

NC COASTAL RESOURCES COMMISSION (CRC)
October 9, 2008
Conference Call Meeting

CALL TO ORDER/ROLL CALL

Chairman Emory called the meeting to order at 10:00 a.m. and reminded Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act.

Angela Willis called the roll. The following Commissioners were present for the phone conference meeting when the roll was called: Bob Emory, Joan Weld, James Leutze, Chuck Bisette, Renee Cahoon, Charles Elam, David Webster, Jerry Old, Bob Wilson, Lee Wynns, Veronica Carter, Ed Mitchell, Wayland Sermons, Bill Peele. There were no reported conflicts. Based upon this roll call, Chairman Emory declared a Quorum.

Chairman Emory gave some background about the issue that would be discussed today. He stated there are sandbags whose permits have expired but, until Hurricane Hanna and the unnamed storm which followed Hanna, these bags had been covered and vegetated. As a result of these two storms some of these sandbags have now become uncovered. Since these bags were covered and vegetated, they were exempt from removal. Now that these bags are uncovered and their permits have expired they are not eligible to be recovered with sand and would therefore go on the list of sandbag structures that are involved in the sandbag removal index and would have to be removed unless they become naturally covered. Senator Basnight's office has submitted a request to the CRC requesting, "If a storm exposes sandbags that had been covered and vegetated, I believe the affected property owner should be allowed to return his or her property to its pre-storm condition."

Jim Gregson stated the current CRC rules state that the removal of temporary erosion control structures shall not be required if they are covered with sand and stable, natural vegetation. Typical procedures for sandbags whose time has run out and have become uncovered are subject to removal. The sandbag database shows that there are approximately 65 structures that were covered with sand and stable, natural vegetation prior to the storms. There are 174 that were covered with sand (and may or may not have vegetation).

Renee Cahoon stated the recent unnamed storm reminded her of Hurricane Dennis in Nags Head. She stated it is the most erosion she has seen since 1995. The elevation of the beach has dropped 1 ½ to 2 feet and there is a 20-foot escarpment that has not been there since the mid-1990's.

Jim Leutze stated this request seems very reasonable. He stated he would like to hear a reason why people should not be allowed to recover their sandbags. Although this storm may be the worst storm in ten years, there will be other storms and we will be faced with this after every storm. We need to be careful what precedent we set. There should be a certain set period of time to recover the sandbags.

Bill Peele asked if the CRC could redefine this? He stated we could include what Wayland is saying and change it to “cyclonic event” or “lunar tide and storm combined that does substantial erosion.” It seems the definition is where the problem exists.

Bob Emory stated that at a later time the CRC could consider an amendment of the rule that governs this General Permit.

Chuck Bissette stated that at some point the word “tropical” could be taken out of 7H .2500. The Secretary would still have the authority to make the evaluation of whether to activate the emergency permit.

Wayland Sermons asked the Commission if any of them had any real problems with linking the Emergency Permit with the sandbags being recovered?

Joan Weld stated that she does have a problem with it. We should hold fast to our present sandbag regulations. As I listen to this, there are too many gray areas and it weakens our efforts on sandbags. I am worried that what we do today will have long-range effects. This is not the first or last that we will see severe erosion. I think we need to stay the course and then talk about it more comprehensively.

Bill Peele stated he was thinking about the removal of existing bags that are damaged. Are there too many to deal with on a variance basis?

Chairman Emory asked Jim Gregson if he knows how many sandbags have become exposed.

Jim Gregson stated 23 letters have been sent out to property owners for bags that are subject to removal. We will be dealing with these for the next six months to one year. The reports coming in that were part of the 65 that were covered and vegetated and subject to removal prior to the storm are Figure Eight Island (2-3), Topsail Beach (2-3) and Kill Devil Hills/N. Nags Head (6-12). In the standard practice today if the bags are uncovered and their time has run out, the property owners would be sent a letter notifying them that they have 30 days to remove the bags. The problem now is there are already so many of them that are subject to removal (about 150) and we are expecting variances, therefore we will probably not get out there to see the ones that have been uncovered as a result of this storm for six months to a year so they are low on the priority list.

Ted Tyndall stated the thirty-day notices went out September 19th and therefore these property owners have another 10 days or so before we even start to verify if the bags have been removed. One thing I want to emphasize is the properties that received the thirty-day notices were validated with this storm because these bags are now scattered even more than they were before. This is a logical progression and is following a logical sequence, but it will take time to go through the legal maneuvers to have all the pieces put into place. We will be working down the list we already have and these newly uncovered sandbags would not rank as highly as sandbags already on the list. A thirty-day removal letter would not go out to these property owners for months because there are already so many that are substantially worse than these newly uncovered bags.

Jim Leutze stated that he would like to put this into a broader context. Our sandbag rules are not universally popular. It looks to some as if the CRC sets arbitrary rules and the CRC is insensitive. This is an act of God. If we are not considerate and flexible in this situation we will reinforce the antipathy that people have towards all of our sandbag rules. I want to demonstrate that we are willing to be reasonable and considerate. We are going to stick to our sandbag removal rules, but that when something extraordinary or unusual happens that we will demonstrate concern for the property owners that find themselves in an unusual situation.

Bill Peele stated that we are looking at pushing sand back up and if we don't put sandbags back into these areas that are subject to high levels of erosion, it will remove the last line of defense for another storm. There may be beach nourishment that comes along, but if we do this and the sandbags go back and are covered then retreat needs to happen if this happens again.

Wayland Sermons asked if the rules state that property owners may only use this one time?

Lee Wynns stated that of the 20 sandbag structures that are in play, are these people asking to put more sandbags back or are they asking to just cover the sandbags. With the emergency permit, even though the fee is waived it still requires a permit. Won't staff be going out and looking at these bags during the permit process? Can we give the staff some parameters for these newly uncovered bags to give them a one-time permit?

Charles Elam asked Ted Tyndall, since there are so many other sandbags in line ahead of these newly uncovered bags, if someone was to get a permit under the emergency act by the Secretary would they be looked at immediately?

Ted Tyndall stated that if they requested to push sand, we would look at their permit request immediately. But if the property owners do not come to us, we would continue to go through the prioritization list that we already have.

Lee Wynns stated that this could be a public relations nightmare if we do not handle it right.

Bob Wilson asked if it matters if the bags had been covered by normal accretion or by machine?

Jim Gregson stated that we don't know. The majority have been covered by trucking in sand or by beach bulldozing. For the purposes of removal, DCM does not care how they were covered as long as they are covered and have stable, natural vegetation.

Renee Cahoon stated that no sandbags are covered by accretion. When the bags are put in they are covered by trucking in sand. In the winter beach bulldozing permits are obtained.

Bob Emory stated that one direction we could go would be under the direction of the Emergency Permit. We could tell the Division to issue permits to recover sandbags that had previously been covered prior to these two storms. The theory would be the permit allows repair to the dune and the covered sandbags were the dune.

Wayland Sermons asked if this would always be subject to the Emergency Permit Rules?

Jim Leutze stated that he would vote in favor of this.

Ted Tyndall asked if the proposal was for previously covered and vegetated.

Bob Emory stated that he only mentioned covered.

Ted Tyndall stated that the sandbags that were covered with sand, but were unvegetated, would add another 100 or so to the 65 that Jim had talked about.

Bob Emory stated that his counsel would be to limit it to covered and vegetated. The fact that they are vegetated would indicate that they are not impacted as much by chronic erosion problems, but in fact it was the storm that uncovered them. A covered bag could have been covered the day before the picture was taken. A vegetated bag would indicate that it had been stable long enough for vegetation to be established.

Steve Underwood stated that when the sandbag inventory was done there were over 300 sandbag structures permitted. When we went and did the inventories, over 100 were in violation. What we are talking about here is 15-20 structures above the ones we already know are in violation. The ones in violation are getting letters and we are slowly working through the list.

Jim Gregson clarified that of the 150 sandbag structures on the list and the 23 that received letters, none of the property owners are in violation yet. It is only when the 30 days is up and there has been failure to remove the bags that these property owners would be in violation of our sandbag rules. The rules require us to give property owners 30 days to remove the bags. None of the 23 property owners that received 30-day removal letters have received notices of violation.

Joan Weld stated that what we do today could result in more public relations concerns from the citizens of the state.

Bob Emory stated that no matter what decision the CRC makes, we can expect criticism.

Bob Wilson stated that he would err on the side of the homeowners on this.

Bob Wilson made a motion that the CRC, under the authority of the Secretary's Emergency General Permit that was issued September 29, 2008, that sandbags which were previously covered and vegetated that became exposed either during Hurricane Hanna or the unnamed storm be allowed to be recovered under Emergency General Permit 7H .2500.

Charles Elam seconded the motion.

Bill Peele asked what do we do the next time these bags are exposed during another storm?

Bob Emory stated that 7H .2500 includes the ability to declare an emergency. Can a property only get the benefit of the emergency permit once?

Jim Gregson stated that the permit states there is a one-time fee waiver. The emergency permit for repairing frontal dunes or covering sandbags is self-limiting in that it is a response to storm events. If it becomes uncovered again as a result of a high tide, you could not use the emergency permit for this.

Bob Emory asked if the emergency permit is utilized by a property owner and then five years later a new declaration is made due to a similar storm event, could the property owner use the emergency permit again?

Chuck Bisette stated they could use the permit, but would have to pay the permit fee.

Veronica Carter stated that she would feel better if the motion were amended to add the words “uncovered that were previously in compliance”.

Jim Gregson asked what “in compliance” refers to? Are we talking about dimensions or something else? One recommendation would be that if the bags were covered and vegetated prior to the storm and then they become exposed and then we notice that they are out of size compliance, the CRC would need to require them to come into compliance and then be recovered.

Veronica Carter stated that her concern would be not to open a Pandora’s box. We should only be giving leeway to structures that were in compliance prior to this act of God. “In compliance” would mean were covered and vegetated.

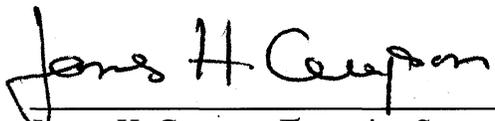
Bob Wilson accepted this amendment to the motion.

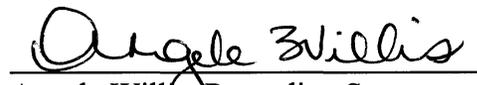
Charles Elam accepted this amendment to the motion.

The motion passed with eleven votes (Bisette, Carter, Elam, Leutze, Mitchell, Old, Peele, Sermons, Webster, Wilson, Wynns) and one opposed (Weld) (Cahoon did not vote).

The CRC adjourned at 10:53 a.m.

Respectfully submitted,


James H. Gregson, Executive Secretary


Angela Willis, Recording Secretary