

**COASTAL RESOURCES COMMISSION (CRC)  
CLARION OCEANFRONT HOTEL  
KILL DEVIL HILLS, NC  
OCTOBER 27-28, 2004**

**Present CRC Members**

Courtney Hackney, Vice Chairman

Bob Barnes (arrived at 9:20 am)  
Renee Cahoon  
Bob Emory  
Peggy Griffin  
Doug Langford  
Jerry Old

Bill Peele  
Lee Wynns  
Melvin Shepard  
Joan Weld  
Bob Wilson

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

Bob Shupe, Chairman  
Bill Morrison, Vice Chairman

Ann Holton  
Lee Padrick  
Frank Alexander  
Spencer Rogers  
Natalie Baggett  
Dara Royal  
Scott Chappell (for Mike Street)  
Harry Simmons  
Carlton Davenport

Lester Simpson  
Joe Dooley  
Penny Tysinger  
John Doughty  
Beans Weatherly  
Rick Gardner  
Ginger Webster  
Renee Gledhill-Earley  
Calvin Wellons

**Present Attorney General's Office Members**

Jill Hickey  
Merrie Jo Alcoke  
Christie Goebel

Wednesday October 27, 2004

**COMMISSION CALL TO ORDER**

Vice Chairman Courtney Hackney called the meeting to order at 8:30 a.m. He advised that Executive Order One mandated that CRC members avoid conflicts of interest or the appearance of conflicts.

**ROLL CALL**

Stephanie Bodine called the roll. Chairman Eugene Tomlinson, Mary Price Harrison, and Larry Pittman were absent. All present Commissioners indicated no known conflicts of interest.

**APPROVAL OF AUGUST 25-26, 2004**

**Bob Wilson made a motion, seconded by Peggy Griffin to adopt the August 2004 minutes as written. The motion passed with a vote of 10 in favor (Barnes, Cahoon, Emory, Griffin, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns) and 1 abstaining (Peele).**

**EXECUTIVE SECRETARY'S REPORT**

Charles Jones reported the following to the CRC:

CSO Meeting

The Coastal States Organization (CSO), which was created to represent state governors in coastal affairs, met in October. The CSO helps coastal and Great Lakes states develop and implement national coastal policy and resolve coastal issues.

This meeting featured presentations, discussions and special sessions addressing critical coastal and management challenges, such as aquatic invasive species, desalinization plants, regional sediment management, and marine managed areas. CSO discussed the next steps for CZMA reauthorization and comprehensive ocean policy legislation, given the completion of the U.S. Commission on Ocean Policy's Final Report. The membership also discussed CSO initiatives that enhance the support of science as research for coastal management priorities throughout the meeting. NC's marine Managed Areas Inventory was praised during the meeting and used as an example during a presentation by NOAA MPA Center staff.

NERR Review

The U.s. Department of Commerce will conduct its annual review of the four North Carolina sites that are part of the National Estuarine Research Reserve program during the week of Dec. 6. As part of the review, 3 public meetings will be held to receive comments on the operation and management of Reserves. Public hearings will be held on Tuesday, Dec. 7 at the Currituck

County Library in Corolla; Wednesday, Dec .8 at the C-MAST Building in Morehead City; and Thursday, Dec. 9 at the DENR Regional Office in Wilmington.

### Bald Head Island

Bald Head Island was recognized by the National Audubon Society as a North Carolina Important Bird Area at ceremonies on the island September 11. DCM was one of the agencies recognized for their involvement in the protection of the island's natural resources. Paula May, our Reserve Research Biologist in Wilmington, accepted the plaque on behalf of Coastal Management. The Bald Head Woods component of the Coastal Reserve Program encompasses over 231 acres of maritime forest and is managed by the division for research education and passive recreation.

### OLF

The Navy has lost two-thirds of the money needed to build the outlying landing field in Washington. In the new federal budget, Congress shaved the Navy's funding from \$95.7 million to \$30 million. Although the move does not kill the project, it means the Navy will have to approach Congress for the rest of the money after numerous environmental lawsuits are settled.

### Clean Beaches Council Pledge campaign

North Carolina has joined 18 other coastal states in pledging to voluntarily commit to uphold federal BEACH Act water monitoring standards, monitoring practices, and public notification procedures. The Clean Beaches Council (CBC) initiated the national pledge campaign this summer.

The 2000 BEACH Act requires all coastal states and territories to formally adopt the 1986 EPA water quality criteria and adhere to strict water quality monitoring and public notification policies.

### State Legislative Update

Legislation passed during the 2004 Short Session provides the state with an extraordinary 2-year opportunity to conserve some of the most critical threatened areas in our state. The General Assembly gave authorization for the Natural Heritage, Parks and Recreation and the Clean Water Management Trust Funds to finance land acquisition projects that are critical for the expansion of our state park system and our gamelands, as well as for compatible use around our military bases. The legislation authorizes the state to issue \$32 million in bonds for fiscal year 2005 and \$13 million for FY 2006. This legislation allows a major land acquisition for the expansion of Lake James State Park.

### Ocean Policy Report

The US Commission on Ocean Policy issued its final report Sept. 20, calling for large increases

in ocean exploration and education funding as well as strengthening ocean and fisheries oversight within NOAA and other executive bodies. It also calls for a regional approach to ocean and coastal management. The report has only minor changes from the draft that was circulated this past summer. The President has 90 days to respond to the report.

### Federal Oceans Bills

Despite the release of the Ocean Policy report, several ocean policy bills failed to see committee action in either the House or Senate during the regular session. An ocean reform bill ([S. 2647](#)) introduced by Sen. Fritz Hollings (D-S.C.), may be included in the lame-duck session.

The bill would establish a national ocean policy to protect, maintain and restore the health of marine ecosystems. The bill would also establish NOAA as an independent agency or elevate it to Department status. NOAA currently exists under executive order. The Senate Commerce Committee passed the bill a few days after the commission's final report was submitted to Congress and the White House. Proponents of the legislation said there is a slim chance it will be taken up by the Senate without White House encouragement.

### Staff News

Mike Lopazanski has accepted the position of Policy Manager in the Raleigh office. Mike has been working with the Division since June 1992 has been our Coastal and Ocean Policy Analyst.

Kim Hamilton joined the Elizabeth City office this week as a field rep. She completed her undergraduate work at the University of Delaware and Perdue University, graduating with a Bachelors of Science Degree. She obtained her Masters of Science Degree from Auburn University in Marine Aquaculture. Her past work experience includes conducting environmental audits for private industry, and the coordination of projects for the Mobile Bay National Estuary Program, some of which involved watershed restoration and innovating oyster gardening methods.

On Nov. 1, Ryan Davenport will join the Morehead City office as a field rep. Ryan has a degree in Environmental Science from NC State University. His past work experience includes working with the Carteret County Health Department and the State of Hawaii Dept. of Environmental Health. He is very familiar with the NC coast as well as being an avid surfer.

Tere Barret has accepted the position of District Manager for the Morehead City Office. Tere has previously worked as a field representative and for a limited time as a permit coordinator with the Division for the past 17 years both in the Morehead City and Wilmington offices.

We still have 12 vacancies in the Division including 2 major permit coordinators/processors and 3 field representatives but I feel we are close to filling these and some other critical positions. Hopefully, when we meet in January I will report that we are close to being fully staffed.

DCM has also requested 6 additional staff positions to help implement the CHPP – Four Enforcement Officers, one policy analyst and one coastal geologist.

### CRC News

Commissioner Bob Barnes has decided not to pursue reappointment to the Commission after this year. Bob’s term officially expired in June, but he has continued to serve past that time since new commissioners have not yet been appointed by the governor’s office. We sincerely appreciate his service on the CRC and wish him well.

The CRC will meet Dec. 3 at the Craven County Agricultural Building in New Bern to formally adopt the CHPP.

### **PUBLIC INPUT/COMMENT ON THE NC COASTAL HABITAT PROTECTION PLAN (CHPP)**

Butch Parrish, Chairman of the Town of Topsail Beach Planning Board, addressed the CRC on any 12% impervious surface requirements and the widened waterfront set backs. Mr. Parrish stated that at Topsail Beach they are intensely interested in protecting the clean water of Topsail sound and the coastal estuaries. They have been aggressive in implementing ground water run-off ordinances. Mr. Parrish stated they are concerned that a 12% impervious surface rule and a widened waterfront set back would impose dire constraints on the few remaining unbuilt lots they have. He stated the impervious surface rule would restrict building footprints to 600 feet where most of the lots are 5000 square feet. A 75-foot setback, when combined with the street setback rules, would limit building depth to 17 feet. Mr. Parrish stated that essentially these rules would stop further development in Topsail Beach. He stated that they are much more interested in mitigative policies that will allow them to correct issues with older homes, thus reducing current amount of run-off. He also stated that they would welcome financial assistance in the form of grants and low interest loans that would help them get citizens to install storm gutter and sock tile systems on older homes, and replace old technology septic systems with newer alternative systems that do a better job of cleaning effluent. Mr. Parrish closed by saying that he encourages the CRC to stress mitigative policies that will help coastal towns such as Topsail Beach further the efforts to improve water quality and to avoid policies that will penalize a few property owners with little impact on habitat improvement.

Steve Waters addressed the CRC next commenting on the CHPP on behalf of the Topsail Island Shore Protection Commission. He stated that they acknowledge the work that has led to the release of the draft CHPP; however their organization remains concerned with the harsh reference to beach nourishment and inlet dredging as threats to the environment. Mr. Waters stated that specifically problematic is language such as the call to (a) “improve monitoring of beach nourishment projects” without definition, (b) “adopt clearer standards on sand compatibility”, which implies a higher standard than exists today affecting many “in progress” Federal Shoreline Protection Feasibility Studies, and (c) “develop a coastwide beach and inlet management plan” where there already exists federal jurisdiction and individual project permit requirements. Mr. Waters stated that to assume that all inlets are alike in nature and the entire coast is to be subject to a state regulatory management plan raises serious need for further

discussion and he urged the CRC to continue dialogue and public discussion of the impacts of the CHPP upon local governments and other stakeholders.

Michelle Duval, Environmental Defense, addressed the CRC regarding the CHPP. Ms. Duval stated that the CHPP is a framework for the future, and as more info becomes available it will be incorporated. The success of CHPP depends on the three Commissions supporting each other's efforts. Ms. Duval voiced concern about the lack of specifics in the Plan and urged the CRC to be sure their final plan is very specific. She stated that she felt the goals in the Plan are laudable, but it would be more useful if the goals were more specific. As for the public outreach component – Ms. Duval reminded the CRC that most of the recommendations are nothing new; they have been proposed by other study committees. She urged the CRC to move forward as soon as possible.

Bruce Bortz, Deputy Planning Director, Town of Nags Head addressed the CRC regarding the CHPP. He stated that the Town of Nags Head supports the overall premise of the CHPP to protect, and where feasible, enhance fish habitats and water quality. However; the Town does have some concerns. Mr. Bortz stated that the Plan was developed over a six (6) year period with little public involvement. He also stated that the Plan did not involve the academic community and industry, nor did it involve local government. Mr. Bortz stated that he did not feel that the Plan comprehensively reviewed the effectiveness of existing state and federal regulations designed to protect water quality. Mr. Bortz was concerned that the Plan contains no feasibility studies, costs estimates, or economic impact references. Mr. Bortz questioned the cost and whom it was going to affect. Mr. Bortz stated that the Town of Nags Head requests that the CRC undo the atmosphere of developing the Plan in isolation, establish a broad stakeholders group and partnership comprised of local government, academic leaders, and industry representatives to build public support for policies and rules that will work in the real world.

Howard Braxton, Town of Topsail Beach addressed the CRC on the CHPP requesting more opportunities for more input. Mr. Braxton stated that 6 representatives drove 5 hours to attend the CRC meeting and are all very interested in discussion. He stated that they represent people who are interested in CHPP and want as much opportunity for public input.

Harry Simmons, Mayor of Caswell Beach and a member of the CRAC, addressed the CRC representing the Brunswick Beaches Consortium (BBC). Mayor Simmons stated that the BBC has concerns with regards to the CHPP. The lack of meaningful involvement in every step of the development process by coastal local governments, the very entities bearing the greatest burden under the Plan, compounded by the absence of a sincere commitment to involve local governments in every step of the implementation process are the reasons the BBC feels the CHPP will fail. Mayor Simmons stated that singling out fish habitat as the sole basis for all management decisions pertaining to the coast is missing what is important to residents of the coast as well as human and non-human users of coastal resources. Mayor Simmons stated that rather than attach a proven method of beach restoration and preservation, he encouraged the CRC to work to find ways to improve the technology and lengthen the time between nourishments, even if those methods require changes in current law. He stated that there has been a failure to provide the human and financial resources needed to effectively enforce and evaluate existing rules, regulations and laws before adding any more of them to the books.

Mayor Simmons stated that there needs to be much more of the burden for water quality on areas upstream of the coast, especially agricultural and forestry interests, before adding more rules, regulations and laws to what is already the most regulated region of our state. Mayor Simmons stated that the BBC feels that there was a failure in recognizing that over one-half of the ocean shoreline of NC is already barred from any future development, in perpetuity, due to inclusion in National Seashores, federal and state wildlife and coastal preserves, federal and state parks and numerous local conservation areas. He stated that the apparent involvement of certain environmental organizations in the drafting of the Plan, and the exclusion of other stakeholders with different points of view, making the Plan patently unbalanced and thus flawed to the point of failure. Mayor Simmons stated that the CHPP, as currently written, will most likely create pressure for actions, both legislatively and in the courts, which could have been avoided had the process been such to allow for removal or amendment of the more egregious elements of the Plan before this point. He urged the CRC to consider these points when determining what, if anything, to do with this document.

Lisa Martin, representing the NC Home Builders Association (NCHBA) as the Director of Regulatory Affairs, addressed the CRC regarding the CHPP. Ms. Martin stated that several members of the NCHBA attended the public meetings and offered comments. She also stated that they appreciated the focus on public participation and the time and effort DENR staff expended in holding public meetings and, in particular, meeting with member associations individually. Ms. Martin stated that the NCHBA agrees with the recommendations for enhancing enforcement of existing rules and programs, especially where it involves mission and program consolidation by various agencies. The NCHBA also supports the recommendation for public education focused on the value of, and threats to, coastal fisheries habitats, and the need to create accurate and verifiable maps of coastal habitat areas. Ms. Martin stated that the NCHBA is concerned, however, that some of the recommendations will result in implementation measures that may severely affect the viability of coastal economy without an equal benefit to coastal fisheries habitat. She stated that any measures that prevent beach renourishment and the resulting protection from storm events will affect the viability of the coastal economy and will not be supported by the NCHBA. Ms. Martin stated that the NCHBA understands the need for water quality protection and sees value in the use of State Revolving Fund loans to local governments, particularly if those loans are used to retrofit stormwater controls in already developed areas. Ms. Martin stated though, if implementation of the water quality goal includes the imposition of impact fees or development fees, the NCHBA would vigorously oppose it.

Matt Paul, representing Figure Eight Island HOA, addressed the CRC regarding the inlet management concept in the CHPP. He voiced concerns about inlet dredging and beach nourishment. Mr. Paul felt there might be an opportunity here to build a better framework for management of these issues if you balance economic and environmental concerns. Mr. Paul stated that dredging can have fisheries benefits.

Art Schools, Mayor of Emerald Isle, thanked the staff for assistance in the Bogue Inlet project. Mr. Schools stated that he felt instead of an Inlet Management Plan, that he'd like to think it could be done a more expeditious manner.

Jeff DeBlieu, addressed the CRC on the CHPP stating that for last three years he's been attempting a project to restore oyster habitat in Pamlico Sound. He stated the CHPP is making it more possible to restore shellfish areas; overfishing and destructive fishing practices are partly responsible. Mr. DeBlieu stated that Gene Balance has been using nineteenth century maps to find remains of largest shellfish beds that once lined the sound (many acres in size). Some of those beds are still there, but buried under mud and silt from development, etc. Most of the destruction of Pamlico Sound is under the water. Mr. DeBlieu stated that as the CRC hears the calls for more expeditious steps to make it possible for land activities, to think about what happens under the water as a result. He stated that unseen impacts are being caused beneath the water, and these impacts fit together and add up to total devastation of the estuarine resources. Mr. DeBlieu stated he recognized that putting more regulations in place when the current ones already don't get enforced, and when its so easy for the General Assembly to overturn them, is a difficult thing to do. Mr. DeBlieu stated that it is just as much the CRC's responsibility to think about water as what people are doing on the land.

Todd Miller, Coastal Federation, commented on the CHPP stating that he thinks everyone understands that when the Fisheries Reform Act was passed, there was no attention paid to how it would be done, no emphasis on public involvement. He stated the real work lies ahead in getting to the details of what the proposals need. Mr. Miller stated that he has attended CHPP meetings consistently, as over the last few years there has been a CHPP presentation of some kind to CRC and CRAC to include representatives of local governments, so they do have a say in developing policy. CRAC is a built-in mechanism to involve people in development. Mr. Miller stated it is the job of the CRC to make the policy; it can't be delegated to other groups.

### **OTHER PUBLIC COMMENT**

Jeff Scott, Kitty Hawk Realtor, addressed the CRC with concerns about CAMA laws. Mr. Scott stated there are properties on the west side of NC 12 where the AEC line extends well into these lots. Mr. Scott stated that currently driveways should be clay, packed sand or gravel, not impervious surfaces. He voiced concern of the unfairness to have the paved road seaward of these homes and not allow it for property owners also. Mr. Scott stated in his area of town, town law requires paved drive.

### **CRC & CRAC DISCUSSION OF THE CHPP**

A facilitated discussion, by Dianne Reid of DWQ, was held regarding the recommendations within the NC CHPP. The CRC and CRAC considered each recommendation under the four goals. Bullets indicate a comment, action or change requested by the CRC and CRAC followed by an explanation to put the comment in context.

- Prioritization of recommendations and coordination of rule making between all three commissions.

The CRC/CRAC discussed the importance of all three commissions coordinating their CHPP actions after adoption of the document. The CRC/CRAC would like to see the commissions coordinate their priorities for implementation where appropriate.

- Division of Soil and Water Conservation and Division of Forest Resources to be included in the coordination of rule making and in Goal 1.

The recommendations under Goal 1 (Improve Effectiveness of Existing Rules and Programs Protecting Coastal Fish Habitat) include “Coordinate rulemaking and enforcement among the regulatory agencies.” The CRC/CRAC want the Division of Soil & Water Conservation and the Division of Forest Resources included in the “Responsible commission or agency” column of Table 9.2

- Need to include federal agencies and programs in the coordination.

In recognition that not only state agency and programs affect coastal fish habitat, the CRC/CRAC would like the commissions to be kept apprised of federal agency actions that may have an impact on the implementation of any recommendations.

- Need to regularly update the CRC on the activities of the other commission. Should be a regularly occurring agenda item on how implementation of the CHPP is proceeding. MOU between the commissions?

The CRC/CRAC want to formalize communication among the commissions on the implementation of the CHPP recommendations.

- Implementation plans should include items that all three commissions could address simultaneously.

The CRC/CRAC want a coordination of priorities within the implementation plans where appropriate.

- CRC should be involved in the process of habitat restoration (Goal 3 a), particularly oyster restoration (subtidal oyster reef no-take sanctuaries) where bottom is to be filled. There will need to be coordination with the USACE and possibly CAMA permits. Include CRC in the responsible agency column. CRC rules may need to be amended to allow the oyster restoration projects being proposed.

There was some discussion of the involvement of the CRC and DCM in permitting the types of projects proposed for subtidal oyster reef no-take sanctuaries under Goal 3. (Enhance Habitat and Protect It From Physical Impacts). It was clarified that DCM already has a process to address DMF activities of this sort and no additional action is necessary. However, DCM should be included in the “Responsible Commission or Agency” column of Table 9.2.

- Beach Management Plan

\*Agreed to language - Beach Management Plan (alternative language) – Prepare and implement a comprehensive beach and inlet management plan that addresses ecologically based guidelines, socioeconomic concerns and fish habitat.

One of the recommendations under Goal 3 “Enhance Habitat and Protect It From Physical Impacts” stated “*Prepare and implement a coast-wide beach and inlet management plan that requires ecologically based guidelines for minimization of impacts to fish habitat, while addressing socio-economic concerns*”. There was concern that the language “...requires ecologically based guidelines...” indicated an obligation while “addressing socio-economic concerns” was less binding. It was agreed that altering the recommendation to call it a “comprehensive” beach and inlet management plan would include the intent of the original recommendation while not emphasizing one component over another.

- Goal 4-1. - Include definition of emergency situations to allow discharge of stormwater. Suggested language – “Prohibit new or expanded stormwater outfalls to coastal beaches and to coastal shellfishing waters (EMC surface water classifications SA and SB) except during times of emergency (as defined by Division of Water Quality’s Stormwater Flooding Relief Discharge Policy) when public safety and health are threatened, and continue to phase-out existing outfalls by implementing alternative stormwater management strategies.”

The first recommendation under Goal 4. is to “Prohibit new or expanded stormwater outfalls to coastal beaches and to coastal shellfishing waters (EMC surface water classifications SA and SB) except during times of emergency when public safety and health are threatened, and continue to phase-out existing outfalls by implementing alternative stormwater management strategies.” The CRC/CRAC believe that “times of emergency” needs to be defined in the recommendation. The Division Water Quality has a Stormwater Flooding Relief Discharge Policy that allows the discharge of stormwater directly to the ocean and sounds under emergency conditions when public health and safety are endangered. Emergency conditions are defined as “water on streets at a depth of 14 inches, that restricts emergency vehicles from responding to the needs of the public.” This definition was developed in cooperation with the Division of Emergency Management and is applied on a case-by-case basis. During further discussion the CRC/CRAC asked that any CHPP implementation plan include a time limit for the phase out of stormwater outfalls on beaches and coastal shellfishing waters.

- Rephrase the marina and dock management plan recommendation to remove the word *minimize*.

\*Alternative Language for marina and dock management plan recommendation –  
Develop and implement a comprehensive coastal marina and dock management plan and policy for the protection of shellfish harvest waters and fish habitat.

Also under Goal 4 is the recommendation “Develop and implement a comprehensive coastal marina and dock management plan and policy to prevent closures of shellfish harvest waters and minimize cumulative impacts to fish habitat”. There was a great deal of discussion regarding what would “minimize cumulative impacts to fish habitat” would mean. A substantial number of

CRC/CRAC members believe minimize to mean “zero impacts” and that this recommendation would prevent the construction of marinas. The CRC/CRAC decided to remove the word minimize and rephrase the recommendation as above.

- Approving the document means agreeing to the recommendations and using the CHPP as a resource document.
- Modify the signature page to clarify the intent of adopting the plan. Specifics within the document are only a starting point.
- Add a sentence to the executive summary stating that the CHPP is a reference document.

There continues to be uncertainty about what the CRC will be committing to by adopting the CHPP. While staff has stated that the CHPP is planning document to be used as a guide in the development of implementation plans, the CRC is uncomfortable that there is no statement within the document regarding this. Several members stated that they could not agree to adopt the document if such a statement was not part of the document. The CRC/CRAC would like to add the following statement to the beginning of the Executive Summary: “This document is intended as a resource and guide for implementation of the goals and recommendations in Chapter 9 (Table 9.2).”

## **VARIANCE REQUEST**

### Larry Powell (CRC-VR-04-13)

Christine Goebel reviewed the Stipulated Facts on Attachment B of CRC-VR-04-13, stating that the petitioner proposes to build a single-family residence on a vacant lot in New Hanover County. The proposed development is inconsistent with the 30-foot buffer rule in 7H.0209(d)(10), which requires that all new development be located a distance of 30 feet landward of the normal high water level.

Ms. Goebel stated that the lot measures 5,037 sq. ft. and is bordered on the east by the Carolina Beach Yacht Basin, on the west by lot 17, on the south by neighboring property, and on the north by Rogue Cove Drive. The waters of the Carolina Beach Yacht Basin are classified as “SB” for primary recreation areas, by the EMC, and are closed to the harvest of shellfish. The lot is located in the Coastal Shorelines AEC, and there is an existing bulkhead and boardwalk along the water that was installed by the developer. The Town of Carolina Beach requires a 10-foot front yard setback and 7.5-foot side yard and rear setbacks. Ms. Goebel stated that the area of the lot excluding the area within the 30-foot buffer and the area within the Town of Carolina Beach zoning setbacks is 1,267 sq. ft. The Petitioner is proposing a building area of 35 feet by 40 feet, or 1,400 sq. ft. The proposal is a 2-story building, with an overall living space of 2,800 sq. ft. There are also two impervious material driveways 10 feet wide proposed. The structure encroaches 14 feet into the buffer on the northeast corner of the home and 15 feet into the buffer on the southeast corner. Ms. Goebel stated that the lot was platted prior to June 1, 1999; however, it does not meet either exception to the buffer rule. The Petitioner has proposed a stormwater management system to capture the first 1.5 inches of rainfall from all impervious

surfaces. Ms. Goebel stated that the rules, standards, or orders issued by the CRC will cause the Petitioner an unnecessary hardship in that it will limit development on the lot to a smaller than average area for building, and the lot is peculiar in shape. However, Ms. Goebel stated that this hardship is a result of the Petitioner in that the lot was purchased after the buffer rule took effect and the proposed design and use, and the absence of researching what the applicable rules would allow on the lot creates a hardship. Finally, Ms. Goebel stated that the variance request will be consistent with the spirit, purpose, and intent of the rules in that the Petitioner proposed a stormwater management system, and also sited the home on the lot as far back from the water as possible.

Bill Raney, attorney for the Petitioner, stated that there are currently 7 homes in the subdivision with an average footprint of 1,697 sq. ft. whereas the Petitioner is seeking a home with a footprint of only 1,400 sq. ft. Mr. Raney reiterated the proposal for a stormwater management system and the peculiarity of the lot and asked the CRC to consider and grant a variance for the Petitioner.

**Bob Emory made a motion, seconded by Doug Langford, to grant the variance as requested subject to the elimination of the impervious surface that the petitioner has offered, and subject to the standard stormwater control variance criteria that was adopted by the CRC at the October 2004 meeting. The motion passed by a hand vote of 9 in favor (Barnes, Cahoon, Emory, Griffin, Langford, Old, Peele, Wilson, Wynns), and 2 opposed (Shepard, Weld).**

### **CONTESTED CASE**

#### Ray et al. Brunswick County

The issue in this case is the location of the vegetation line used to establish the building setbacks on the Pate and Bond lots. Ocean Isle Beach received a large-scale beach nourishment project in March 2001. Therefore, the vegetation line as it existed prior to the nourishment is the applicable line for determining oceanfront setbacks. DCM staked the pre-nourishment vegetation line in December 1999. DCM later learned that a portion of the vegetation line staked in 1999 did not appear on the survey maps, and the data for that area could not be found. The Pate and Bond lots are located in the area where the pre-project vegetation line was missing. DCM then decided to re-stake the vegetation line as it existed, rather than trying to relocate the pre-project line based on aerial photography (Dec. 2000), in May 2003. After the appeals were filed, Jim Gregson reviewed the aerial photography for comparison to the May 2003 line location. DCM ultimately concluded that with regard to the three lots in question, the May 2003 vegetation line appears to closely resemble what was on the 2000 aerial photography.

Merrie Jo Alcoke informed the CRC that Judge Wade affirmed DCM's decision to issue the permits based on the re-staked vegetation line, finding that the Respondent's use of the May 2003 vegetation line as a basis for reviewing applications for the subject permits was rational under the circumstances. Ms. Alcoke requested that the CRC adopt the Judge's decision in its entirety.

Frank Sheffield argued that the representative from DCM, who had staked the original December 1999 vegetation line testified that, although she could not remember the exact location of the line in front of these lots, she did remember that at some points in this area, the vegetation line was on the landward side of the road. Petitioners believe that had DCM used the pre-project vegetation line, as required by the CAMA rules and regulations, instead of the May 2003 line, the LPO would not have issued the permits to the Respondents-Interveners. Mr. Sheffield stated that the Respondent improperly used the May 2003 vegetation line and that the CRC had not enacted a regulation to govern the situation when pre-project vegetation line data is missing. He also stated that because Respondent's decision to use the May 2003 line was not adopted in substantial compliance with the NC APA, it is invalid.

**Melvin Shepard made a motion, seconded by Renee Cahoon to adopt the Administrative Law Judge's decision. The motion passed unanimously with a hand vote. (Barnes, Cahoon, Emory, Griffin, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

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

Ms. Griffin presented the minutes from the P&SI Committee (SEE ATTACHMENT FOR WRITTEN COPY). The CRC took the following action:

**Peggy Griffin made a motion that the Emerald Isle Advanced Corps Land Use Plan be certified by the CRC. The motion passed unanimously by a hand vote. (Barnes, Cahoon, Emory, Griffin, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

**Peggy Griffin made a motion that Chowan County's Land Use Amendment, based on the new legislation, be certified. The motion passed unanimously by a hand vote. (Barnes, Cahoon, Emory, Griffin, Langford, Old Peele, Shepard, Weld, Wilson, Wynns)**

### **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:

**Bob Emory made a recommendation to approve 15A NCAC 07H.2700 (General Permit for The Construction of Riprap Sills for Wetland Enhancement in Estuarine and Public Trust Waters) for January Public Hearing (I&S 04-19). The motion passed unanimously by a hand vote. (Barnes, Cahoon, Emory, Griffin, Langford, Old, Peele, Shepard, Weld, Wilson, Wynns)**

### **CRAC REPORT**

Bill Morrison presented the minutes from the CRAC meeting. (SEE ATTACHEMENT FOR WRITTEN COPY). No action was taken by the CRC during this report.

**NEW BUSINESS**

Mr. Langford commented on some difficulties on vacant lots on the west side of the beach road in Kitty Hawk. Mr. Langford referred to Jeff Scott's public comments and requested that rule 7h .0309 be put on the January 2005 agenda.

With no further business, the CRC adjourned.

Respectfully submitted,

Charles S. Jones, Executive Secretary

Stephanie Bodine, Recording Secretary