

MINUTES

MEETING: COASTAL RESOURCES COMMISSION (CRC)

LOCATION: Blockade Runner
Wrightsville Beach, North Carolina

DATE: January 28-29, 2004

PRESENT: **CRC MEMBERS**

Courtney Hackney, Vice-Chairperson

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

Coastal Resources Advisory Council (CRAC) Members

Bob Shupe, Chairperson

Frank Alexander	Spencer Rogers
Joe Beck	Dara Royal
Joe Dooley	Lester Simpson
Rick Gardner	Mike Street
Joe Johnson	Ray Sturza
Joe Lassiter	Penny Tysinger
Wayne Mobley	Beans Weatherly
Bill Morrison	Dave Weaver
Jim Mulligan	Ginger Webster
Bill Price	Calvin Wellons

Commission Call to Order

Vice Chairperson Hackney called the meeting to order at 8:30 a.m. Vice Chairperson Hackney 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:	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:	Present. No conflict.
Doug Langford:	Present. Mr. Langford advised that he had an acquaintance with the attorney representing the Town of Nags Head in their variance request but he did not feel this would cause a conflict of interest or

	appearance off conflict.
Jerry Old:	Present. No conflict.
Bill Peele:	Present. No conflict.
Larry Pittman:	Present. No conflict.
Melvin Shepard:	Present. No conflict.
Joan Weld:	Present. No conflict.
Bob Wilson:	Present. No conflict.
Lee Wynns:	Present. No conflict.

Vice Chairperson Hackney stated that there were going to be a number of changes to the CRC's agenda. He advised that several of the individuals scheduled to give presentations this morning were not going to be present. He stated that Dr. John Fisher, Dr. Kenneth Taylor and Steve Underwood were not able to be present. Vice Chairperson Hackney advised that Spencer Rogers would be filling in for Dr. Fisher. Vice Chairperson Hackney said since several of this morning's presentations were cancelled, the presentation on general permits for marsh sills that was scheduled to be presented to the Implementation and Standards (I&S) Committee would be given to the full CRC. Vice Chairperson Hackney advised that the CRAC would be meeting this afternoon after the CRC committee meetings.

Vice Chairperson Hackney advised that the John and Myra Ladd Bone variance request had been removed from the CRC's agenda for tomorrow.

Approval of October 23-24, 2003 Meeting Minutes

Vice Chairperson Hackney stated that approval of the October 23-24, 2003 minutes would be postponed until tomorrow morning to give CRC members a chance to review the minutes overnight.

Executive Secretary's Report

Acting Executive Secretary Charles Jones advised that Donna Moffitt had left the Division of Coastal Management (DCM) to accept the Director's position with the aquarium at Fort Fisher and he had been named as the Acting Director for DCM.

Mr. Jones reported that Michele Walker had been hired as DCM's Public Information Officer. Mr. Jones said Melissa Carl had been hired as DCM's Wetland Management Specialist. He said Jonathan Howells was the new District Planner in DCM's Washington District Office. Mr. Jones said District Planner Mike Christenbury had moved from the Morehead District Office to the Wilmington District Office. Mr. Jones reported that John Thayer had been promoted to DCM's Planning Supervisor. Mr. Jones said Jeff Schaffer and Guy Pearce had left DCM's major permitting section. Mr. Jones stated that John Taggart and Steve Ross had resigned from DCM's reserve program. Mr. Jones advised that there were currently 15 vacancies on the DCM staff and of the present staff, there were 10 positions with a year or less experience. Mr. Jones said in the Wilmington District Office, the most senior field representative had less than a year experience.

Mr. Jones advised that DCM was going to be moving some of its Coastal Reserve staff from the UNC-Wilmington office to Beaufort beginning in July of this year. He stated that this move would allow for greater communication and coordination. Mr. Jones reported that several positions would remain at UNC-Wilmington.

Mr. Jones reported that on February 25th DCM staff along with experts from around the country would be participating in a NOAA sponsored workshop on the ecological effects of sea level rise. He said the workshop would be held in Beaufort and he reviewed the goals of the workshop.

Mr. Jones stated that the North Carolina Coastal Training Program, an educational program of the North Carolina Natural Estuarine Research Reserve, would be offering an online grant writing workshop and a series of septic tank system workshops for the coastal decision maker audience.

Mr. Jones advised that the DCM planning staff had developed a funding schedule for local governments participating in the CAMA land use planning program for 2004 through 2007 and he explained how this funding would be awarded. He reported that the funding schedule was available on DCM's web site.

Mr. Jones gave an update on the Department of Navy's proposed Outer Landing Field (OLF) in coastal North Carolina.

Mr. Jones announced that Dave Heeter was retiring February 1st from the Attorney General's Office.

Presentations

Science Panel Background, Membership and Purpose

Spencer Rogers advised that Dr. John Fisher regretted that he could not be at the CRC meeting this morning but he had provided him with his comments for presentation. Mr. Rogers then gave this information presentation. No action on this information item was required by the CRC.

Building Damages from Hurricane Isabel

Spencer Rogers stated that North Carolina had the second oldest hurricane resistant building code in the nation and he reviewed the history of the creation of this code. Mr. Rogers then gave an overview of building damages from Hurricane Isabel throughout coastal North Carolina. CRC members discussed the damages sustained in various areas of coastal North Carolina and the reasons for these damages and questioned the adequacy of current building codes in North Carolina and the Federal Flood Insurance Program. Vice Chairperson Hackney said that while the CRC could not set building codes or tell the Federal Flood Insurance Program what to do, there might be areas where the CRC could make suggestions and he would ask that the Planning and Special Issues (P&SI) Committee put this on their agenda for further discussion.

Proposed General Permit for the Construction of Riprap Sills (I&S-0308)

Vice Chairperson Hackney advised that this presentation had originally been scheduled on the I&S Committee's agenda but since time had opened up this morning it would be presented to the full CRC. Doug Huggett then reviewed what had transpired regarding this general permit to date. After a lengthy discussion by the CRC on the various aspects of the proposed general permit and making changes to the rule language, Doug Langford moved that the CRC send the general permit language to public hearing and his motion was seconded. After additional discussion, it was agreed that the I&S Committee would continue the discussion at their meeting later in the afternoon and Mr. Langford's motion would be carried over to that meeting. (SEE ATTACHMENT 2 FOR WRITTEN COPY OF I&S Committee meeting minutes.)

Public Input and Comments

Vice Chairperson Hackney asked that the individuals who had signed up to speak to the CRC not address any issue that was on the CRC's agenda for this meeting.

The following individuals addressed the CRC each of them urging the CRC to give special consideration, where needed, to the reestablishment of the CAMA setback line following Hurricane Isabel:

Ray Sturza, Dare County

Beth Midgett, Hatteras Village

Stephen Gilley, Hatteras

Matt DesRoches, Property Owner, Hatteras

Leonard Winter, Hampstead, also addressed the CRC. Mr. Winter urged the CRC to consider making

changes to their setback rules and what was allowed in the setback. Mr. Winter further advised that he felt there was a problem with cutting in wetlands and the lack of enforcement or fines when cutting occurred.

Public Hearings

15A NCAC 7K .0209, Amendment to the Exemption/Accessory Use/Maintenance Repair/Replacement

Vice Chairperson Hackney advised that nobody had signed up to address this proposed rule amendment and nobody had submitted written comments. Vice Chairperson Hackney asked if there was anyone present who would like to address the CRC. Nobody spoke regarding this proposed rule amendment.

Thursday, January 29, 2004

Approval of October 23-24, 2003 Meeting Minutes

Melvin Shepard moved that the CRC approve the minutes from the October 23-24, 2003, CRC meeting and his motion was seconded and approved. Bob Shupe referred the CRC to pages 13 and 14 of the minutes. Mr. Shupe said it was the understanding of the CRAC and DCM staff that the CRAC meeting was not meant to be a trial as stated in the minutes but would become a normal schedule. Mr. Shupe stated that DCM staff understood that funding was not anticipated to be a concern for the CRAC meetings on Tuesday. Mr. Shupe said that if funding did become an issue, DCM staff understood that the fifth CRC meeting would be cancelled and the CRAC was requesting clarification on this matter from the CRC. Vice Chairperson Hackney said he thought the intention was that this was going to be a trial for a year and not for one time. Vice Chairperson Hackney asked that the minutes be revised to reflect this clarification.

The CRC voted in favor of the motion to approved the minutes by a vote of 9 in favor of the motion (Renee Cahoon, Bob Emory, Peggy Griffin, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns and none opposed to the motion. Doug Langford abstained from voting on the motion.

Report from the P&SI Committee

Peggy Griffin presented the minutes from the P&SI Committee. (SEE ATTACHMENT 1 FOR WRITTEN COPY OF MINUTES.) The following items required action by the full CRC.

Update on Resolution Regarding the Placement of Sand from Dredged Navigation Channels on North Carolina Beaches (P&SI-04-01)

Ms. Griffin advised that the P&SI Committee had voted to forward a copy of the CRC's adopted resolution regarding the placement of sand from dredged navigation channels on North Carolina Beaches be forwarded to all resource committees and to also forward other correspondence promoting a coordinated effort towards changing the Army Core of Engineers mission to include keeping useable spoil material within the system for beach renourishment. The CRC voted unanimously in favor of this motion from the P&SI Committee (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

Beach Nourishment Topics for Future Meetings (P&SI-04-02)

Ms. Griffin reported that the P&SI Committee voted to adopt the outline presented for 1-2 presentations to be made over the next 5 CRC meetings. The CRC voted unanimously in favor of this motion from the P&SI Committee (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

Report from the I&S Committee

Bob Emory presented the minutes from the I&S Committee meeting. (SEE ATTACHMENT 2 FOR WRITTEN COPY OF MINUTES.) The following items required action by the full CRC.

Proposed General Permit for the Construction of Riprap Sills (15A NCAC 7H .2700) (I&S-03-08)

Mr. Emory advised that the I&S Committee had voted on several changes to the proposed general permit language and following agreement on these language changes, the I&S Committee voted to send the general permit language to the full CRC with a recommendation to send the general permit language to public hearing. CRC members discussed and expressed reservations regarding certain language in this proposed general permit. After this discussion, the CRC voted unanimously in favor of the motion from the I&S Committee to send this general permit language as proposed to public hearing (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

Erosion Rate Public Hearings Update (I&S-04-01)

Mr. Emory reported that the I&S Committee voted to recommend the rule amendment be adopted by the CRC. This motion from the I&S Committee was unanimously approved by the CRC (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

Proposed General Permit for Mitigation Activities (15A NCAC 7H .2600)(I&S-03-08)

Mr. Emory advised that the I&S Committee voted unanimously to send the proposed general permit to the full CRC with a recommendation to proceed to public hearing. This motion from the I&S Committee was unanimously approved by the CRC (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

Proposed Changes to 15A NCAC 07H .0306(a)(5), Enclosure of Existing Roof Covered Porches (I&S-03-11)

Mr. Emory stated that the I&S Committee had voted to recommend that the CRC send the proposed changes to public hearing. The motion from the I&S Committee was unanimously approved by the CRC (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

CRAC Report

Ginger Webster reported that yesterday the CRAC held their election of CRAC chairperson and vice chairperson of the CRAC and she was pleased to announce that Bob Shupe had been unanimously elected as chairperson of the CRAC and Bill Morrison had been unanimously elected as vice chairperson of the CRAC.

Mr. Shupe then presented the minutes from the CRAC. No action was required from the CRC on this report.

Variance Requests

George Ross Variance Request (CRC-VR-03-01)

Dave Heeter advised that Mr. Ross owned a piece of property on a canal that connected to Spring Creek at Fairfield Harbor in Craven County. Mr. Heeter showed the CRC photographs of the property. Mr. Heeter advised that Mr. Ross received a general permit to locate his pilings at 1/4 the width of the water body. Mr. Heeter said he then asked for a variance to move those pilings out to 1/3 of the water body because there were a number of other pilings on the same water body with 1/3 the width of the canal. Mr. Heeter stated that the other pilings were permitted at a time when the CRC's rules allowed the pilings to be

located that far off shore. Mr. Heeter advised that in the process of preparing the matter for the CRC, Mr. Ross agreed to modify his variance request. Mr. Heeter said Mr. Ross would move the upstream piling to a location that was 1/4 of the width of the water body and leave the second piling at a location that was 1/3 of the width of the water body. Mr. Heeter advised that this would help protect the riparian rights of the owners in this part of the canal which was a concern of DCM staff. Mr. Heeter said that with that modification, DCM had no objection to the CRC granting a variance to Mr. Ross. Mr. Heeter advised that the variance would be to locate the downstream piling at 1/3 of the width of the water body and the upstream piling would stay at 1/4 of the width of the water body.

Doug Langford moved that the CRC grant this variance request and his motion was seconded and unanimously approved (Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns). Renee Cahoon was out of the room for this vote.

James Coble Variance Request (CRC-VR-03-16)

Dave Heeter stated that Robert Outten, an attorney from Kitty Hawk, was representing Mr. Coble. Mr. Heeter said Mr. Coble was seeking a variance so he could locate a concrete pad under his ocean front property on Ocean Boulevard East in Holden Beach. Mr. Heeter said he needed a variance from the CRC's rule 7H .0309(b) that limits driveways and parking areas to clay, packed sand or gravel on certain oceanfront lots. Mr. Heeter advised that Mr. Coble's residence was under construction and he applied for a permit for a concrete pad. Mr. Heeter said this permit application was denied and he was now seeking a variance for that pad. Mr. Heeter showed the CRC photographs of Mr. Coble's residence which was under construction.

Mr. Heeter reviewed the Stipulated Facts contained in Attachment B of CRC VR 2003-16.

Robert Outten reviewed Mr. Coble's response to the variance criteria contained in Attachment C of CRC VR 2003-16 and showed photographs of the area. Mr. Outten urged the CRC to make a practical application of this rule for a minimal amount of development to allow a handicap access which would be difficult to do otherwise. Mr. Outten said this was in line with other things the CRC had been done.

Mr. Heeter reviewed DCM's response to the variance criteria contained in Attachment C of CRC VR 2003-16. Mr. Heeter urged the CRC to deny this variance request.

CRC members discussed this variance request and asked questions regarding the proposed construction. **Bob Emory moved then that the CRC deny this variance request and his motion was seconded. After additional discussion, the CRC voted to deny this variance request by a vote of 7 in favor of denying the variance request (Bob Emory, Peggy Griffin, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Lee Wynns) and 3 opposed (Renee Cahoon, Doug Langford, Bob Wilson).**

Town of Nags Head Variance Request (CRC-VR-03-23)

Renee Cahoon stated that she would like to be excused from participating in the discussion and vote on this variance request due to a potential conflict. Lee Wynns also asked to be excused from participation.

Doug Langford said he did not feel he had a conflict but wanted to state that he did live in Nags Head and knew where this property was located and was very familiar with the AEC.

Vice Chairperson Hackney said that DCM staff was concurring with this variance request and, therefore, he had asked Merrie Jo Alcock to be as brief as possible since the CRC had already seen everything that was going to be presented. Vice Chairperson Hackney said, unless there were problems with the variance request, he had requested that the CRC be given a very brief overview.

Ms. Alcock advised that she would be representing DCM staff on this variance request and the next four variance requests this morning.

Ms. Alcock stated that Bruce Horton, the Deputy Planning Director for the Town of Nags Head, was present to respond to questions from the CRC.

Ms. Alcock advised that this variance was related to an AEC rule which the CRC might not be familiar with and had to do with public drinking water supply. Ms. Alcock said it was called the Small Surface Water Supply Watershed AEC but she would be referring to it as the Fresh Pond AEC. Ms. Alcock stated that it protected the fresh pond between Nags Head and Kill Devil Hills which supplies raw water for treatment to both of those towns. Ms. Alcock said in order to protect the pond, sources of pollution such as septic tanks had to be located a certain distance from the pond and the CRC's rule had specific standards for the amount of gallons per day that the septic tanks could handle in this AEC. Ms. Alcock said the rule stated:

Between the distances of 500 feet and 1200 feet from the edge of the pond, construction of septic tank systems shall be limited to one single septic tank system serving a single family residence not to exceed four bedrooms or its equivalent volume of sewage, on a lot or tract of land not less than 40,000 square feet.

Ms. Alcock said that was the standard rule which contemplated single family residence development, however, what the Town of Nags Head wished to do was to build a large recreational facility on a 13 acre parcel of land. Ms. Alcock advised the Town of Nags Head had applied to install a large septic system that would service the recreation area. Ms. Alcock advised that all of the site was within the Fresh Pond AEC. Ms. Alcock said the Local Permit Officer (LPO) was required to deny the permit because of the large septic system which would not be permitted according to the CRC's rule. She advised, however, if the Town of Nags Head were to subdivide these lots, they would actually be able to have more pollution from the septic tanks in this area. Ms. Alcock said that because what the Town of Nags Head proposed would actually cause less impact, DCM staff was supporting this variance on each of the four criteria. Ms. Alcock showed the CRC a drawing of the proposed recreational facility.

Melvin Shepard moved that the CRC grant this variance request with the provision that this land not be further subdivided in the future to single family homes as long as the land was owned by the Town of Nags Head. Mr. Shepard's motion was seconded. The CRC voted unanimously in favor of this motion (Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson).

Altieri Homes Variance Request (CRC-VR-03-21)

Merrie Jo Alcock said this variance was a 30 foot buffer request from Alteri Homes, LLC, Limited Liability Corporation, and their agent was Johnnie Davis who was present today and available for any questions along with several of his business partners who were also available for questions.

Ms. Alcock advised that Alteria Homes had applied for a CAMA minor permit to construct four attached townhouses in the Town of Carolina Beach. She said the townhouses would be located on two adjacent pieces of property and the property was adjacent to Myrtle Grove Sound which was presently closed to the harvest of shellfish. Ms. Alcock reviewed the Stipulated Facts contained in Attachment B of CRC-VR-03-21. Ms. Alcock stated that the Conditional Use Permit that was issued by the Town of Carolina Beach required an engineer's stormwater plan and required the applicant to follow up with a letter saying that the system was properly installed and was functioning properly. Ms. Alcock said since the time the variance materials had been prepared, she had received the required stormwater plan. Ms. Alcock advised that this development was inconsistent with the 30 foot buffer rule and also the impervious surface limitations. Ms. Alcock showed photographs of this property.

Ms. Alcock reviewed DCM staff's response to the variance criteria contained in Attachment C of CRC-VR-03-21.

Johnnie Davis reviewed why the petitioner felt this variance request should be granted.

Doug Langford moved that the CRC deny this variance request and his motion was seconded.

Steve Green advised that he was one of the parties involved in this variance request and he explained why the petitioner felt they had met the spirit and intent of the CRC's rules.

After additional discussion by the CRC and input from the parties involved, the CRC voted unanimously to deny this variance request (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

Village of Bald Head Island (CRC-VR-03-18)

Vice Chairperson Hackey stated that the CRC had heard similar variances on before but this was a new one and it was his understanding that DCM staff and the Village of Bald Head Island were in agreement as to the variance request.

Merrie Jo Alcocke said the Village of Bald Head Island had come before the CRC at the last CRC meeting with a request to expand the size of their existing sandbags for a certain distance and this request was simply asking for more additional linear feet. Ms. Alcocke showed photographs of the area involved in this variance request. Ms. Alcocke reviewed the additional Stipulated Facts contained in Attachment B of CRC-VR-03-18.

Ms. Alcocke introduced George House, attorney for the petitioner, and Becky King, Town Manager.

Ms. Alcocke advised the parties had discussed this morning the possibility of amending this request to ask for an additional 65 feet which would take the sandbags to the next property line which was a condemned house. Ms. Alcocke said if the petitioner could also increase the size of the bags for that additional 65 feet they were asking to do so. Ms. Alcocke said staff had determined that did not change their position. Ms. Alcocke stated that consistent with the position that DCM staff took in October, DCM staff was supporting this variance. Joan Weld asked Ms. Alcocke to review what the deminsions of sandbags the petitioners were requesting in this variance request and Ms. Alcocke referred Ms. Weld to Additional Stipulated Fact 22 contained in CRC-VR-03-18 and she reviewed what the petitioner was seeking in this variance request.

Mr. House reviewed the technical and legal reasons the Village of Bald Head Island was seeking this variance request. Mr. House said these sandbags would not solve the problems the Village of Bald Head Island was having but were clearly a temporary measure. He stated where they had been installed, the larger sandbags they were helping.

A discussion then followed regarding the legality of issuing a variance for the additional 65 feet when an actual permit application had not been denied. After this discussion, Vice Chairperson Hackney said his suggestion was that this additional 65 feet of sandbags being added to what was already requested today include the provision that the addition only be allowed provided it got within 20 feet of the structure as would normally be granted and Doug Langford so moved. Mr. Langford's motion was seconded. Vice Chairperson Hackney said the problem with that motion and second was that the CRC really did not have a motion on the floor other than the motion to add this to the request. Vice Chairperson asked if there was a motion to approve or disapprove this variance request. Renee Cahoon moved to approve the variance request with that addition and her motion was seconded. Vice Chairperson Hackney said a motion had been made and seconded to approve the sandbag extension in size and length. After additional discussion, the CRC voted unanimously in favor of granting this variance request (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

William Harazin Variance Request (CRC-VR-03-19)

Merrie Jo Alcocke this variance request had been filed by William Harazin and his wife Becky French and they were present today to respond to questions from the CRC.

Ms. Alcock said the petitioners owned property on the north end of Figure Eight Island which was the area that had come before the CRC in different forms over the last several years. She said since 1996 this area had experienced chronic erosion. Ms. Alcock advised that at the CRC's July 2003 CRC meeting, fifteen of the lot owners on the north end of the island together sought a variance from the height and width restriction on the sandbags they had been permitted. Ms. Alcock said DCM staff opposed that variance but that variance was granted. Ms. Alcock advised that petitioner's property was just a couple of lots south of the area where the 15 property owners increased the size of their bags so there presently was a sandbag revetment in this area.

Ms. Alcock said the petitioners had installed bags on their property pursuant to a general permit issued by DCM for approximately 90 to 100 feet of bags. She stated that what the petitioners proposed to do was install bags on their neighbor's property which was a vacant, undeveloped lot. Ms. Alcock said without bags on that lot, there was a gap in the sandbag revetment which was protecting this section of shoreline. Ms. Alcock advised that the CRC's rules did not allow for protection of vacant lots. She said the rules only allowed for protection of structures and imminently threatened roads and threatened roads and associated right-of-way so his permit application to install the bags on the neighboring lot was denied and this was the variance being sought today. Ms. Alcock said the effect of the gap in the sandbags was fairly obvious and Fact No. 8 in the Stipulated Facts contained in Attachment B of CRC-VR-03-19 addressed this issue. Ms. Alcock showed photographs of the area involved in this variance request and Mr. Harazin explained what was depicted in these photographs.

Ms. Alcock reviewed staff's response to the variance criteria contained in Attachment C of CRC-VR-03-19. Ms. Alcock advised that DCM staff did not support this variance request.

Mr. Harazin presented the petitioner's response to the variance criteria and urged the CRC to grant this variance request.

Melvin Shepard moved that the CRC deny this variance request. The motion failed due to the lack of a second.

Bob Wilson moved that the variance request be granted and his motion was seconded and approved. After discussion, the CRC voted in favor of granting the variance by a vote of 5 in favor of the motion (Renee Cahoon, Bill Peele, Larry Pittman, Joan Weld, Bob Wilson) and 4 opposed to the motion (Bob Emory, Peggy Griffin, Larry Pittman, Lee Wynns).

After this vote, the CRC discussed at length the current sandbag rules and expressed an interest in revisiting these rules. Charles Jones advised that at the next CRC meeting, DCM staff would present a history on sandbags and how the current rules had been written.

Gary and Margaret Doppes (CRC-VR-03-20)

Merrie Jo Alcock advised that Mr. Doppes was present today along with his attorney, Mr. Bill Rainey.

Ms. Alcock said the petitioners were seeking a variance from the CRC's 30 foot buffer rule to enclose and cover an open deck in the buffer. She advised the deck was 720 square feet and the petitioners were asking to put a roof over it and because this was an impervious surface in the buffer. Ms. Alcock reviewed the Stipulated Facts contained in Attachment B of CRC-VR-03-20. Ms. Alcock showed the CRC photographs of this structure.

Ms. Alcock advised that DCM staff did not agree that the petitioners had met all of the variance criteria and she reviewed Staff's Response to the Variance Criteria contained in Attachment C of CRC-VR-03-20

Bill Rainey reviewed the petitioner's response to the variance criteria. Mr. Rainey pointed out that the

proposed fixed roof was designed so that stormwater runoff from the roof was directed into an engineered stormwater collection system that would result in less stormwater runoff than would occur without the roof.

After a discussion by CRC members, **Bill Peele moved that the CRC grant this variance request with the stipulation that there will be an approved stormwater system that will handle runoff from the would structure. Mr. Peele's motion was seconded and approved by a vote of 7 in favor of the motion (Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Joan Weld, Bob Wilson, Lee Wynns) and 3 opposed to the motion (Renee Cahoon, Larry Pittman Melvin Shepard).**

Contested Cases

Glen Sasser Contested Case (CRC-CC-04-01)

Dave Heeter advised that this case involved an appeal by Mr. Sasser from the denial of a permit application to construct a residence on a lot in Surf City. Mr. Heeter said the matter went to an administrative hearing and the Administrative Law Judge (ALJ) upheld the denial of the permit application. Mr. Heeter said the CRC had received the Certified Record of this administrative hearing. Mr. Heeter advised that the CRC had also received a statement from DCM supporting the decision of the ALJ and recommending that the CRC adopt it. Mr. Heeter said the CRC also had a number of exceptions Mr. Sasser had taken to the Recommended Decision of the ALJ.

Vice Chairperson Hackney and Jill Hickey reviewed with the CRC their charge in this matter and responded to CRC member's questions regarding the process.

Mr. Heeter said Mr. Sasser was challenging the denial of his application for a CAMA permit. He stated the issue the CRC had to decide was whether the Surf City LPO properly denied his April 12, 2002, CAMA permit application. Mr. Heeter advised Mr. Sasser had sought a permit to construct a pedestal house on his lot at Surf City and also to extend a protective berm along the oceanfront even further towards the ocean. Mr. Heeter said the LPO officer found that his permit application was inconsistent with two of the CRC's rules and he reviewed these rules. Mr. Heeter said that upon finding that the application was inconsistent with these two rules, the LPO was required to deny the permit application. Mr. Heeter reviewed stipulated facts in this case contained in the hearing record and the ALJ's Findings of Fact and Recommended Decision. Mr. Heeter said the LPO had properly denied Mr. Sasser's permit application and he urged the CRC to uphold the Recommended Decision of the ALJ.

Glenn Sasser said he had not filed a notice of request to be heard in this matter but he had filed Exceptions to the Recommended Findings and Decision of the ALJ. Mr. Sasser explained why he felt his permit application should have been granted.

Melvin Shepard said he felt the LPO had followed the CRC's rules and he moved that the CRC adopt the ALJ's Recommended Decision and his motion was seconded. The CRC voted unanimously in favor of the motion to adopt the ALJ's Recommended Decision (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

Robert Valois Contested Case (CRC-CC-04-02)

Dave Heeter advised that Mr. Valois owned a lot on the Atlantic Intracoastal Waterway at Holden Beach where his neighbor was Mr. Edward Barry. Mr. Heeter said Mr. Barry had added two new courses of concrete blocks to an existing concrete block wall. Mr. Heeter stated that DCM ultimately decided that this was exempt and did not require a permit. Mr. Heeter said it was decided it was exempt because it was maintenance and repair. Mr. Heeter advised that Mr. Valois challenged DCM's decision. Mr. Heeter said Mr. Valois filed a Motion for Summary Judgement which the ALJ granted. Mr. Heeter advised that the ALJ ruled that the addition of the two courses of concrete block to the existing wall was development as defined under CAMA. Mr. Heeter stated the ALJ found it was not exempt because it was maintenance and

repair necessary to repair damage. Mr. Heeter advised that DCM was ordered to reinstate the two Notices of Violation (NOV) and vacate its letter resending those NOVs and to take such further action authorized by law. Mr. Heeter stated that DCM did not object to the CRC adopting the ALJ's Recommended Decision.

Mr. Valois stated that the ALJ's Recommended Decision was quite clear and was supportable in every respect and he urged the CRC to adopt the Recommended Decision.

Bob Emory moved that the CRC adopt the Recommended Decision of the ALJ and his motion was seconded and unanimously approved (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

Chuck and Susan Wakild Contested Case (CRC-CC-04-03)

Mr. Heeter said what this case involved was that the Wakilds challenged a CAMA permit that was issued to their riparian neighbors, Richard and Diane Gray. Mr. Heeter advised that the permit authorized the construction of a dock and pier. He said the Gray's site plan depicted a riparian corridor for their lot that appeared to be accurate and DCM had relied on that when issuing the permit. Mr. Heeter stated that the Wakild's challenged the permit and they contended that the riparian corridor was improperly located and that the pier would in fact encroach on their riparian corridor. Mr. Heeter advised that the Wakilds had a surveyor prepare a survey and indeed, they were correct. Mr. Heeter said it turned out that the survey that the Gray's had relied upon was based on the wrong Arc America data. Mr. Heeter reported that DCM agrees that the Wakild's survey is the best information available for locating the riparian corridor and it also agrees that the Gray's permit should be declared null and void. Mr. Heeter advised that the Wakild's made a Motion for a Summary Judgment asking for this relief and DCM did not oppose it. Mr. Heeter advised that in this case the Grays were a party so they were clearly bound by any decisions.

Bill Raney, attorney for the Wakilds, said it was nice to have a situation where both parties agree. Mr. Raney stated that Mr. Gray was a party to this decision but he was not present today. Mr. Raney urged the CRC to adopt the ALJ's Recommended Decision.

Bob Emory moved that the CRC uphold the ALJ's Recommended Decision and his motion was seconded and unanimously approved (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Winns).

Old/New Business

Vice Chairperson Hackney said the resolution requesting a review of coastal management in North Carolina. Vice Chairperson Hackney said since Chairperson Tomlinson had introduced this resolution, he felt the CRC should wait until he returns.

Doug Langford moved that this resolution be tabled until the next CRC meeting and his motion was seconded and unanimously approved (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

Variance Related Issues Related to Buffer Rules Since approval in August 2000

Vice Chairperson Hackney advised this agenda item was being postponed until the next CRC meeting.

Other Business

Vice Chairperson Hackney advised that the CRC heard from numerous people at Hatteras about a variety

of problems some caused by Hurricane Isabel and some caused by the fact that none of the CRC's rules were never perfect especially in hurricane situations. Vice Chairperson Hackney said the CRC needed to be addressing these concerns but at the same time protecting them and any future homeowners. Vice Chairperson Hackney said what was being proposed was to attempt to understand what the situation was and hopefully correct it, if possible.

Doug Langford said this was a follow-up to the comments and information presented yesterday. Mr. Langford said that in response to the extraordinary situation at Hatteras Island as a result of Hurricane Isabel, he was proposing an amendment to 15A NCAC 7H .0304, AECs Within Ocean Hazard Areas. Mr. Langford then read the current language in this rule.

Mr. Langford stated that his motion would follow and was consistent with the CRC's action in 1996 to provide relief for those counties and beach areas within those counties. Mr. Langford said his motion would be to include the following in 7H .0304 and send the proposed rule change to public hearing:

The Commission designates as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line as shown on NC DOT aerial photographs dated 6/2/03 was destroyed as a result of Hurricane Isabel on September 18, 2003 and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until such time as stable, natural vegetation has reestablished or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item 4(a) of this Rule.

Mr. Langford asked that DCM staff be asked to field test this method to determine its usefulness during the next month. Mr. Langford said he was also requesting that staff ask Spence Rogers to participate in the field test and if it was determined that a better method could be crafted, a special session of the CRC would be called to consider alternative rule language for public hearing. Mr. Langford said this was not a part of his motion but he did feel this was very important.

Mr. Langford's motion was seconded.

After discussion of Mr. Langford's motion, CRC members agreed to insert "or other relevant photography" following "NC DOT aerial photographs dated 6/2/03". Mr. Langford agreed to this change.

CRC members voted unanimously in favor of sending the proposed rule change to public hearing (Renee Cahoon, Bob Emory, Peggy Griffin, Doug Langford, Bill Peele, Larry Pittman, Melvin Shepard, Joan Weld, Bob Wilson, Lee Wynns).

With no further business, the CRC adjourned at 12:55 p.m.

Respectfully submitted,

Charles S. Jones, Executive Secretary

Mary Beth Brown, Recording Secretary

MINUTES APPROVED BY
CRC 4/29/04 _____

