

**COASTAL RESOURCES COMMISSION (CRC)  
SHERATON CAPITAL CENTER HOTEL  
RALEIGH, NC  
AUGUST 25-26, 2004**

**Present CRC Members**

Eugene Tomlinson, Chairperson

Bob Emory

Peggy Griffin

Courtney Hackney (not present 8/26)

Mary Price Harrison (not present 8/26)

Jerry Old

Larry Pittman (not present 8/26)

Melvin Shepard

Joan Weld

Bob Wilson

Lee Wynns

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

Bob Shupe, Chairperson

Bill Morrison

Wayne Mobley

Ginger Webster

Natalie Baggett

Scott Chappell (alternate)

Webb Fuller

Dara Royal

Ann Holton

Carlton Davenport

Lee Padrick

Harry Simmons

Spencer Rogers

Dave Weaver

Angie Manning (new)

Penny Tysinger

Joseph Beck

Renee Gledhill-Earley

Lester Simpson

Ray Sturza

Joe Dooley

Joe Lassiter

**Present Attorney General's Office**

Jill Hickey

Merrie Jo Alcoke

Christie Goebel

**Wednesday August 25, 2004**

**COMMISSION CALL TO ORDER**

Chairman Eugene Tomlinson called the meeting to order at 8:30 a.m. He advised that Executive Order One mandated that CRC members avoid conflict of interest or the appearance of conflict.

**ROLL CALL**

Stephanie Bodine called the roll. Bob Barnes, Renee Cahoon, Doug Langford and Bill Peele were absent. All present Commissioners gave no indication of a conflict of interest

**APPROVAL OF JUNE 23-24, 2004 MINUTES**

**The minutes were approved, as written, with a unanimous hand vote in favor (Emory, Griffin, Hackney, Harrison, Old, Pittman, Shepard, Weld, Wilson, Wynns)**

**EXECUTIVE SECRETARY'S REPORT**

Charles Jones reported the following to the CRC:

Hurricane season is upon NC, with three storms that affected the state – Hurricanes Alex, Charley and Tropical Storm Bonnie. Fortunately, damage from all three storms had been relatively minor. Hundreds of vehicles on Hatteras and Ocracoke islands were flooded, and many Outer Banks homes and businesses also suffered flood damage. Charley was a Class 1 hurricane, however the beaches fared well since the storm came in at low tide. Bald Head Island was not as lucky, with at portion of the roadway in south Beach being damaged. Rainfall associated with Charley, plus rainfall, which fell the following day, created flooded roadways and yards in the central and northern portions of the coast.

Coastal Management staff is continuing to assist property owners who need permits to repair or rebuild. NOAA predicted 12-15 named storms this year, with 6-8 of those becoming hurricanes.

**The Riggings Condominiums**

The Federal Emergency Management Agency awarded Kure Beach a \$3.6 million grant to help knock down The Riggings Condominiums complex and rebuild it across U.S. 421.

In 1985, DCM issued a permit to install sand bags to protect the complex. Over the years the CRC granted the Riggings variances from the permit requirements to have the bags removed. In 2003, the Homeowner's Association requested another variance to allow the bags to stay in place while they continued to search for funding to relocate the buildings. The CRC voted to issue a variance to the homeowners for an additional two years.

## DOT Violation

DCM has issued a Notice of Violation (NOV) to the NC Dept. of Transportation for illegally kicking a 700-foot channel in Currituck Sound. According to the DOT, a large workboat was in the harbor in May replacing the plastic pipes that marked the traditional channel, in preparation for a new ferry route at the site. When the boat became stuck in the shallow waters, it forced its way out with its prop, creating the channel. The NOV cites DOT for unauthorized major development without a CAMA permit and violations of the state dredge and fill law.

Several other agencies, including the Corps of Engineers, the National Marine Fisheries Service, and the NC Division of Marine Fisheries and the Division of Water Quality are involved in this issue, and have been cooperating in our efforts to develop a restorations plan. The restoration work, which involves filling in the channel to pre-disturbed depths, began on 8/23/04.

## Legislative Update

Three specific bills came out of this legislative session that directly affected the CRC.

House Bill 11411 designated a portion of Hatteras Island as a temporary unvegetated beach area where the vegetation line was buried or destroyed by Hurricane Isabel. At the June 2004 meeting, the CRC adopted a rule, which mirrors this bill. It should become effective as a permanent rule on September 1, 2004.

Senate Bill 732 authorizes the CRC to implement a pilot program under which a county may designate an area as a new urban waterfront under CAMA. The bill provides that a number of conditions must be met for a project to be eligible for considerations, and limits the application of a new urban waterfront area to only one county.

In addition, the Budget Act included special provisions that will affect how DCM processes permits, including expanding the express permit review pilot program to the Washington Regional Office.

The specifics of these bills were included in the packets, as well as other environmental legislation that was passed during the 2004 session of the General Assembly.

## Ocean Policy Commission Draft Report

On July 22, 2004, the US Commission on Ocean policy convened its final public hearing in Washington DC and voted to approve its Draft Final Report. Based on input from Governors and other stakeholders, some changes were made to the original draft. Of particular note:

Changes were made to clarify and strengthen state roles in Regional Ocean Councils, and to emphasize that Councils should be driven by needs identified at the state and local level.

The states' roles in management of Federal waters and new offshore management regimes have been strengthened.

There is an increased focus on supporting coastal and watershed management, including calling for a watershed clearinghouse and integrated grants programs.

### Federal Legislation

In related news, leaders of the House Oceans Caucus have introduced a comprehensive ocean policy reform bill that also incorporates many of the recommendations of the Ocean Commission. The bill, called "Oceans-21", would establish a national ocean policy to "protect, maintain and restore the health of marine ecosystems." It also would make ecosystem-based management a top priority of ocean policy.

### Staff News

Two DCM staff members have left the Division in recent weeks:

Kristie Corson, who had been the assistant consistency and permits coordinator since November 2000, left the Division earlier in August.

Tony Zaharias, a field representative in Elizabeth city, has resigned in order to return home to Massachusetts.

There is also a vacancy in the Elizabeth City office with the pending retirement of Ed Harrell. Ed has been with the Division for 14 years. Prior to this, Ed was employed with the Town of Nags Head. Ed will retire October 1, 2004.

Doug Huggett, manager of major permits and federal consistency, has moved from Raleigh to Morehead City office.

## **PRESENTATIONS**

### How the Beach Works

Spencer Rogers, with North Carolina Sea Grant, presented a lecture on how the beach works, with a focus on erosion types. Mr. Rogers stated the types of erosion are: seasonal, severe storm, long term and inlet. He stated that the worst erosion occurs in the winter season, when it can knock out the roots and linear vegetation line. Mr. Rogers stated that storm-induced erosion happens infrequently. During storms, the incoming waves move up to the berm, causing rapid erosion, flattening the slope, and building offshore sand bars. Mr. Rogers stated that the dunes are a major factor in storm protection. He then presented four myths and related facts regarding dunes. Myth One: roots of dune plants stop erosion. Mr. Rogers stated dune plants do not provide a dense root mat, as is the case with marsh grasses. But, root systems are important for healthy dune plants, which trap sand and thus help build the dunes. Myth Two: dunes provide protection from chronic erosion. Mr. Rogers stated that dunes in fact provide little protection for chronic erosion that occurs on a day-to-day basis. For example, in Rodanthe no size dune will

stop retreat. Myth Three: to build big dunes, start close to the ocean. The fact is you build best protection landward to seaward. Dunes grow in a seaward direction, as blowing sand is trapped. Myth Four: bigger dunes provide more protection than smaller dunes. Mr. Rogers explained that a more landward location of a smaller dune might provide storm protection equal to a larger dune more seaward. Mr. Rogers summarized his presentation by stating: Seasonal fluctuations are expected. Temporary dune erosion in severe storms is expected. And dunes can provide protection from infrequent storm-induced erosion, but they cannot provide much protection from chronic erosion.

### Coastal Habitat Protection Plan (CHPP) – Adoption and Implementation

Robin Smith addressed the CRC regarding the adoption and implementation of the CHPP, with approval being done in September. Ms. Smith gave a brief history in stating that in the 1997 FRA, legislators directed the Department to prepare a plan describing critical fishery habitat, threats to the habitat, and make recommendations to correct such threats. The Planning Document, which is not a regulatory document, identified the needs for the future. Ms. Smith stated that the Planning Document does not make decisions but rather recommendations, and she asked the CRC to approve the CHPP as a foundation. Ms. Smith stated that the priority recommendations were pulled out of the Plan and presented to the Commission in order to go about responding to the recommendations. She also stated that some of the recommendations would require amendments of existing rules, but many do not. This Plan is a broad outline of needs provided for public input and participation.

Ms. Smith stated that the Plan would be presented in September. Commissions can have additional discussion at their individual meetings so as to have time to do any provisions before having one more meeting near year-end.

Ms. Smith informed the CRC that a series of public meetings were held last summer in two rounds.

### Overview CHPP Public Comments

Mike Lopazanski overviewed the major changes to the CHPP since its public draft on July 1, 2004. He stated that 937 people attended the public meetings and over 1500 written comments were received. Mr. Lopazanski stated that a special effort was made to reach out to interest groups such as realtors and homebuilders in Wilmington, local governments and commercial fishing groups in New Bern, and forestry and agriculture groups in Raleigh. He stated attendees were skeptical that there will be any improved coordination, compliance monitoring and enforcement. They were not convinced that there would be additional staff or that the necessary tools would be available to enforce existing rules. Some other public comments included that the CHPP review period was too short, beach nourishment is portrayed negatively and no positive aspects are included in the text such as benefits to habitats and storm protection, and recommendations did not acknowledge the use of engineered systems to minimize the effects on water quality. There was also concern that the CHPP did not recognize the effectiveness of the existing system of permitting, consistency determination and environmental impact review in minimizing the negative impacts of beach nourishment. Mr. Lopazanski stated that one final

group of comments addressed a lack of economic analysis contained in the CHPP. He then reviewed the changes that were made to the recommendations and text of the document based on the public input. The changes included reexamining the portrayal of forestry activities as a major threat to water quality, incorporating into the recommendations the use of engineered systems and recognize that increased limits on impervious surfaces may not be feasible in all situations, and the addition of a statement to address concerns regarding stakeholder groups and the recognition of economic concerns as any of the recommendations move forward.

## **PUBLIC INPUT AND COMMENTS**

Richard Farley, from North Topsail Beach, addressed the CRC regarding a request to deny a neighbor a Permit Exemption to replace/repair sandbags that would bring it to the allowable height restrictions. Mr. Farley stated that if the neighbor is allowed to replaced sand bags it will block his deeded access to the beach. He stated that this access has been there for over 20 years. He asked that the CRC consider that though his neighbor has the right to protect his property with sandbags, Mr. Farley has the right to continue to have access to the beach. Mr. Farley stated that several homes use that access.

Merrie Jo Alcoke gave a brief description of the person requesting the exemption and what work he would like to do. She also encouraged Mr. Farley to exercise his right to a Third Party Request.

Jill Hickey stated that she was getting the indication that Mr. Farley would file a Third Party Hearing request. Mr. Farley stated that indeed he intended such. Ms .Hickey stated that Mr. Farley would need to file the request and exercise the opportunity to settle this matter in a different forum.

Mr. Farley thanked the CRC and Ms. Hickey for the opportunity to speak.

## **VARIANCE REQUESTS**

Louis Wetmore (CRC-VR-04-10)

Christine Goebel reviewed the Stipulated Facts on Attachment B of (CRC-VR-04-10), stating that the petitioner owns a lot and home on the south end of Bald Head Island and seeks a variance from 7H .1705(a)(10), which limits the dimensions to 6' in height by 20' in width. The petitioner presently has sandbags protecting his home, but in order to better protect the threatened structures, he seeks permission to install sandbags adding 3' in height to the pile.

Ms. Goebel stated that the lot is within the Ocean Hazard Area of Concern (AEC), the Ocean Erodible AEC, the High Hazard Flood AEC, and the Inlet Hazard AEC. She also stated that other neighboring property owners, both east and west, also have recently permitted sandbag structures protecting their imminently threatened structures. The petitioner's sandbags are eligible to remain in place until May 2008 because the Village of Bald Head Island has an active beach nourishment program. The present sandbag structures have not prevented waves from overtopping the bags and eroding the area behind the bags.

Ms. Goebel stated that Staff agrees that application of the development rules causes petitioner unnecessary hardship. However, at this location the hardship results from the accretion of sand waterward of the sandbag structure, which buries the lower portion of the bags, decreasing the height of the structure above the beach profile. Ms. Goebel stated that the hardship does not result from conditions, which are peculiar in nature. CRC rules do acknowledge that much oceanfront property along the coast is subject to erosion and flooding simply by its proximity to the ocean. Ms. Goebel stated that Staff contends that allowing petitioner to enlarge his sandbags structure is not consistent with the spirit, purpose, and intent of the rules issued by the CRC. She also stated that Staff does not disagree that the variance will secure public safety and welfare. Increasing the sandbags is not going to have additional significant impacts on the public beach. However, Ms. Goebel stated that the variance would not preserve substantial justice when the petitioner has not shown that the hardships are unique to the property.

**Melvin Shepard made a motion, seconded by Joan Weld to deny the variance as requested. The variance request was denied by a hand vote of 5 in favor (Emory, Griffin, Shepard, Weld, Wynns), and 2 opposed (Old, Wilson).**

Richard L. Vanstory, Sr. (CRC-VR-04-11)

Merrie Jo Alcoke reviewed the Stipulated Facts on Attachment B of CRC-VR-04-11, stating that that petitioner proposes to build a single-family residence on a lot in Ocean Isle Beach. The petitioner is seeking a variance from 7H .0209(d)(10), which requires all new development to be located a distance of 30 feet landward of the normal high water level.

Ms. Alcoke stated that the location is bordered on two sides by manmade canals, and the canals are part of a large finger canal system that connects to the Atlantic Intracoastal Waterway (AIWW) at certain points. She also stated that the canals are closed to the harvest of shellfish. However, just beyond the entrance channels to the canal system, the waters of the AIWW are open to shellfishing. Ms. Alcoke stated that the proposed house will be located 8 feet from the normal high water level of the canal on the north side of the property, and will comply with the 30-foot buffer on the east side. There are a total of 25 lots similar to Petitioner's in that they are located on the north end of these canals and are bordered by canals on two sides. Of the 25 lots, 23 have an existing residence, and at least one encroaches into the buffer and was constructed after the buffer rule came into effect. Ms. Alcoke stated that the Town of Ocean Isle Beach would require Petitioner to install a stormwater management plan that collects the first inch and a half of stormwater.

Ms. Alcoke stated that Staff disagrees that the Petitioner is being caused a hardship, in that there is a financial loss due to inability to build a house deemed large enough to be consistent with surrounding houses, however this factor alone is not enough to establish a hardship that would warrant a variance. Staff also states that the hardship is due to the petitioners proposed design and use.

Mr. Richard Vanstory addressed the CRC, stating that he was currently waiting approval on a permit to build a bulkhead, as the house cannot be built until the bulkhead is in place. Mr. Vanstory informed the CRC that his property was appraised at \$900,000

Need action taken here – variance was granted.

Town of Belville (CRC-VR-04-12)

At the request of the CRC, this variance has been transcribed verbatim as follows:

Chairman Eugene Tomlinson: The next item on the agenda is the variance request of the Town of Belville in Brunswick County. At this junction I am going to have to recluse myself. I visited this site with –inaudible- issues. I have a very strong previous position as –inaudible- that could be taken on as –inaudible-. I am going to give the gavel over to Mr. Emory.

Bob Emory: Thank you Mr. Chairman. Ms. Alcoke.

**MERRIE JO ALCOKE:** Thank you Commissioner. The variance request was filed by the Town of Belville, which is a town located in Northern Brunswick County, about a mile south of intersection 17 and 74. Belville is requesting to conduct dredging from a boat ramp to the –inaudible- of Brunswick River. Go ahead and show them the photos that we have. This is an aerial shot showing the location of the boat ramp and a public park, where the boat ramp is located along the Brunswick River. This is just a close up of that where you can see the cove that cuts in here from the river and you can actually see the dock and part of the boat ramp there that we will be discussing today. I believe this photo was taken at the meeting that the Chairman referred to that he attended a couple months ago. The photo was taken at low tide and shows the boat ramp there at the mouth of the cove extending out towards the Brunswick River. You can see some of the mud bars. This is just a close up shot of the same view, the mouth of the cove. Here you can see the mud bars that are inhibiting navigation. Same shot but further up on the wayward, this is the boat ramp, which obviously is accessed for two boats to be

launched. It is a public boat ramp. Thank you Josh. In 1994, the Town of Belville constructed a public park and boat ramp -inaudible- a CAMA permit and through funds that were provided by the Division of Coastal Management through their –inaudible (Public Access)- fund as well as funds provided by the Wildlife Resources Commission. The park that is located about a mile south of intersection 17 and 74 in Brunswick County on the east side of Highway 133. It has two boat ramps, parking, bathroom, riverside observation deck, picnic, playground and other recreational facilities. Obviously it is adjacent to the Brunswick River. At this location the waters of Brunswick River are classified SC by the Environmental Management Commission are they are designated as a Primary Nursery Area (PNA). The PNA designation has been in effect since 1977. At this location there is approximately a 4-foot tidal amplitude. Meaning that there is 4 feet between low tide and high tide at this particular location along the Brunswick. Prior to the 1994 CAMA permit application to construct this facility, the Petitioner, Town of Belville, were informed of the status of the waters as

a PNA and that they might encounter problems with dredging. The waters adjacent to the boat ramp were shallow at that time as well. They were made aware of the CRC's rules that prohibit new dredging, new navigation channels in PNAs. They decided to go forward with a boat ramp for purposes of long and small boats that could benefit from use of the ramp. After they were issued a CAMA permit and the facility was constructed the Town came back and asked for a modification of the CAMA Major Permit to do some dredging out to Brunswick River. At that time they proposed to dredge a channel that was 60 feet wide by 300 feet long. At that time the approximate depth of the water at mean low water was 2 feet. Which was about the same as it was in 1994 when they had first applied to install the boat ramp. At that time in 1995 their project proposed to –inaudible– what the existing channel from 2 feet to 3 feet, so an approximate excavation of about 1 foot on an average. However, as you saw in the photos there is mud bars and so in some places the excavation would have been as much as 2½ feet to get through the mud bars. During the permit review process the Division of Marine Fisheries sampled the waters near the ramp. They found large numbers of juvenile southern flounder, spot, croaker, menhaden, blue crabs, and other species, which confirmed their belief during the permit review process that this was a productive PNA. The permit modification request was denied by DCM in 1996. It is that denial that the petitioners are seeking a variance from. The findings of DCM in their permit denial are outlined specifically in your facts at number 18. I will give you the highlights. The denial is based primarily on DMF objections regarding the PNA. However Division of Water Quality (DWQ) also objected to the project on the basis that it would violate their Antidegradation rules. In total four agencies objected to the

proposed project. DCM denied the project primarily based on the CRC's rules that provide that navigation channels must avoid PNAs. The denial is not based simply on other agencies rules but also CRC rules. At that time the Town did file an appeal at the Office of Administrative Hearing (OAH) at some point and it was recently closed in 2002 for lack of activity. The OAH dismissed the case without objection from the petitioner. They also filed a variance request in 1997 and that variance request was never heard due to inability to agree on stipulated facts at that time. Now they have filed a new variance request. There is not a time limit on filing a variance request as long as the conditions on the site have not changed so you have that permit denial to get to this process. In this case we are working from a 1995 permit denial. There are not significant changes at the site that would require them to go through the permit process again. In this new variance they have reduced the impact of their dredging. It has gone from 60 feet in width to 30 feet in width, remaining 300 feet in length. The total width of the channel has been reduced by half. The petitioners produced a depth survey that we were able to review and also compare to the survey that they presented with their CAMA permit application in 1995. The survey showed that within the cove the area has filled in somewhat since the original application. But just at the mouth of the cove beyond the waters of the Brunswick River there has been little to no change. We do have copies of the survey if any of you would like to look at them. Since 1997 DMF has continued to sample the water at this location. They have a sampling station right there. Over those years the waters have continued to show to be highly productive PNAs. When this variance request came forward, we contacted DMF to ask them if their position may have changed on the application. They

indicated that it had not even though the reduction of the dredging, their position will be the same that they would object to any new dredging. Pointing out in favor of the petitioners of their argument that they took forward we stipulated that this is the only public boat ramp in the Town of Belville. The next closest boat ramp is over 8 miles away in the Town of Navassa. This is the only public facility of this type in that area. If the petitioner is granted a variance they will still have to obtain other state and federal permits, including a Section 10 permit under the Rivers and Harbors Act, as well as a 404 permit under the Clean Water Act, and a 401 certification from the State saying that the project will violate water quality standards. I will turn now to the staff position of the four criteria that you must consider. Staff agrees that petitioners do have a hardship in this case. The petitioner's have alleged that the boat ramp is totally useless. We would not go as far to agree with that statement, but they do have, it is extremely shallow water there and therefore they do have a hardship with the fact that this facility being located at this cove, which is shallow, therefore it limits the use of the type of boats and the time of day that they can launch at this facility. Do the difficulties result from conditions peculiar to the property? Petitioners allege that yes they do in that they have a unique situation here but staff disagrees on that point. We don't believe that there is anything unique about the shallow waters at this location and we don't have other facts that would suggest that the hardship would result from conditions peculiar to the property such as its location, its size, or topography. The petitioners have not contributed to their own hardships in this case. We agree with the petitioners on this point. The hardships are primarily caused just by environmental factors and therefore we would not agree that the Town's actions

have caused a hardship in this case. However we did point out on our staff position that the Town has been aware since the time that they applied for their permit application that this hardship was present. We continue to see a problem for dredging in this area. Finally on the fourth factor, which is spirit, purpose and intent, the staff wrote a rather lengthy position here where we weighed the consideration for public access against the consideration for protecting the important resources and habitat (of)–inaudible- PNAs. Staff's position in this case is it is not consistent with the spirit, purpose and intent. In this case the preservation of the PNA outweighs the public access consideration. The basis of that is that they do still have a public facility that has provided people access to the water, although the size of the boats that can be used and the time of day is limited, there is a riverside observation deck, and a public park. The access to the water – inaudible- contemplates, don't just mean the ability to launch a boat –inaudible- different types of access are valuable as well. The facility is providing public access that it was intended to provide without being unconstructive use of this boat ramp. I regret I forgot to introduce the representatives who are here today on behalf of this variance request. That is Steve Stone who is the Assistant County Manager of Brunswick County. This park has been brought into the county system, although it named the petitioner as the Town of Belville, the county has really been the advocate for this variance. Also present is County Commissioner Bill Sue. I will turn it over to Mr. Stone the Assistant County Manager.

**STEVE STONE:** We certainly want to thank you for hearing this request today. During the break I put a one-page handout at your sections. It just summarizes why we

think this variance request should be granted. There are also some –inaudible- some of the same photos that Merrie Jo made available to you here. Essentially –inaudible- this park is roughly ten years old. We spend about \$172,000 of public capital developing the ramp and the surrounding park. The County also contributed in time about the equal amount of labor to build the park. There is really only one other ramp anywhere in the area. It's really technically on the Cape Fear River, which is part of the same river its just 8 miles north of here. The remainder of the Cape Fear on the western side all the way to Southport, which is about 25 miles, there is no access ramps at all going to Southport. There has been a significant amount of sedimentation in the cove, in the basin, where the ramp is. You can see from the photos that at high tide there is literally no water at the foot of the ramp to the edge of the River. We understand the importance of the PNA. But the reality is very very high demand for this ramp. Boaters attempt to use it anyhow. Literally what happens is when it is absolute low tide you can see its dry. They try and go out and try to come back in and they ground out, and we believe probably do more cumulative damage to the river bottom and it increases the turbidity more. –inaudible- case if we could simply dredge and maintain along this channel out to the river we certainly would try to mark it well to make sure we kept boaters within that channel. We simply think that to do that we could balance the public interest to have boating access to Brunswick River in this area which really is a tremendous –inaudible- the immediate areas –inaudible- over the last 15 years or so. We are aware that we would need probably some additional state permits and a permit from the Corps of Engineers should you grant this variance request. We are prepared to do whatever –inaudible- agencies –inaudible-

(would require) to be able to add this channel. I certainly would be glad to entertain any questions.

**BOB EMORY:** Any questions of the Petitioner or Ms. Alcock? Melvin.

**MELVIN SHEPARD:** I guess what I really want to ask you is, is that your intent to do exactly what you say according to your intent at a later date to expand on this with docks and places for boats to park and then it would become more a marina?

**STEVE STONE:** No Sir. Our intent is what, we're very explicit on just making it available for recreational boaters, that the County doesn't intend to put anything else on the water here. We, in fact, have been negotiating with the state which –inaudible- just north of this to expand a park facility, but anything that we will do there will be back off the river and will be –inaudible- (only for) recreation purposes.

**MELVIN SHEPARD:** If the CRC, and DCM had done all the things that we needed to do over time, and things like the CHPP's program had been in place for a long time, we would have PNAs everywhere. We would have strong fish everywhere. It has always seemed to be that the type thing that you have going here does a great deal more than preserve the stability from runoff than any development of that property could come into etc. I have really strong feelings that people need access to these waters that we're trying to create –inaudible- and those people will be the support that we need for the rules to be made because they'll be things there for them to enjoy. I have really strong feelings that we should never ever override someone like DMF when they say that they don't want –inaudible- (dredging) in PNAs. But I predicated that a few minutes ago by saying all the areas ought to

be PNAs. I believe that what we have to do at times is say okay this is a place where we're going to breach the PNA and make it an access for human beings to enjoy that for which we are –inaudible-. Having said that, we would never ever ever override them Mr. Chairman, except once in awhile. I won't go on with this. I would love to have seen a better package than what you are presenting to us. I would rather have seen a package where you are doing what you intend but you will have some form of stabilization of that channel so that you don't have to return. Because if you use the channel for these boat ramps, like you're going to use it, it's going to re-silt. The boat(s will create wave action) and it's going to put it right back. Not only that, the Management Clean Water Act, or trust fund or something like that probably would allow you to build some sort of stabilization on each side that would have grown oysters or something like that. It would then have probably created a better PNA. **You would have that deeper water than exists at the present time –inaudible-.** I guess what I am saying to my fellow Commissioners is this is a worthwhile project. It ought to be done a little more thorough than it is being done. If you will be straightforward and do what you say you want to do. There is no reason for this not to be here and in other places. **Mr. Chairman with that I would vote that the variance be approved as requested.**

**JERRY OLD: I'll second.**

**BOB EMORY:** We have a motion to approve and a second. Is there further discussion?

**BOB WILSON:** People using that ramp –inaudible- PNA. Those are the people that –inaudible- (will be soon be buying saltwater fishing licenses.)

**MELVIN SHEPARD:** I would hope it would be recorded somewhere in its entirety. I think DMF needs an explanation of why we did not listen to their concerns.

**BOB EMORY:** Assuming that Melvin's –inaudible- I think that was a request that we have them verbatim. Any other discussion?

**BOB WILSON:** It seems to me that the original intent of this Board was to grant permission to, this Panel, was to allow them to put in a facility that works. For the last thirty years that's what I've done for a living –inaudible- facilities as a dredging contractor and this request speaks very clearly to me with the comments that you made. I think that it would be wrong for the Board to deny this group the right to preserve the –inaudible-(usefulness) of a facility that this same Board allowed them to build some years ago. The PNA is certainly a major issue for us. But so is the public access to the public trust waters we are here to (protect) –inaudible-. One of the things that does concern me about this request is that I think it is very shortsighted. The material that they are going to be removing is pluck mud. It will not hold a high wall. If they are putting a wider channel, in my professional opinion, really won't do much good in the long run. I think that if we are going to, as a Body, give them the right to proceed in this way, that we should allow them the right to go to the other permitting agencies and request something that in the long run will do them more good. What I am suggesting is the original request, which is 300 feet long and 60 feet wide, to me makes sense because this area will –inaudible-. I would suggest that we, if we approve this request, that we allow them permission from our group, if it's within our rules to do this, to provide a channel 300 feet long and up to 60 feet wide, if they get approved by the other agencies. It's my

opinion that's what we need. I think we're being very –inaudible-. If that means more impact of PNAs, that's what it means. I agree with Melvin if we were a perfect world we would have PNAs everywhere. It's the place where, for me to draw a line in the sand and say the original (intent of CAMA was to allow public access by boat)–inaudible- would not allow me to –inaudible-. The fact that nobody –inaudible-then years ago –inaudible-. We are at fault, we're approving something obviously –inaudible-. Our intent, to do something for the public, and I think that's where I'm stuck on. I think it's something we need to do. Well I don't know whether it is or not, but I would like to offer, that we allow them to dredge the channel 300 feet long up to 60 feet wide, if they can receive approval from the other agencies. I would like to make that as an amendment.

**BOB EMORY:** Do you accept that as a friendly amendment?

**MELVIN SHEPARD:** I assume that the request (asks the lawyer a question that is inaudible)

**JILL HICKEY:** That's correct.

**MELVIN SHEPARD:** So it would almost be to send it back to the drawing board –inaudible-.

**MERRIE JO ALCOKE:** Actually their modified permit application was for 60 feet. It was on the variance request that they reduced it to 30. I believe that was on the advice of the staff to try to mitigate some, to get technical ruling, so they minimized in that fashion only. In the variance request there is an actual drawing and permit application.

**BOB EMORY:** So the action by this Commission, if it so desires, could, in spite of what the variance request is, grant the original permit request?

**MERRIE JO ALCOKE:** -inaudible, not at microphone.

**MELVIN SHEPARD:** I accept that change.

**BOB EMORY:** And seconder?

**JERRY OLD:** Yes.

**JOAN WELD:** I really would have a tough time – inaudible-. I very strongly favor public access, particularly on our rivers, I sort of like what it's involved here.

**BOB EMORY:** Is there any further discussion? Lee.

**LEE WYNNS:** I kind of see us possibly putting restrictions on one section of our fishery. Because there are –inaudible-. Then I see us on the other hand coming back and saying okay that's all right, -inaudible-. We have conflicting feelings here about this. I understand the need for public access to the water. It is a public trust and it belongs to the people of NC, whether you want to –inaudible-. But at the same time we have an obligation to protect –inaudible-. I personally would have like to have seen a better package and see if we can come up with something better than what we've got. With the objections that were placed on the original construction ten years prior that this is going to always be a problem. –inaudible-. We are going to create a navigation channel to launch boats. I can see development coming in, because now we can –inaudible-. It won't be long before –inaudible- they will be back, even with a 30-foot wide navigation channel. They will be back . –inaudible-. So we are going to

see a recurring request. I would have liked to see a better plan on board from the very start where they are not going to be coming back. -Inaudible-

**BOB EMORY:** Thank you Lee.

**MELVIN SHEPARD:** I'd like to follow up on Lee's concerns. I have great faith that my colleagues are going to embrace the CHPP program and that we're going to do a much better job in the future on providing habitat for fisheries. I told our legal representative, but I wasn't going to say anything about it, but I think probably that is not to say. I said that I would have preferred there be some stabilization in this channel. I'd like to make an informal suggestion as part of our approval that the Town of Belville explore the possibility of stabilizing the sizes of this channel so that it will not tend to filter back in and then ask to be redredged in some short period of time. In doing the stabilization of the size, they can virtually dedicate, because of their creation of habitat for fisheries, -inaudible- PNA. I think they will do that. I think they have a responsibility for trying to do that. Lee's concerns are genuine and I definitely agree with them. Enough said.

**BOB EMORY:** I want to be clear on what you are saying. You said as part of the variance you want to ensure that they will consider that?

**MELVIN SHEPARD:** Not necessarily ensure, but I think our suggestion is that they should consider that. I don't think we have a legal way to say to them, this is something you must do.

**BOB EMORY:** So will that be part of the variance or is that just the message that we are delivering to the County through our deliberation?

**JILL HICKEY:** I think we can add a condition to the variance if we so choose. If the motion ends up being there is a condition that the County study whatever and report back to the staff the results of the study and we want to try and look at stabilizing; you can make that a condition of the variance; if you want that to be part of your motion.

**MELVIN SHEPARD:** I don't necessarily want that to be a part of the motion because when I looked the gentleman in the eye a few minutes ago and asked him what his intentions were I depended on him being straightforward and honest about what they planned to do. I think they are hearing our concerns and they as a governmental body ought to do -inaudible-. I don't want to try and tie their hands to any particular thing. I think it's an issue where they ought to feel some responsibility.

**BOB EMORY:** Joan.

**JOAN WELD:** I'm hearing enough in my mind that I think I'm going back to my original position. I will oppose it particularly because of the tension I have.

**BOB EMORY:** If there is no further discussion, **just to recapture what we're voting on. It is not the variance as requested, but it is up to what was requested in the original permit, up to 60 feet wide.** So that is the motion we're voting on. **All those in favor of the motion please raise your hand. (Griffin, Old, Shepard, Wilson). That is four. All opposed? (Weld, Wynns). And that is two. So the variance is granted 4 to 2.** I hope the representatives of Brunswick County heard the related discussion and will look at other possibilities to mitigate.

**BILL STUPE:** I'm Bill Stupe. I'm the County Commissioner. This boat ramp exists in the Fifth District, which I represent. I'm an endangered species myself in Brunswick County because I'm a native. I can tell you that when I was kid this whole Brunswick River was used as a –inaudible– delivery ships. We had 500 delivery ships run into the mud on both sides. Eventually they've taken those out in the past, oh about 20 years ago. We have obtained title to that park from DOT. We are in the process of obtaining the title for another 18 acres that goes back to the north. It will be used exclusively for trailers, picnic tables, things like that. It will not turn into a marina because that's not our preference. We just want a place where people can put their boats in and take them out. It's sort of a shame that Brunswick County has got a river named Brunswick River and we don't even have access to it. I'd like to thank you for your deliberations and also thank you for your decision. I can assure you that if we can figure out a way to stabilize that channel without having to go back and dredge it, it'll pay us in the long run to do that. Thank you.

The gavel was then given back to Chairman Tomlinson.

#### **P&SI COMMITTEE REPORT**

Ms. Griffin presented the minutes from the P&SI committee (SEE ATTACHMENT FOR WRITTEN COPY). No action was taken by the CRC during this report.

#### **I&S COMMITTEE REPORT**

Mr. Emory presented the minutes from the I&S Committee (SEE ATTACHMENT FOR WRITTEN COPY). The CRC took the following action:

**Mr. Emory made a motion to accept the postponement of the Oak Island AVL request for one calendar year. The motion passed unanimously by hand vote. (Emory, Griffin, Old, Shepard, Weld, Wilson, Wynns)**

**MELVIN SHEPARD:** Mr. Chairman would you give us your thoughts on this?

**CHAIRMAN TOMLINSON:** My thoughts were that you should grant it. Absolutely.

**Mr. Emory made motion to dedicate time, after the Executive Secretary's Report at the October meeting, to discuss the CHPP. The motion passed unanimously by hand vote. (Emory, Griffin, Old, Shepard, Weld, Wilson, Wynns)**

**Mr. Emory made a motion to adopt the four stipulations that would be included on CAMA Minor Permits that were issued to an applicant that had been granted a variance. The motion passed unanimously by hand vote. (Emory, Griffin, Old, Shepard, Weld, Wilson, Wynns)**

### **CRAC REPORT**

Bob Shupe presented the minutes from the CRAC meeting. (SEE ATTACHMENT FOR WRITTEN COPY). No action was taken by the CRC during this report.

### **OLD/NEW BUSINESS**

Mr. Lopazanski presented the CHPP 2003-2004 Annual Report to the CRC. He reviewed the status of the CHPP, to include the September 9, 2004 meeting presentation. Mr. Lopazanski informed the CRC that DENR conducted a public outreach program in 2003-2004 to include an informational video describing the CHPP, and informational brochure describing the six types of coastal fish habitats, and a newspaper tabloid with further information. Mr. Lopazanski also reviewed the Plan adoption, that by law the three commissions are to adopt the CHPP by Dec. 31, 2004. He also informed the CRC that in early 2005 work will begin on development of Management Unit plans, focusing on issues specific to each area, and identification and management of site-specific important fish habitat areas provided in the CHPP.

**Mr. Shepard made a motion, seconded by Peggy Griffin to approve the Annual CHPP report. The motion passed unanimously by hand vote. (Emory, Griffin, Old, Shepard, Weld, Wilson, Wynns)**

With no further business, the CRC adjourned.

Respectfully submitted,

Charles S. Jones, Executive Secretary

Stephanie Bodine, Recording Secretary