

MINUTES

MEETING: COASTAL RESOURCES COMMISSION (CRC)

LOCATION: Ramada Inn
Wilmington, North Carolina

DATE: October 23-24, 2002

PRESENT: CRC Members

Eugene Tomlinson, Chairperson
Courtney Hackney, Vice-Chairperson

Bob Barnes	Ernie Larkin
Peggy Griffin	Jerry Old
Mary Price Harrison	Bill Peele
Doug Langford	Melvin Shephard

Coastal Resources Advisory Council (CRAC)

Ginger Webster, Chairperson
Bob Shupe, Vice-Chairperson

Frank Alexander	Harrison Marshall
Natalie Baggett	Bill Morrison
Joe Beck	Jim Mulligan
Donna Bridges	Lee Padrick
*Bryan Buck	Spencer Rogers
John Doughty	Mike Street
Carlton Davenport	Ray Sturza
Webb Fuller	Penny Tysinger
Renee Gledhill-Earley	Dave Weaver
Joe Lassiter	

**Representing Joe Dooley

Wednesday, October 23, 2002

Commission Call to Order

Chairperson Tomlinson called the meeting to order at 10:00 a.m. Chairperson Tomlinson advised that Executive Order Number One mandates that he remind CRC members that they must state if they had any conflict of interest or appearances of conflict with any items on the CRC's agenda. Chairperson Tomlinson asked CRC members to state, as the roll was called, if they had any such conflict or appearances of conflict.

Roll Call

Eugene Tomlinson:	Present. No conflict.
Alton Ballance:	Not present.
Bob Barnes:	Present. No conflict.
David Beresoff:	Not present.
Bob Emory:	Not present.
Peggy Griffin:	Present. No conflict.
Courtney Hackney:	Present. No conflict.
Mary Price Harrison:	Not present. NOTE: Ms. Harrison arrived at 10:05 a.m.

Patricia Howe:	Not present.
Doug Langford:	Present. No conflict.
Ernie Larkin:	Present. No conflict.
Jerry Old:	Present. No conflict.
Bill Peele:	Present. No conflict.
Larry Pittman	Not present.
Melvin Shephard:	Present. No conflict.

Approval of July 24-25, 2002 Meeting Minutes

Courtney Hackney moved that the minutes of the July 24-25, 2002, CRC meeting minutes be approved and his motion was seconded and approved (Bob Barnes, Peggy Griffin, Courtney Hackney, Ernie Larkin, Jerry Old, Bill Peele, Melvin Shephard). Doug Langford abstained from voting on approval of the minutes because he did not attend the July meeting.

Executive Secretary's Report

Donna Moffitt advised that in the interest of time, due to the CRC's full agenda, she would not give an oral Executive Secretary's Report. She stated that copies of the written report (SEE ATTACHMENT 1 FOR WRITTEN COPY OF REPORT) had been distributed and if anyone had any questions after they had an opportunity to read the written report she would be happy to address those questions tomorrow. Ms. Moffitt said she did want to mention one thing that showed up in her written report and that was that Jessica Gill would be leaving the Division of Coastal Management (DCM) and this would be her last CRC meeting. Ms. Moffitt said that she also wanted to remind CRC members, CRAC members, DCM staff and friends of the reception tonight at Airlie Gardens. Ms. Moffitt said there was one agenda change that she was aware of at this point. Ms. Moffitt advised that the Mark Saulnier (CRC-VR-02-05) variance request would not be heard today.

Courtney Hackney stated that he had one question. Dr. Hackney said that DCM staff had recently confirmed their earlier conclusion that the Oregon Inlet jetties were consistent with state policy. Dr. Hackney said the CRC's rules did not allow hard structures on the beach or hard jetty structures so he wondered how DCM staff concluded this was consistent. Charles Jones advised that DCM staff had determined that the Oregon Inlet jetties were consistent with state policy because the CRC allowed in their rules three exceptions to its shoreline erosion control policies and he reviewed these exceptions with the CRC. Ms. Moffitt responded that these exceptions in the shoreline erosion control rules, which were adopted by the CRC a number of years ago, allowed DCM staff to find that there was no reason to change the original 1981 consistency finding when the Oregon Inlet jetties were first presented to the state for a determination of whether they were consistent with the coastal management program. Ms. Moffitt reported that the letter sent to the Corps of Engineers (COE) stated that DCM had no reason to change their original determination and that DCM reserved the right to change its opinion if they received new information that would cause them to change its opinion.

Doug Langford stated that he had been looking at the action items on the CRC's agenda for tomorrow and one of them was the adoption of a temporary rule for variance procedures. Mr. Langford said he noted that this variance procedure had been adopted by the General Assembly the 30th day of July 2002. Mr. Langford asked if the CRC still had to act on this item. Ryke Longest responded that the only reason for that was really for editorial clarity. Mr. Longest said that now that the General Assembly had set forth what the factors were, the CRC's rules were in conflict with the statute and so all that the CRC would really be doing was conforming for editorial clarity the variance rules that were now set forth in the statute. Mr. Longest reviewed what the changes to the variance procedures were.

Presentation on Pew Ocean Commission Coastal Sprawl Report

Donna Moffitt introduced Dana Beach, Director of the South Carolina Conservation League, advising that he was the author of the Pew Ocean Commission Coastal Sprawl Report.

Mr. Beach advised that the first three decades of water quality protection in the nation had focused with some success on point source discharges and on their nonpoint source analogues. He said that land use was a vague after thought. Mr. Beach stated that if coastal aquatic ecosystems were to be preserved in the future, land use reform would have to become the central organizing principle of environmental protection strategies supplemented with, but not supplanted by, on site best management practices (BMPs). Mr. Beach stated that this would be a difficult transition because the current system sharply divided land use control, which was essentially the purview of local government, from environmental regulation which was thought to be the purview of the state. Mr. Beach said that over time this relationship, which was really a non-

relationship, had become quite comfortable and patterns had been fallen into to enforce that. Mr. Beach said if you considered how the coast could develop over the next 30 years, you would realize that this was not going to solve the problem of coastal pollution and it was not going to protect coastal habitats. Mr. Beach reviewed with the CRC the data, research findings, and recommendations contained in the Pew Ocean Commission Coastal Sprawl Report.

No action was required by the CRC on this information presentation.

Variance Requests

Ted Lukralle (CRC-VR-02-10)

Dave Heeter advised that he was with the North Carolina Attorney General's Office and he was representing DCM. Mr. Heeter stated that Mr. Lukralle had informed him that he would not be here today. Mr. Heeter advised that he did have a faxed copy of the Stipulated Facts that Mr. Lukralle had signed.

Mr. Heeter stated that Mr. Lukralle owned an oceanfront lot at North Topsail Beach, Onslow County. Mr. Heeter said the lot was within the inlet hazard area of environmental concern and had experienced severe erosion. Mr. Heeter stated that the Onslow County Local Permit Officer (LPO) had denied his permit application because the development he proposed was seaward of the first line of stable, natural vegetation and as a result he needed a variance from the CRC's erosion setback requirement and there was also a provision in the North Topsail Beach Land Use Plan (LUP) which he also needed a variance from.

Jim Gregson reviewed some photographs of the property with the CRC. Mr. Gregson advised that currently the erosion escarpment was approximately 3/4 of the way back under the house towards the street side. Mr. Gregson stated that Mr. Lukralle wanted to build a gravel drive coming all the way from New River Inlet Road and gravel beneath the structure to park on.

Mr. Heeter reviewed the Stipulated Facts contained in Attachment B of CRC VR 2002-10 (CRC-VR-02-10). Mr. Heeter stated that Mr. Lukralle had sent him some additional material in the last day or two that he asked be provided to the CRC and Mr. Heeter distributed this material to the CRC.

Courtney Hackney said that in his response to the variance criteria Mr. Lukralle states that this is his only home and is a primary residence. Mr. Heeter advised that this had not been stipulated to and he would argue strongly that Mr. Lukralle owned several other properties. Dr. Hackney stated that he questioned this because it appeared that this house was not being lived in. Jim Gregson said it was his understanding that the water and sewer had been reconnected but the power had not.

Mr. Heeter reviewed Mr. Lukralle's and DCM staff's responses to the variance criteria. Mr. Heeter advised that DCM staff was opposed to granting this variance request. Mr. Heeter advised that Mr. Lukralle's permit application had also been denied because of inconsistencies with the local LUP so he also needed a variance from the Town of North Topsail Beach.

Mary Price Harrison moved that the CRC deny this variance request and her motion was seconded.

Doug Langford said he would like to offer a substitute motion to approve the variance with the stipulation that he also get a variance from the Town of North Topsail Beach. Mr. Langford's substitute motion did not receive a second.

After discussion, **the CRC voted unanimously to deny this variance request (Bob Barnes, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Melvin Shepard).**

Benn Fishing (CRC-VR-02-06)

Dave Heeter reported that Benn Fishing, L.L.C., operated a boat building and maintenance facility at Wanchese, Dare County. He said the company applied for a Coastal Area Management Act (CAMA) minor development permit to add a 70' by 75' covered shop to its existing facility. Mr. Heeter advised that the LPO denied their permit application because the covered shop would be located within the 30 foot coastal shoreline buffer. He stated that Benn Fishing was seeking a variance from that particular buffer. Mr. Heeter stated that nobody would be present today representing Benn Fishing.

Mr. Heeter advised that a minor permit had been issued to Benn Fishing on September 23, 2002, to do what they wanted to do outside the 30 foot buffer which was what DCM had been arguing was evidence that there was no hardship. Mr. Heeter said that Benn Fishing had stipulated that they did indeed have a minor permit allowing them to do the work outside the buffer and they had agreed to submit that to the CRC today. Mr. Heeter advised that Benn Fishing had also submitted a letter they also wanted the CRC to consider which basically says they still wanted the CRC to consider their variance request. Mr. Heeter handed out to the CRC copies of the minor permit issued to Benn Fishing and copies of the letter he received yesterday saying they wanted the CRC to consider their variance request.

Mr. Heeter reviewed the Stipulate Facts contained in Attachment B of CRC VR 0002-06 (CRC-VR-02-06).

Mr. Heeter reviewed the petitioner and staff's response to the variance criteria. Mr. Heeter advised that DCM opposed this variance request.

Doug Langford advised that he did not know the petitioner and had never spoken to the petitioner but he did remember the process the CRC had gone through to provide for exceptions to the 30 foot setback rule and one of the things that came out in discussion before the CRC adopted the limited list of exceptions was that if someone had a traditional Carolina coastal use that they felt should fall within that list that they could always come before the CRC for a variance. Mr. Langford said this was certainly a traditional Carolina coastal industry and it was on the original list before it had been taken off for one of the exceptions. Mr. Langford stated that he felt boat building and commercial fishing in the list of exceptions the rule had as currently written created many nonconforming situations such as the two buildings that are already there. Mr. Langford said the stormwater runoff would be a great concern to him if this canal had not already reached a level of pollution where it was not acceptable for shellfishing or the consumption of any seafood that would be harvested there. Mr. Langford stated that he would also like to point out that the State of North Carolina owned the Wanchese Seafood Industrial Park which was built exactly like this with the buildings right on the water within the 30 foot setback and to not include boat building which was in the Seafood Industrial Park and fishing and to have a consideration for those industries and also for this variance he thought was creating a problem the CRC would have to deal with over and over again. Mr. Langford said the CRC had talked about functionally dependent uses which was a Federal Emergency Management Agency (FEMA) term as opposed to the water dependent the CRC talked about and traditional Carolina uses. Mr. Langford stated that functionally dependent uses he still believed were very important in the consideration of what should be allowed in the 30 foot buffer. **Mr. Langford moved that the CRC approve the variance request and his motion was seconded.**

Courtney Hackney stated that he understood where Mr. Langford was coming from and he did have sympathy for those traditional businesses. Dr. Hackney said he might feel a little differently about this one if it were that there was no other possibility for them to be able to continue the operation without being in the 30 foot buffer zone. He said in this case it was pretty clear that they could continue to do the boat building they had historically done outside of the 30 feet because they had plenty of space. He stated that in this case there was the opportunity to move at least one structure back even if the old structures were not moved back. Dr. Hackney said in this particular case he did not see that it denied the historical use of this particular piece of property and at the same time there would be less degradation to the water quality. Dr. Hackney stated that he might feel differently if there were no other choice but to put this particular building adjacent to the water, but in this case there was an option so he would oppose granting the variance.

Melvin Shepard expressed his strong opposition to granting the variance request.

Ernie Larkin said he agreed with Dr. Hackney and Mr. Shepard and was also opposed to granting this variance request. Dr. Larkin stated that the controlling factor here was that the shed could be built just outside the buffer zone. **Dr. Langford made a substitute motion that the variance request be denied and his substitute motion was seconded.**

Courtney Hackney called the question on the substitute motion. The CRC voted in favor of the substitute motion to deny the variance request by a vote of 7 in favor of the substitute motion (Bob Barnes, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Ernie Larkin, Bill Peele, Melvin Shepard) and 2 opposed to the substitute motion (Doug Langford, Jerry Old).

Fred David (CRC-VR-02-14)

Dave Heeter stated that Fred and Joy David were present today. Mr. Heeter advised that there were two minor changes to the Stipulated Facts. He reported that in Stipulated Fact No. 14 the square footage of the buildable area of the lot should be

2,580 square feet. Mr. Heeter said in Stipulated Fact 21 the last part stating "and a ten foot wide strip of grass" should be deleted from that Stipulated Fact.

Mr. Heeter advised that Mr. and Mrs. David owned a lot bordered by two canals in the Town of Ocean Isle Beach, Brunswick County. He reported they applied to the Ocean Isle Beach LPO for a CAMA minor development permit to construct a single-family residence on their lot. He said the permit application was denied for inconsistency with the CRC's 30 foot buffer requirement and this was what they were seeking a variance from.

Mr. Heeter showed the CRC slides of the David's lot.

Mr. Heeter reviewed the Stipulated Facts contained in CRC VR 2002-14 (CRC-VR-02-14).

Fred David stated that he and his wife appreciated the opportunity to address the CRC today and he thanked Mr. Heeter for the professional manner with which he had assisted him on this variance request. Mr. David advised that he was a visiting teacher at East Carolina University in the Management School of Business and that currently he was a professor at Frances Marion University. Mr. David stated that he commuted from Ocean Isle Beach where he was a permanent resident. Mr. David advised that he grew up in Whiteville, North Carolina. He stated that he ran a commercial deep sea fishing charter boat at Ocean Isle Beach and he took people fishing every day during the summer and on weekends year around. He stated that he had witnessed the decline in the fisheries and fishing for 40 years in the Ocean Isle Beach so he was very sensitive to environmental issues and appreciated the work the CRC did. Mr. David said, however, he was here today to ask for a variance request.

Mr. David said, having grown up near Ocean Isle Beach, six years ago he realized he would need a little larger lot than what would be allowed so he purchased a 70 foot lot. He stated that there were 51 corner lots in the Ocean Isle Beach scenic canal system and he owned lot number 47 which he purchased six years ago and, as he had said, it was a 70 foot lot. Mr. David advised that there were only 9 vacant corner lots left in the system. Mr. David reported that lot number 46 had just been granted a permit a few days ago for a 7 foot setback so he was certain, without even going through the variance request, that CAMA was going to allow the 7 foot setback for the other 50 foot lots. Mr. David stated that what he was asking for today was on a 70 foot lot to let them setback 17 feet from the mean high water mark. Mr. David stated that all of his adjacent neighbors were at 7 feet from the mean high water mark. Mr. David advised that when he discovered a year or so ago that there was a 30 foot buffer he and his wife had downsized their house plans. He stated that his wife had 10 brothers and sisters and they had 3 children so they needed a little larger house and that was why he paid double six years ago to get the 70 foot lot instead of a 50 foot lot. Mr. David said if they were forced to stay 30 feet off the mean high water mark he was going to be way out of line with his neighbors and he would have to build a substantially smaller house than he ever would have anticipated. Mr. David reiterated that his adjacent neighbor was at 7 feet off the mean high water and he was not requesting that. He said almost everyone of the cottages on the 51 corners were at 7 feet off the mean high water and they were not even requesting 7 feet. He advised that their variance request asked for a compromise of 17 feet off the mean high water because that would provide a nice 7 foot irrigation landscaping buffer there and they would do whatever the CRC needed with regard to stormwater retention. Mr. David stated that if they had to set their house back at 30 feet, 42% of their lot would be rendered unusable. Mr. David advised their lot currently experienced erosion but he and his wife were committed to improving the environmental situation on their lot and not harming it at all. He stated they were going to put a nice landscaped buffer along the whole north side to prevent any runoff into the canal.

Mr. David said if they had to set back 30 feet it would be a real hardship for them because they would have to build a substantially smaller house and that was why they had purchased the 70 foot lot six years ago at double the price. He said it would also be a hardship because their view would be dramatically restricted given that all of their neighbors were at the 7 foot mark. Mr. David stated they had submitted a compromise plan where they backed off 17 feet. He said that did restrict their view and it did restrict the size of the house but if they had to move back 30 feet it would be an unbearable hardship for them. Mr. David explained why they felt there were peculiar conditions associated with their lot.

Mr. David reiterated that, if the CRC would grant their variance request, they would put a 7 foot landscape irrigation buffer all along the north side of the canal and coupled with their gutter system, their grading of the lot back from the water and their gravel driveway they would nicely protect the environment. He said they would not harm the environment but would actually improve the environment. Mr. David stated that rendering 42% of their lot unusable would be unfair and unreasonable so they were asking the CRC to allow their compromise plan. He said that rather than setting back 7 feet as all of their neighbors, they were asking to be allowed to setback 17 feet. He advised this was the extent they could endure

cutting down the size of their floor plan any further and even though their view would be restricted at 17 feet they could endure that.

Mr. David said in conclusion that their hardships primarily were that they would have to build a much smaller house and they were the only 70 foot lot left and they had purchased it six years ago. He said they had cut the floor plan down substantially already. He said it was a hardship because it lowered the value of the house due the view and the alignment and the size.

Mr. David, Mr. Heeter and Brian Sasser, LPO for Ocean Isle Beach, responded to questions from CRC members.

Mary Price Harrison moved that the CRC grant this variance request and her motion was seconded. After additional discussion, **the CRC voted in favor of the motion to grant the variance by a vote of 8 in favor of granting the variance (Bob Barnes, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Ernie Larkin, Jerry Old, Bill Peele, Melvin Shepard) and 1 opposed to granting the variance (Doug Langford).**

Announcement from the Attorney General's Office

Jim Gulick advised that he was the Senior Deputy Attorney General in charge of the Environmental Division of the Attorney General's Office and that he was very well aware of the great importance of the work of the CRC. Mr. Gulick said, as the CRC members knew, Ryke Longest who had been their counsel for some time was going to do some other important work in the Attorney General's office. He stated that Mr. Longest would be working full time on implementing the Smithfield agreement looking for solutions to the animal waste issues in North Carolina. Mr. Gulick said he knew the CRC would wish Mr. Longest well. Mr. Gulick stated that he had completed the interviews for an attorney to replace Mr. Longest as counsel to the CRC but had not made a final decision but he could tell the CRC that he had a very talented applicant pool and felt the CRC would be very pleased with their new counsel.

Variance Requests Continued

Currituck Co. R.O. Plant (CRC-VR-02-13)

Merrie Jo Alcoke advised that she was representing DCM in the next four variance requests.

She said the first of these variance requests was filed by Currituck County. Ms. Alcoke recognized Pat McDowell, Currituck County's engineer, Dan Scanlon, Currituck County Manager, Owen Ethridge, County Commissioner, and Mike Bradley, Currituck County Attorney.

Ms. Alcoke advised that Currituck County was proposing to develop a Southern Outer Banks Water System within the Ocean Sands Subdivision near Corolla in Currituck County. She stated they applied for a CAMA Major Permit to install and operate a subsurface diffuser for the purpose of blending and disposing of discharge from the reverse osmosis water treatment facility. Ms. Alcoke advised that the discharge pipes would be required to go through the ocean setback area and to be deposited into the Atlantic Ocean and, therefore, the variance they were seeking today was from the setback rules that would not allow that type of development in the ocean setback area.

Ms. Alcoke reviewed Stipulated Facts contained in Attachment B of CRC-VR-02-13. Ms. Alcoke reviewed staff's response to the variance factors contained in Attachment C of CRC-VR-02-13.

Pat McDowell, project engineer, thanked Merrie Jo Alcoke and Doug Huggett for their assistance in processing this variance request. Mr. McDowell then presented an overview of the project proposal and the area the project would serve using a powerpoint presentation to assist with his explanation.

Mr. McDowell stated that Currituck County and DCM staff agreed on all four of the variance standards. He then reviewed the County's response to each of the four variance factors contained in the information provided to the CRC by Currituck County.

Mr. McDowell responded to questions from CRC members.

Jerry Old moved that the CRC grant this variance request and his motion was seconded. After additional discussion, **the**

CRC voted in favor of granting this variance request by a vote of 8 in favor of granting the variance (Bob Barnes, Peggy Griffin, Courtney Hackney, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Melvin Shepard) and 1 opposed to granting the variance (Mary Price Harrison).

John Adams (CRC-VR-02-16)

Merrie Jo Alcoke advised that Mr. Adams was present today and with him was Dan Bollick, a contractor from New Bern. Ms. Alcoke stated that they did not plan to present anything today but would answer questions if the CRC had any questions for them.

Ms. Alcoke stated that Mr. Adams had applied to install four moorings pilings adjacent to an existing dock in a manmade canal off Spring Creek in Fairfield Harbor Subdivision outside New Bern in Craven County. Ms. Alcoke reviewed the Stipulated Facts contained in Attachment B of CRC-VR-02-16. Ms. Alcoke advised that DCM staff was supporting this variance request because they felt it met the four factor test and she reviewed staff's response to the four factor test contained in Attachment C of CRC-VR-02-16.

Courtney Hackney moved that the CRC grant this variance request and his motion was seconded and approved by a vote of 8 in favor of the motion (Bob Barnes, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Ernie Larkin, Jerry Old, Bill Peele, Melvin Shepard) and none opposed to the motion. Doug Langford was out of the room when this vote was taken.

Village of Bald Head Island (CRC-VR-02-12)

Merrie Jo Alcoke stated that Ken Kirkman was here today to represent the Village of Bald Head Island along with Becky King with the Village of Bald Head Island.

Ms. Alcoke advised that the Village of Bald Head applied to install emergency stormwater outfalls on the Atlantic Ocean side of Bald Head Island. She said the outfalls were intended to drain flood waters during emergency situations. Ms. Alcoke said the pipes would be located through the erosion setback area through the secondary and frontal dunes and seaward of the first line of stable natural vegetation. Ms. Alcoke said the CRC's rules did not allow this kind of development in the setback nor did the development meet any of the exceptions provided in the ocean hazard rules.

Ms. Alcoke reviewed the Stipulated Facts contained in Attachment B of CRC-VR-02-12.

Ken Kirkman advised that Becky King, Village Manager of the Village of Bald Head Island, John Middleton, Assistant Village Manager and two representatives, Davis Fennell and Andy Mills, from Cape Fear Engineering who had designed this system were present today.

Ken Kirkman said he would like to emphasize that this was one of the rare times he could come before a regulatory commission and say what was being proposed we hope we never have to use and if it was used, it was going to allow what had already historically been done but in a much safer and more efficient manner. Mr. Kirkman stated that flooding in this area of Bald Head Island was a real problem because this area was a natural bowl. Mr. Kirkman advised this area had a natural dune system surrounding it. He stated it was not manmade in anyway and the roads were in existing low areas within that area. Mr. Kirkman advised that during these storms what occurred was an immense amount of rainwater plus some overwash into this area. Mr. Kirkman said that on Bald Head in dry conditions the natural percolation of the water worked very well but it did not work when the water table got real high and there was simply no place for the water to go. Mr. Kirkman advised that, in the past, what occurred was Bald Head had to scurry around and try to find one or more pumps and then try to find a way to get those pumps to the island. Mr. Kirkman noted that Bald Head Island marina was the only barge landing and if the marina got closed there was no way to get anything to the island to discharge this type of water. Mr. Kirkman advised that with the cooperation of the state agencies Bald Head was allowed to pump but the pumping was erratic and could not get a volume out in a time sufficient to address a lot of the public health and safety needs. Mr. Kirkman stated that the result of the pumping was that the hose could not be secured to the pump very well and beach scouring occurred. Mr. Kirkman said what Bald Head Island had attempted to do in this particular application was to design a totally passive system that was invisible, that was secured on both ends and which could only be used in an emergency with permission of the state agencies. He said this would allow the water to get off quicker and it would allow there to be a temporary trenching with a controlled bottom to control beach scouring. Mr. Kirkman stated it would allow the water to get out quicker which would allow the public to get back to the beach much quicker and would allow people to get back to their

homes much quicker. Mr. Kirkman said as to the trenching through the dunes, Bald Head had a great history of re-vegetation and an active vegetation program.

Mr. Kirkman advised that the petitioner believed that all the variance criteria were met both in intent and in the specifics of the project and DCM staff agreed. Mr. Kirkman advised that DCM staff had worked very closely to be sure that their concerns expressed during the permit process had been addressed. Mr. Kirkman said he wanted to mention one of these briefly. Mr. Kirkman stated that there was the concern that after a storm and after erosion that exposed pipes would be left on the beach. Mr. Kirkman said Bald Head had, therefore, redesigned the system both to anchor it so it would not wash out and become storm debris and to put it in removable 20 foot sections so it could be lengthened or shortened as necessary to keep up with the changing beach conditions.

Mr. Kirkman said this was a project that did all good and no harm and he urged the CRC's support of the project.

Jerry Old moved that the CRC approve this variance request and his motion was seconded.

Mary Price Harrison said in reviewing the Stipulated Facts she did not see a place where the Division or Department would be consulted for permission and she wondered if that would be a permit condition. Ken Kirkman responded that this was in Stipulated Fact 23. Ryke Longest advised that he would recommend that this would be a condition of the variance and would also need to be included in the permit as well. Jerry Old asked if the motion needed to reflect that and Mr. Longest responded that it would probably be a better practice. **Jerry Old amended his motion to approve the variance with the condition that the stormwater outfalls could only be used following approval of DCM and the Division of Water Quality prior to each use and his amended motion was seconded and approved by a vote of 8 in favor of the motion (Bob Barnes, Peggy Griffin, Courtney Hackney, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Melvin Shepard) and 1 opposed to the motion (Mary Price Harrison).**

City of Wilmington (CRC-VR-02-13)(erroneously labeled CRC-VR-02-14)

Merrie Jo Alcocke advised that David Cowell, the engineer for this project, was present today. Ms. Alcocke stated that this variance request involved the City of Wilmington's downtown "Riverwalk" project which was a pedestrian walkway spanning the downtown area. Ms. Alcocke said the City of Wilmington was granted a CAMA Major Development Permit and later a modification authorizing construction of a two-story building with a partially covered deck and floating dock at 128 South Water Street. She said this property was owned by George Coffin. Ms. Alcocke stated the City of Wilmington, in conjunction with Dr. Coffin, was seeking a variance from a permit condition. Ms. Alcocke said the permit allowed redevelopment of the area in question, however, there was a permit condition limiting the length that the deck was allowed to extend over the public trust waters. Ms. Alcocke advised that the petitioners were seeking a variance from that 20 foot limitation that was found in the CRC's urban waterfront rules.

Ms. Alcocke referred the CRC to Attachment A in CRC-VR-02-13 which cited the relevant statutes or rules involved in this variance request. Ms. Alcocke said the project did quality as urban waterfront redevelopment and, therefore, was subject to the special rules found under the CRC's coastal shoreline rules. Ms. Alcocke stated that one of these rules required that the structure shall not extend more than 20 feet waterward of the normal high water or normal water level.

Ms. Alcocke reviewed the Stipulated Facts contained in Attachment B of CRC-VR-02-13. Ms. Alcocke advised that the petitioners were applying for a variance to extend the deck from the 20 feet limitation to at one end 24 feet and at the other end 28 feet.

Ms. Alcocke reviewed staff's response to the four variance factors contained in Attachment C of CRC-VR-02-13.

David Cowell explained briefly what the petitioners were asking for in this variance.

Jerry Old moved that the CRC approve this variance request and his motion was seconded and unanimously approved (Bob Barnes, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Melvin Shepard).

Public Input and Comments

Chairperson Tomlinson stated that the CRC would receive comments and public input on any item that was not on the CRC agenda and was not under adjudication in any way. Chairperson Tomlinson advised that three people had signed up to speak to the CRC.

Dick Bierly, Morehead City: Mr. Bierly stated that he appreciated the opportunity to speak to the CRC. Mr. Bierly said his topic was House Bill 1540. Mr. Bierly advised that this bill had been introduced to nullify the rule the CRC passed to protect our citizens and property in the coastal zone. Mr. Bierly stated that in the aftermath of Hurricane Floyd (sic, Fran) the North Carolina Disaster Recovery Task Force recommended to the CRC the effectiveness of hazard mitigation rules and designated ocean hazard areas should be carefully evaluated and strengthened, if necessary, to reduce future property loss and protect property owners and barrier island beaches. He said the CRC reviewed its existing rules and determined that it could mitigate the damage of swimming pools and tennis courts by requiring these structures to meet the same setback requirements as any house or hotel. Mr. Bierly advised that the CRC prepared a proposed rule that would wisely prohibit the construction of new swimming pools and tennis courts in the ocean setback or hazard area. Mr. Bierly stated that the CRC held public meetings and accepted written comments. Mr. Bierly advised that the public response was uniformly supportive and no one objected. He said the CRC passed the rule and it was to go into effect August 1, 2002. Mr. Bierly reported that at the eleventh hour Representative Culpepper, obviously on behalf of some constituents, introduced a bill to nullify the CRC's rule. He said the rule was not assigned to the House Environmental Committee for consideration and swiftly passed the House and went to the Senate Agriculture, Environment and Natural Resources Committee. Mr. Bierly advised that there was no opportunity for environmental consequences to be discussed until this Committee hearing and even then it was clear the train had left the station. Mr. Bierly stated he was among several people who attended this Committee meeting and some of them had provided input. Mr. Bierly advised that he had a copy of his remarks at that time for CRC members. Mr. Bierly said the Committee seemed to accept Representative Culpepper's argument that the CRC had passed a one size fits all rule and that this rule infringed on ones personal property rights. Mr. Bierly advised that the bill passed the Committee after a spirited debate and ultimately it passed the Senate. Mr. Bierly stated that the bill to nullify the CRC's work was passed when Governor Easley did not sign it in the required period of time. Mr. Bierly said any reasonable person knew there was no way to assure that the debris from that next storm would only land on that particular property owner's land. He said it could just as easily land on the beach elsewhere or in someone else's living room. Mr. Bierly stated that the CRC knew this and they had done the right thing when they passed that rule. Mr. Bierly said, as the saying goes, the ball was back in the CRC's court. Mr. Bierly stated that the CRC was correct in writing that rule to protect people and property and he strongly recommended that the CRC go back to work and prepare a rule that would still provide that protection. He said the CRC could prove to the public that they would do their job and not be intimidated by one important representative influenced by a handful of constituents and their supporters who sat on the sideline during the process and then used their influence to negate the CRC's carefully considered work.

Emily Farmer, Emerald Isle: Ms. Farmer stated that she was a Commissioner at Emerald Isle. Ms. Farmer advised that Emerald Isle had an ordinance prohibiting swimming pools in the ocean erodible Area of Environmental Concern (AEC). Ms. Farmer stated that the reason they had it was because the CRC upon recommendations of the Coastal Hazards Science Panel developed a rule, went through a very public process to seek input during which there was little to no objection, and adopted the rule. Ms. Farmer said this was the way the process was supposed to work. Ms. Farmer stated that Emerald Isle followed the CRC's lead of setting common sense to coastal policy. Ms. Farmer said that as one of two citizens providing comments at the CRC's public hearing on the draft rule she found it discouraging as she was sure the CRC did that this sensible rule to cut down on storm debris and increased erosion was torpedoed by development interests in Dare County with powerful friends in the General Assembly. Ms. Farmer said it was particularly frustrating that a member of the CRC and a member of the CRAC spearheaded that back door effort rather than using their positions on these boards to work through the process. Ms. Farmer said she encouraged the CRC not to let this drop. Ms. Farmer urged the CRC to review the recommendations from the Science Panel and other groups who have studied the aftermath of the hurricanes of several years ago. Ms. Farmer said it may be that limiting pools to motels and hotels when there were larger setbacks would be enough to minimize the clean-up burden placed on tax payers and the destruction and erosion caused by structures in hazardous areas. Ms. Farmer stated that, in addition, it might be that limiting pools to fiberglass with minimal decking allowed only on the landward side would help. Ms. Farmer said that most members of the CRC did their job. Ms. Farmer stated that the CRC had a good rule done in by back door politics. Ms. Farmer urged the CRC to work to restore public confidence in North Carolina's ability to be proactive in protecting North Carolina's coastal resources and revisit this issue before the next storm strikes.

Michelle Duval, Raleigh: Ms. Duval stated that she was also here today to offer a few remarks about House Bill 1540. Ms. Duval advised that she was one of the people who did not have the opportunity to speak during the debate in the Senate

committee and she thanked the CRC for allowing her to make a few remarks today. Ms. Duval said, unfortunately, as the CRC had experienced, this bill illustrated the danger of the way the Administrative Procedures Act (APA) was currently structured. Ms. Duval stated that it demonstrated the ability of some legislators to not participate with a good faith effort in the administrative process and to abuse that process by not allowing rulemaking bodies such as the CRC to bring their expertise to bear on an issue. Ms. Duval said, however, rather than turning this into a debate over the APA because this had become a part of the issue, the CRC correctly recognized that the construction of swimming pools within the ocean hazard setback zone was simply a bad idea with regard to public safety. She said that obviously there were better and worse alternatives with respect to construction materials for swimming pools but unfortunately the bill's sponsor was not amenable to allowing a process that might have resulted in the development of criteria for the construction of pools in the setback zone that would minimize the threat to public safety and health. Ms. Duval said for that very reason they would also encourage the CRC not to abandon this issue especially considering the blanket nature of the exemption and its impacts. She said that in the interest of public safety they encouraged the CRC to pursue a process that would allow the development of minimum criteria for pool construction in the setback.

Chairperson Tomlinson asked if there was anyone else present who wished to address the CRC.

Jim Stephenson, North Carolina Coastal Federation: Mr. Stephenson stated that he wanted to add to this same subject of swimming pools and encourage the CRC to take action and revisit the issue and put together some rules that would be acceptable to the community they were regulating. Mr. Stephenson said he wanted to give a brief chronology of the ocean setback rules. Mr. Stephenson advised that on March 23, 2000, the issue came up before the Implementation and Standards (I&S) Committee. He said that the minutes from that meeting read:

Courtney Hackney stated that a consensus had been reached to begin developing new regulations on banning swimming pools and tennis courts from the oceanfront setback area.

Mr. Stephenson said on November 16th the I&S Committee again discussed it and unanimously approved sending the proposed rule amendment to the CRC. He stated that on November 17th the full CRC unanimously approved the proposed rule amendment. Mr. Stephenson advised that a public hearing was held on July 25th and there was one speaker, Emily Farmer from Emerald Isle, and the CRC voted to approve the rule, again unanimously. Mr. Stephenson said on October 5th there was a conference call and the CRC, due to a procedural error, had to re-approve the rule. Mr. Stephenson stated that there were no oral or written comments received from any developer or any realtor or any other member of the public in opposition to the rule.

Mr. Stephenson stated that he thought the CRC knew the sequence of what happened in the legislature which he would not repeat for the sake of brevity. Mr. Stephenson advised that The Wilmington Morning Star, The Charlotte Observer, and The News and Observer all condemned the action of the legislature and the procedure by which this rule was overturned by the legislature in very strong words. Mr. Stephenson said The News and Observer actually suggested that something to the effect that the legislature was sticking the CRC's head below water. Mr. Stephenson advised that the Governor, as the CRC knew and saw in Ms. Moffitt's report, did not sign this bill. Mr. Stephenson said it was only the third bill during his administration that he had not signed which was a significant action. Mr. Stephenson said, obviously, the bill was veto proof because of the sponsorship and the leadership from Dare County who supported the bill. Mr. Stephenson advised that in remarks the Governor's press secretary said:

The Governor did not sign the bill because he wants to make it clear that he does not favor rollbacks in environmental protection or hazard mitigation.

Mr. Stephenson reported that Press Secretary Cari Boyce said:

There is a way to fix this through the Coastal Resources Commission and it did not require a veto.

Mr. Stephenson advised that it was his sense that the Governor not only expected the CRC to revisit the swimming pool bill to restrict swimming pools and any other hazards from the oceanfront setback area but he actually wanted the CRC to do that. Mr. Stephenson said he would encourage the CRC to put it on their agenda and begin to take action at its January meeting.

Jan Harris, Brunswick County Environmental Action Team: Ms. Harris advised that she also had spoken at the Senate

committee meeting, or she partially spoke since she was cut off mid-stream. Ms. Harris said she also wanted to speak on the swimming pool issue. Ms. Harris said, more specifically, on how it came about. Ms. Harris stated that first of all she would like to thank the CRC for all their hard work. Ms. Harris said she watched the CRC during their meetings struggle hearing testimony from experts and people effected before they crafted a rule and then they put it out for public comment. Ms. Harris said when they put a proposed rule out for public comment that gave groups like the Brunswick County Environmental Action Team the opportunity to educate their membership and the public as well. Ms. Harris said, in fact, several CRC members had participated in some of their workshops when they tried to educate people on potential rules. Ms. Harris stated that the Brunswick County Environmental Action Team had been blown away when they learned there was a loophole in the APA that created a back door to legislation to afford special interest groups an opportunity that the public did not have. Ms. Harris said once it got to this point, the public had no opportunity to speak and control what happened with a rule. Ms. Harris advised that she was before the CRC today to encourage them that everyone now knew about this back door and this loophole that exists and to let the CRC know that they were looking to the CRC to continue to hear their remarks and make the rules accordingly.

No other individuals asked to address the CRC.

Thursday, October 24, 2002

Presentations

Typical Coastal Stormwater Management Systems

Charles Jones advised that at the last CRC meeting the CRC had asked for a presentation on designs for stormwater systems. Mr. Jones stated he had hoped to have a representative from the Division of Water Quality, Stormwater Group, to give background on their rules but, unfortunately, they had to back out at the last minute. Mr. Jones said Jim Mulligan was present to help answer any question that might arise after or during the presentations. Mr. Jones stated that also present was Allen Lewis who was with East Coast Engineering. Mr. Jones advised that Mr. Lewis actually designed and made sure stormwater management systems were installed properly and he was going to give a presentation on what their considerations were in coming up with designs for various systems.

Mr. Jones and Mr. Lewis then gave this information presentation. No action was required by the CRC on this information presentation.

Overview of SEPA/NEPA (CRC-02-03)

Doug Huggett advised that he was DCM's Major Permit Coordinator and one of the duties that came with that responsibility was that he was also DCM's SEPA coordinator. Mr. Huggett stated that the SEPA process was a very complex process and was very hard for a lot of people to grasp. Mr. Huggett said he had learned a lot about it since he had taken over this responsibility and had learned quite a bit more when he was preparing this presentation. Mr. Huggett said this presentation revolved around the North Carolina Environmental Policy Act or SEPA as it was commonly called for State Environmental Policy Act. Mr. Huggett said he was going to try to keep his presentation to some degree directed at SEPA as it relates to CAMA and the State Dredge and Fill permit process for which DCM was charged with enforcing.

Mr. Huggett then gave this information presentation and responded to questions from CRC members. No action was required by the CRC on this information presentation.

DENR Ecosystem Enhancement Program

Donna Moffitt said she was very pleased to introduce Bill Gilmore, a professional engineer. Ms. Moffitt advised that Mr. Gilmore was the Transition Manager for the Ecosystem Enhancement Program which was a partnership between the COE, the Department of Environment and Natural Resources (DENR) and the Department of Transportation (DOT) regarding mitigation for highway project impacts. Ms. Moffitt advised that Mr. Gilmore had a unique position in that he reported to both the Secretary of DENR and DOT. Ms. Moffitt reported that Mr. Gilmore had worked for DOT for 16 years and in the private sector for 16 years. Ms. Moffitt said the focus of his work had primarily been on management systems and application of NEPA and infra-structure projects across the nation. Ms. Moffitt reported that the CRC was the first commission to hear about the Ecosystem Enhancement Program.

Bill Gilmore thanked the CRC for inviting him to speak to them today about a really exciting program. Mr. Gilmore advised that North Carolina's Ecosystem Enhancement Program was literally a new approach to mitigation. Mr. Gilmore said the Ecosystem Enhancement Program was a multi-agency endeavor to look at how they could address the mitigation side of the project impacts in a more comprehensive manner. Mr. Gilmore gave an overview of how this program had begun and the progress made with the program to date.

No action was required by the CRC on this information presentation.

CRAC and Committee Reports

CRAC Report

Ginger Webster presented the report from the CRAC. (SEE ATTACHMENT 2 FOR WRITTEN COPY OF REPORT.) The following item required action by the CRC.

CRC/CRAC Meeting Schedules

Ms. Webster advised that the CRAC had a discussion at their meeting yesterday morning over their meeting procedures. Ms. Webster reported that she had actually brought these concerns to the Executive Committee at their meeting yesterday morning. Ms. Webster advised that many of the CRAC members were frustrated with having to choose between the CRAC meeting or the CRC variance requests that might be of interest to their appointing body and also missing some of the CRC's opening session presentations. Ms. Webster reported that Ms. Moffitt had agreed to work within the Department to help in anyway she could given the budget constraints. Ms. Webster advised that the CRAC did spend quite a bit of time talking about options. Ms. Webster said after a lot of discussion of meeting an additional day as well as alternative meeting schedules and budget considerations, a motion was made to ask the CRC to consider altering its meeting schedule so that they would not meet parallel to the CRAC. Ms. Webster said, in essence, what that would mean would be to ask the CRC to start their meeting on the afternoon of the first day and then have a full day on the second day. Ms. Webster said if for whatever reason that was not amenable to the CRC or convenient to the CRC's schedules, then the CRAC would want to alter their meeting schedule to come in the afternoon before as they used to do so that the CRAC would not miss any of the CRC's meeting. Ms. Webster advised this was voted on unanimously and they would await the CRC's discussion on that as they planned their January meeting.

Chairperson Tomlinson asked Ms. Moffitt to coordinate this effort between the CRC Executive Committee and Ms. Webster to see if they could come up with something that was agreeable to everyone.

Report from I&S Committee

Ernie Larkin presented the report from the I&S Committee. (SEE ATTACHMENT 3 FOR WRITTEN COPY OF REPORT.) The following items required action by the CRC.

Temporary Rule to Change Variance Criteria (I&S-02-10)

Dr. Larkin said approximately a year ago the CRC changed its variance criteria to temporary rulemaking based on the results of the Sammie Williams case whereby the CRC essentially dropped the fourth criterion. Dr. Larkin said, in the mean time, the General Assembly, as a result of conversations with the DENR and recommendations from DENR, amended CAMA to more precisely define what the variance criteria should be and to get those criteria in line with current development practices. Dr. Larkin advised this bill had been signed in August and it was now the CRC's task to pass a temporary rule to reflect the changes in CAMA. Dr. Larkin said the CRC did not have much choice about doing this but he would like to read through what those changes were because they would certainly effect the way the CRC deals with variances in the future and he reviewed these changes with the CRC. Dr. Larkin reported that the temporary rule the I&S Committee adopted reflects the statute just about verbatim with a few minor editorial words added. Dr. Larkin stated a motion had been made and passed to recommend to the full CRC that the CRC adopt the proposed temporary rule. **Dr. Larkin stated that he was bringing this as a motion from the I&S Committee. The CRC voted unanimously in favor of adopting this temporary rule (Bob Barnes, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Melvin Shepard).**

Temporary Rule for Riprap Groins Under the General Permit Provisions (I&S-02-11)

Dr. Larkin advised that this proposed temporary rule also came as a result of action by the General Assembly. Dr. Larkin stated the General Assembly had said:

The Commission shall allow the use of riprap in the construction of groins in estuarine and public trust waters on the same basis as the Commission allows the use of wood.

Dr. Larkin stated that what the I&S Committee had done with this was add to the rule the word riprap in a few places to equalize how wooden and riprap groins were treated and to add a few minor clarifications specific for riprap. Dr. Larkin advised that one of these clarifications was that riprap groins shall not exceed a base width of 10 feet. Dr. Larkin said the I&S Committee also clarified that riprap groins shall not exceed 2 feet above mean high water or the normal water compared to wood groins of 1 foot to allow for some settling of the riprap.

Dr. Larkin advised this temporary rule had been approved by the I&S Committee as a motion to the CRC to adopt the temporary rule amendment. The CRC voted unanimously to adopt this temporary rule (Bob Barnes, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Melvin Shepard).

Swimming Pool Issue

Dr. Larkin said that about a year ago the CRC passed a rule that deleted from the list of things that may be permitted within the ocean hazard area. Dr. Larkin stated the CRC's rules contained a listing of types of development that may be permitted seaward of the oceanfront setback requirement and the CRC had deleted from that list tennis courts, swimming pools and concrete slab shed floors. Dr. Larkin advised that before the CRC's rule became effective, the General Assembly passed a bill that said the CRC amendment by which swimming pools would be deleted from that list shall not become effective.

Dr. Larkin stated that tennis courts and concert slab shed floors were still taken out of that list of allowed development but swimming pools were restored to that list.

Dr. Larkin said to initiate the discussion he had recommended that this issue be sent to the Coastal Hazards Subcommittee of the I&S Committee for further discussion in an attempt to see if it were possible to delineate exactly what had caused this rule to be negated by the General Assembly and to see if there were ways the CRC could salvage some of the reasons the CRC wanted the rule to be in place in some form of compromise. Dr. Larkin stated that he felt that subcommittee might be the best way to begin to explore that issue.

Dr. Larkin advised that there had been a fair amount of discussion about the issue and a motion was made to send this issue to that subcommittee and that motion was defeated by a vote of 4 to 3. Dr. Larkin said he thought the primary reasons for its defeat were that it was felt this was more of a local issue than one that the CRC should deal with and it was also felt by some that it was a bit of an emotional issue right now and maybe a cooling off period would be appropriate. Dr. Larkin said there was a pretty thorough discussion at the time and since that motion was defeated there was no action on this issue.

Mary Price Harrison advised that she would like to re-raise this issue for several reasons. Ms. Harrison stated that the vote count of 4 to 3 represented less than half of the I&S Committee. Ms. Harrison stated she did not raise the quorum issue at the time but on thinking about it she thought perhaps it would be better considered by the full commission. Ms. Harrison stated that her distinct impression when she was working this bill very hard in the General Assembly was that the sponsor was not interested in amending the bill to accommodate some potential variances in the swimming pools such as concrete aprons around the pool and size. She said it was her impression that this was something that the CRC would fix and, in fact, when the bill's sponsor presented the bill to the House floor he specifically said this was something that the CRC needs to address and fix. Ms. Harrison stated that she spoke to several members after the House vote who said the reason why they voted the way they did was because they thought the rule was getting sent back to the CRC to work on some language that was acceptable to the stakeholders and regulated community. Ms. Harrison advised that she felt quite strongly that the CRC was given the direction to fix this at the CRC level. Ms. Harrison stated that the Governor made that same statement when he did not veto the bill. Ms. Harrison reiterated that she felt pretty strongly that this was something the CRC needs to address. Ms. Harrison said as far as whether it was a local issue versus a state issue she thought CAMA directed the CRC to protect the coastal resources. Ms. Harrison said she would like to re-raise this issue for debate and consideration by the

full CRC.

Ms. Harrison moved that the CRC consider re-referring this issue to the Coastal Hazards Subcommittee and her motion was seconded.

Doug Langford said his intent was not to even imply what the majority of the members of the CRC should do or not do but he would like to provide the CRC with a bit of insight that he was made aware of. Mr. Langford said in two places pursuant to this section it was stated that a board of commissioners may order the removal of a swimming pool upon a finding that the swimming pool was dangerous or prejudicial to public health and safety for both counties and for cities. Mr. Langford said the reason this was put in there was that it was a restating of a state statute. He said, as the CRC heard yesterday, Emerald Isle already had an ordinance prohibiting this action. Mr. Langford said the reason this was put in there twice, and was actually restating a statute that was already on the books, was fairly obvious. Mr. Langford stated it was because it was felt this was a local zoning issue and they wanted it decided by towns, cities and counties who certainly had the statutory authority to do so and they were elected representatives of those towns, cities and counties and as elected representatives of those people. Mr. Langford said if you stopped and thought about it of the 20 counties there were great differences between the coastal environment in the various coastal areas. Mr. Langford said, therefore, this was put in there to make sure there was no doubt whatsoever that statute did apply in this situation.

Ernie Larkin stated he felt it was a positive thing that those two statutes were in there. Dr. Larkin said he would note though that what they dealt with was that the boards, either city or county, may order the removal of an existing swimming pool if they find that it was dangerous or prejudicial to public health or safety. Dr. Larkin stated this was a little different than whether the pool was allowed to be there in the first place or not.

Doug Langford said he agreed with Dr. Larkin except for the fact that it was taking part of the statute and that state statute gave counties and towns because they were the legal entity that had the responsibility for zoning the right to pass an ordinance that prohibits anything they felt was adverse to health, safety or welfare of their system.

Mary Price Harrison said the Emerald Isle ordinance had been adopted and passed after the CRC initially proposed the rule and they were motivated by the fact the CRC was adopting a similar rule and she understood there was a chance that ordinance might not last as a result of this legislation. Ms. Harrison stated that in researching the history of this rule, the exceptions were added back when the setback rules were changed and there was a feeling that there might be some takings law suits that would ensue in the setbacks and so the exceptions were added so that folks could use their property. Ms. Harrison said what she read was that these exceptions in the oceanfront setback were intended to be limited to hotels and motels and larger commercial facilities and not the proliferation of pools for private residences that have caused the debris problems after hurricanes.

Courtney Hackney said he thought the CRC was getting two issues a little confused. Dr. Hackney said clearly there were a lot of occasions and cases where the CRC had structures in the ocean hazard zone which did not start out there but because the ocean moves they ended up being there. Dr. Hackney stated that local governments already had authority to remove those structures whether they were houses, motels or swimming pools. Dr. Hackney said what was being talked about here was in the permitting process of building a house the CRC required that structure to be so far back from the ocean. Dr. Hackney advised the CRC was not really talking about having it removed, they were talking about whether it was permitted in the beginning. Dr. Hackney reminded everyone that the reason the CRC got into this was not because the CRC did not want people to be able to swim in swimming pools, it was because of impacts from hurricanes where the CRC observed not just swimming pools but other kinds concrete structures got thrown around and damaged and endangered health and public safety. Dr. Hackney said this was the reason the CRC got into this issue to begin with. Dr. Hackney stated you could still build a swimming pool but you had to be outside of the ocean setback. Dr. Hackney said the CRC's intent of the rule was not to deny swimming pools but rather to use the same standards for swimming pools that they used for other structures.

Jerry Old said it appeared to him that this was basically an economic issue. Mr. Old said there was a cost associated with debris flying and doing damage but on the other hand swimming pools provided for a tax base. Mr. Old reiterated he felt this was basically an economic issue. Mr. Old advised said what was asked for yesterday was just to let this is sue cool off a little.

Melvin Shepard said what made him lean towards revisiting this issue was the possibility of coming up with recommendations that swimming pools be made of something that was not so destructive as concrete such as fiber glass.

Mr. Shepard stated that he felt if this was referred to the Coastal Hazards Subcommittee they would probably be able to provide the CRC with some good recommendations on how this issue was effectively handled in other states.

Doug Langford asked who was on the Coastal Hazards Subcommittee and Mary Price Harrison responded that the subcommittee was made up of Ginger Webster, Dave Weaver, Mike Street, Melvin Shepard and Ernie Larkin.

Melvin Shepard called the question and his motion to call the question was approved.

The CRC voted in favor of Ms. Harrison's motion to refer this issue to the Coastal Hazards Subcommittee by a vote of 6 in favor of the motion (Bob Barnes, Peggy Griffin, Mary Price Harrison, Ernie Larkin, Bill Peele, Melvin Shepard) and 3 opposed to the motion (Courtney Hackney, Doug Langford, Jerry Old).

Report from Planning and Special Issues (P&SI) Committee

Peggy Griffin gave the report from the P&SI Committee. (SEE ATTACHMENT 4 FOR WRITTEN COPY OF REPORT.) The following items required action by the CRC.

North Topsail Beach LUP Amendment (P&SI-02-11)

Ms. Griffin advised that the **P&SI Committee had voted to recommend certification of the proposed amendment to delete the "move-back" line policy from the Ocean and Inlet Hazard Areas policies of the North Topsail Beach LUP to the full CRC. The CRC voted unanimously in favor of the motion from the P&SI Committee to certify the proposed amendment to the North Topsail Beach LUP (Bob Barnes, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Melvin Shepard).**

Perquimans County LUP Update (P&SI-02-10)

Ms. Griffin reported that the **P&SI Committee had voted to recommend certification of the 1998 Perquimans County Land Use Plan Update and the CRC voted in favor of this motion from the P&SI Committee to certify this LUP update by a vote of 8 in favor of the motion (Bob Barnes, Peggy Griffin, Courtney Hackney, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Melvin Shepard) and none opposed to the motion. Mary Price Harrison abstained from voting on this motion.**

Granting of Planning Authority to the Towns of Emerald Isle and Oriental

Ms. Griffin advised that the Towns of Emerald Isle and Oriental had requested planning authority from the CRC to develop individual plans and the **P&SI Committee voted to recommend to the CRC that planning authority be granted to the Towns of Emerald Isle and Oriental to develop individual CAMA Land Use Plans. The CRC voted unanimously in favor of this motion from the P&SI Committee (Bob Barnes, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Melvin Shepard).**

Old/New Business

Future Discussion of Coastal Habitat Protection Plans (CHPPs)

Mike Street said that the preparation of CHPPs by law was a DENR process and not a Division of Marine Fisheries process. Mr. Street stated that the North Carolina CHPPs program was created by the General Assembly's Fisheries Reform Act of 1997. He advised that the goal of the Act was the long term enhancement of coastal fisheries associated with each habitat. Mr. Street said the plans were to be prepared, and were being prepared, by DENR. Mr. Street said there was the CHPPs Development Team which was comprised of technical staff from DWQ, DCM, Marine Fisheries, Environmental Health, Wildlife Resources Commission as well as the Fish and Wildlife Service. Mr. Street stated that the plans were to be adopted by the Marine Fisheries Commission, the Coastal Resources Commission and the Environmental Management Commission, and once they were adopted implementation was mandated. He stated that implementation could be rulemaking, program enhancement, compliance monitoring, enforcement, research and a variety of other activities. Mr. Street stated there was nothing else like this anywhere in the country. Mr. Street stated there was going to be one North Carolina Coastal Habitat Protection Plan and it was being drafted now. Mr. Street said some sections were substantially complete and had been through DENR review and others had not even been written. Mr. Street said this plan would address six major habitats on a

coast-wide basis. Mr. Street stated that following that there would be 11 management unit plans which would address critical habitats within watersheds. He reported that the watersheds that would be addressed were based on the basin-wide plan of the Environmental Management Commission, DWQ, as modified based on habitat types and fisheries resources. Mr. Street said the CHPP document was a scientific document and DENR was doing there best to minimize scientific jargon and have it as understandable as possible but the things they had in their must be based on good science. Mr. Street stated it would serve as a reference document for the 11 geographic plans and for other folks doing other kinds of planning. Mr. Street stated that it described the various habitats, their functions and utilization of those habitats by fishers, status and trends of those habitats, existing and potential threats and recommended management actions. Mr. Street reviewed the six habitats and briefly reviewed a few things about each of the habitats.

Mr. Street advised that beginning in January staff would begin presenting one or two habitats to each of the three commissions at their meetings. Mr. Street said this was a process recommended by Secretary Ross so the commissions could develop their knowledge about these habitats and about the CHPPs process gradually as they did for the changes in the land use plan rules. Mr. Street advised staff would be giving powerpoint presentations and possibly a couple pages of summary information. Mr. Street said they would talk about the habitats and functions in much more detail than he had done today. He advised they would talk about status and trends in these habitats, would discuss the threats, present preliminary management options and seek guidance from the CRC. Mr. Street advised that by the end of next summer there would be a draft CHPP that would be given to the Inter-commission Review Committee. Mr. Street reminded the CRC that the IRC was composed of two members of each of the three commissions who were providing oversight for this process. Mr. Street said they would take this document over several months and go from the options to recommendations. Mr. Street advised that DENR staff would not be developing the recommendations but rather the IRC would develop the recommendations that would go to all three commissions. Mr. Street stated there would be public input during that period as well. Mr. Street said it was hoped that all three commissions could get together late next year for discussions. Mr. Street stated that the plan should come to the three commissions in the spring of 2004 for action and adoption. He advised that the law provided that this was supposed to happen by July 1, 2003, and the intention of DENR was to request a one year extension.

Mr. Street responded to questions from CRC members.

Miscellaneous

Doug Langford

Doug Langford said he had an idea that he had shared with several people. Mr. Langford stated that it was a thought that if it was embraced by the CRC would help improve the way the CRC was able to focus on the issues that were pertinent to the various areas of the twenty county jurisdiction of the CRC. Mr. Langford said the environment in the Wilmington area was not the same as the environment in the northeast and the water quality was not the same. He stated there were so many things that were different between these areas so that when the CRC passed a rule and then found themselves getting very passionate about their position on certain rules it might be because the CRC was passing rules where one size fits all and the rule had to apply to all these areas. Mr. Langford stated that where it was targeting a very important issue in one area, for the sake of discussion he would say Wilmington, then it might actually be of a punitive nature to other counties within the twenty county jurisdiction. Mr. Langford advised that he had mentioned this to Joe Lassiter and he thought it was good idea and he said one way this could be structured would be to do it by basin areas. Mr. Langford said, for example, the Pasquotank Basin would be one area, the Tar/Pamlico would be another and then the Neuse, Trent and Cape Fear Basin would be another and then when the CRC adopted rules whatever they might be the rule or rules could apply to just the Pasquotank Basin or to all three or two out of the three wherever they would be most effective in implementing the policy that was the intention of the CRC to implement. Mr. Langford advised that he had checked with the CRC's attorney and found that there was nothing in CAMA to preclude this action. Mr. Langford stated he felt it needed further study because he certainly was not asking for action on the part of the CRC today but the three basin area might be the way to go or it may not be the way to go but he truly believed that what it could do was help the CRC target the areas that had specific challenges without any down side to other areas in the twenty county jurisdiction. Mr. Langford asked Chairperson Tomlinson to send this to one of the CRC's standing committees and from there the committee could report back to the full CRC.

Chairperson Tomlinson assigned this issue to the P&SI Committee.

Jerry Old

Jerry Old said he had been here four days and he had seen a lot of work by people out in the field and it became evident that their desire to make a difference was certainly one of the things that kept them going and not any reimbursement that they might receive. Mr. Old stated that he felt the cost of what it actually cost DCM to do business needed to be looked at and subtract from that the fees DCM received for doing that and divide that by the number of permits DCM issues and that amount was what DCM should be charging to do their business. Mr. Old said a lot of things DCM was doing were luxury items like boat lifts or condominium projects and those things were not necessities to life and those people who were doing those projects would be glad to pay the money if DCM gave them quality service. Mr. Old stated that it would be his suggestion that the CRC look into what it actually cost DCM to do business and then transfer that to the permits that were being issued.

Melvin Shepard advised that he agreed with Mr. Old and that he felt DCM's permit fee schedule needed to be looked at and revised.

Donna Moffitt said she appreciated Mr. Old and Mr. Shepard's concern on this issue. Ms. Moffitt said she was at the point that she would rather exist off fees than general appropriations from the General Assembly because you could count on fees. Ms. Moffitt stated that people still wanted to build in spite of what the economy was doing. Ms. Moffitt reported that DCM's applications had not fallen off that much but that it was for someone else to decide if DCM was going to have a program that was run more by fees than general appropriations. Ms. Moffitt advised there was one area though that she would like to bring to the CRC's attention and that was CAMA caps the amount of fees that can be used to support the regulatory program at 33 1/3%. Ms. Moffitt said she knew of one program that got the General Assembly to take that cap off and that was the Division of Land Resources. Ms. Moffitt stated that if the CRC wanted to create a program that was run by the people who use the services of DCM, they would probably need to look at removing that cap in CAMA.

Chairperson Tomlinson asked Ms. Moffitt to bring something for the CRC's consideration at the January meeting.

Melvin Shepard

Melvin Shepard said what he would like to see brought up, probably in the I&S Committee, and the CRC had talked about it and had asked for something to come to them that talked about how you actually decided whether or not this project was capable of retaining the groundwater it says it was going to retain on an individual variance request or something. Mr. Shepard said the CRC had asked for that to come back to them. Mr. Shepard said what he was hearing at this meeting was that there were some counties and some municipalities that were already doing the job for the CRC so that the CRC could depend on them to guide their own efforts. Mr. Shepard said it seemed to him that the CRC needed to put together some sort of guidance document that as the CRC considered variances here was the guidance. He said, in other words, when this guy says he has got, in an unincorporated area, a plan to retain his stormwater from his building or home what was the plan. Mr. Shepard said was it one that needed certification, what were the CRC's requirements for him to meet. Mr. Shepard stated that the CRC did not have those requirements in hand at this time and it seemed to him that the CRC already had people showing up that the CRC could recognize in this document that we rely on x town or x county.

Charles Jones responded that there was some guidance. He said, in fact, with the exceptions that the CRC did allow within the buffer there was the requirement that it be built to the standards that Allen Lewis was talking about yesterday which were the EMC standards for their high density coastal development which was the retention of 1 1/2 inch adjacent to SA waters. Mr. Jones advised this was specified in the rules and it had to be designed by a certified professional. Mr. Jones said there might be some clarity that needed to be done when the individuals came in such as having the plan as a part of the variance package so the CRC could tell exactly what was going to be done. Mr. Jones stated this was something that could be suggested to someone who made a mitigating offer to have such a device.

Donna Moffitt

Ms. Moffitt said she wanted to thank all of the CRC and CRAC members who wrote, e-mailed, called or discussed the issue with their local government the proposal in the Senate budget to relocate the Raleigh office. Ms. Moffitt said that proposal did not make it into the final budget and she felt like it had a lot to do with everyone who lobbied on behalf of DCM and DENR to not have that provision. Ms. Moffitt stated that would have had an extremely negative impact to the coastal management program primarily because 1/2 of the DCM staff are in field offices. Ms. Moffitt advised that the Raleigh staff

dealt with other state agencies, federal agencies, DENR senior management and were not the ones who dealt most directly with the public but beyond that not a single person in the Raleigh office, except for herself, could relocate to the coast. Ms. Moffitt said, in essence, DCM would have positions going to the coast without bodies in them to do the work but the work would still have to go on and that work would have to be delegated to the field staff. Ms. Moffitt said DCM felt that proposal was not in the best interest of the state, its citizens or the program.

Ms. Moffitt advised there was one person who had taken a major role in helping to lobby the General Assembly to get that provision out of the budget and at this time she would like to ask Mary Price Harrison to come forward and receive a certificate of appreciation on behalf of DCM staff.

Changes to CRC Operating Procedures (CRC-02-02)

Donna Moffitt said the last time the CRC had reviewed and adopted changes to their Operating Procedures was 1999 and a number of things had happened since then that she felt warranted a re-look at the Operating Procedures and also the CRC's attorney had suggested that some changes were in order for other reasons. Ms. Moffitt said these were both substantive and editorial changes. Ms. Moffitt then reviewed the proposed changes contained in CRC-02-02.

Mary Price Harrison moved that the CRC approve the changes reviewed by Ms. Moffitt to the CRC's Operating Procedures contained in CRC-02-02 with the exception of the changes proposed to Article IX, Section 4. The CRC agreed that this section should state that the ex-officio members of the committees would not vote in the standing committee meetings and that the chairs of the standing committees would vote only in the event of a tie. Ms. Harrison's motion was seconded and unanimously approved.

Senate Bill 1115

Donna Moffitt advised that in the budget bill that was passed by the General Assembly there were some changes made to the Dredge and Fill Law, as well as CAMA and the CRC had already dealt with the change regarding riprap groins. Ms. Moffitt said the changes she was referring to was contained in an Information Item the CRC received in their packet and was entitled "Senate Bill 1115, Excerpts from An Act to Modify the Current Operations Appropriations Act of 2001 and to Make Other Changes in the Budget Operation of the State." Ms. Moffitt said this had to do with a section in the Dredge and Fill Law which was G.S. 113-229 in which there were changes that were made that pretty clearly indicated the beach-quality sand that was dredged from navigation projects shall be disposed of on the ocean beach or shallow active near shore area where it is environmentally acceptable and compatible with other uses of the beach. Ms. Moffitt stated she had since learned that some people thought that change would affect the way the COE handled disposal from navigation dredging projects and that this law would trump a federal agency's requirement under their statutes or their budget situation and that it would be trumped through CAMA and the federal consistency process. Ms. Moffitt said she had since had to explain that, if DCM were to use this law in the federal consistency process particularly related to COE projects, DCM first must submit this change in the law to the federal government, specifically the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, and they had to approve it for us to use it with regards to federal projects. Ms. Moffitt said DCM planned to submit this law to the federal government but did not know if they were going to approve it for use in the review of federal projects for federal consistency. Ms. Moffitt stated, on the other hand, this was state law and if a private entity or a local government wished to do dredging and then make whatever use they wanted to of the dredged material, they would be required to follow this law because DCM was going to have to make them follow this law to get a CAMA permit.

With no further business, the meeting adjourned at 11:40 a.m.

Respectfully submitted,

Donna Moffitt, Executive Secretary

Mary Beth Brown, Recording Secretary

MINUTES APPROVED BY
CRC 01/22/03 _____