

**DRAFT MINUTES**

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

**LOCATION:** Crystal Coast Civic Center  
Morehead City, North Carolina

**DATE:** April 24-25, 2002

**PRESENT:** CRC Members

Courtney Hackney, Vice Chairman

Alton Ballance	Ernie Larkin
Bob Emory	Jerry Old
Mary Price Harrison	Bill Peele
Patricia Howe	Larry Pittman
Doug Langford	Melvin Shephard

Coastal Resources Advisory Council (CRAC) Members

Ginger Webster, Chairman  
Bob Shupe, Vice Chairman

Frank Alexander	Bill Morrison
Natalie Baggett	Lee Padrick
Carl Beacham	Spencer Rogers
Joe Beck	Rosetta Short
Donna Bridges	Lester Simpson
John Doughty	Mike Street
Carlton Davenport	Wayne Teeter
Don Davenport	*Tim Ware
Webb Fuller	Dave Weaver
George Gilbert	Calvin Wellons
Joe Morris	

\*Representing Joe Dooley

Wednesday, April 24, 2002

Commission Call to Order

Vice Chairman Hackney called the meeting to order at 10:00 a.m. Vice Chairman Hackney, in accordance with Executive Order No. One, reminded CRC members of their duty to avoid conflicts of interest or appearances of conflicts and he asked that any CRC member who had a known conflict of interest or appearance of conflict with matters before the CRC to so state as the roll was called.

Roll Call

Eugene Tomlinson:	Not present.
Alton Ballance:	Not present. (NOTE: Mr. Ballance arrived at 10:10 a.m. on Wednesday, April 24, 2002.)
Bob Barnes:	Not present.
David Beresoff:	Not present.
Bob Emory:	Present. No conflict.
Peggy Griffin:	Not present.
Courtney Hackney:	Present. No conflict.

Mary Price Harrison: Present. No conflict.  
Patricia Howe: Present. No conflict.  
Doug Langford: Present. No conflict.  
Ernie Larkin: Present. No conflict.  
Jerry Old: Present. No conflict.  
Bill Peele: Present. No conflict.  
Larry Pittman: Present. No conflict.  
Melvin Shephard: Present. No conflict.

### Special Recognition

Vice Chairman Hackney recognized Roger Crowe advising that Mr. Crowe had served on the CRC for six and a half years in the Wildlife and Sports Fishing slot and as the Vice Chairman of the CRC and he presented Mr. Crowe a plaque of appreciation for his years of service on the CRC. Mr. Crowe expressed his appreciation for this recognition.

### Approval of January Minutes

Vice Chairman Hackney stated that he would like to ask the CRC's permission to table this until the next meeting. Vice Chairman Hackney said there had been some need to add some language to reflect some of the things that had gone on and there were some omissions. Vice Chairman Hackney advised that if any CRC members had their own omissions or additions they should give them to Ms. Brown and these would be taken up at the CRC's next meeting. Vice Chairman Hackney stated that these omissions and changes needed to be in the minutes because they reflected some aspects of a former case that could come back and cause problems for the CRC if they were not in there correctly.

**Melvin Shepard moved that approval of the January 23-24, 2002, CRC minutes be tabled until the CRC's July meeting and his motion was seconded and unanimously approved (Bob Emory, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard).**

### Executive Secretary's Report

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

Ms. Moffitt advised that David Beresoff could not attend the CRC meeting today but he had provided the CRC with a written Shellfish Report and with an additional report that he thought members of the CRC would find of interest. She reported that CRC members had been provided with a copy of the written Shellfish Report and a copy of the additional report was being circulated to CRC members.

Ms. Moffitt reported that the Capps and Mattingly variance requests were both being postponed. She advised that there were no other agenda changes.

Patricia Howe stated that she would like to find out how the CRC could get Executive Order No. 15 signed quicker than this fall. Ms. Howe advised that there was a situation in New Hanover County where the Department of Transportation (DOT) was going to dump or bypass stormwater runoff into Futch Creek. She said Clean Water Trust money had been used to repair Futch Creek and buy land, the Land Trust had been involved in obtaining land and individuals had donated land in assigned pieces and they had brought the shellfish waters back to good in Futch Creek and DOT dumping or bypassing stormwater runoff into Futch Creek would totally destroy all these efforts. Ms. Howe said she thought Executive Order 15 spoke to this issue and she thought this needed to be done immediately if it was possible.

### Shellfish Report

Vice Chairman Hackney stated that, as Ms. Moffitt reported earlier, David Beresoff was unable to be present at this CRC meeting but he had provided a written copy of the Shellfish Report which had been provided to CRC members. (SEE ATTACHMENT 2 FOR WRITTEN COPY OF REPORT.)

#### Other Business

Vice Chairman Hackney advised that he would appoint a nominating committee for the vacant Marine Science/Technology slot on the CRAC.

**Melvin Shepard moved that the CRC ask Division of Coastal Management (DCM) staff to prepare a resolution asking Governor Easley to reauthorize Executive Order No. 15 and his motion was seconded and unanimously approved (Alton Ballance, Bob Emory, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard).**

Vice Chairman Hackney stated that Alton Ballance had arrived at the meeting and he reminded Mr. Ballance of his duty to avoid conflicts of interest or the appearance of conflicts and he asked Mr. Ballance if he had any known conflicts of interest or appearance of conflicts and Mr. Ballance responded that he had none.

#### Variance Requests

##### Williamson (CRC-VR-02-01)

Merrie Jo Alcoke advised that she was representing DCM in the variance request filed by Ms. Geraldine Williamson. Ms. Alcoke reported that Ms. Williamson was not present today. Ms. Alcoke stated that Ms. Williamson owned property at 416 18th Street in Sunset Beach. She said the petitioner applied for a Coastal Area Management Act (CAMA) Major Permit to construct a pier, dock, floating dock and uncovered boat lift adjacent to a basin off Tubbs Inlet. Ms. Alcoke said a permit was issued on October 11, 2001, for the proposed development with a condition limiting the length of the pier to one-fourth the width of the water body as prescribed by Rule 15A NCAC 7H .0208(b)(6)(J)(iii). Ms. Alcoke reported that the petitioner filed this variance request seeking relief from strict application of the "one-quarter rule" due to the shallow conditions of the water body.

Ms. Alcoke reviewed the Stipulated Facts contained in Attachment B of CRC-VR-02-01. Ms. Alcoke reviewed the petitioner and staff's response to the variance criteria contained in Attachment C of CRC-VR-02-01. Ms. Alcoke reported that DCM staff did not feel the petitioner had met the variance criteria and did not support granting this variance request.

Ms. Alcoke responded to questions from CRC members.

**Melvin Shepard moved that this variance request be denied and his motion was seconded and unanimously approved (Alton Ballance, Bob Emory, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard).**

#### Contested Cases

##### Sammie Williams (CRC-CC-02-01)

Vice Chairman Hackney stated that this was a remand from Judge Griffin. Vice Chairman Hackney advised that this week he had received a request from Mr. Williams' attorney to delay this case. Vice Chairman Hackney stated that this case had been scheduled for some time and in some ways it was a "no brainier" and in other ways it was not. He said those who had been around for a while knew the history of this case and largely what the CRC was looking at was an order from Judge Griffin that the CRC vote for a variance with some specific conditions that would be added to the permit. The Vice Chairman said he knew there were some CRC members who disagreed with the Judge's decision. Vice Chairman Hackney stated that sometimes people in authority did not necessarily interpret rules the way he did but the fact was that they had the authority to do

that and he felt this was what the CRC was looking at here. He said his preference was to go ahead and dispense with this matter before there were new members coming onto the CRC at the July meeting. Dr. Hackney asked Mr. Longest to basically lay out exactly what the CRC had to do here.

Mr. Longest reviewed the materials he had provided to the CRC attached to his April 8, 2002, memorandum. Mr. Longest gave an overview of the judicial action that had transpired in this case. He advised that what was before the CRC today was an order from the Superior Court dated March 28, 2002 that directs that the CRC grant a variance to Sammie Williams. Mr. Longest responded to questions from CRC members. CRC members discussed with Mr. Longest what language would be appropriate and acceptable to use in granting the variance in order to be in compliance with the order from the Superior Court.

Doug Langford stated that this case had gone on for far too long. He said the CRC had an order from a Superior Court judge and he did not intend in any way to deviate from that order. **Mr. Langford moved that the CRC adopt verbatim the order from the Superior Court and his motion was seconded.** CRC members discussed Mr. Langford's motion with several members expressing their concern that there was some vagueness in the language as written in the order. Mr. Langford said he felt the CRC should move ahead with the motion. **Mr. Langford clarified that his motion was to follow the order of the Honorable Judge William Griffin, Resident Superior Court Judge, with the conditions as set out in the order dated February 16, 2000.** Mr. Langford moved to call the question and his motion was seconded and unanimously approved.

The CRC voted in favor of Mr. Langford's motion by a vote of 9 in favor of the motion (Alton Ballance, Bob Emory, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard). Mary Price Harrison abstained from voting on this matter.

King (CRC-CC-02-02)

Dave Heeter advised that the CRC had been mailed only the odd numbered pages of the Recommended Decision in this case and that he was now passing out the even numbered pages. He said they had also not received the King's Exceptions to the Recommended Decisions and he was also passing this out and he was also handing out his Statement in Support of Recommended Decision. CRC members then discussed whether they wanted to proceed with this case today since they had not received all the relevant information prior to this meeting or whether the matter should be delayed in order to give CRC members time to fully review the materials which were just handed out. Ryke Longest explained the statutory time frames the CRC was under in responding to this Recommended Decision of the Administrative Law Judge. **Doug Langford said in view of the statutory time constraints, he would move that the CRC proceed with taking action on this case at this meeting and his motion was seconded.** The CRC voted in favor of Mr. Langford's motion by a vote of 9 in favor of the motion (Alton Ballance, Bob Emory, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard) and none opposed to the motion. Mary Price Harrison did not vote on this motion.

Winnifred King said they would be presenting their case to the best of their ability realizing that the CRC had the transcripts from the other two hearings and realizing that the CRC had the open mind necessary to make a decision that law does not exist in a vacuum and has to live in a real world and that government does not want to have rules that hurt its' constituents. She stated these were quotes from United States Supreme Court Justice Anthony Kennedy. Mrs. King advised that they would like to reply to Issues #1, 2, 3, 4, 5, 6 and 21 of Findings of Fact from December 8, 1997 and then October 9, 2001 #36. She stated they would like to reply to Conclusions of Law #2, 9, 10, 14, 15, 19, 21, 22 and 26. Mrs. King then began to read their response to these issues in the Findings of Fact and Conclusions of Law contained in their written Exceptions to the Recommended Decision. Dr. Hackney suggested that, due to time limitations, the CRC take a brief minute break and read the King's written Exceptions to the Recommended Decision and then ask Mrs. King any questions they might have after their reading of the written Exceptions. After the CRC had taken a break to read the King's Exceptions, Mrs. King passed around photographs for the CRC's review. Vice Chairman Hackney suggested that while the CRC reviewed these photographs that Dave Heeter present DCM staff's position in this case and

after his presentation, the CRC could ask the Mrs. King and Mr. Heeter any questions they might have.

Dave Heeter stated that Mr. and Mrs. King owned an oceanfront lot at 1606 North Shore Drive in Surf City. He said in the early 1980s before they owned the lot a house was built on it which complied with the CRC's 60-foot oceanfront setback. Mr. Heeter advised that by 1989 the vegetation line had moved inland due to beachfront erosion and the house no longer complied with the 60-foot oceanfront setback. Mr. Heeter reported this was shown in an aerial photograph which was respondent's Exhibit A and attested to by DCM staff. Mr. Heeter said by 1995 there was some increase in the vegetation in front of that property but it still no longer met the CRC's erosion setback. Mr. Heeter advised that this was the situation prior to Hurricanes Fran and Bertha. Mr. Heeter reported that in 1996 the house on the lot was destroyed by Hurricane Fran. He said, in addition, there was extensive erosion as a result of Hurricanes Fran and Bertha. Mr. Heeter stated that in April of 1997 the King's applied to the Surf City Local Permit Officer (LPO) for a CAMA permit to rebuild their house. He said that because of the great number of permit applications which were filed after the two hurricanes, the Surf City LPO asked DCM for assistance in determining where the erosion setback line should be measured from on the King's lot. Mr. Heeter said DCM determined that the lot was so badly eroded that there was no longer a first line of stable natural vegetation on the lot. He said DCM also determined at that time that they could not escrapulate a vegetation line because there was no vegetation for several blocks of that property on either side. Mr. Heeter reported that, in addition, the beach at that point in time came almost back to the street and there was no buildable area on the King's lot. Mr. Heeter said DCM informed the Kings that it would be necessary to wait until a vegetation line became reestablished and an ocean setback line could be determined before they could proceed. Mr. Heeter stated that the application was also denied because the Surf City Land Use Plan required that all development in the Ocean Hazard Area of Environmental Concern (AEC) be located "so as to maximize a structure's protection from wind and water and to minimize damage to protective land forms of dunes and beaches in accordance with CAMA regulations."

Mr. Heeter stated that the King's filed an appeal with the Office of Administrative Hearings (OAH) and they also petitioned the CRC for a variance. Mr. Heeter advised that the two matters were consolidated and a hearing was held before the Office of Administrative Hearings in December of 1997. Mr. Heeter stated that a Recommended Decision was never issued following that hearing. Mr. Heeter said in October of 2001 a second hearing was held and that hearing was held to update the evidence and the conditions on the lot since 1997. Mr. Heeter stated that the new evidence showed that there was now a first line of stable natural vegetation on the lot as defined in the CRC's rules. Mr. Heeter provided the CRC with photographs showing this. Mr. Heeter stated that the vegetation line was basically in front of the emergency dune which was pushed up after the hurricanes. He said the vegetation line was down the front of this berm system and the 60-foot erosion setback came out on the rear of the lot more or less along the line of the sand dunes and this was a few feet short of the street right-of-way. Mr. Heeter said there was some buildable area on the lot at this point but this area was only around ten feet. He said effectively the lot was not buildable under the CRC's regulations to the Town of Surf City's regulations.

Mr. Heeter advised that after the hearing in October of last year, the Administrative Law Judge (ALJ) issued a Recommended Decision to confirm the denial of the King's permit application and he recommended against granting the variance request. Mr. Heeter advised that this matter was now before the CRC for a final decision. Mr. Heeter said DCM staff urged the CRC to adopt Judge Gray's Recommended Decision in its totality. Mr. Heeter stated that the Factual Findings were certainly supported by more than ample evidence in the record and the Conclusions of Law were supported by the Factual Findings. Mr. Heeter said there was substantial evidence showing that the permit application was properly denied in 1997. Mr. Heeter said at that time a house could not be built on the property in compliance with the CRC's ocean setback rules. Mr. Heeter said the evidence submitted last fall did show there currently was some buildable area under the CRC's rules but this area was only approximately 10 feet.

Mr. Heeter said the CRC should also deny the King's request for a variance and he reviewed staff's response to the four variance criteria. Mr. Heeter urged the CRC to uphold the ALJ's Recommended Decision to deny the petitioner's variance request.

Ms. King responded to questions from CRC members.

**Bob Emory moved that the CRC affirm the ALJ's Recommended Decision and his motion was seconded. The CRC voted unanimously in favor of Mr. Emory's motion (Alton Ballance, Bob Emory, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard).**

Tuchscherer (CRC-CC-02-03)

Ryke Longest advised that Ms. Tuchscherer had contacted him by telephone and asked that he discuss her appeal with the CRC. Mr. Longest stated that he had explained to Ms. Tuchscherer that at this point she could not withdraw her appeal because it was in transition between the Office of Administrative Hearings and the CRC. Mr. Longest said he told Ms. Tuchscherer that he would transmit her request to withdraw the appeal to the CRC and the CRC could act to adopt the ALJ's Recommended Decision.

Mr. Longest advised that this case involved a permit fee. Mr. Longest said the issue was if a permit was denied, was the permit fee still owed to DCM and the ALJ had held in this case that the permit fee was non-refundable since the fee was for administrative purposes. Mr. Longest stated this was the issue in that case and the ALJ agreed with DCM's interpretation of what the permit fee was for. Mr. Longest said he, as he had stated before, the Administrative Procedures Act required that the CRC take action within a certain amount of time or by default adopt the ALJ's Recommended Decision. Mr. Longest stated this could just have been removed from the calendar but he did not want to do that on his own authority since he had no control over the CRC's decisions. Mr. Longest said he wanted to put this to the CRC and an appropriate motion might be to adopt the ALJ's Recommended Decision or to take no action and accept the ALJ's Recommended Decision by default.

Vice Chairman Hackney said he had not seen anything in his packet on this so the CRC had not received any information and did not know what the ALJ's Recommended Decision was. After discussion between CRC members and Mr. Longest on how this matter could be handled, Vice Chairman Hackney suggested that the CRC table this matter and ask that they be sent a copy of the ALJ's Recommended Decision and if CRC members saw something that made them uncomfortable about the ALJ's Recommended Decision automatically being adopted there could be a telephone conference call meeting to make a decision on it. CRC members agreed that Vice Chairman Hackney's suggestion was acceptable.

Other Business

Mary Price Harrison advised that she was passing out copies of a draft letter regarding real estate disclosure that she would like for the CRC to consider taking action on tomorrow.

Public Input and Comments

Vice Chairman Hackney advised that several people had signed up to speak to the CRC. Vice Chairman Hackney stated that this segment was for public input and comment for the CRC to try and solicit ideas from the public on items they felt should be brought to the CRC's attention.

Don Morris, Newport, NC

Mr. Morris thanked the CRC for the opportunity to address them. He stated that he would keep his remarks brief. Mr. Morris stated that he had a prepared statement and had a copy for the CRC. (SEE ATTACHMENT 3 FOR WRITTEN COPY OF COMMENTS.)

Ricki Shepherd, Hatteras Village

Ms. Shepherd advised that she was a resident of Hatteras Village. Ms. Shepherd stated that she was currently serving as president of the Hatteras Village Civic Association. She advised that

several others had accompanied her here today to seek the CRC's help in protecting the heart of their community, the Slash Marsh. Ms. Shepherd said that pressure from development had grown so rapidly over the last few years that one could barely believe it. Ms. Shepherd stated they obviously must become more involved with their future growth issues. She said they had taken steps with their goal of protecting the quality of life in their small village and the fragile environment surrounding it. Ms. Shepherd stated they were working with the county planning board members and staff to update their zoning and they were coming to the CRC with their concerns.

Ms. Shepherd stated they were grateful to the DCM for denying permit applications in the past to protect Slash Marsh. Ms. Shepherd reviewed the importance of the functions of Slash Marsh. Ms. Shepherd said they believed that opening a dredged channel through the marsh would have negative impacts and she reviewed what they felt these negative impacts would be. Ms. Shepherd said they were requesting that the CRC and DCM consider the negative impacts of these types of activities. Ms. Shepherd said public input should be allowed earlier in the process so that local people could make their concerns known to the reviewing agencies. She said it must count for something.

Ms. Shepherd thanked the CRC for their time and thoughtful consideration of their concerns. She encouraged the CRC and the DCM staff and anyone interested in protecting coastal Carolina to participate in the process whenever possible to keep North Carolina's vital wetlands safe.

Vice Chairman Hackney stated that the local land use plan could be an excellent tool for addressing some of the concerns raised by Ms. Shepherd.

A discussion then followed on whether or not Ms. Shepherd's remarks should be heard by the CRC at this time since the issue she was bringing before the CRC could be something that came before the CRC at a future date through the CAMA permitting process. Ryke Longest advised that he had heard nothing specific in Ms. Shepherd's remarks that would prevent the CRC from hearing her comments at this time.

#### Howard Rooney, Hatteras Village

Mr. Rooney stated that he was a permanent resident of Hatteras, North Carolina, and he was here today to beg the CRC to reject any permits for dredging in Slash Marsh. Mr. Rooney said the Slash was a natural salt marsh estuary and was not navigatable for boats and was a tidal marsh surrounded by permanent residents. He said it was the home of a wide variety of wildlife and a wide variety of shore and marsh birds. Mr. Rooney reiterated that this was a live salt marsh. Mr. Rooney said he had brought photographs to show the peace and serenity of this basin and he asked the CRC to take a good look at the peace and serenity of what they had. He said their had never been dredging in Slash Marsh because it was an estuary. Mr. Rooney stated that dredging would create noise and pollution and completely change this historic community. Mr. Rooney advised that they were trying to preserve this historic community. Mr. Rooney said they were trying to preserve the historic sites in their community. Mr. Rooney stated that they had a drive tour, a CD and they also had a brochure showing the historic sites. Mr. Rooney reported they also had made a historic survey showing the old boats that were still there and the present buildings. Mr. Rooney ended his comments with a journal entry from a New York Union soldier on Sunday the 13th of October 1861.

Mr. Rooney thanked the CRC for listening and hearing these comments.

Vice Chairman Hackney stated that he felt Mr. Rooney had some interesting places to inject into his local land use plan if they were not already there. Vice Chairman Hackney said he would also like to make sure that it was understood, and to help DCM staff in case their was any concern, that the CRC listening to people's complaints had nothing to do with what DCM staff had to do in terms of their permitting job. Vice Chairman Hackney said DCM staff currently had rules they had to follow. Vice Chairman Hackney said these rules might be changed in the future but right now DCM staff had specific rules and they had to follow those rules.

#### Dan Burroughs, Hatteras Village

Mr. Burroughs advised that he was a permanent resident of Hatteras. He said he had moved to Hatteras in 1965. Mr. Burroughs stated that he was going to make comments to the CRC on a marsh and not about any specific permit or project. Mr. Burroughs said he was here representing the Hatteras Village Citizens Association. Mr. Burroughs advised that he had made the trip today to voice their concerns about the possible endangerment of the salt marsh which was a major portion of their village. Mr. Burroughs said Ms. Shepherd had touched on the productiveness of the salt marsh estuary. He stated there were a number of young people in their village who still thought their life's work was being a commercial fisherman. Mr. Burroughs advised that the productiveness of the Pamlico Sound had seen better years and worse years but blue crab and trout catches were at an all time low and this could be attested by the fishermen and certainly documented or validated by the Division of Marine Fisheries. Mr. Burroughs said if this eastern North Carolina industry was going to be protected, the breeding area, namely the salt marsh estuaries, could not be infringed upon. He stated that Slash Marsh was not a creek, it was not a river and it was not navigatable. Mr. Burroughs said it was a marsh plain and simple. Mr. Burroughs said they appealed to the CRC and its staff to look carefully at any request that would degrade wetlands.

No other individuals asked to address the CRC.

#### **Thursday, May 25, 2002**

Vice Chairman Hackney called the meeting to order at 8:35 a.m. Vice Chairman Hackney said the CRC would begin their meeting this morning with some informational items related to beach renourishment.

#### **Presentations**

##### Biological Impacts of Beach Nourishment

Dr. Pete Peterson presented this information item to the CRC. No action was required by the CRC.

##### Biological Impacts of Beach Nourishment at Kure Beach

Dr. Martin Posey presented this information item to the CRC. No action was required by the CRC.

#### **CRAC and Committee Reports**

##### CRAC Report

Ginger Webster presented the CRAC report. (SEE ATTACHMENT 4 FOR WRITTEN COPY OF REPORT.) No action was required by the CRC.

##### Report from Implementation and Standards (I&S) Committee

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

##### Inlet Alteration Overview

Dr. Larkin reported that after hearing this presentation given by Doug Huggett and discussion by the I&S Committee, the I&S Committee had produced a resolution having to do with the degree of investigation into inlet projects including the need for an Environmental Impact Statement. The resolution follows:

**Until such time as the CRC has adopted rules governing the relocation or alteration of inlet systems for the purpose of relocation, alteration, expanded navigation, sand removal, or beach renourishment, the CRC requests that the Secretary of the Department of Environment and Natural Resources require an Environmental Impact**



Statement under the North Carolina Environmental Policy Act for any major project that proposes to dredge an inlet system. An inlet system consists of the inlet, its ebb or flood tidal deltas, spit, or an inlet hazard area on the sound side of a barrier island. Ongoing navigation projects are exempt from this requirement if they do not alter or increase the depth or width of a channel beyond authorized parameters.

Dr. Larkin advised that he was bring this as a motion from the I&S Committee to the CRC for adoption.

A discussion followed on the potential impacts of this resolution, the need for the resolution and the legality of the resolution. Mike Street advised that he had been in the I&S Committee yesterday when this matter had come up and he did not recall that this resolution had come out of the I&S Committee as a recommendation. Dr. Larkin responded that there had not been a formal vote taken on the resolution in the I&S Committee. Dr. Larkin stated that as Chair of the I&S Committee he had looked around and saw a significant majority of heads nodding and nobody objecting. He stated that he had certainly meant to make it clear that it would be carried to the CRC today. Dr. Larkin reported that a formal vote had not been taken but rather this was an informal judgement by the Chair as to whether there was a consensus in the Committee.

After additional discussion on what the impacts would be of adopting this resolution, Dr. Hackney stated that the question currently before the CRC was whether or not there was a properly constituted resolution from the I&S Committee and he would say that there was not since there was not technically a vote. Dr. Hackney said that what he would like to do was to table this issue and let the I&S Committee decide what they wanted to do at their next meeting. Dr. Hackney stated that what he would charge the I&S Committee with doing, in context of this discussion, was to review how the current State Environmental Policy Act (SEPA) document works and where the levels of impact were in terms of elevating so there was a clear idea of how the process had worked, how it might work in the future and whether there was a need to look at the SEPA process in more depth.

Mary Price Harrison explained what had been the driving force behind this resolution but said she could understand that there were a lot of questions and if it was the desire of the CRC, she would withdraw the resolution at this time.

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

Patricia Howe presented the report from the P&SI Committee. (SEE ATTACHMENT 6 FOR WRITTEN COPY OF REPORT.) The following items required action by the CRC.

#### Land Use Plan (LUP) Local Government Funding Schedule (P&SI-02-07)

Ms. Howe advised that Kathy Vinson had asked the P&SI Committee to provide guidance on several land use planning issues related to the 2002 Land Use Planning Guidelines.

Ms. Howe said Ms. Vinson had explained that the CAMA legislation provided that municipalities may develop individual land use plans if this authority was either delegated by the county or granted by the CRC. Ms. Howe stated that Ms. Vinson had explained that although the CRC and coastal counties had previously authorized or delegated this authority to some municipalities, this authorization was not always formally documented. Ms. Howe stated that Ms. Vinson said that municipalities who wished to develop a new land use plan must either provide written documentation that this authority had been granted or request current authorization from the respective county or the CRC. Ms. Howe said that Ms. Vinson reported that if a municipality was not delegated planning authority by the county or preferred to request authority from the CRC, the municipality had to demonstrate to the CRC that it was currently enforcing its zoning ordinance, subdivision regulations and the state building code in its jurisdiction. Ms. Howe advised that Ms. Vinson had asked the I&S Committee to recommend procedures to the CRC concerning adequate documentation that authority to develop individual land use plans had been granted by

either the respective county or the CRC.

Ms. Howe advised that the P&SI Committee had voted to recommend to the CRC the following procedures:

County delegation to the municipality to develop an individual plan may be documented by providing either a certified resolution from the county's elected board of this action, a letter from the chief elected county official documenting the action of the elected board or a certified copy of the minutes of the meeting where this authorization was granted.

If the municipality is not delegated authority by the county or prefers to request authority from the CRC to develop its own plan, the following procedures will be adequate to demonstrate to the CRC that the town is currently enforcing its zoning ordinance, subdivision regulations and the state building code within its jurisdiction. The Town should provide the CRC with a letter from the Mayor or his/her designee verifying that the municipality has adopted and is enforcing zoning and subdivision ordinances and is enforcing the state building code regulations.

Ms. Howe advised that she was presenting this as a motion from the P&SI Committee. The CRC voted unanimously in favor of this motion from the P&SI Committee (Alton Ballance, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shephard).

Ms. Howe reported that Ms. Vinson then asked the P&SI Committee to provide direction regarding time limits for CRC certification consideration of new land use plans developed in accordance with the 1995 Land Use Planning Guidelines. Ms. Howe advised that Ms. Vinson said that during the land use planning moratorium some local governments who were previously funded for the land use plan update (prior to 1998) submitted draft plans for state review. Ms. Howe said Ms. Vinson reported that state comments were returned to local governments and most of these plans were subsequently locally adopted and certified by the CRC, however, a few local governments whose plans were reviewed have yet to forward a locally adopted plan to the CRC for certification consideration. Ms. Howe stated that Ms. Vinson said that at least one local government had developed a draft plan with no funding assistance from DCM but had not yet submitted it for state review. Ms. Howe advised that Ms. Vinson advised this plan was developed within the past year.

Ms. Howe advised that the P&SI Committee had voted to recommend to the CRC the following policies regarding certification consideration of new land use plans developed under the 1995 rules:

Plans developed under the 1995 Land Use Planning Guidelines that were reviewed by the state prior to the CRC's adoption of the 2002 land use planning guidelines (October 25, 2001) must be locally adopted and presented to the CRC prior to August 1, 2002 or the effective date of the 2002 guidelines, whichever is later in order to be considered for certification.

Plans that have not yet been reviewed must be submitted for state review prior to the effective date of the 2002 guidelines in order to be considered based on the 1995 guidelines. In order to be considered for CRC certification, these plans must be adopted and provided to the CRC within 6 months of the return of state review comments to the local government.

Ms. Howe advised she was presenting this as a motion from the P&SI Committee. The CRC unanimously approved this motion from the Committee (Alton Ballance, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shephard).

Ms. Howe said Ms. Vinson then proceeded with a discussion of the amendment process. Ms. Howe advised that Ms. Vinson said that the CRC and DCM encourage local governments to use the CAMA Land Use Plans in development discussions. Ms. Howe advised that Ms. Vinson stated changing circumstances often created the need for an amendment to an existing plan that should be promptly addressed rather than waiting for the next land use plan update. Ms. Howe stated that Ms. Vinson said the CRC had traditionally accepted amendments to existing plans (even those developed in accordance with a previous set of Land Use Planning Guidelines) until an updated plan was locally adopted and certified by the CRC. Ms. Howe advised that Ms. Vinson noted, however, that the 2002 guidelines were significantly different from the 1995 guidelines and previous revisions to the CRC's Land Use Planning Guidelines were not as substantial as the 2002 revision. Ms. Howe said Ms. Vinson asked the P&SI Committee to provide recommendations on how the CRC would review and certify amendments to existing plans until an update plan could be developed once the 2002 guidelines became effective.

Ms. Howe reported that the P&SI Committee had voted to recommend to the CRC the following procedures for reviewing and certifying minor amendments to existing plans once the 2002 Land Use Planning Guidelines become effective:

For minor modifications that meet the criteria in .0901(b)(1), (A) through (D) of the 2002 Land Use Planning Guidelines, the local government may request the Executive Secretary of the CRC to certify the amendment according to the process established in .0901(b).

Ms. Howe advised she was presenting this as a motion from the P&SI Committee. The CRC voted unanimously in favor of this motion from the Committee (Alton Ballance, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard).

Ms. Howe reported that the P&SI Committee had voted to recommend to the CRC the following procedures for reviewing and certifying other (not minor) amendments to existing plans once the 2002 Land Use Planning Guidelines become effective:

For other amendments, the local government must follow the procedures specified in .0901(a) of the 2002 Land Use Planning Guidelines. The amendment must comply with all applicable requirements of the 1995 Land Use Planning Guidelines and must not create an internal inconsistency in the plan.

Ms. Howe advised she was presenting this as a motion from the P&SI Committee. After discussion of this motion, the CRC voted in favor of the motion from the Committee by a vote of 8 in favor of the motion (Alton Ballance, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Larry Pittman, Melvin Shepherd) and 1 opposed to the motion (Bill Peele).

#### Action Items

##### Technical Change in the CAMA Land Use Planning Guidelines

Donna Moffitt advised that yesterday in her Executive Secretary's Report she had referred the CRC to a memorandum in their packets outlining a proposed technical change to the CAMA Land Use Planning Guidelines that would go into effect in August of 2002. Ms. Moffitt reported that this proposed technical change had not been caught in time for it to be a part of the changes going to effect in August so what the CRC was being asked to do was approve the technical change DCM staff was recommending occur so that it can be calendared for a public hearing. Ms. Moffitt advised that the proposed technical change was to 7B .0702(c)(2)(A)(vi) which currently read:

(vi) Non-coastal wetlands probable 404 wetlands;

Ms. Moffitt said DCM staff was proposing to change the language in (vi) to read:

(vi) Non-coastal wetlands including forested wetlands, shrub-scrub wetlands and freshwater marshes;

Ms. Moffitt explained why this change was being proposed. Ms. Moffitt advised that basically what was needed at this point was for the CRC to accept that technical change and recommend that it go to public hearing.

**Doug Langford moved that the CRC accept the proposed technical change to 7B .0702(c)(2)(A)(vi) and that the proposed change be sent to public hearing and his motion was seconded.**

Mary Price Harrison asked if the proposed language could be change to say "including but not limited to" and she explained why she was proposing this change. A discussion followed on how the wording being proposed had been selected and whether there was a need to change it to "including but not limited to". The CRC's legal counsel advised that the normal position of the courts for regulatory language is if you say included that meant but not limited to.

**The CRC voted unanimously in favor of Mr. Langford's motion to accept the proposed technical change and send it to public hearing (Alton Ballance, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard).**

#### CRAC Nominating Committee

Vice Chairman Hackney advised that he was appointing Bill Peele of the CRC, Mike Street of the CRAC and Steve Benton of DCM staff to serve on the nominating committee to bring nominations to the CRC at its July meeting to fill the vacant Marine/Science Technical position on the CRAC.

#### Old/New Business

##### Bill to Amend CAMA Variance Process

Vice Chairman Hackney said the CRC needed to discuss the bill to amendment to the CAMA variance process. He said the CRC had received a copy of the draft bill in their packets. Vice Chairman Hackney said this had been driven by the recent Sammie Williams court case where the CRC had to look very carefully at its variance procedure and how it was working or not working and then the CRC also had an opinion from the court that said that some of the things the CRC had historically done they could not do. He said, in addition, there also some historical problems with the variance as currently written. Vice Chairman Hackney said this was an amendment to CAMA that should fix some of those problems. **Dr. Hackney advised that what was needed from the CRC was a motion of support and Jerry Old so moved and his motion was seconded.**

Donna Moffitt explained why the changes to variance process were being proposed and she reviewed exactly what those changes were advising that two additional changes had been made to the proposed bill since the 2/25/02 draft CRC members had received. Ms. Moffitt said DCM staff was asking for the CRC's approval to take this to the Environmental Review Commission (ERC). Ms. Moffitt advised there was still no guarantee that this change would come about if the ERC chooses not to adopt and go forward to the General Assembly. **Jerry Old said he would include in his motion that the CRC supported the proposed changes and asked that the ERC move these changes forward to the General Assembly. Mr. Old's motion was unanimously approved (Alton Ballance, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard).**

##### Resolution on Reissuance of Executive Order No. 15

Vice Chairman Hackney stated that also before the CRC was a resolution to Governor Easley to reissue Executive Order No. 15 (SEE ATTACHMENT 7 FOR WRITTEN COPY OF RESOLUTION.) Vice Chairman Hackney advised that Executive Order No. 15 was still in effect but it would have a little more

force if the present governor adopted it. Vice Chairman Hackney stated that a secondary aspect of that was the National Coast Week and National Governors' Coastal Conference were scheduled for September of 2002 and that would be an excellent opportunity for Governor Easley to accentuate the coastal management program in North Carolina.

**Jerry Old moved that the CRC adopt the resolution on Executive Order No. 15 and his motion was seconded.**

Patricia Howe read an editorial from the Morning Star regarding DOT's proposal to send rainwater runoff from the new U.S. 17 bypass into Futch Creek. (SEE ATTACHMENT 8 FOR WRITTEN COPY OF EDITORIAL.) Ms. Howe said she would like to ask if the Secretary could possibly get involved in this right now under the current Executive Order No. 15 because Governor Easley's reaffirmation would not be effective until September.

**The CRC voted unanimously in favor of Mr. Old's motion (Alton Ballance, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard).**

**Patricia Howe moved that the CRC request the Secretary to be involved in this issue with the authority that comes from Executive Order No. 15 and signed by Governor Hunt.** Ms. Howe said something needed to be done to stop this from happening and it needed to be done now. She stated that it could not wait for a new Executive Order. **Ms. Howe's motion was seconded. The CRC voted unanimously in favor of Ms. Howe's motion (Alton Ballance, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard).** Doug Langford said he felt a copy of the editorial Ms. Howe had read should go along with the letter to the Secretary.

#### Real Estate Disclosure

Mary Price Harrison advised that yesterday she had distributed a draft letter and currently she was handing out a fact sheet as an attachment to that letter for background about what the real estate disclosure problems were. Ms. Harrison said the CRC had sent a resolution to the Real Estate Commission three years ago to require disclosure the of sandbag permit and the expiration. Ms. Harrison advised that the feedback she and Ms. Moffitt had received when they testified to the Real Estate Commission was that they had a couple of items they asked for on their disclosure form but they felt they didn't have the best authority to adopt this specific disclosure form. Ms. Harrison said this had been a big issue for the CRC for maybe two decades. Ms. Harrison stated that the Legislative Study Commission which convened after Hurricane Fran made it one of their three main recommendations. Ms. Harrison said the CRC's Science Panel made it one of their major recommendations. Ms. Harrison advised that the CRC had sent this letter a year and a half ago to the Chairs of Post Floyd Disaster Response Recovery folks and she believed a copy of this letter had also been sent to the Coastal Beach Movement Committee which Ray Sturza had co-chaired. Ms. Harrison said there had not been much luck thus far in getting some movement and it was hoped that it might be helpful if this request was sent to the Environmental Review Commission. Ms. Harrison stated this was a draft of a letter to send to the Environmental Review Commission requesting that they adopt some legislation that would give the Real Estate Commission such authority. Ms. Harrison said she would like to get the sense of the CRC that this would be an appropriate letter for Chairman Tomlinson to send.

**Doug Langford moved that Chairman Tomlinson be provided with a copy of this letter to use as a guide so that if he felt there was something he wanted to add or change the CRC gave him the authority to do so and his motion was seconded and unanimously approved (Alton Ballance, Mary Price Harrison, Patricia Howe, Doug Langford, Ernie Larkin, Jerry Old, Bill Peele, Larry Pittman, Melvin Shepard).**

#### Other Issues

Patricia Howe asked how the decision was made to retain the sandbags at Mason's Inlet. Ms.

Moffitt responded that this was her decision. Ms. Moffitt stated that she had made this decision on technical information DCM had received.

Agenda Items

Mary Price Harrison requested that the CRC receive an overview on the SEPA requirements.

Doug Langford said that approximately three years ago when the CRC made concessions on the I&S Committee's work on setbacks there was an informal agreement that the CRC and DCM staff would pursue any agencies, the General Assembly and whoever to encourage them in the strongest way possible to provide structures for the cleaning up and reduction of stormwater runoff from old sewer systems and all of the things from estuaries that were coming downstream. Mr. Langford stated that discharges were still coming downstream. Mr. Langford stated that he would like to request that Vice Chairman Hackney or Ms. Moffitt or the appropriate person get in touch with the Division of Water Quality and find out where we were. Mr. Langford said there was concern about whether that message had gotten across. Mr. Langford said there was concern about whether that message had gotten across outside of their jurisdiction and whether this was impacting their jurisdiction. Vice Chairman stated that possibly what the CRC could request was that DCM staff give an overview of what was happening in terms of federal and state regulations. Mr. Langford stated that if any activity was happening, it was happening very quietly. Vice Chairman Tomlinson stated that what he did know was that there was very strong resistance to stream buffers to new regulations. Mr. Langford said there was also resistance from the 20 county areas but they were doing their part and that was why he would for somebody from DWQ to let them know what they were doing.

Vice Chairman Hackney thanked the members of the CRC who served so well. Vice Chairman Hackney said that there were approximately seven members of the CRC whose terms were ending as of this meeting. Vice Chairman Tomlinson thanked the members of the CRC who had served for the past four years. With no further business, the CRC adjourned at 11:20 a.m.

Respectfully submitted,

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Donna Moffitt, Executive Secretary

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Mary Beth Brown, Recording Secretary