would be located seaward of the erosion setback line. The area of the existing and proposed decking on the two lots would exceed the 500 sq. ft. limitation. The petitioners seek a variance on 15A NCAC 7H .0306(a)(1) and .0309(a) to construct a second swimming pool and deck on a lot shared by two owners, but still treated as a single lot.

Mr. Robert Outten, attorney for the petitioners, addressed the CRC and stated that though the property is one lot it is two separate titles. Mr. Outten stated that the property is divided through the townhouse regulations as opposed to being divided through subdivision regulations. He also stated that the existing pool is not common property. Mr. Outten stated that the owner of Unit B has used up the property rights of the entire lot to the detriment of the Bones owning Unit A. Mr. Outten stated that within the spirit and purpose of the rules had they chosen to build houses that were a foot apart they would be eligible for a pool, but because they built a common wall the Bones are not eligible. Mr. Outten stated that the proposed pool would not be on common property. Mr. Outten stated that this is unfair and inappropriate and the Bones should be able to use their property as the adjoining property owner uses his. He asked the CRC to grant the variance with consideration that these are two townhouses with two titles and two different owners.

Lee Wynns made a motion, seconded by Joan Weld to deny the variance as requested. The variance request was denied by a hand vote of 6 in favor (Emory, Griffin, Peele, Weld, Wilson, Wynns) and 1 opposed (Langford)

David Riso (CRC-VR-04-05) and John Wilson (CRC-VR-04-06)

Ms. Alcoke suggested that the CRC consider the same discussion for variances 04-05 and 04-06, due to the factors being identical. The CRC agreed, however would vote on the variances separately. (“petitioners” herein will identify both the Riso’s and the Wilson’s)

Ms. Alcoke reviewed the Stipulated Facts on Attachment B of CRC-VR-04-05, stating that the petitioners own two oceanfront lots, with one vacant. Ms. Alcoke stated that the petitioners applied for a permit to replace and relocate a septic tank and drain field for an existing residence. The proposed septic system would be located within a frontal dune on the landward side of an oceanfront lot. The permit was denied based on ocean hazard rules related to protection of primary and frontal dunes. The petitioners did not appeal that denial and revised plans to move the proposed septic system seaward of the frontal dune and closer to the dwelling as would be allowed under CRC rule. The petitioners also filed for a septic system permit with Currituck County Health Department at that time. Currituck County Health Department denied the septic system permit application for the second location. Therefore the Local Permit Officer denied the CAMA minor permit because the petitioners lacked the required permit for the septic system. The petitioners are seeking a variance on 7H .0306(a)(3) and 7H .0309(b)(3) to replace and relocate a septic system within a frontal dune on the landward side of the lot.

Ms. Alcoke stated that without the variance the dwelling would remain uninhabitable.

Mr. Outten addressed the CRC and stated that without the CAMA permit, the petitioners will be unable to obtain the Health Department permits or the building permit to repair the dwelling, making the property unusable. Mr. Outten stated that there are only two locations for the septic

system. One requires a variance on CRC rules, and the other was denied by the Currituck County Health Department.

Ms. Weld made a motion, seconded by Mr. Emory to deny the variance as requested. Some discussion took place that included Mr. Outten explaining that the Health Department did issue a permit to the petitioner for their original location of the septic tank. Once the permit was issued, the petitioner applied for a CAMA permit and was denied due to the location violating CRC rules. The Health Department then revoked the permit that was issued and the petitioner changed the location of the septic tank that would meet CRC rules. However, when the petitioners went back to the Health Department to apply for another permit they were denied based on the second location. CRC members participated in the discussion stating that they would grant the variance request upon the petitioner receiving the required permit from the Health Department. Mr. Outten then explained that if his client went to the Health Department first, his client would have to come back to the CRC and request the variance for a second time. He assured the CRC that the Health Department will issue a new permit and requested the CRC grant the variance now for time sake. **Mr. Langford made a substitute motion, seconded by Ms. Griffin to grant the variance for John Riso (CRC-VR-04-05) on the condition that the Currituck Health Department re-issue an appropriate permit for the first proposed location. The variance was granted with a hand vote of 5 in favor (Griffin, Langford, Peele, Wilson, Wynns) and 2 opposed (Emory, Weld).**

Mr. Langford made a motion, seconded by Ms. Griffin to grant the variance for John Wilson (CRC-VR-04-06) on the condition that the Currituck Health Department re-issue an appropriate permit for the first proposed location. The variance was granted with a hand vote of 5 in favor (Griffin, Langford, Peele, Wilson, Wynns) and 2 opposed (Emory, Weld).

Frank and Anne Harrington (CRC-VR-04-07)

Ms. Alcoke reviewed the Stipulated Facts on Attachment B, CRC-VR-04-07 stating that the petitioners own a lot in Ocean Isle Beach with an existing residence on the lot. The petitioners are seeking to remodel the existing home by making two additions. The existing home is located partially within the 30-foot buffer. One addition would meet the 30 foot buffer requirement. The other addition would extend 14 feet from the normal high water level. Ms. Alcoke stated that the petitioners would install an engineered stormwater plan and therefore a variance granted would be consistent with the spirit, purpose, and intent of the rules issued by the CRC.

Anne Harrington addressed the CRC. She presented two photographs of homes that are characteristic of what she is proposing to do to her existing home. The petitioners are seeking a variance from 7H .0209(d)(10), which requires that all new development be located a distance of 30 feet landward of the normal high water level.

Mr. Emory made a motion, seconded by Mr. Wilson to grant the variance as requested, provided that the Town of Ocean Isle issue the permit, and that an engineer supervise the design and construction of the stormwater retention system to ensure that it was built to

specifications. The variance was granted with a hand vote of all in favor (Emory, Griffin, Langford, Peele, Weld, Wilson, Wynns).

Lee Crouch, Jr. (CRC-VR-04-09)

Christine Goebel reviewed the Stipulated Facts on Attachment B, CRC-VR-04-09 stating that the petitioners are seeking to construct a pier, gazebo, ramp, floating dock and four boat lifts adjacent to Masonboro sound. Ms. Goebel stated that the property is located within the estuarine waters and public trust waters AEC's and is classified as primary nursery area by the Division of Marine Fisheries. She stated that the petitioners proposed the maximum length of the pier to be 328 feet from the waterward edge of the coastal wetlands vegetation into the waters of Masonboro Sound. This would place the waterward end of the structure about 119 feet from the 80-foot channel buffer. Ms. Goebel stated that there are two piers approximately 700 feet and 1100 feet away that extend to approximately 1/3 the width of the water body. These two piers would be similar to the proposed pier. However, this pier would be slightly larger since it would extend approximately 35% of the width of the water body. She stated that if the proposed structure is limited to 233 feet in length, following the 1/4 rule, the structure would have a significant adverse affect on the local Primary Nursery Area resources and the Division of Marine Fisheries (DMF) would recommend denial of a permit for such a project. Ms. Goebel stated that the DMF would not object to the project being built to the proposed 328 feet distance. Ms. Goebel stated that there is an unnecessary hardship resulting from strict application of the rules; such hardships result from conditions, which are peculiar to the property; and the proposed development is consistent with the spirit, purpose and intent of the rules.

The petitioners are seeking a variance from 7H .0208(b)(6)(J)(iii), to extend a structure more than 1/4 the width of a natural water body, human-made canal or basin.

William Raney, legal representation for petitioners, addressed the CRC stating that he is in complete agreement with the staff recommendations. Mr. Raney added that either of the two options present a problem with the applicant. If they propose to build in accordance with the 1/4 rule, they not only don't have sufficient water to really accommodate the type of navigation and docking that is normal for this area, but the DMF will object to the permit issuance because it will be in a area where the floating docks would rest on the bottom at low tide.

Ms. Weld made a motion, seconded by Mr. Langford to grant the variance as requested. The variance was granted with a hand vote of all in favor (Emory, Griffin, Langford, Peele, Weld, Wilson, Wynns).

P&SI COMMITTEE REPORT

Ms. Griffin presented the minutes from the P&SI Committee (SEE ATTACHMENT 1 FOR WRITTEN COPY). The CRC took the following action:

Ms. Griffin made a motion to approve the Certification of the Town of Nags Head Land Use Plan Amendment, which states the Town will require and will continue to mandate that any non-ocean front hotel or motel east of US 158 or east of NC 1243 shall be within a short walking distance of either a private deeded beach access or public beach ocean access

facility. Hotels and motels west of US 158 and fronting on Roanoke Sound shall provide private on-site access to Roanoke Sound for their guests. The motion passed unanimously (Emory, Griffin, Langford, Peele, Weld, Wilson, Wynns).

I&S COMMITTEE REPORT

Mr. Emory presented the minutes from the I&S Committee (SEE ATTACHMENT 2 FOR WRITTEN COPY). The CRC took the following action:

Mr. Emory made a motion to take proposed amendment to 15A NCAC 07H .1105 – Placement of riprap along estuarine shorelines, to public hearing. The motion passed unanimously by hand vote (Emory, Griffin, Langford, Peele, Weld, Wilson, Wynns)

Mr. Emory made a motion to adopt the amendment of rule 7H .0304(4)(b) – Unvegetated Beach Areas. The motion passed unanimously (Griffin, Emory, Langford, Peele, Weld, Wilson, Wynns)

CRAC REPORT

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

ACTION ITEMS

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

Chairman Hackney read the proposed amendment, stated that a public hearing was held in April with no significant changes were made. **Chairman Hackney called for a hand vote to adopt this amendment; the motion passed unanimously (Emory, Griffin, Langford, Peele, Weld, Wilson, Wynns)**

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

Chairman Hackney read the proposed adoption, stated that a public hearing was held in April with no significant changes. **Mr. Langford recommended that the rule be approved for adoption. The motion passed unanimously (Griffin, Emory, Langford, Peele, Weld, Wilson, Wynns)**

OLD/NEW BUSINESS

OLD BUSINESS

Mr. Emory requested that Chairman Hackney appoint a subcommittee of CRC/CRAC members to reopen the meeting schedule and to bring a recommendation back to the CRC in August to either change the schedule or leave as is. Mr. Emory suggested that the current schedule of Tuesday, Wednesday, and Thursday precludes doing business either end of the week and going to a Wednesday, Thursday, and Friday schedule to allow members to handle their business at the beginning of the week. Chairman Hackney stated that he will inform Eugene Tomlinson that the consensus is to reopen this topic and to appoint the subcommittee.

NEW BUSINESS

Ms. Weld stated that she would like to make a motion, to consider a resolution that the CRC join the MFC in support of the position of the EMC in its lawsuit with the RRC regarding Phase II Stormwater rules. She stated it is a positive way to show solidarity between the three Commissions, and shows support from the CRC of the importance of effective stormwater programs. She stated it also signals that the CRC is prepared to fulfill the CHPP's mandate. Jill Hickey gave some background on the current issue as the acting attorney for the EMC. Mr. Langford, and others, stated that they were not familiar enough with the details to support such a motion at this time, and could there be an update at the next meeting. It was also a group consensus that there would not be enough time to have a resolution drawn up for consideration. **The motion died for lack of a second.**

Chairman Hackney requested staff give a brief update on the status with the EMC with regards to stormwater rules at the August meeting.

With no further business, the CRC adjourned.

Respectfully submitted,

Charles S. Jones, Executive Secretary

Stephanie Bodine, Recording Secretary