

**MINUTES**

**MEETING:** COASTAL RESOURCES COMMISSION (CRC)

**LOCATION:** Ramada Inn  
Kill Devil Hills, North Carolina

**DATE:** January 22, 2003

**PRESENT:** **CRC Members**

Courtney Hackney, Vice-Chairperson

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

**Coastal Resources Advisory Council (CRAC) Members**

Ginger Webster, Chairperson  
Bob Shupe, Vice-Chairperson

Frank Alexander	Jim Mulligan
Natalie Baggett	Lee Padrick
Joe Beck	Spencer Rogers
Joe Dooley	Lester Simpson
John Doughty	Mike Street
Rick Gaardner	Ray Sturza
Ann Holton	Wayne Teeter
Wanda King	Penny Tysinger
Joe Lassiter	Dave Weaver
Gary Mercer	W.H. Weatherly
Bill Morrison	Calvin Wellons

**Wednesday, January 22, 2003**

**Commission Call to Order**

Vice-Chairperson Hackney called the meeting to order at 10:00 a.m. Vice-Chairperson Hackney advised that Chairperson Tomlinson could not be at this meeting due to surgery he was undergoing that could not be scheduled at another date. Vice-Chairperson Hackney said that Executive Order One mandated that CRC members avoid conflict of interest or appearances of conflict. He asked CRC members to state, as the roll was called, if they had any such conflict or appearances of conflict.

**Roll Call**

Eugene Tomlinson:	Not present.
Bob Barnes:	Not present.
Renee Cahoon:	Present. No conflict.
Bob Emory:	Present. No conflict.
Peggy Griffin:	Present. No conflict.
Courtney Hackney:	Present. No conflict.
Mary Price Harrison:	Not present. NOTE: Ms. Harrison arrived at 10:05 a.m.
Doug Langford:	Present. No conflict.
Jerry Old:	Not present. NOTE: Mr. Old arrived at 10:04 a.m.
Bill Peele:	Not present.

Larry Pittman:	Present. No conflict.
Melvin Shepard:	Present. No conflict.
Joan Weld:	Present. No conflict.
Bob Wilson:	Not present.
Lee Wynns:	Present. No conflict.

Vice-Chairperson Hackney welcomed the new members of the CRC. He advised that Governor Easley appointed four new members to the CRC and reappointed three of the existing members of the CRC. Vice-Chairperson Hackney stated that the reappointments were Larry Pittman, Bob Emory and himself. He said the four new members were Renee Cahoon of Nags Head, Joan Weld of Currie, Bob Wilson of Mooresville and Lee Wynns of Colerain. Vice-Chairperson Hackney stated that the Oaths of Office for all seven of these appointments were on file with the Secretary of State. He said the Statements of Economic Interest for the new members had been evaluated by the North Carolina Board of Ethics and as they requested he was going to read these into the record.

Vice-Chairperson Hackney said the Board of Ethics found that Ms. Cahoon had no actual conflict of interest but a potential for conflict of interest and that Ms. Cahoon should exercise appropriate caution while performing her public duties as a member of the CRC, particularly as they relate to or involve Dare County.

Vice-Chairperson Hackney advised that the Board of Ethics found that Ms. Weld had no actual or potential for conflict of interest.

Vice-Chairperson Hackney reported that the Board of Ethics found that Mr. Wilson had no actual conflict of interest but the potential for conflict of interest and that Mr. Wilson should exercise appropriate caution while performing his public duties as a member of the CRC should his company have business in areas subject to the jurisdiction of the CRC.

Vice-Chairperson Hackney said that the Board of Ethics found that Mr. Wynns had no actual conflict of interest but the potential for conflict of interest in that Mr. Wynns should recuse himself from any proceedings that specifically affect his real estate holdings.

Vice-Chairperson Hackney welcomed the new members to the CRC and thanked them for their willingness to serve on the CRC.

#### Announcements

Vice-Chairperson Hackney advised that Chairperson Tomlinson had appointed Bob Emory to serve as Chairperson of the Implementations and Standards (I&S) Committee.

Vice-Chairperson Hackney said CRAC member Rosetta Short was seriously ill. He advised that a Certificate of Appreciation for her many years of service on the CRAC was going to be presented to her from the CRC.

Vice-Chairperson Hackney reported that due to the prediction for adverse winter weather, the CRC was going to adjourn this meeting today. He advised that this would be accomplished by holding the afternoon concurrent committee meetings as a committee of the whole. Vice-Chairperson Hackney said the committee of the whole would act on the agenda items that required action at this meeting. Vice-Chairperson Hackney advised these items were the Holden Beach Land Use Plan Amendment from the Planning and Special Issues (P&SI) Committee, the estuarine shoreline erosion presentation, the proposed Coastal Area Management Act (CAMA) amendment to increase fees, and the erosion rate update and rule language from the I&S Committee.

#### Approval of October 23-24, 2002 Meeting Minutes

**Doug Langford moved that the minutes of the October 23-24, 2002 CRC meeting be approved. Mary Price Harrison advised that she had a few technical corrections which she would give to Ms. Brown and she seconded Mr. Langford's motion. The CRC unanimously approved Mr. Langford's motion (Renee Cahoon, Bob Emory, Peggy Griffin, Mary Price Harrison, Doug Langford, Jerry Old, Larry Pittman, Melvin Shepard, Joan Weld, Lee Wynns).**

#### Executive Secretary's Report

Donna Moffitt advised that, due to a family emergency, Charles Jones had been called away from the CRC meeting and she and Ted Tyndall would be presenting the agenda items Mr. Jones had been scheduled to present. Ms. Moffitt then presented the

Executive Secretary's Report. (SEE ATTACHMENT 1 FOR WRITTEN COPY OF REPORT.) Ms. Moffitt advised that CRC members were being provided with updated copies of rule 7H .1401-.1405 and 7H .0309, .0310 and .0311. She asked that CRC members replace the versions of these rules they currently had with these updates. Ms. Moffitt advised that the Glenn Sasser variance would not be heard today.

### **Variance Requests/Contested Cases**

Vice-Chairperson Hackney asked Mr. Longest to advise the CRC on the proper judicial procedures for hearing variance requests and contested cases and Mr. Longest reviewed these procedures for the CRC.

### **Variations**

#### **James Phillips Variance Request (CRC-VR-02-1)**

Merrie Jo Alcock advised that she was with the North Carolina Attorney General's Office and she was representing the Division of Coastal Management (DCM) in this variance request. Ms. Alcock said Quible & Associates had prepared Mr. Phillips' permit application and Joe Lassiter with Quible & Associates was present today representing Mr. Phillips.

Ms. Alcock said that Mr. Phillips had a contract to purchase property currently owned by Howard and Robert Basnett. She stated that the contract hinged on his ability to obtain a CAMA permit for a single family residence and other structures he was seeking to build on his property. Ms. Alcock said Mr. Phillips and the current property owners jointly applied for a CAMA major permit to construct a residence, driveway and docking facility. Ms. Alcock advised that DCM denied the permit based on inconsistency with the CRC's 30-foot buffer rule. Ms. Alcock said the property was located on a man-made canal between the Pamlico Sound and Highway 12 in Frisco in Dare County.

Ms. Alcock reviewed the Stipulated Facts contained in Attachment B of CRC-VR-02-1. Ms. Alcock advised that the petitioner was seeking a variance from the 30-foot buffer rule for a driveway.

Ms. Alcock reviewed DCM's response to the Variance Criteria contained in Attachment C of CRC-VR-02-1.

Joe Lassiter advised that he was with Quible & Associates and he was here representing James Phillips. Mr. Lassiter stated that he felt, in general, DCM staff was supporting this variance request and, in fact, it was recommended by the Elizabeth City DCM staff and it was determined fairly late in the process that the roadway leading to the proposed residential structure was not a water dependent use. Mr. Lassiter explained why the road was in the buffer and why the petitioner felt a variance was justified for placing the house where it was located.

Ms. Alcock and Mr. Lassiter responded to questions from CRC members.

**Mary Price Harrison moved that the CRC grant this variance request and her motion was seconded and approved by a vote of 8 in favor of the motion (Renee Cahoon, Bob Emory, Peggy Griffin, Mary Price Harrison, Doug Langford, Larry Pittman, Joan Weld, Lee Wynns) and 2 opposed to the motion (Jerry Old, Melvin Shepard).**

#### **Joseph and Doris Fleming Variance Request (CRC-VR-02-18)**

Dave Heeter advised that he was with the North Carolina Attorney General's Office and he was representing DCM staff in this variance request. Mr. Heeter advised that the Flemings owned a lot on the shoreline in Brigands Bay Subdivision in Frisco, Dare County. He said they wanted to construct a 16-foot by 30-foot addition to an existing single-family residence. Mr. Heeter stated that their permit application was denied because of inconsistencies with the 30-foot buffer requirement. Mr. Heeter advised that before a CAMA permit could be issued the CRC must vary the buffer requirement. He said a variance would also be needed from the 30 percent lot coverage limitation in Rule 15A NCAC 7H.

Mr. Heeter reviewed the Stipulated Facts contained in Attachment B of CRC-VR-02-18. Dennis Hawthorne showed photographs of the property in question in this variance request.

Gary Price advised he was present to represent the Flemings. Mr. Price thanked DCM staff for working with him to bring this variance before the CRC today. Mr. Price said the Flemings had invited him to their home recently and while he was there they advised him that Mr. Fleming was in the final stages of lung cancer. He reported they had asked him if he would apply for them

for a permit to add a room onto their house. Mr. Price stated that currently they had a two bedroom home in Brigands Bay which was a small residence for a waterfront home anywhere in Dare County. He stated this had been their primary residence for 14 years. He said this house was built in 1982 prior to the buffer act coming into effect and because of the existing layout of the house and where this addition needed to go had put them in the position they were in. Mr. Price stated that Mr. Fleming said wanted this room added on was because the two bedrooms they currently had were very small and he wanted a new room that could facilitate him and his needs and still allow his wife to live a social life and not be bothered by him. Mr. Price reviewed with the CRC a plat drawn of the property pointing out some of the governmental regulation lines that effect the buildability and what the Flemings could do on their lot. Mr. Price advised that after he had received DCM staff's comments he took another look at this project to see what they could do to work toward staff's recommendations and also further address water quality. Mr. Price said it appeared that they did have five more feet that they could take this addition and move it further away from the water and still allow this room to function for the Flemings. Mr. Price advised that before he came to the meeting today he had called the engineer to see if the stormwater infiltration system could be enlarged to also address water quality and he had been advised that this could be enlarged as well to take up additional stormwater. He said there was a ridge in front of the house and they could also put a guttering system on the house to make sure the runoff goes away from the sound. Vice-Chairperson Hackney asked if the guttering system would be for the old structure as well as the new and Mr. Price responded that it would.

**Melvin Shepard moved that this variance be approved with the new construction being moved to within five feet of the septic system and that the infiltration system be increased in size to handle the area of the original construction that is extended into the 30-foot buffer and the new construction. Mr. Shepard's motion was seconded. Dave Heeter pointed out that Mr. Price had also advised that the Flemings were willing to install guttering and Mr. Shepard stated that he would also like to include that as part of his motion. The CRC voted unanimously in favor of Mr. Shepard's motion (Renee Cahoon, Bob Emory, Peggy Griffin, Mary Price Harrison, Doug Langford, Jerry Old, Larry Pittman, Melvin Shepard, Joan Weld, Lee Wynns).**

#### William and Doris Smith Variance Request (CRC-VR-02-19)

Dave Heeter advised that the Smiths owned a lot on the shoreline of a canal off Pamlico Sound in Hatteras, Dare County. He stated that they wanted to add an addition to an existing structure and also cover a deck. Mr. Heeter said their permit application had been denied due to inconsistency with the CRC's 30 foot buffer requirement.

Mr. Heeter reviewed the Stipulated Facts contained in Attachment B of CRC-VR-02-19 and DCM staff's response to the variance criteria contained in Attachment C of CRC-VR-02-19.

Mr. Smith stated that they had purchased this house in 1995 with the intention of doing this work at that time and that was why they had obtained a permit. He said, however, they had to do a lot of work on the interior of the house and then he had a heart attack. Mr. Smith said shortly after his recovery his elderly mother who lived in South Carolina became ill and was placed in a nursing home for several years and they had to go there at least twice a month for that length of time. Mr. Smith stated they had a business to run in Frisco, Island Boatworks, and that had taken a lot of their time. Mr. Smith advised that they were just now getting around to doing this and they did not realize the permit had expired until they tried to do it and found out they could not. Mr. Smith explained why they needed to locate their addition on the side of the house instead of the back of the house. Mr. Smith said he hoped the CRC would grant them a variance.

Mary Price Harrison questioned Mr. Smith on their willingness to install a stormwater management system and Mr. Smith responded that they would be willing to do this.

**Mary Price Harrison moved that the CRC grant a variance to allow construction of the proposed addition to the existing residence and cover an existing deck on the condition that the Smith's would install a gutter system to collect rainwater from the roof and install an engineered stormwater infiltration system to capture the first one and one half inches of rainfall and runoff from the structure and her motion was seconded. Ms. Harrison's motion was unanimously approved (Renee Cahoon, Bob Emory, Peggy Griffin, Mary Price Harrison, Doug Langford, Jerry Old, Larry Pittman, Melvin Shepard, Joan Weld, Lee Wynns).**

#### Phil McAdams Variance Request (CRC-VR-02-20)

Dave Heeter advised that Mr. McAdams owned a corner lot between two canals at Ocean Isle Beach. Mr. Heeter stated that this was a vacant lot that Mr. McAdams wanted to build a residence on with some decking which would intrude into the 30 foot buffer. Mr. Heeter stated the Local Permit Officer denied the permit application because of the inconsistency with the 30 foot CRC buffer requirement and Mr. McAdams was seeking a variance from that buffer requirement.

Mr. Heeter reviewed the Stipulated Facts contained in Attachment B of CRC-VR-02-20. Mr. Heeter advised that Stipulated Fact No. 21 was not entirely correct. He pointed out that Stipulated Fact No. 21 said there were no residences to the north of the proposed residence, only vacant lots, but now there were now two houses located to the north. Mr. Heeter showed photographs taken of this area.

Mr. Heeter reviewed staff's response to the Variance Criteria contained in Attachment C of CRC-VR-02-20.

Mr. McAdams thanked the CRC for hearing his variance request. Mr. McAdams said he had asked Robert O'Neal who worked with R. S. McClure who was his builder and lived on the island to talk to the CRC about some of the facts. Mr. McAdams said he did have an odd situation because there were not a lot of lots on Ocean Isle that had two canals on the lot on both sides and there were only a few of them left, the rest of them had been built upon. Mr. McAdams said the Town requires a stormwater management system and he thought what he had heard today was that the purpose of the buffer was to protect water quality from stormwater runoff.

Mr. O'Neal said that between Mr. McAdams' position and staff's position there was really no argument. He stated that everyone was in agreement that something had to be done. Mr. O'Neal said that Mr. McAdams' position was that he had paid for a premium lot that he would could not build on since he would be left with a 13 foot wide lot if he had to meet the 30 foot buffer setback from the south side. Mr. O'Neal stated that they were also in agreement, as stated in their petition, that they had no objection to the 30 foot buffer on the west side. He stated this was a bay window and part of some open decking that had been included but they were more than willing to redesign to just obtain a permit with the regular stipulation that nothing be added to the 30 foot buffer on the western side except for the allowable 200 foot of open deck. Mr. O'Neal said that on the south side they would like to request that they would be able to reduce that deck to 6-foot in width elevated slatted walkway between the east and the west deck with the one on the east being an uncovered deck and on the west a screened porch. Mr. O'Neal said that this was their request.

Mr. O'Neal responded to various questions from CRC members. Melvin Shepard asked Mr. O'Neal to repeat what he proposed for the west side of this structure. Mr. O'Neal stated that what they proposed on the west side was to meet the 30 foot setback requirement. Mr. O'Neal said that on the south side they were asking to reduce the width of the open deck to 6 feet wide and use an open slatted walkway to connect the east deck and the west side screened porch. Vice-Chairperson Hackney pointed out to CRC members that what was being asked for in this variance request was different from what had been provided to them in their packet material.

**Jerry Old moved that the CRC grant this variance request on the condition that the applicant reduce the width of decking on the south side to 6 feet of slatted walkway and eliminate the proposed screened porch on the west side. The CRC voted unanimously in favor of Mr. Old's motion (Renee Cahoon, Bob Emory, Peggy Griffin, Mary Price Harrison, Doug Langford, Jerry Old, Larry Pittman, Melvin Shepard, Joan Weld, Lee Wynns).**

### **Contested Case**

Vice-Chairperson Hackney advised that in contested case hearings there were many times that the amount of documentation CRC members received was overwhelming. Vice-Chairperson Hackney reminded CRC members that what they were required to do was affirm, change or reject a Recommended Decision of the Administrative Law Judge.

### **Town of Ocean Isle Beach Contested Case (CRC-CC-03-01)**

Dave Heeter advised that Elva Jess was present today to represent the Town of Ocean Isle Beach.

Ms. Jess said that what had been pointed out at least twice this morning was that we were not here today to create new and exciting facts and she was not going to do that. Ms. Jess said this was a fairly straightforward and simple case. Ms. Hickey said that before the hearing she and Mr. Heeter had stipulated a majority of the facts in this case that would be heard by the Administrative Law Judge (ALJ). Ms. Jess said, unfortunately, the ALJ had not concluded as they would have liked for him to so, consequently, the ALJ had also not ruled as they would have liked for him to. Ms. Jess stated she had prepare and filed an objection to this order which the CRC should have that received. Ms. Jess said, however, she understood they were missing a page and, as a result, she would go over that a little more thoroughly than she would the rest.

Ms. Jess stated that the decision rendered by the ALJ Sammie Chess took into account three separate issues. Ms. Jess advised

the Town of Ocean Isle Beach had objected to the fact that one of the issues should have even been considered by the ALJ. Ms. Jess said this issue was raised by Mr. Heeter in his opening statement to the judge and it was presented in testimony by a Mr. Cook, property owner in this block. Ms. Jess advised that Mr. Heeter's contention was that because the majority of the owners on adjacent lots would prefer there not be a reopening of First Street that they had acquiesced in the abandonment of it and that really was not an issue the ALJ should have even considered. Ms. Jess said whether or not a property owner had acquiesced in the abandonment of it by building private walkovers to the beach across the road right-of-way and obtaining alternative means of access to their lots was not an issue the ALJ should have considered. Ms. Jess stated they had to deal with every single property owner and every single property owner's interest.

Ms. Jess said the second issue that was raised by the ALJ in the decision process was whether the CAMA and rules of the CRC would deny landowners access to their property if the road was not rebuilt. Ms. Jess stated that the ALJ's Findings of Fact to address that issue deal with a recommendation made by Charles Jones at the hearing that perhaps the CRC would deal with this issue by granting the Town of Ocean Isle Beach permission to build and utilize Hatteras ramps. Ms. Jess advised that Mr. Jones had testified that this was something that the CRC had permitted in the past and also he was indicating that in the future it might be something that would happen through the Town of Ocean Isle Beach's variance request. Ms. Jess said he was just informing the court that it was something that might happen and through the Findings of Fact made by Judge Chess he in fact indicates that was something the DCM staff would recommend to the CRC. Ms. Jess stated the Hatteras ramps, however, from a practical perspective did not really respond to the issue that the Town of Ocean Isle Beach had and she explained why the Town of Ocean Isle Beach felt this would not be a reasonable means of access in this case. She said, if a reasonable means of access could not be provided, it was the Town of Ocean Isle Beach's position that would result in a condemnation. Ms. Jess said it appeared that this ruling would in fact result in a condemnation or taking of private property and this was something the rules were not supposed to result in. Ms. Jess said the Town of Ocean Isle Beach argues that potentially there would be a taking of private property without adequate compensation creating the Town's inability to comply with an affirmative duty required by it pursuant to State statute. Ms. Jess advised this was the last page the CRC had not received. Ms. Jess stated that the stipulations contained within the packet were two State statutes regarding maintenance and construction of the streets. She said NCGS 136-66.1 provided that the Town shall be responsible for the maintenance, construction, and reconstruction of all streets within the municipality that were within its street system. Ms. Jess said the Town of Ocean Isle Beach had an affirmative duty to maintain those streets. Ms. Jess advised that NCGS 160-296(1) provided that the Town had the duty to keep the public streets, sidewalks, alleys and bridges in proper repair. Ms. Jess said NCGS 160-296(2) provided that the Town had the duty to keep the public streets, sidewalks, alleys and bridges open for travel and free from unnecessary obstruction. Ms. Jess said it was a simple fact that the road existed, a storm took the road away, the Town of Ocean Isle Beach asked for a permit in order to put the road back but not as it once was. Ms. Jess advised that it was asphalt but the Town of Ocean Isle Beach was proposing that they put in a gravel street, similar to the one that the Department of Transportation (DOT) installed a few years earlier, on a stretch of property adjacent to that tract.

Ms. Jess responded to questions.

Dave Heeter said that the primary issue before the CRC was whether or not DCM properly denied the CAMA permit application to rebuild this road. Mr. Heeter stated DCM had found that the rebuilding of the road as proposed was inconsistent with the CRC's rules and also with the Town's land use plan. He said for many years there had been an erosion problem along the oceanfront in this part of Ocean Isle Beach. Mr. Heeter reviewed exhibits contained in the hearing record and explained what the Town was proposing in their permit application to reconstruct this roadway. Mr. Heeter said the problem was that the proposed road would fail to comply with the 120 foot erosion setback and the road would actually be located seaward of the first line of stable natural vegetation. Mr. Heeter said the Town's land use plan also basically prohibited development on sites which were potentially dangerous. Mr. Heeter stated that these were the basic grounds for the denial of the permit application.

Mr. Heeter said the Town was arguing that under State statute they were required to maintain this road. Mr. Heeter said his answer to that would be that they were required to maintain it but it had to be consistent with applicable laws and in this case it was not consistent with the CRC's setback requirement or with the Town's land use plan. Mr. Heeter said the takings issue was something that would be raised after the CRC made their decision. Mr. Heeter said the takings issue was not something the CRC needed to consider at this time.

Vice-Chairperson Hackney asked if it was correct that the CRC's job today was to decide if the Conclusions of Law by the ALJ and then the decision were to be upheld. Ryke Longest responded that was correct.

Mr. Heeter responded to questions from CRC members.

**Mary Price Harrison moved that the CRC adopt the ALJ's decision as recommended by DCM staff and her motion was seconded. Doug Langford advised that he would like to be excused from voting on this case since he was unavoidably out of the room during most of the discussion. The CRC voted unanimously in favor of Ms. Harrison's motion (Renee Cahoon, Bob Emory, Peggy Griffin, Mary Price Harrison, Jerry Old, Larry Pittman, Melvin Shepard, Joan Weld, Lee Wynns).**

Helen Smith Contested Case (CRC-CC-03-02)

Merrie Jo Alcock said this case was Helen Smith versus the Department of Environment and Natural Resources (DENR) and DCM. Ms. Alcock advised that Ms. Smith was present today with her son, Frank Smith.

Ms. Alcock reported that the ALJ in this case made a decision in favor of the petitioner after an evidentiary hearing. Ms. Alcock stated she had filed exceptions to the ALJ's decision on numerous basis. She said the primary basis was that the Office of Administrative Hearings (OAH) lacked the subject matter jurisdiction over the case. Ms. Alcock said on the first page of Respondent's Brief with Exceptions to ALJ's Decision she had a 1 and a 2. Ms. Alcock advised that the first was that she requests the CRC to reverse this decision and modify it by finding, first, that OAH lacks subject matter jurisdiction pursuant to two rules of North Carolina civil procedure. She said that, secondly, she asked that in the alternative, that respondent did not err in the particular ways that were outlined in this decision. Ms. Alcock said she was going to ask that the CRC consider reversing the ALJ's decision in the way enumerated in number 1 but also to make findings relevant to number 2 for purposes of judicial economy. She said, for example, if the CRC was to find that OAH did not have jurisdiction and then maybe on appeal it was found that they did, then the issue could be sent back to the CRC on the substance of the matter which was what was covered by number 2. Ms. Alcock stated she would ask that the CRC also make findings and reverse the ALJ's decision on the substance as outlined in number 2.

Ms. Alcock advised that the background of this case was outlined in her Statement of Case on page 2. Ms. Alcock said the petition had first been filed by Ms. Smith in December of 2000 challenging the location of some pilings in the Intercoastal Waterway near property that she owns in Hampstead, North Carolina. Ms. Alcock said Ms. Smith alleged that the pilings were blocking their access to the waterway. Ms. Alcock said she filed a Motion to Dismiss in that first instance but this motion was never ruled on because a Settlement Agreement was entered into where the owner of the pilings, Joe Honeycutt, agreed to move the pilings. Ms. Alcock advised that without ever having a hearing, the various parties entered into a Settlement Agreement. Ms. Alcock said it was this Settlement Agreement that lead to the case that was now before the CRC. Ms. Alcock advised that after the Settlement Agreement the pilings were realigned and moved but the petitioner was not satisfied with that realignment and, therefore, filed this case appealing the terms of the Settlement Agreement and alleging that the terms of the settlement were not properly implemented. Ms. Alcock said in this appeal, filed in 2002, the petitioner alleged that she was not given notice of the surveyor going out on site and secondly that the pilings were still not straight and not in accordance with the alignment she was seeking. Ms. Alcock referred the CRC to Exhibit 7 in the record which was a picture of the disputed pilings after they were realigned by Mr. Honeycutt explaining what was depicted in the photograph.

Ms. Alcock stated that the important thing about subject matter jurisdiction was that DCM had to have undertaken an action that would be subject to review by the OAH and by the CRC. Ms. Alcock said that unlike all the other things the CRC had heard today where there was not a decision to grant or deny a permit giving someone the right or denying them the right to do something, there was no permit application in this case and no request for a permit. Ms. Alcock advised this was the primary basis for her Motion to Dismiss. Ms. Alcock said subject matter jurisdiction had to exist before the OAH could hear a case and so she had brought a Motion to Dismiss on numerous bases of why subject matter jurisdiction did not exist in this case. Ms. Alcock stated that those bases were the OAH did not have jurisdiction over breach of contract. She said a settlement agreement was a contract as established by North Carolina Law. Ms. Alcock stated that if a party to a contract was unhappy with the enforcement of that contract, their remedy would be to go to a superior court for interpretation of that contract and for determination of whether or not it was properly implemented. Ms. Alcock advised this was provided by statute in NCGS 7A-240 which says the proper forum for justiciable matters of a civil nature, such as contract disputes, are the trial divisions of the General Court of Justice. Ms. Alcock stated that OAH was not a trial division of the General Court of Justice. Ms. Alcock said a trial division of the General Court of Justice like a superior court or district court would have the power to issue injunctive relief which was the type of relief that was sought in this case.

Ms. Alcock said secondly she argued that OAH did not have subject matter jurisdiction because the petitioner was not a "person aggrieved." Ms. Alcock advised that under the Administrative Procedure Act (APA) to go into the OAH you had to be a "person aggrieved." Ms. Alcock stated she had argued that the petitioner was not a "person aggrieved" because a "person aggrieved" was defined as someone adversely affected in their legal rights or property by an administrative decision. Ms. Alcock stated that for two reasons the petitioner was not a "person aggrieved" . She said the petitioner did not own riparian

property and had not, therefore, been adversely affected in her property rights, and secondly there had been no administrative decision by an agency.

Ms. Alcoke stated that the third basis for lack of subject matter jurisdiction was that the petitioner did not comport with the requirements of the APA. She said the next basis was that CAMA provided the exclusive way to appeal a CAMA permitting decisions and the petitioner was not one of the people who were entitled to an appeal under CAMA. She advised that two different types of people could appeal under CAMA. Ms. Alcoke said one was a permit applicant which was provided for in NCGS 113A-121.1. Ms. Alcoke stated that another person who could file an appeal was a third party who was aggrieved by a permit decision but they first had to go through the chairperson of the CRC through a proceeding called a Third Party Hearing Request. She advised that if that Third Party Hearing Request was granted by the chairperson of the CRC then that person got to go to OAH. Ms. Alcoke stated the Secretary of DENR was afforded an automatic right to appeal and so the petitioner, not being a permit applicant and not being a third party who had filed a Third Party Hearing Request through the chairperson and not being the Secretary of DENR was, therefore, not entitled to an appeal under CAMA.

Ms. Alcoke reported that she had next pointed out that in order to have subject matter jurisdiction you had to timely file your appeal. Ms. Alcoke advised that the petitioner did not allege and the ALJ's Decision did not state what the alleged date of the agency action in this case was. Ms. Alcoke said she argued that there was no agency action from which an appeal could be made. Yet, even if there was agency action, the date of any such action triggered the statutory appeal period under CAMA, which the petitioner clearly did not meet when the petitioner filed for a contested case hearing on January 28, 2002.

Ms. Alcoke said finally she had argued that the petition should be dismissed for failure to state a claim upon which relief may be granted. Ms. Alcoke advised this was Rule 12(b)(6) of the North Carolina Rules for Civil Procedure which requires the petitioner to make a claim that OAH could help them with and give them some relief. She said the petitioner sought to have the pilings realigned and this relief exceeded the power assigned to ALJs which was specifically described in the APA in 150B-33 and 36. Ms. Alcoke said injunctive relief was not one of them. Ms. Alcoke said the petitioner's claim, if any, was against Mr. Honeycutt, the owner of the pilings, and not the State and therefore was in the wrong forum. Ms. Alcoke said that because the complaint was against the riparian property owner, Mr. Honeycutt, it did not lend itself to proper review by the CRC because the CRC's job was to review DCM decisions.

Ms. Alcoke said she was not going to go into detail about why the ALJ's Decision should be reversed regarding the substance of it. She said she had outlined that in her brief with citations to the transcript, record and exhibits. Ms. Alcoke asked the CRC to reverse the ALJ's Recommended Decision and find there was no subject matter jurisdiction and also to find in the alternative that the agency did not err in the ways enumerated in the APA.

Helen Smith stated she too had some pictures of the pilings she wanted to share with the CRC. Ms. Smith advised they had agreed, and Ms. Alcoke and Ms. Moffitt had signed the agreement and everyone signed the agreement to have the pilings straightened up. Ms. Alcoke stated these pictures were not part of the record so it was not something that could be considered by the CRC. Ms. Smith advised she had heard that she had been sent a kit about what was in the record but she did not receive any kit so she did not know what Ms. Alcoke was talking about. Ms. Smith said all these things were added into evidence at the hearing. Vice-Chairperson Hackney stated that the CRC could only discuss things that were in the hearing record that they had been provided. Ms. Smith asked who had provided the CRC with the record. Ryke Longest stated that the OAH should have provided both Ms. Smith and Ms. Alcoke with a copy of the hearing record. Ms. Smith stated that she did not receive anything but Ms. Alcoke's response. Mr. Longest asked Ms. Smith if she took part in the hearing and was present during the hearing. Ms. Smith responded that she had. Mr. Longest asked Ms. Smith if she was there when the evidence was presented and Ms. Smith said she was. Mr. Longest asked Ms. Smith if what she wanted to present today was something that was presented at that hearing. Ms. Smith's son, Frank Smith, responded it was in one or the other of two hearings. Ms. Smith said there had been several hearings. Mr. Smith said this was not really a major concern. It was simply the way the pilings were installed without a permit and that was what the whole issue was about. He said the pilings were installed in the waterway below the water line without a permit. Mr. Longest asked Ms. Alcoke if the item that had been handed to Commissioner Shepard was not in the record. Ms. Alcoke responded that if you referred to the ALJ's Recommended Decision on the very first page it listed the exhibits that were part of the hearing. Ms. Alcoke advised that the petitioner entered just one exhibit and that was a survey. She stated that the respondents entered in seven exhibits and that was not an exhibit that was a part of the hearing. Mr. Longest reiterated that the CRC could only hear what was in the hearing record.

Ms. Smith said there were two hearings and the an agreement was made at the first hearing and all these things that Ms. Alcoke addressed about the zoning restrictions and all that sort of stuff was addressed in that first hearing. Ms. Smith said at that time they got the agreement and that was supposed to have settled that case. Vice-Chairperson Hackney asked if he was correct that

there was no ALJ decision in that first case. Ms. Smith responded there was an agreement made. Ms. Alcoke responded there was no court reporter and no proceedings but they had come to a Settlement Agreement that day. Ryke Longest asked if the Settlement Agreement was in the record and Ms. Smith responded that was correct and there were seven signatures on it. Mr. Longest referred the CRC to the Settlement Agreement contained in the hearing record they had received. Mr. Longest said this was the Settlement Agreement Ms. Smith was here to discuss. Mr. Longest asked Ms. Smith what it was she wanted the CRC to do. Ms. Smith said all she wanted was to have done what was in the Settlement Agreement and this had not been done. Mr. Longest asked Ms. Smith how they had not done it. Ms. Smith advised that it had been agreed that the pilings would be straightened out in accordance with the terms of the Settlement Agreement. Additional discussion followed on what was contained in the hearing record and what would be allowable for Ms. Smith to discuss and present. Ms. Smith reiterated that she had not received a copy of the hearing record. Ms. Smith said she had also not been notified when the surveyor would be at the site. Ms. Smith reviewed why she felt the terms of the Settlement Agreement had not been adhered to and why she felt the pilings still needed realignment. Mr. Smith said they were asking the CRC to affirm the ALJ's Recommended Decision.

Vice-Chairperson Hackney said that in the Settlement Agreement it was agreed that the pilings would be moved and they had been moved. He asked the Smiths if it was correct that were contending that even though the pilings were moved, the pilings were still 3.2 feet from where they should be. Mr. Smith responded that they were still 3.2 feet from where the Settlement Agreement stated they should be. Vice-Chairperson Hackney said this was the subject the CRC was dealing with but the argument right now was whether the ALJ had the authority to rule in this case since there was no permit and no "aggrieved person" and if the CRC had the authority to grant this. He said it clearly had some civil elements that they very well might have a basis for a case but DCM had not granted a permit. Mr. Smith asked if it was not correct that a permit was required for the sinking of pilings below the waterline. Vice-Chairperson Hackney asked Ms. Moffitt if there was a permit request and Ms. Moffitt responded that there had been no permit application by these people. Mr. Smith said that was the complaint about the pilings that were installed without a permit. He said this was how this started. Vice-Chairperson Hackney asked if there was any enforcement action in this matter. Mr. Smith responded they came down and looked at it and said they did not see anything wrong with what he had done. Mr. Smith stated the fact that he had done anything without a permit was a violation of the rules. Vice-Chairperson Hackney said what the CRC's charge was to affirm the ALJ's Recommended Decision or deny it or alter it as they felt appropriate.

Melvin Shepard asked if these pilings were all in public trust waters and not on these individuals' personal property and Vice-Chairperson Hackney said that was correct. Mr. Shepard said the next question he had was whether the CRC and DCM had any authority in this case to even grant permits or get involved with putting pilings in a public trust area. Mr. Shepard stated that he knew, for example, in their oyster garden they did not have to ask the CRC anything about putting pilings within inches of the shore. He said the CRC did not become involved. Mr. Shepard questioned who was the legal authority was for granting pilings in public trust areas. Ryke Longest responded that when it was development within an Area of Environmental Concern (AEC) it was in DCM's permitting jurisdiction. Mr. Longest advised that the question here was not an objection to any permit. Mr. Longest said the question was the enforcement of a requirement as cited by the ALJ and to enforce the Settlement Agreement. Mr. Longest stated the ALJ's order ordered three things and he thought the CRC should be pretty clear about this. Mr. Longest advised that the CRC only had jurisdiction to decide should the ALJ's order be upheld or should the ALJ's order not be upheld and the basis for that would be to consider the arguments in the Proposed Findings of Fact and Conclusions of Law that Ms. Alcoke had submitted. Mr. Longest said to adopt the ALJ's decision, the CRC would need to make no decision about anything else they would just need to say they adopted the ALJ's decision. Mr. Longest said, in fact, if no action were taken by the CRC that would happen by default. Mr. Longest said the question of whether or not a permit is required was really not the question in this case because that was the subject of something called a Third Party Hearing Request process as set forth in CAMA if a third party did not like some permitted activity. Mr. Longest advised there was a permit entered in the record for some dredge and fill activity but that permit did not mention anything about pilings one way or the other. Mr. Longest said there might be other information in the record that he was not aware of about what was required and what was not. Mr. Longest said it certainly may have been required pursuant to that marina but he thought it would be good for the CRC to ask Ms. Alcoke and Ms. Smith what they know, if anything, about what is in the record about how those pilings were placed and whether a permit was required and was this pursuant to a permit as long as something about that was in the record. Mr. Longest asked if there was anything in the record about under what authority these pilings had been placed.

Mr. Smith asked if CRC members had a transcript of the hearing and Mr. Longest responded they did. Mr. Smith said there was testimony in the record but he did not know where it was.

Ms. Alcoke referred CRC members to page 11 of her Respondent's Brief with Exceptions to ALJ's Decision. Ms. Alcoke said it gave background that she thought would help the CRC on how these pilings got there in the first place. Ms. Alcoke said she did not think any of this was disputed by the parties. Ms. Alcoke said under Proposed Additional Findings of Fact it states:

Petitioner is not a riparian property owner, but owns property on the landward side of Broadview Lane, across the road from the property where the disputed pilings are located. The tract of land over which the petitioner claims a right to access the AIWW is privately owned by Carl and Lou Rose.

Ms. Alcocke said Exhibit 1 in the record also supported that. She stated the Roses had denied the petitioner's right to cross over their property to land a boat there but that was not being looked at. Ms. Alcocke advised that in respondent's Exhibit 1 there was a letter from the Roses' attorney to the petitioner saying not to cross over their property anymore. Ms. Alcocke said the petitioner claims that in July of 1999 Mr. Honeycutt who owns the pilings and the boat landing added some pilings to the existing ones making the landing on the Rose side where they claim to go down nearly unusable by blocking access to deep water. Ms. Alcocke said the permit Ms. Smith held up earlier was a 1975 Army Corps of Engineers permit that authorized 11 pilings and that was before CAMA. Ms. Alcocke advised this permit was not entered into the record at the hearing but was a part of the Settlement Agreement and that was a part of the record. Ms. Alcocke said there was a 1985 permit in the record and the purpose for this being in the record was because when permit applications are submitted a plat is drawn that shows what they have now and the plat showed that the pilings were there in 1985. Ms. Alcocke said the pilings were permitted in 1974 and they were still there in 1985. Ms. Alcocke said DCM would agree that they had been modified over time. Ms. Alcocke stated that in July of 1999 Mr. Honeycutt added some to the existing ones making the access to deep water difficult. Ms. Alcocke said that the petitioner's son, Frank Smith, rented a backhoe and tore the pilings down. She said he was found responsible by an arbitrator for destruction of property. Ms. Alcocke said the pilings were reinstalled by Mr. Honeycutt and no permit was ever applied for when Mr. Honeycutt either allegedly added the pilings that blocked deep water access or when he put them back after they were pulled out. She said nobody looked at anything. Ms. Alcocke stated that after the fact when the petitioner made the claim that they were blocking access, DCM looked at them and advised that the pilings had been there forever and a permit was not needed to repair them. Ms. Alcocke said DCM did not have a personal stake in the pilings and did not have the ability to exercise self-help and go move them because the pilings were not in violation of CAMA.

Doug Langford asked Ms. Alcocke if during the hearing that was the subject of the case before the CRC today did she make argument at that time that the ALJ did not have jurisdiction in this case. Ms. Alcocke responded that she moved for a lack of jurisdiction in both cases and none of her motions were ever ruled upon until the decision was issued and he found in their favor and ruled that the Motion to Dismiss was denied.

Bob Emory said he did not know what could be done if the CRC decided in favor of the petitioner. Mr. Emory stated that he could not see where the CRC had any authority in this matter.

**Mary Price Harrison moved that the CRC reverse the ALJ's Decision and modify it as recommended by Ms. Alcocke and her motion was seconded.** CRC members discussed at length and questioned how this case should be resolved and what, if any, authority the CRC and DCM had in this matter and would have if the CRC upheld the ALJ's Recommended Decision. **The CRC voted five in favor of Ms. Harrison's motion (Bob Emory, Peggy Griffin, Mary Price Harrison, Joan Weld, Lee Wynns) and five opposed to Ms. Harrison's motion (Renee Cahoon, Doug Langford, Jerry Old, Larry Pittman, Melvin Shepard). Vice-Chairperson Hackney broke the tie on this motion by voting in favor of the motion.**

Melvin Shepard said it seemed to him that perhaps the CRC and other agencies did not have the rules in place to deal with this kind of thing. Mr. Shepard stated that he believed the CRC was in conflict rather than in concert with what the Marine Fisheries Commission says on certain things. Mr. Shepard advised that he thought they had a dog in the fight of the case the CRC just heard. Mr. Shepard said dealing with 15A NCAC 7H where it talked about wooden groins and riprap offshore it was certainly talking about getting into areas where the Division of Marine Fisheries could want to have a say in whether we did or did not do something. Vice-Chairperson Hackney stated they did comment on permits. Mr. Shepard said in this case he could not find where the Division of Marine Fisheries had been asked for an opinion. Mr. Shepard advised his recommendation to the Chair was that the Chair appoint a committee consisting of a member of DCM and ask for a member from the Division of Marine Fisheries and a member from the North Carolina Fish and Wildlife who were the designated law enforcement officers on the water in the State of North Carolina and maybe a member of the Attorney General's Office to take a look at what had been talked about today, things in the public trust waters. Mr. Shepard stated that those were under the Department of Administration and the Secretary of DENR was given the job of handling those but exactly who handled them and under what conditions and under what conditions would you want to make sure that you pulled in another agency for comment before you looked at any kind of a case and where would law enforcement come in where two guys got in a quarrel in the water about whether you were allowed to do something in front of your property. Mr. Shepard said what he had found out in dealing with oyster gardens was that everybody had a right to be everywhere. Vice-Chairperson Hackney asked Mr. Shepard if it was alright if he requested that DCM staff develop a short presentation on public trust in the coastal zone and how that was handled. Mr. Shepard agreed with

Vice-Chairperson Hackney's proposal.

### **Public Input and Comment**

Don Morris of 511 Broad Creek Loop Road, Newport, North Carolina, said that the North Carolina Constitution proclaims that the ocean beaches of North Carolina are held in public trust for all of its citizens. He said the North Carolina Constitution directs all elected and appointed officials to protect and defend public trust rights. Mr. Morris stated that the sharp rise in development of the oceanfront beaches in North Carolina had created severe problems with traditional beach access and use by the public. Mr. Morris advised that developers and communities alike ignore the public trust doctrine when oceanfront property was transferred and developed. He stated that instead the developers and locally elected officials imply that the beaches fronting the newly developed properties were private beaches for area residents only and that locally elected officials allow further restrictions on public access by banning sport fishing vehicle use by fishermen on beaches and implementing no parking bans on streets in the vicinity of the beaches. Mr. Morris stated that the Whalehead lawsuit filed in Currituck County Superior Court was a classic example of wealthy oceanfront property owners attempting to usurp traditional beach rights of citizens of the State. He said if the State courts rule in favor of the Whalehead group, all developed beaches in the State would soon be off limits to the public except for federal and State owned areas.

Mr. Morris said another glaring example of oceanfront property owners attempting to exclude the public from their private beaches was taking place in Pine Knoll Shores. Mr. Morris reported the municipality was attempting to secure a federal beach nourishment project without strictly adhering to the federal Army Corps of Engineers (COE) public access requirements. Mr. Morris stated that Pine Knoll Shores evaded the COE requirements last year by claiming the nourishment project was a privately funded project and did not have to meet COE requirements. He said, however, in order to secure funding for a Federal 933 project planned for the winter of 2004, Pine Knoll Shores is pressing the COE to approve an access scheme which provided limited parking and access to their beach during the summer tourist season only. Mr. Morris said the Pine Knoll Shores scheme did not provide year round parking with access for all of the beach included in the proposed taxpayer financed renourishment project. Mr. Morris advised that, in effect, the beachfront property owners were seeking approval from the COE to continue privatizing the beaches of the State even though federal and State funds were paying for the sand being dumped in front of their palatial beachfront homes. Mr. Morris stated that this proposed violation of the public trust continues while elected and appointed officials did nothing to protect the public trust rights. He said, indeed, it appeared that officials do everything they could to gain favor among the well to do oceanfront property owners while ignoring the public trust rights of American taxpayers.

Mr. Morris said if the Whalehead subdivision and the Town of Pine Knoll Shores were allowed to privatize the oceanfront beaches in their areas, the practice would undoubtedly spread to all the coastal areas of the state. Mr. Morris said to paraphrase a statement recently made by Governor Easley which was analogous to beach access; "Our state is indeed fortunate to have so many natural resources and as the heirs we have a special responsibility to take care of this bounty." Mr. Morris urged the Governor's office, DCM and the court system to uphold the rights of the people by insuring compliance with federal and State standards for public access to all of the beaches in our State.

Vice-Chairperson Hackney thanked Mr. Morris for his comments. Nobody else asked to address the CRC.

### **CRC/CRAC Committee as a Whole**

Vice-Chairperson Hackney advised that the two standing committees were now meeting as a committee of the whole.

#### **Holden Beach Land Use Plan Amendment (P&SI-03-01)**

Kathy Vinson said what was before the CRC today was a proposed amendment to the 1997 Town of Holden Beach Land Use Plan Update. She said this plan was certified by the CRC in November of 1998. Ms. Vinson reported that what the Town of Holden Beach was proposing to do was to clarify that they would allow bulkhead construction consistent with State standards. Ms. Vinson introduced Steven Wheeler, Holden Beach Town Manager.

Ms. Vinson advised that the current policy in the plan that was certified in 1998 states unequivocally that the Town intends to prevent damage to existing coastal and freshwater marshes resulting from bulkhead construction. Ms. Vinson said DCM's regulatory staff had determined that correct application of this policy to a CAMA major permit would require a proposed bulkhead to be aligned landward of all vegetated wetlands at the construction site. Ms. Vinson said the Town says this is stricter than what they intended since the CRC's minimum use standards allow that bulkheads be constructed landward of just significant marshlands and marshgrass fringes

Ms. Vinson reported that on November 25, 2002, the Town held a properly advertised and conducted public hearing to consider the change to clarify the language. Ms. Vinson advised the amendment read:

It is the policy of the Town of Holden Beach to prevent damage to existing significant coastal and freshwater marshes as a result of bulkhead installation as provided under State and federal regulation. Maintenance and replacement of existing bulkheads will be permitted. It is the policy of the town of Holden beach to allow for the straightening and aligning of bulkheads to original property lines on canal lots.

Oceanfront bulkheads, groins, seawalls or other shoreline hardening erosion control structures are not permitted by the State of North Carolina and will not be allowed on Holden Beach.

Ms. Vinson said what the Town had done was to clarify that they did intend adhere to State standards and did not intend to impose any local standards which were more restrictive than State standards. Ms. Vinson reiterated that a hearing had been held on November 25th and she understood that there were no comments received. Ms. Vinson stated that DCM staff did recommend that the CRC certify this amendment.

Vice-Chairperson Hackney advised that since the CRC and CRAC were meeting as a committee as a whole, CRAC members were invited and encouraged to participate in any discussion. He said, however, the vote would be by only the CRC since they would be adopting this as a full CRC.

**Doug Langford moved that the CRC certify this land use plan amendment and his motion was seconded and unanimously approved (Renee Cahoon, Bob Emory, Peggy Griffin, Mary Price Harrison, Doug Langford, Jerry Old, Larry Pittman, Melvin Shepard, Joan Weld, Lee Wynns).**

#### Estuarine Shoreline Erosion

Stan Riggs with East Carolina University stated they had some results from a recent study they had conducted in part from a request from DCM with respect to developing some specific information on estuarine shoreline erosion which the CRC had past trouble dealing with and needed more data. Dr. Riggs said he was going to present this data to the CRC today. He said this would be published by DCM hopefully by the end of March or April. Dr. Riggs then summarized the data gathered in this study. Dr. Riggs responded to questions.

#### Proposed CAMA Amendment to Increase Fees Sufficiently to Cover Cost of Running CAMA Permitting Program (I&S-03-01)

Donna Moffitt referred the CRC to Agenda Item I&S-03-01 contained in their meeting packet which was a memorandum from Charles Jones to the CRC dated January 2, 2003 with the subject being Permit Fees. Ms. Moffitt said this was before the CRC today because of a request from Jerry Old that DCM staff do an analysis of permit fees received versus the cost of running DCM's regulatory program to see if the CRC would like to support either existing legislation that DENR is working on or come up with some other plan to get funds into DCM to better match what it actually costs to run the regulatory program. Ms. Moffitt advised that she had realized earlier in the day that the legislative proposal currently being consider by DENR that Mr. Jones said was attached to his memorandum had not in fact been attached. She advised this would be mailed to CRC members as soon as staff returned to their office. Ms. Moffitt then reviewed the background, the existing permit revenues, recent impacts of current State budget crisis and potential legislative initiatives contained in Mr. Jones' memorandum to the CRC.

Ms. Moffitt said what the CRC should consider is whether they were interested in supporting the proposed DENR legislation to raise the cap in CAMA and then the CRC would come back and do rulemaking, did the CRC want to take a different route and go directly to coastal legislators and suggest that the fees be raised or given what DCM has provided today, did the CRC want DCM to come back to the CRC with more information or a different kind of information. CRC and CRAC members discussed what the best way to proceed with this issue would be. **The CRC agreed that between now and the next meeting CRC members would contact their legislators to obtain input on what their reaction to this issue would be and learn if they had any input on how to proceed with this issue and provide DCM staff with any input they might receive and, if needed, a CRC conference call could be initiated. The CRC advised Ms. Moffitt to advise DENR senior staff that the CRC held this discussion today and would be having discussions with as many coastal legislators as practicable to get their reaction to evolving towards DCM self funding.**

#### Erosion Rate Update Schedule and Rule Language (I&S-03-02)

Ted Tyndall referred the CRC to the January 9, 2003, memorandum from Charles Jones to CRC/CRAC members with the subject Schedule for Updating the 1998 Shoreline Erosion Rate and Proposed Rule Language. Mr. Tyndall stated that DCM was in the final stages of finalizing the new shoreline erosion rates based on the 1998 aerial photography dataset. Mr. Tyndall said DCM staff planned to present the new rates at the April CRC meeting. Mr. Tyndall advised that in addition to presenting the erosion rates, the language in various portions of Subchapter 7H-State Guidelines for Areas of Environmental Concern that reference the new rates needed to be adjusted. Mr. Tyndall reported that Mr. Jones attached to his memorandum a copy of the Proposed 2003-2004 Schedule for Updating the 1998 Shoreline Erosion Rates and Proposed Rule Language. Mr. Tyndall stated that it was a fairly ambitious schedule and it was being introduced today to let the CRC know that it was coming. Mr. Tyndall said at this meeting today DCM staff was presenting some draft language changing those dates which was standard operating procedure that DCM had done over the past eight to ten years during the update of these maps. Mr. Tyndall advised that at the April meeting DCM staff wanted to take it back to the CRC, probably in the I&S Committee, with the new shoreline erosion rates and proposed rule language change. Mr. Tyndall said from June through August public hearings would be held and finally at the October CRC meeting the public hearing results would be presented and the CRC could hopefully adopt the new rates. He advised that then in December the Rules Review Commission could approve the new rates and from there to the General Assembly. Mr. Tyndall said if the CRC looked at what he had passed out, it was some of the draft language DCM was proposing to change. Mr. Tyndall advised that the things that were highlighted basically just were the dates based on when things will be adopted and become effective and when the windows of certain grandfathering would take place. Mr. Tyndall stated this was nothing new but rather the way business had operated in the past as the erosion rates were updated. Mr. Tyndall pointed out several typos.

Vice-Chairperson Hackney asked if it was correct that what DCM staff was asking the CRC do today was to simply look this over and what the CRC would see in April would be this plus the maps with the actual rates and Mr. Tyndall said that was correct.

#### **Old/New Business**

##### **Potential CRC/CRAC Schedule Change**

Ginger Webster stated that the CRAC had put forth this proposal to start with and after further discussion today and based on the Executive Committee's discussion, this request was currently being tabled.

With no further business, the meeting adjourned at 4:40 p.m.

Respectfully submitted,

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Donna D. Moffitt, Executive Secretary

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Mary Beth Brown, Recording Secretary

**MINUTES APPROVED BY CRC  
ON APRIL 23, 2003. \_\_\_\_\_**