

Implementation and Standards Committee
September 21, 2006
Hilton Hotel, Wilmington, NC

Bob Emory, Chair

DWQ Acceptance of Permeable Pavement Systems (I&S-06-26)

Tancred Miller informed the committee that the State's Phase II stormwater bill requires DWQ to give property owners and developers credit for using pervious paving materials. Tancred's memo and the included section of DWQ's Best Management Practices Manual outline the amount of credit that may be given for various pervious paving systems. Tancred noted that the CRC has historically given credit for pervious paving systems under the "innovative design" provision of our coastal shorelines rules. DWQ's BMP Manual includes requirements for maintenance and inspection of the pavement systems, and represents an improvement in regulation of these systems. Tancred informed the committee that DCM staff and local permit officers will be directed to apply the DWQ standards in our normal course of business. Property owners and developers will be advised that in order to receive credit from DCM for installing pervious paving systems, they must provide satisfactory evidence to DCM that their systems meet the DWQ guidelines for design and installation. Staff does not see the need for any CRC action on this item.

Water Depth and Pier Construction (I&S-06-24)

Rich Weaver presented an issue to the Committee pertaining to an increasing number of requests for boat slips in water depths that may be too shallow to support boating activity. Rich presented a brief description of the problem and then introduced a memo from the Division of Marine Fisheries requesting that boat slips proposed in water depths of less than 3 ft. (4 ft. in some cases) be elevated to the Major Permit process. Rich then suggested that prior to taking such action, staff wanted to compile and analyze the data and present it to the Committee for discussion. The data for 2006 (to date) was presented to the Committee showing the total number of boat slips issued and denied, the total number of boat slips issued in waters open to shell fishing, the total number of boat slips issued in Primary Nursery Areas, and the number of boat slips issued in each CAMA county. Rich then presented an aerial photograph example that demonstrated the issue. After suggesting a few options, he closed the presentation by asking the Committee for guidance in addressing the issue of boat slip requests in shallow water depths.

Bob Emory asked if the recommendations from the Multi-slip Docking Facility Working Group addressed the issue of water depths. Staff responded that it did and committed to communicating with that group for details. Mike Street then commented on the reasons that Marine Fisheries is concerned with the issue and mentioned that "prop kicking" is becoming a big problem in these shallow areas as well.

Ted Tyndall expressed concerns that pushing the piers into deeper water often causes navigational issues, so it becomes a balancing act in permitting such structures. Lee Wynns and Chuck Bisette expressed that they felt that the current coordination between DCM and DMF appears to be working well and would rather not implement new rules at this time. Staff also expressed concern that elevating the many GPs for full review would drastically increase the workload of the Major Permits staff.

Melvin Shepherd then moved to allow staff to continue dialogue with DMF, and look for a non-regulatory solution. Lee Wynne seconded the motion. The motion passed with one vote in opposition.

Wetland and Marsh Alteration (I&S-06-21)

Terry Moore gave a slide presentation to the Committee that showed evidence that the constant mowing, burning, seeding, planting, and general alteration of the marsh can change the plant species composition as pioneering and fugitive species colonize an area. Terry stated that interest in marsh mowing seems to have evolved for many reasons including beautification, view, habitat elimination, defacing of the resource, and for disguising the marsh. He posed two questions to the Committee. First, does the Commission believe that there is statutory authority under the CAMA to consider these activities as development? And second, if it does, what guidance should the staff use in developing standards for rule making?

After some discussion and clarification, including whether or not to refer the issue to the Division of Water Quality for potential rule change to their basin-wide buffer rules, a motion was made and seconded to refer the issue to the Attorney General's office to ask for an opinion on the question of authority to regulate the mowing and cutting of the marsh. If the answer from the AG's office is in the affirmative, then Staff could come back to the Committee to address the specifics associated with the regulating of such activities. The motion passed eleven to four.

Static Vegetation Line Discussion (I&S-06-20)

Jeff Warren informed the Committee that the intent of his presentations was to present numerous concepts on static vegetation lines and oceanfront setbacks. Dr. Warren underscored the point that the draft rule language presented in the memo was prepared by staff as a tool for strategic discussions and not meant to imply that rule language was being presented for adoption. Data were presented on coastal hazards to frame the need for discussion including expected population increases, higher frequencies and potential magnitudes of hurricane, relative sea level rise, and statewide erosion rates. Dr. Warren began by describing the static vegetation line and presented the current policy that defined such a line. To simplify the discussion, a list of four concepts were presented for consideration: 1) Should large-scale projects be redefined in existing rules? 2) Should the setback revert from the static vegetation line to natural vegetation when most or all of beach fill project sand has eroded, 3) Should the alternative vegetation line language in existing rules be amended to allow additional methodologies for developing the line?

4) If a static vegetation line has been established, and if setback measurements revert back to natural vegetation, should development be allowed and, if so, only under certain restrictions?

Ocean Development Setback Discussion (I&S-06-22)

Dr. Warren also reviewed existing policies on oceanfront development setbacks and described a concept of a graduated setback based on the size of a structure. Three major concepts were identified for discussion: 1) Should oceanfront setbacks be based on size, and not use, of the structure? 2) Should oceanfront setbacks be increased? 3) Is the graduated setback concept an appropriate management tool for the oceanfront? Chairman Emory suggested that the Committee offer DCM staff guidance by considering all seven concepts. Melvin Shepherd made a motion to consider setbacks based on the size of a structure and not the use (e.g., residential versus commercial) and Spencer Rogers seconded. Numerous concerns were voiced, including how to define the size of a structure (e.g., height, footprint, total floor area) and its use (residential versus commercial versus multi-family), but the motion was withdrawn after it appeared there were still many unknown variables the needed to be considered before decisions could be made. Bob Wilson noted the issue of re-development versus new development since the barrier islands were almost fully developed must be considered when reviewing existing and future policies. Mr. Wilson also stressed the importance of including the local municipalities in the process. Spencer Rogers and Harry Simmons commented that 30-year setback factors may not be enough and Melvyn Shepherd added that the high number of non-conforming lots along the oceanfront indicated the setback factors guiding the initial development were not doing their job. Joan Weld wanted more information from the CRC Science Panel on their recommendations regarding setbacks. Jeff Warren agreed to re-distribute the 1999 short-term recommendations that had been made to the CRC by the Science Panel. Joan Weld also felt that the Science Panel should discuss the static line and setback concepts and potentially report back to the Committee. Overall, it was agreed that more data and further discussion would be needed before the Committee could give DCM staff guidance on potential directions for rule making.

Update on Estuarine Shoreline Stabilization Subcommittee and the Biological & Physical Processes Workgroup (I&S-06-25)

Bonnie Bendell stated that the Estuarine Biological and Physical Processes Workgroup has completed their task of making recommendations on appropriate shoreline stabilization methods for different shoreline types. The recommendations are compiled in a report and included in the CRC packet. Bonnie also reported that the Estuarine Shoreline Stabilization Subcommittee met Wednesday to discuss the recommendations report in detail. Discussion centered around the direction that staff should take in drafting possible rule concepts. The Subcommittee will meet again in October. Bob Emory, chairman to the Estuarine Subcommittee commended the Estuarine Work Group for completing the report in a concise and timely manner.

Draft Exception to Buffer Rule for Stormwater Ordinance (I&S-06-23)

Due to the lack of time, this agenda item was rescheduled until the November meeting.

