

Shore Protection Manager

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## CARTERET COUNTY BEACH COMMISSION MEETING

Minutes

Pine Knoll Shores Town Hall

October 27, 2003, 2 pm

### **Acronyms:**

CBOC – Carteret County Board of Commissioners

CRC - Coastal Resources Commission

EI – Emerald Isle

EIS – Environmental Impact Statement

NCDCM - N.C. Division of Coastal Management

USACE – United State Army Corps of Engineers

### **Attendance.**

Commission chair Buck Fugate, vice-chair William Donnelly, Commission Members Doug Brady, Bob Gallo, Jack Goldstein, George Herrmann, Pat McElraft, Art Schools, Dr. John Wells, Jim Willis III, secretary Greg Rudolph, and the general public. Member Joe Stroud was absent.

- (1) **Call to Order.** – Chairman Fugate proceeded to call the meeting to order.
- (2) **Approval of Minutes (Regular Beach Commission Meetings – September 25, and October 17, 2003).** – Vice-chair Donnelly motioned that the minutes for the September 25<sup>th</sup> regular Beach Commission meeting be approved as presented. The motion was seconded by member Gallo and unanimously approved. Chairman Fugate asked for a motion to approve the minutes from the October 17<sup>th</sup> regular meeting. This motion was provided by member Hermann, seconded by vice-chair Donnelly, and unanimously approved.
- (3) **Beach Commission Annual Elections.** – Chairman Fugate explained that the Commission's bylaws state that officer elections shall take place in October. On behalf of the Beach Commission, the County Manager has inquired with the Institute of Government as to the status of the four Commission members (Donnelly, Goldstein, McElraft, and Willis) that have not been appointed to date by the CBOC. Although no opinion has been rendered by the Institute of Government yet, it is believed that the members are seated and in good standing until removed. However, since a ruling has not been disclosed, it is recommended that the four members exempt themselves from voting in the elections as a precautionary measure. Also, six of the seven members that are not involved with the reappointment situation are present today, and this constitutes a quorum out of the eleven-member Commission. Thus, voting for the minutes, elections, and other issues should be acceptable.

Chairman Fugate continued that the only outstanding issue is that the four members that have not been reappointed should probably not be eligible for office for the time being. This circumstance will change once and if the reappointments are made by the CBOC. Member

Herrmann nominated William "Buck" Fugate for chairman of the Beach Commission. This nomination was seconded by member Dr. Wells and unanimously approved (6-0). Member Herrmann suggested that he could act as an interim vice-chair until member Donnelly was reappointed to the Beach Commission; at which time member Donnelly can be re-seated as vice-chair of the Commission. Member Gallo agreed with this approach and made a motion that member Herrmann should be elected as interim vice-chair. The motion was seconded by chairman Fugate and unanimously approved (6-0).

(4) **Beach Restoration Projects.**

A. **Bogue Banks Shore Protection and Brandt Island Pump-Out/Section 933 Projects Update.** – Chairman Fugate asked the Secretary to provide an update concerning the Section 933 Project. Secretary Rudolph noted that much of the information contained in the agenda packet has been conveyed to the Commission in e-mails and that the Energy and Water Develop Appropriations Bill for FY 04 may go to conference and be passed by this Friday (10/31/03). Also, there are good indications that the staffers for the House of Representatives are favoring to include the Section 933 appropriation in the conference bill, thus the only major obstacle to implementing the Section 933 Project is the lawsuit between Bean Stuyvesant (Bean) and Norfolk Dredging. The Shore Protection Office/Beach Commission has been in contact with the attorneys representing Bean and has provided information pertaining to the local impacts of the Section 933 Project. Bean plans to file a stay and an appeal to the U.S. Court of Federal Claims decision later today (10/27/03). Bean is structuring the stay in a manner that prevents the Federal Claims Court decision from proceeding, therefore Bean could conduct all the work associated with the Brandt Island Pump-Out and Section 933 effort. Also, Bean is asking for the appeal process to be completed by December 31, 2003.

Member Gallo confirmed that if the stay is granted, then the Project could begin almost immediately. If the stay is not granted, then Bogue Banks would have to wait until the appeal decision is forthcoming in December and that may put the Section 933 Project in jeopardy. Secretary Rudolph replied that if dredging has to start in January because the stay is not granted and the appeal decision is not rendered until late December, then completing the Section 933 Project within the environmental window could be very tight. Member Schools asked if Bean loses their stay motion, then is Norfolk awarded the bid. Secretary Rudolph replied the conventional wisdom is that the entire project will be postponed until the appeal is heard by the Court of Appeals. Member Donnelly asked if this Court was in the District of Columbia. Secretary Rudolph replied that this is the case. Member Donnelly noted that the U.S. Court of Appeals in D.C. was a very good court. Secretary Rudolph noted that that the Court of Appeals should provide their decision regarding the stay and an appeal timetable within 24 to 48 hours. Chairman Fugate asked how the Project Cooperation Agreement would be executed by the CBOC considering that the CBOC's only meeting in November is on the 3<sup>rd</sup>. Member Brady mentioned that the Project Cooperation Agreement could be placed on the CBOC agenda for November 3<sup>rd</sup> and tabled if the appropriation or lawsuit does not work in the County's favor. Or, an interim meeting could be called.

Member Gallo noted that he is in negotiations with the owner of the Iron Steamer Pier to place sand through the pier. The Corps construction plans includes a 1,000 foot buffer at each pier along the Base Disposal Plan area (Fort Macon and AB) and Section 933 (PKS) Project areas. Member Gallo also shared with the Commission that the Section 933 Project funding will first be borne by the PKS beach nourishment reserve and then the bonds will be sold to essentially reimburse the PKS beach nourishment reserve.

- B. Bogue Banks Restoration Project – Phase III Update.** – Secretary Rudolph asked member Schools to provide an update to the Beach Commission regarding the Bogue Inlet channel realignment Project (Phase III of the Bogue Banks Restoration Project). Member Schools noted that the preliminary Draft EIS has been submitted to the Project Development Team and any comments by this group should be submitted within the next few days. CPE will review these comments with the USACE and submit the Draft EIS for Public Review in early November. The public hearing for the Draft EIS will be held on December 8, 2003 at the EI recreation center. All the resource agencies seem to be cooperating and the Project appears to be heading in the right direction. Also, on a separate note, the sandbags at the Pointe have been granted an extension by the NC CRC and should be removed in August 2005, which is the same time that the municipally-owned sand bags are scheduled for removal. Secretary Rudolph added that the Project is undergoing a shift in the fact that the resource agencies now have strict timelines to submit their comments. Chairman Fugate disclosed that a few individuals have asked why the Beach Commission wasn't doing more in regards to the Bogue Inlet channel realignment Project. Chairman Fugate explained that EI is the Project sponsor, yet the Beach Commission is very interested in completing this third phase of the Bogue Banks restoration effort and that the secretary is on the Project Development Team. Chairman Fugate further explained that there is not a lot the Beach Commission can do at this point. Member Schools mentioned that he wished the Project was progressing in a quicker manner but again, the permitting process is running smoothly. Chairman Fugate concluded the discussion by offering the Commission's assistance at anytime.
- C. Morehead City Harbor Sand Management Strategies – Sediment Transport Study.** – Chairman Fugate mentioned that if the Beach Commission is ever going to come to grips with Regional Sand Management on Bogue Banks, then some independent study is going to have to be completed to bring the USACE to the table to implement Regional Sand Management, or in the worst-case scenario, use this information to implement a sand management plan by a litigative mechanism. The USACE often mentions regional sand management as a holistic approach to navigation, but the most egregious waste of sandy resources takes place at the Morehead City Harbor, yet no solutions appears to be forthcoming from the USACE. Chairman Fugate continued that he has spoken to the County Manager, chairperson of the CBOC, and County Attorney about this issue and the necessity for an independent study. The only study that has been completed to date was prepared by the USACE and only investigated potential damages to PKS. Chairman Fugate posed a question if the timing was correct to seek a request for proposal considering that the occupancy tax has been repealed by the CBOC, i.e., should the CBOC sign a multi-year agreement for a study if there will be no occupancy tax. The other side of this argument is that the Beach Commission must continue with beach preservation issues. Chairman

Fugate asked the Commission if they should instruct the Secretary to prepare a Request for Proposal.

Member Willis presented a three-year projection of the "beach fund" without the occupancy tax and noted that the beach fund could accommodate the independent study. Member Dr. Wells recommended that the Secretary should begin formulating a proposal and that the occupancy tax issue should be resolved in one way or another by the time a contract would be presented to the CBOC. Member Dr. Wells also mentioned that the "blank page" approach should facilitate some very innovative proposals and should provide the Commission a wide range of possibilities. It will likely take at least two years to complete the independent study. Vice-chair Herrmann agreed with member Dr. Wells and that the Beach Commission should proceed with the study. Member Dr. Wells mentioned that he was hesitant if the study would be used for litigation. Member Dr. Wells also asked for the Secretary's comments. Secretary Rudolph expressed some concern that if the occupancy tax is repealed and the independent study is pursued, then there will be no funding to participate in the Shore Protection Project and to retain Marlowe & Company. Member Wells replied that he was more concerned about the proposal preparation time. Secretary Rudolph noted that this aspect of the proposal and independent study would not be problematic. Member McElraft mentioned that she supported the independent study concept but was against any litigative measure. Member Donnelly asked when the feasibility report is to be completed. Secretary Rudolph replied that the study would be completed in September 2004 and that an independent study may draw more attention to the Shore Protection Project, which could mean that regional sand management planning will be incorporated into the Shore Protection Project and that the Project would receive appropriate funding.

Member Gallo made a motion to instruct the Secretary to prepare an independent study request for proposal and to return this proposal to the Beach Commission by their November meeting. The motion was seconded by member Dr. Wells and unanimously approved. Vice-chair Herrmann noted it is important to let the CBOC understand that the Beach Commission is dedicated to preserving the beaches of Bogue Banks, and this action is representative of this overall objective.

- (5) **Other Business.** – Chairman Fugate mentioned that he represented the Beach Commission in a regional sand management presentation to the Planning and Special Issues committee of the CRC and Coastal Resources Advisory Commission last week. The presentation was warmly received and the chairman was asked to give the same presentation to the full CRC the next day. The NCDRC staff also prepared a resolution for the CRC that was passed in an abbreviated format and essentially stated that the USACE should abide by all State rules. The CRC also passed a motion to hold a beach nourishment symposium.

Member Gallo asked if the CBOC was going to respond to the letter signed by all the Mayors in Carteret County to reinstate the occupancy tax. Member Brady mentioned that it is apparent that any changes to the bill will have to be made in the long session of the General Assembly (2005). Member McElraft noted that the local communities may have to at least pursue the possibility of a local bill if no resolution to the occupancy tax situation appears to be forthcoming. Chairman Fugate conveyed that this is a County issue and that hopefully a solution can be reached. Member Gallo expressed some concern regarding County Commissioner

Dawsey's letter to the editor and was wondering if a reply should be forthcoming from the Beach Commission or if there should be individual responses. Member McElraft replied that individual comments are up to each person's discretion, but the Beach Commission should not prepare a formal reply unless it only addresses the "illegal meeting" reference only. Chairman Fugate noted he will take these comments into consideration.

- (6) **November 2003 Meeting Date (November 24, 2003 – proposed)**. – It was agreed upon that the next Beach Commission meeting would be held on November 24<sup>th</sup> at 2:00 pm.
- (7) **Adjourn.**