

**Implementation and Standards Committee
March 23, 2006
Ramada Inn, Kill Devil Hills**

Bob Emory, Chair

Town of Duck Implementation and Enforcement Plan (I&S-06-10)

Ed Brooks, Minor Permit Program Coordinator, reported that the Town of Duck had completed the preliminary requirements outlined in GS 113A-117 and 15A NCAC 71 .0500 - .0700 for submission for CRC approval of their Implementation and Enforcement Plan to administer the CAMA Minor Permit Program within their jurisdictional boundaries. Brooks stated that the Town Council had held the required public hearing and adopted their I & E Plan by resolution on February 1, 2006. Bob Emory asked if staff was satisfied with the Town's plan and Brooks responded in the affirmative. At that point Ray Sturza, made a motion to send the Town of Duck's Implementation and Enforcement Plan to the full Commission for approval consideration. The motion passed unanimously.

Continued Discussion of Stormwater System Buffer Exemption (I&S-06-06)

Mike Lopazanski reviewed the Committee's efforts over the past year to develop an exception to the buffer rule for local governments implementing a local stormwater ordinance and program. During this time, the Committee and Commission have also heard from the Division of Water Quality proposal for a Universal Stormwater Management Program as well as the failure of the Coastal Stormwater Rules to protect overall water quality. The Committee was advised that the EMC Universal Stormwater Management Program rules were now open for public comment until May 15th and that the EMC is expected to adopt rules in July. Mike further advised that there was some alternate language being proposed that would decrease the amount of stormwater to be treated under the USMP. It was the recommendation of staff that the Committee delay further action on an exception for local governments with stormwater programs until the EMC takes final action. In this way, the CRC would ensure that their actions would more closely parallel those of the EMC.

Mike noted that while most of the buffer variances granted by the Commission failed to follow a clear pattern, one exception seemed to be those variances involving development along man-made canals that employed stormwater systems. Since January 2002, the CRC has heard 16 variance requests involving properties along man-made canals. Only two of these variances were denied, with one being later granted after alterations to the project were made and the other being denied because the structure could be located elsewhere on the lot. Mike reviewed draft language for an exception to the buffer for lots on man-made canals. He stated that it incorporated similar provisions as the exception for properties located in municipalities with local

stormwater programs such as a limitation to residential structures as well as a 30% limit on impervious surfaces in the buffer.

A question was raised regarding whether the proposed rules would allow pools in the buffer or not. After much discussion on the issue, a motion was made to not allow pools as an exception to the buffer rule. There was additional discussion among the Committee on whether or not pools should be allowed at all and if they met the hardship criteria required of a variance. It was pointed out to the Committee that variance request for pools in the buffer were becoming more common and that the Commission had granted several such variances over the past few years. The Committee noted this concern and agreed to be cognizant of this concern in future variance requests.

Finally, given the pending action of the EMC on the USMP, and that there was a desire to further discuss the granting of variances for pools, the Committee decided that it would be best to defer further action until it is clear what will ultimately comprise the Universal Stormwater Management Program. The motion was withdrawn and a request was made that staff provide the Committee with an update on the actions of the EMC at the June Meeting.

Sediment Criteria – Carbonate Content (I&S-06-12)

Jeff Warren reminded the Committee that the CRC approved the draft sediment criteria language for public hearing at their last meeting in January. However, Warren informed the Committee that staff had the opportunity for stakeholder input from both the CRC Science Panel and the Marine Fisheries Commission's Water Quality Advisory Council during the last month. Staff felt that many of these suggestions, in addition to further internal review, merited minor modifications to the draft rule language. Because the scenario existed to discuss and adopt these modifications at this meeting without having to move the existing public hearing date of June, staff felt there would be greater efficiency addressing these modifications prior to the public hearing rather than after. The reasoning behind this was the avoidance of additional public hearings associated with these suggested changes.

Several opinions on the proposed techniques in determining how sediment and shell material placed on the beach would be determined incompatible were offered as well as the appropriateness of adding such language to the rule on such a short notice. After some dialogue, a motion was made and passed unanimously to adopt the modified rule language for public hearing in June.

Structure Repair vs. Replacement Rule – Continued (I&S-06-11)

Roy Brownlow, DCM Compliance and Enforcement Coordinator, presented an overview of the proposed draft rule revisions of NCAC 7J .0210 and 7K .0209. Roy reported the draft changes implement specific guidelines yet provide flexibility for regulatory staff to

enforce the rules. The proposed rule revisions would allow staff to respond more timely to permit requests and would provide a fair but firm guidance in the permit decision process. The critical revision removes the responsibility of the local inspections office in determining the physical value of a structure allowing the staff to make this determination, and provides specific guidelines in making the 50 percent call. Pursuant to NCGS §113A-103(5)c, the draft now defines certain classes of minor maintenance and improvements which are statutorily exempt in addition to those specifically excluded by NCGS §113A-103(5)b.5. Furthermore, the draft defines the 'market value' of structures and provides alternative methods to derive the market value. In addition, the draft prescribes the methods for determining 'replacement' of existing water dependent structures.

Bob Wilson asked if accessory structures are included. Brownlow replied that accessory structures are still regulated as per 7K .0209 and decks are included if they are structurally attached to the principal structure. Melvin Shepherd wanted to ensure that the language is clear on how 'market value' is derived due to coastal construction and land values. Ted Tyndall answered that staff is proposing using only the 'sticks and bricks' costs only and removes the value of the land in making replacement and repair determinations. Joe Lassiter asked what the term adjusted tax value meant. Tyndall replied that it is the current tax value as derived from the county's tax assessor accounting for the county's reevaluation cycle. Ray Sturza expressed concerns in removing the value of location and land from the total costs and in the hierarchy of who can determine the cost of repairs, that there might be too many options available and could lead to an individual jumping around for the best cost. Ted Tyndall responded that the purpose of the rule change is to specifically remove the cost of the land and the intangibles that may be associated with it and simply focus on the value of the structure. Staff committed to looking further into these concerns.

Staff was then directed to look into the issues raised, to discuss any changes with counsel and bring the revised draft rule to the Committee in June.

Floating Docks and Piers Follow-up (I&S 06-09)

David Moyer gave a power point presentation on floating docks and piers. He stated that at the last Commission meeting the issue of floating/drive on docks was discussed in the form of a Declaratory Ruling. The CRC denied the request and asked staff to look at the structures to see if any rule change would be appropriate to allow for greater flexibility of the use of such structures.

David began his presentation with a history of the rule changes for docks and piers that occurred back in 1995. He discussed the issues that forced the Commission to change the rules including the "maxing out" of allowed structures, alignment, congestion, and navigation issues, excessive Public Trust usurpation, and various environmental impacts. David then showed examples of the various floating dock/boat lift technologies that exist today.

David stated that the third goal of the recently approved Coastal Habitat Protection Plan (CHPP) is to enhance habitat and protect it from physical impacts including docking facilities on shallow water habitat. He informed the Committee of several groups that were working on this issue including the CHPP Intra-agency Coordination group, the Multi-Slip Docking Facility Advisory Committee that Walter Clark with Sea Grant is heading up and the informal discussions that the Division of Marine Fisheries and Division of Coastal Management are holding regarding minimum water depths for dock structures based on bottom type and location. David stated the Multi-slip Docking Facility Advisory Committee would be holding public meetings next week in Washington and Wilmington for stakeholder input and discussion.

Staff recommended that the CRC defer any action on this issue until after these groups have released proposed recommendations in order to keep from going through the protracted rule-making process only to turn around and go through the process a second time to make any changes that may have resulted from the aforementioned groups' work. David pointed out that the Commission currently permits the use of floating docks and that the only problem is on those small lots that have already used their platform allotment based on their shoreline length. David then presented an alternative solution that looks at development as a maximum footprint or shading issue by combining all impacts allowed under the .1200 General Permit or the .0208 Major Permit Use Standards.

Frank Sheffield, attorney for Jim Andrews who petitioned the Commission for a change in rule making, then gave a brief presentation on the use of jet docks and highlighted many of the positives of using such structures. He recommended that the Committee change the general permit use standards to allow these structures to be placed into existing slips eliminating the conflict with the platform size limitations. There was concern expressed regarding the potential environmental impacts that floating docks can have on bottom habitats. After much discussion, a motion was made and seconded that staff defer any rule making action until after the various working groups have made their recommendations. The Committee emphasized that staff needed to ensure that the information provided to the working groups is fairly presented and that all trade offs on their use is explored. Staff will work with all three groups mentioned and report back to the Committee in June.

Static Vegetation Line (I&S-06-07)

Due to a lack of time, this issue was postponed until the June meeting.

DCM Ability to Regulate Marsh Alteration (I&S-06-08)

Due to a lack of time, this issue was postponed until a later meeting.

Estuarine Shoreline Stabilization Subcommittee Update (I&S-06-13)

Due to a lack of time, Bonnie Divito will present this to the full Commission tomorrow.