

MINUTES

MEETING: COASTAL RESOURCES COMMISSION (CRC)

LOCATION: Archdale Building
Ground Floor Hearing Room
Raleigh, North Carolina

DATE: July 23-24, 2003

PRESENT: **CRC MEMBERS**

Eugene Tomlinson, Chairperson
Courtney Hackney, Vice-Chairperson

Bob Barnes	Bill Peele
Renee Cahoon	Larry Pittman
Bob Emory	Melvin Shepard
Peggy Griffin	Joan Weld
Mary Price Harrison	Bob Wilson
Doug Langford	Lee Wynns
Jerry Old	

Coastal Resources Advisory Council (CRAC) Members

Bob Shupe, Vice-Chairperson

Joe Beck	Jim Mulligan
Carlton Davenport	Spencer Rogers
Tom Ellis	Lester Simpson
*Gary Ferguson	Mike Street
Webb Fuller	Ray Sturza
Harrison Marshall	Penny Tysinger
Gary Mercer	Dave Weaver
Bill Morrison	

*Representing Ginger Webster

Wednesday, July 23, 2003

Commission Call to Order

Chairperson Eugene Tomlinson called the meeting to order at 8:30 a.m. Chairperson Tomlinson advised that Executive Order One mandated that CRC members avoid conflict of interest or the appearance of conflict. He asked CRC members to state, as the roll was called, if they had any such conflict or appearance of conflict.

Roll Call

Eugene Tomlinson:	Present. No conflict.
Bob Barnes:	Present. No conflict.
Renee Cahoon:	Present. No conflict.
Bob Emory:	Present. No conflict.
Peggy Griffin:	Present. No conflict.
Courtney Hackney:	Present. No conflict.
Mary Price Harrison:	Present. Advised that she would refrain from participating in the Figure Eight Island Homeowners Association variance request. She advised she had no other conflicts.
Doug Langford:	Present. No conflict.

Jerry Old:	Present. No conflict.
Bill Peele:	Present. No conflict.
Larry Pittman:	Present. No conflict.
Melvin Shepard:	Present. Stated he had a conflict that he would point out at the appropriate time.
Joan Weld:	Present. No conflict.
Bob Wilson:	Present. Stated he had a conflict that he would discuss at a later time.
Lee Wynns:	Present. No conflict.

Approval of April 23-24, 2003 Minutes

Bob Emory moved that the minutes of the April 23-24, 2003 CRC meeting be approved and his motion was seconded and unanimously approved. (Bob Barnes, Renee Cahoon, Bob Emory, Peggy Griffin, Courtney Hackney, Doug Langford, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson. Note: Mary Price Harrison and Lee Wynns were not present for this vote.)

Approval of April 30, 2003 Minutes

Courtney Hackney moved that the minutes of the April 30, 2003 telephone conference call meeting be approved and his motion was seconded and unanimously approved. (Bob Barnes, Renee Cahoon, Bob Emory, Peggy Griffin, Courtney Hackney, Doug Langford, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson. Note: Mary Price Harrison and Lee Wynns were not present for this vote.)

Executive Secretary's Report

Donna Moffitt advised that Dan McLawhorn was present at the CRC's meeting today. Ms. Moffitt advised that Mr. McLawhorn was retiring from State government at the end of this month. Ms. Moffitt said Mr. McLawhorn's had a distinguished career with the Attorney General's (AG's) Office and had spent several years as counsel to the Department of Environment and Natural Resources (DENR). She said his finger prints were all over environmental statutes and case law for North Carolina. Ms. Moffitt advised that he had been a great friend to the CRC, the Division of Coastal Management (DCM) and the coastal program for North Carolina and he would be greatly missed.

Mr. McLawhorn said it was a pleasure to be with the CRC this morning. Mr. McLawhorn gave the CRC an update on the Giampa case which had been working its way through the courts since 1998.

Ms. Moffitt the presented the Executive Secretary's Report. (SEE ATTACHMENT 1 FOR WRITTEN COPY OF REPORT.)

Ms. Moffitt stated that the only agenda change was that the John and Myra-Ladd Bone variance request had been postponed. Ms. Moffitt advised that there was an error at the bottom of the agenda. She stated that the CRC's next meeting would be October 22-23, 2003 and not the 23rd and 24th.

Variance Requests

Figure Eight Island Homeowners Association (CRC-VR-03-09)

Courtney Hackney said in reviewing the materials for the variances the CRC would be hearing today, he was reminded of the problems the CRC had in the past with variances, specifically one of the Sammie Williams cases which went all the way up and the CRC's decision was overturned on the variance. He said the reason it was overturned was that the judge said the CRC did not have sufficient information in the variance package to make a decision. He stated in that case the CRC had denied the variance and the judge basically overturned the CRC's decision to deny. Dr. Hackney advised that it made the CRC aware in subsequent meetings of the need to perhaps limit variance requests to situations in which the initial intent of the variance process was clear and there were no other arguments that might come up. Dr. Hackney reminded CRC members that the purpose of variance requests was to help the CRC look at a situation in which a rule was being applied which may not make sense in that case and so the CRC was able to look at it and allow someone some relief where the rules technically would not allow it. Dr. Hackney said in reviewing the information from Figure Eight Island Homeowners Association, he was having a very difficult time convincing himself that there was enough information of a technical nature in there to render an appropriate decision. Dr. Hackney said the CRC's representative from the AG's Office had made it clear that if the CRC was going to deny, the CRC had to have information that was in this particular document upon which to base that decision and if that information was not there or the CRC felt it was incomplete, then the CRC had the option to request that particular case be brought back to them either as a variance with more information or go to

the contested case process because that was the only way to get all the information in there when information was the key to the decision. Dr. Hackney asked Jill Hickey to read to the CRC the one small section about the variance process because the CRC had become very liberal with their use of the variance and it was pretty clear after that decision in the Sammie Williams case that the CRC had to have the information in their packet and could not rely on anything else.

Ms. Hickey read directly from rule 7J .0701. Ms. Hickey said she thought the decision for the CRC was whether there was enough information in this packet. Ms. Hickey stated that possibly Dr. Hackney would want to explain to CRC members what more information he might wish to have.

Dr. Hackney stated that he thought there was a lot of technical information here that the CRC could not really ask questions about in terms of what other opinions there might be or other ways of looking at that. Dr. Hackney said it was not in the record and the CRC could not ask that question. He said this was a very technical based request and the CRC did not have all the technical information. Dr. Hackney advised that his purpose in bringing this up was to **make a motion that the CRC request that the petitioner either bring this back as a variance with a lot more information from other individuals who are knowledgeable in the area or that they go through the contested case process so that the whole body of the weight of evidence as to the peculiarity of this particular inlet could be discussed. Dr. Hackney said this was a motion and his motion was seconded by Doug Langford.**

Doug Langford asked how the hearing process would take place and Ms. Hickey explained this process.

Merrie Jo Alcoke said she would suggest that the CRC go ahead and hear this variance request today and after that if the CRC felt the same way, then it would be more clear to the parties as to what other facts needed to be developed. Ms. Alcoke stated the provision for sending it to a contested case was appropriate when there were contested facts and not insufficient facts and she would suggest that there was not a contested issue here. Ms. Alcoke said that for simplicity for the CRC she had often encouraged petitioners to present the most summarized material and in this case it was material. She advised that in this case it was material that DCM staff had the opportunity to review and then what was included in the packet was a shorthand version of the review. Ms. Alcoke stated there were some statements in the facts that were a great condensation of information. Ms. Alcoke said she knew Mack Paul would also appreciate being heard on this. She stated that it might be more beneficial to see at the end if it was appropriate and then it would give direction to them for what sort of facts the CRC would need to make a meaningful decision.

Courtney Hackney said before the CRC went on, he wanted to be sure that procedurally the CRC was making the right decision. He stated that his understanding was that once the CRC started the variance process, then the CRC had to render a decision on that variance. Dr. Hackney said what he was trying not to do was to perjure the CRC one way or the other. Dr. Hackney advised that just because DCM staff felt all the questions were answered, it not necessarily mean that the CRC felt there was enough evidence in the record to make a decision.

Doug Langford advised that he would like to withdraw his second to Dr. Hackney's motion. Melvin Shepard seconded Dr. Hackney's motion.

After additional discussion of Dr. Hackney's motion, Bob Emory said that since there was some question regarding the implications of starting this process he would suggest that the CRC take a brief break to allow the CRC's attorney to formulate an opinion on what the implications would be.

Jill Hickey said she felt this would be a good idea and further that it would be a good idea to talk to counsel for the parties since their might be an agreement that they would want to enter into.

After the recess, Chairperson Tomlinson stated that the CRC had a motion on the floor with a second that the CRC needed more information on the Figure 8 Island Homeowners Association variance request.

Dr. Hackney stated that Mr. Langford had presented to him a friendly amendment that he wanted to add which really was a part of the original motion and this was that the motion did not mean that the only way the petitioner could come back to the CRC was through an administrative hearing but rather they could come back any way including a variance with more information. Dr. Hackney said his motion was not to exclude other options and he accepted Mr. Langford's friendly amendment.

Chairperson Tomlinson said the CRC was going to go forward at this juncture and allow both sides to be heard as a part of Dr. Hackney's motion to see if after the CRC had heard the information from both sides the CRC still needed further information before the CRC could act on his motion. Chairperson Tomlinson stated that the CRC was not going to vote yes or no on the variance they were going to vote yes or no on Dr. Hackney's motion.

Dr. Hackney said he would like to ask that CRC members basically enunciate the questions they have that were not a part of the Stipulated Facts. Dr. Hackney stated this would help the petitioner understand why they were having difficulty with this. He said

as part of this too, there was the possibility of having a short meeting in a very short order of time because time was of the essence for this particular problem. Dr. Hackney said he wondered whether the CRC should proceed with the Commissioners or the presentations. Dr. Hackney said it might help the presenters more if they knew why the CRC was having problems.

Ms. Hickey said she thought it would be best to give them the opportunity to present first and then there might not be questions.

Merrie Jo Alcoke advised that she represented DCM staff in this variance request. Ms. Alcoke said there were fifteen property owners on the north end of Figure Eight Island and they all sought to expand the size of existing sandbags in front of their homes. Ms. Alcoke reviewed the Stipulated Facts contained in CRC-VR-03-09. Ms. Alcoke showed the CRC slides of the area and bags in question. Ms. Alcoke said when the CRC reviewed the variance facts, each little word was hatched out on whether it was significant so the CRC should pay attention to those particulars because they described as best they could what they were willing and able to stipulate to and in some cases they were probably not willing to go as far as petitioners would have them agree to. Ms. Alcoke stated that the petitioners filed this variance seeking to go up to 10 feet above mean highwater and to allow the sandbags to be expanded in width not to exceed 40 feet. She advised that the sandbag structure would not be expanded at all seaward so where the toe of the existing sandbags were, if they were going to add on, it would have to be on the back side. Ms. Alcoke reviewed DCM staff's response to the variance criteria contained in CRC-VR-03-09.

Mack Paul advised that he was here today on behalf of the petitioners. He said the petitioners were facing a very unique and serious shortterm situation that without a variance could result in the loss of their homes. Mr. Paul introduced Dr. Bill Cleary advising that he would speak first and address the CRC briefly providing them with some illustrative information expounding on what had been presented in the Stipulated Facts which he hoped would provide an opportunity, if the CRC had questions, to explore questions the CRC might have about some of the technical information today. Mr. Paul reported that Dr. Cleary had been a member of the North Carolina Science and Hazards Panel since its conception and as, Ms. Alcoke stated, he had studied this inlet for about 25 years. Mr. Paul advised that this information had been determined by DCM staff to be the best information available on the dynamics on Rich Inlet and how it relates to the situation facing the petitioners. Mr. Paul said he would then address the merits of this matter and then Ms. Laura Hearn, who was a petitioner and homeowner, would briefly address the CRC. Mr. Paul said also present today were Bill Raney, an attorney on behalf of the petitioners who was available for questions, Ned Barclay, Chairman of the Homeowners Association, and David Kellum, homeowner and Administrator of the Association of Figure Eight who were supporting this effort as well. Mr. Paul advised that several homeowners were also present.

Dr. Bill Cleary presented an overview of the causes for the erosion along the north end of Figure Eight Island and what the predictions were for Rich Inlet over the next several years. Mr. Cleary showed slides to explain the information presented in his overview and he responded to questions from CRC members during his presentation.

Mack Paul advised that Dr. Cleary was a Coastal Geologist at the University of North Carolina at Wilmington. Mr. Paul said there was little disagreement with DCM staff over most aspects of this variance request. Mr. Paul reviewed the petitioner's response to the variance criteria contained in CRC-VR-03-09. Mr. Paul stated that if any situation warranted a variance, this would be one.

Chairperson Tomlinson reminded all parties that the variance request was not being argued at this point. He said what was being considered was Dr. Hackney's motion regarding whether there was a need for more information in order to fully consider the variance at this time.

Laura Hearn advised that she lived in Winston-Salem and she thanked the members of the CRC for hearing them today. She stated that she was here very much as a token nonprofessional. Ms. Hearn explained to the CRC what she and her husband had experienced with their property since purchasing it in 1993. Ms. Hearn said she appreciated the CRC's time and felt this variance request was really a very fair and reasonable request. Ms. Hearn responded to questions from CRC members.

Chairperson Tomlinson reiterated that the CRC was not debating the variance request but were questioning Dr. Hackney's motion on whether more information was needed before going into the variance procedure. CRC members then asked numerous questions regarding the proposed sandbag structure and discussed at length the information provided with this variance request along with the history of the sandbag rules. Bill Peele then stated that his questions had been answered and he could come up with a positive approach to granting this variance. Doug Langford said he agreed with Mr. Peele and had heard enough to be able hear the variance at this point in time. Dr. Hackney asked the CRC's attorney if it would be appropriate to include the body of this discussion in the Stipulated Facts because this had been the hang up in the beginning that the CRC did not have all the facts that they thought they needed and by doing it the way they had they were able to bring these facts out because they were not hearing the variance. Dr. Hackney said he would assume that both attorneys would have to agree to that. Ms. Hickey responded they would have to agree that everything heard today would be a part of the record. Ms. Alcoke advised that she did not think that would be appropriate and she might want more time to think about that. Dr. Hackney said then you came to the problem because the CRC could not consider most of the information that came out here could not be considered in the variance request even though it was germane and fundamental to the CRC's understanding and ability to vote. He said if the CRC were to deny it based on some

of the things the CRC knew beforehand, that would be overturned by a judge immediately because there was no record of the facts. Ms. Alcock responded that she thought she had misunderstood the suggestion and she thought it would be fine to make it a part of the record. Ms. Alcock said she was fine with it and the petitioner was fine with it. Ms. Alcock said she had been thinking in terms of Stipulated Facts and thinking about all the information jumping around would not necessarily be items that were stipulated to but were certainly items that were stipulated to but were certainly part of the record upon which you make your decision.

Chairperson Tomlinson said it was agreed then that everything that had been said today would become a part of the permanent record and he confirmed that this discussion was recorded on the meeting tapes. **Dr. Hackney said he would withdraw his motion and Mr. Shepard withdrew his second to the motion.**

Ms. Alcock again reviewed DCM's staff response to the variance criteria contained in CRC-VR-03-00.

Mack Paul said he felt the petitioner had been given ample opportunity to present their case but he would like to reiterate the point about the peculiarity and should anyone else bring in a request for a similar type of variance they were not saying erosion was unique or that inlets act in peculiar ways. He said all they were saying was that the conditions and hardships facing the petitioners in this situation was peculiar in the light of Rich Inlet and the dynamics in that area.

Bill Peele moved that the CRC grant this variance request and his motion was seconded. Dr. Hackney said he would like to add some provisions to the motion some of which had already been mentioned. He said one was that the permit be approved only with the provision that should these sandbags fail, they be removed from the beach. Dr. Hackney stated he thought this was something that was normally said but in this case there would be a lot more of them. Dr. Hackney said the second was that the maximum height does not exceed the height of the land. Mr. Peele said he would accept this amendment to his motion. The CRC voted in favor of the motion by a vote of eight in favor of the motion (Bob Barnes, Renee Cahoon, Doug Langford, Jerry Old, Bill Peele, Bob Wilson, Lee Wynns) and five opposed (Bob Emory, Peggy Griffin, Courtney Hackney, Melvin Shepard, Joan Weld).

Wilma Midgett - Rodanthe (CRC-VR-03-13)

Merrie Jo Alcock advised that she was represent DCM staff in this variance request. She stated that Joe Lassiter was present on behalf of Ms. Midgett. Ms. Alcock said in this variance request Ms. Midgett was seeking to construct a house within the CRC's erosion setback area. Ms. Alcock reported that Ms. Midgett owned property that was off Highway 12 in Rodanthe, Dare County. Ms. Alcock reviewed the Stipulated Facts contained in Attachment B of CRC-VR-03-13. Ms. Alcock then reviewed DCM staff's response to the variance criteria contained in Attachment C of CRC-VR-03-13.

Joe Lassiter reviewed Ms. Midgett's response to the variance criteria contained in Attachment C of CRC-VR-03-13 and he responded to questions from CRC members regarding this variance request.

Courtney Hackney moved that this variance request be denied and his motion was seconded and approved by a vote of 11 in favor of the motion to deny the variance (Bob Barnes, Bob Emory, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns) and three opposed to the motion (Renee Cahoon, Doug Langford, Jerry Old).

Public Input and Comments

Chairman Tomlinson asked if there was anyone present who wished to address the CRC about any item that was not on the CRC's agenda.

Jan Harris, Sunset Beach, NC, Brunswick County Environmental Action Team: Ms. Harris stated that her issue was not on the agenda. She said she wanted to speak to the CRC today to propose to an effort that may better inform the public and be helpful during public hearings in the rulemaking process. (SEE ATTACHMENT 2 FOR WRITTEN COPY OF COMMENTS.)

Variance Requests

Grady and Judy Brown (CRC-VR-03-11)

Dave Heeter advised that he was with the AG's office and was represent DCM staff in this variance request. Mr. Heeter advised that the Browns were present today and would like to address the CRC. Mr. Heeter advised that the Browns were seeking a variance from the CRC's 30 foot shoreline buffer requirement in order to put a 20 foot by 24 foot garage on their lot. He said their property was located at 114 Dogwood Trail in Elizabeth City, North Carolina. Mr. Heeter reviewed the Stipulated Facts contained in Attachment B of CRC-VR-03-11 (CRC VR 2003-11). Mr. Heeter advised that DCM staff opposed this variance request and he

reviewed staff's response to the variance criteria contained in Attachment C of CRC-VR-03-11 (CRC VR 2003-11).

Mr. Brown stated that he really did not have much more to add. He said the pictures included in the CRC's packets really showed what was going on. Mr. Brown advised that he needed additional storage and right there at the end of his driveway was where he could come out on his house and garage would be the best place to put it. Mr. Brown stated that on the over side he would have to cut down four or five trees, made a driveway and put it to the back of the house which would probably be close to the 30 foot buffer anyway. Mr. Brown said if there was anyway he could anything that would help the situation as far as the runoff or whatever, he was willing to do it.

Courtney Hackney said one thing the CRC had been doing all along was whenever someone was encroaching on the 30 per cent rule or moving into the buffer zone, was granting variances with the provision that the run the stormwater runoff from the new structure, and sometimes even the old structure, into that system. Dr. Hackney stated that it looked to him like the septic tank was up to par and they would have the ability to do that in the back yard if that was something they wished to do. He said it would certainly enhance their ability to get a variance. Dr. Hackney said he thought he had heard Mr. Brown actually making that suggestion that they would do it.

Mr. Heeter stated that DCM would not object to that being a condition of the variance. Mr. Heeter said since the Browns now wanted to keep the existing shed in the 30 foot buffer DCM did not know where they were planning to put it and that might be of some interest. Discussion then followed on the where the existing shed would be moved to and it was determined that it would be moved back but would still stay in the buffer and the new building placed in front of it. Mr. Brown advised the old shed could be removed, if that was what was needed.

Courtney Hackney moved that the CRC grant this variance request with the provision added that all the stormwater runoff from the new structure be handled with a stormwater management system and his motion was seconded. After discussion, CRC members voted against this motion by a vote of 3 in favor of the motion (Bob Emory, Jerry Old, Larry Pittman) and 11 opposed to the motion (Bo Barnes, Renee Cahoon, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Bill Peele, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

Melvin Shepard moved that the CRC deny this variance request and his motion was seconded and approved by a vote of 12 in favor of the motion to deny the variance request (Bob Barnes, Renee Cahoon, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Jerry Old, Bill Peele, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns) and 2 opposed to the motion (Bob Emory, Larry Pittman).

Michael McGhee (CRC-VR-03-14)

Mr. Heeter advised that Mr. McGhee wanted to build a swimming pool with concrete pad in the 30 foot buffer. Mr. Heeter said his property was in Sneads Ferry adjacent to the Intracoastal Waterway. Mr. Heeter reported that his neighbor, Mr. Rudy Lanier, also wished to build a swimming pool in the buffer. Mr. Heeter advised that he thought the best way to do this was to handle them separately but when the CRC go to Mr. Lanier's variance request he would point out the differences since there were not many. Mr. Heeter reported that Harold Yelle, who had designed the stormwater management system was present and would like to address the CRC.

Melvin Shepard and Bob Wilson advised that they would like to recuse themselves from participating in these variance requests.

Mr. Heeter said both of these petitioners needed a variance from the CRC's prohibition from nonwater dependent development in the 30 foot buffer and in addition they would exceed the 30 foot limitation on impervious surfaces within that Area of Environmental Concern (AEC). Mr. Heeter advised they would need a variance from two of the CRC's provisions. Mr. Heeter reviewed the Stipulated Facts contained in Attachment B of CRC-VR-03-14 (CRC VR 2003-14). Mr. Heeter reported that DCM staff opposed this variance request and he reviewed staff's response to the variance criteria contained in Attachment C of CRC-VR-03-14 (CRC VR 2003-14).

Harold Yelle advised that he was with Aikens and Yelle Associates. Mr. Yelle reported that he was a civil engineer and he reviewed the petitioner's response to the variance criteria contained in Attachment C of CRC-VR-03-14 (CRC VR 2003-14). Mr. Yelle said he felt both of his clients had put forth good faith efforts to satisfy the rules and regulations and the intent of the rules.

Mr. Yelle and Mr. Heeter responded to questions from CRC members.

Mary Price Harrison moved that the CRC grant a variance to Michael McGhee subject to the condition that the stormwater system does contain the 3 inches of rain and also that the pool be moved as close to the house as is engineeringly feasible outside the buffer and her motion was seconded. The motion passed by a vote of 12 in favor of the motion (Bob

Barnes, Renee Cahoon, Bob Emory, Peggy Griffin, Courtney Hakney, Mary Price Harrison, Doug Langford, Jerry Old, Bill Peele, Larry Pittman, Joan Weld, Lee Wynns) and none opposed to the motion. Melvin Shepard and Bob Wilson abstained from the discussion and vote on this variance request.

Rudy Lanier (CRC-VR-03-15)

Dave Heeter advised that Mr. Lanier was Mr. McGhee's neighbor and he had also applied for a Coastal Area Management Act (CAMA) minor development permit to construct a swimming pool and concrete pad in the 30 foot buffer. Mr. Heeter advised that the major difference in this variance request was that the proposed pool was slightly larger. He stated that it was 1,500 square feet with 760 square feet of concrete pad. Mr. Heeter said about 60 percent of the pad would be in the 30 foot buffer. Mr. Heeter said in this case also the pool would not be considered impervious surface but would be considered new development. Mr. Heeter advised that Mr. Lanier was also proposing a stormwater management plan to contain all the runoff from the impervious surfaces in excess of the 30 percent limitation on impervious surfaces.

Courtney Hackney moved that the CRC grant this variance with the same size pool as the pervious one which was 16 feet by 40 feet and that it have the same provision that Ms. Harrison added that it be moved as close to the main structure as was engineeringly possible and the local permit officer along with the engineer will decide where that was and his motion was seconded. The CRC voted in favor of Dr. Hackney's motion to grant the variance with the conditions he specified by a vote of 12 in favor of the motion (Bob Barnes, Renee Cahoon, Bob Emory, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Jerry Old, Bill Peele, Larry Pittman, Joan Weld, Lee Wynns) and none opposed. Melvin Shepard and Bob Wilson abstained from participating in the discussion and vote on this variance request.

Public Hearings

15A NCAC 7H .1400-.1405, Inclusion of Riprap Groins Under the General Permit Provisions

Chairperson Tomlinson advised that nobody had signed up to speak on this proposed rule change and he asked if anyone present would like to address the CRC. No individuals asked to address the CRC and Chairperson Tomlinson closed the public hearing.

15A NCAC 7J .0700-.0703, Procedures for Considering Variance Petitions

Chairperson Tomlinson said again nobody had signed up to speak on this proposed rule change and he asked if anyone present would like to address the CRC. No individuals asked to address the CRC and Chairperson Tomlinson closed the public hearings at 4:05 p.m.

Presentation

Wetland Conservation (NCCREWs New Wetlands Planning Tool for DOT)

Donna Moffitt advised that Kelly Williams had been scheduled to give this information presentation to the Planning and Special Issues (P&SI) Committee but due to time limitations and not been able to give her presentation. Ms. Williams presented this information presentation and responded to questions from CRC members. No action was required by the CRC on this presentation.

Thursday, July 24, 2003

Presentations

Coastal Habitat Protection Plan (CHPP) – Submerged Aquatic Vegetation Habitat

Steve Underwood presented this information presentation. No action was required by the CRC on this information item.

DENR CHPP Outreach Plan Update

Steve Underwood gave an update on the CHPP outreach efforts. This was an information presentation and required no action by the CRC.

Comments by DENR Secretary Bill Ross

Secretary Bill Ross thanked the CRC for their service to the citizens of the State. Secretary Ross said the process of preparing the

CHPP was a critical one and was a historic opportunity North Carolina had to bring three different regulatory programs together in a coordinated and focused way to optimize the beneficial effects of those programs and to reverse the decline in these critical habitats in North Carolina's coastal waters. He said DENR also saw it as an opportunity that was not a regulatory opportunity and one that would fit in under DENR's initiative called "One North Carolina Naturally" where DENR was trying to expand the notion of what land and water conservation was in a not regulatory way. Secretary Ross again thanked the CRC for their work.

DOT Efforts of Address the Problems of NC 12

Roy Sheldon with the North Carolina Department of Transportation (DOT) gave this information presentation. No action was required by the CRC.

Conservation and Green Space – A Call to Action

Donna Moffitt introduced Dr. David Jones advising that he was currently the Director of the North Carolina Zoological Park in Asheboro. Dr. Jones' information presentation did not require any action by the CRC.

CRAC and Committee Reports

CRAC Report

Bob Shupe presented the report from the CRAC. (SEE ATTACHMENT 3 FOR WRITTEN COPY OF REPORT). No action was required by the CRC on this report.

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

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

Dare County Land Use Plan (LUP) Update

Ms. Griffin reported that the P&SI Committee had voted to recommend that the CRC certification of the Dare County 2003 LUP and **she moved that the CRC certify the Dare County Land Use Plan and her motion was seconded. Renee Cahoon asked Chair person Tomlinson to recuse her from this vote and the Chairperson agreed. Melvin Shepard stated that he wanted to abstain from this vote. The CRC voted in favor of Ms. Griffin's motion by a vote of 9 in favor of the motion (Bob Barnes, Bob Emory, Peggy Griffin, Courtney Hackney, Doug Langford, Jerry Old, Joan Weld, Bob Wilson, Lee Wynns) and none opposed. Mary Price Harrison advised that she was abstaining also.**

Report from the Implementations and Standards (I&S) Committee

Bob Emory presented the report from the I&S Committee. (SEE ATTACHMENT 5 FOR WRITTEN COPY OF REPORT). The following items required action by the full CRC.

Other Business

Mr. Emory reported that the I&S Committee had voted to ask DCM staff to review variances the CRC has granted that pertain to the coastal shoreline buffer rules with the purpose of the review being to determine whether the CRC should consider revising the rules. **Mr. Emory moved that the CRC request DCM staff to review the variances that have been granted to the shoreline buffer rules and his motion was seconded.** Doug Langford said that Mr. Emory's motion asked for a review of the variances that were approved but he thought there might be some merit in looking at the variances that were denied also or, in other words, ask DCM staff for a review of any applications for a variances within the 30 foot setback. Mr. Emory agreed with this addition. He stated that his motion would be to look at all variances requested and what their disposition was. Courtney Hackney asked if he could add to that request a review also of potential variances that the CRC did not get because the property owner had used one of the exemptions for small lots. **Mr. Emory said if he understood the amendments that had been offered to his motion, the motion would now be to look at all variances that had been requested from the shoreline buffer rules and how they were disposed of and to look at the number of people who had exercised their flexibility with the exemptions for small lots. Mr. Emory stated that he would accept those as friendly amendments and his motion was approved unanimously (Bob Barnes, Renee Cahoon, Bob Emory, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Jerry Old, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).**

Action Items

Selection of CRAC Appointments

Peggy Griffin advised that she, Webb Fuller and Joan Weld consisted of the CRAC Nominating Committee. Ms. Griffin advised that GS 113A-105(b)(9) required the CRC to appoint members to the CRAC to serve as representatives of the cities of the coastal areas. She reported that the CRC had recently requested nominations from coastal municipalities to fill two vacant coastal cities slots on the CRAC. Ms. Griffin advised that eighteen municipalities submitted nominations and a total of seven individuals were nominated. Ms. Griffin said the CRAC Nominating Committee held two conference calls to establish selection criteria and then to select the two individuals that they would now recommend for appointment to the CRAC. Ms. Griffin reviewed the selection criteria. Ms. Griffin advised that the Committee was pleased to recommend Dara Royal and Harry Simmons for appointment to the CRAC and she reviewed the qualifications of each of these individuals.

Chairperson Tomlinson asked if there were any further nominations from the members of the CRC. Chairperson Tomlinson said hearing none, he would assume these were nominated by acclamation. The CRC voted unanimously in favor of appointing Dara Royal and Harry Simmons to the CRAC (**Bob Barnes, Renee Cahoon, Bob Emory, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Jerry Old, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns**).

Old/New Business

Coastal Habitat Protection Plan Annual Progress Report (CRC-03-02)

Mike Lopazanski advised that the CRC had received in their packets the 2002-2003 Coastal Habitat Protection Plan Program Annual Progress Report. He stated that the Fisheries Reform Act required that the three commissions report by September 1st of each year to the Joint Legislative Commission on Seafood and the Environmental Review Commission on the progress of developing and implementing the CHPPs. Mr. Lopazanski reviewed the significant highlights and developments from the report.

Mary Price Harrison moved that the CRC approve the CHPP Annual Progress Report and her motion was seconded and approved by a vote of 11 in favor of the motion (Bob Barnes, Renee Cahoon, Bob Emory, Peggy Griffin, Courtney Hackney, Mary Price Harrison, Jerry Old, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns) and none opposed. Doug Langford advised that he was going to abstain from this vote.

CRC Quarterly Meeting Schedule

Donna Moffitt advised that two years ago, the CRC had formed a committee to look at how the CRC and CRAC could put into effect some cost saving measures due to the State's budget crisis. Ms. Moffitt said Bob Barnes had chaired that committee and worked with representatives from the CRC, CRAC and DCM staff and had come back with the following motion:

Bob Barnes moved that CRC and CRAC change their meeting schedule for the next two years beginning in July of 2001 and ending in July of 2003 to a quarterly meeting basis meeting in January, April, July and October. That the meetings be held on Wednesday and Thursday, that the July meetings be held in Raleigh and the other meetings rotated up and down the coast and that special one day sessions could be held as needed.

Ms. Moffitt reported that motion was unanimously approved and that schedule had begun in July of 2001. Ms. Moffitt said this two year schedule was now over and it was time for the CRC to consider what type of schedule they wanted to follow for future CRC meetings. Ms. Moffitt reviewed options the CRC had concerning their meeting schedule.

CRC members discussed at length what type of meeting schedule they wanted to adopt with several members expressing that the quarterly meeting schedule was adequate and others expressing their feeling that possible the CRC needed to add at least one additional meeting to the schedule. CRC members also discussed various changes that could be made to the meeting agenda that might be beneficial. Bob Barnes made the suggestion that possibly his original committee could reconvene and come back at the October meeting with a revised meeting schedule. CRC members agreed that this was a reasonable approach and **Doug Langford moved that the original committee reconvene and come back at either the CRC's October meeting with a proposed new meeting schedule and that the current quarterly meeting schedule be followed through the January 2004 meeting and his motion was seconded.** Bob Barnes said he thought there might be some advantage to expanding the original committee and CRC members agreed that this might be advantageous. **CRC members voted in favor of Mr. Langford's motion.**

Expedited Variance Review and Hearings

Donna Moffitt advised that Jill Hickey had been looking at the CRC's rules for possible options for the CRC to consider on how

they handle their variances and hearings. Ms. Moffitt said that during the discussion on the CRC's meeting schedule, the CRC Chairperson and Vice-Chairperson had offered to serve as hearing officers for the hearings that were held on rule-making in conjunction with the CRC's regular meetings and this would be one way to help move along the CRC's main agenda.

Jill Hickey advised that the CRC rules allowed for the full CRC to hear variance requests or for a member or a committee to be appointed to hear variances. Ms. Hickey said that member or committee would then hear them and make a recommended decision to the full CRC and the variance would have to be voted on by the full CRC. Ms. Hickey said this was available under the CRC's rules and they might want to consider something like that. CRC members discussed this option and agreed that they felt it was advantageous for all CRC members to hear the variance requests.

Ms. Hickey stated that another option available would be to impose time limits. Ms. Hickey advised the CRC's rules also said that "the staff shall present the variance" and the petitioner "shall be provided an opportunity to present" but perhaps there might be situations where the staff and the petitioner agreed and the petitioner would waive their right to present. Ms. Hickey said there were ways to make variance requests move quicker, if that was important.

After discussion, CRC members agreed that it was important to continue hearing variance requests as they were currently hearing them.

Future Agenda Items

Courtney Hackney asked that at a future agenda the CRC be given a presentation on porous concrete.

Rules Adoption

Donna Moffitt advised that the two rules that were the subject of the public hearings yesterday were not eligible for adoption today because there had been insufficient notice given to the public. Ms. Moffitt said these rules could be adopted at a telephone conference call and DCM staff was proposing that this conference call be held on Friday, August 1, 2003, at 9:00 a.m. and she explained why this date was being suggested for the conference call.

With no further business, the CRC adjourned at 12:10 p.m.

Respectfully submitted,

Donna D. Moffitt, Executive Secretary

Mary Beth Brown, Recording Secretary

MINUTES APPROVED BY
CRC 10/22/03 _____