

## MINUTES

**MEETING:** Coastal Resource Commission (CRC)  
Special Called Meeting by Telephone

**DATE:** April 30, 2003

**PRESENT:** CRC Members

Eugene Tomlinson, Chairperson  
Courtney Hackney, Vice Chairperson

Bob Barnes	Jerry Old
Rene Cahoon	Bill Peele
Peggy Griffin	Larry Pittman
Mary Price Harrison	Joan Weld
Doug Langford	Bob Wilson

### Commission Call to Order

Chairperson Tomlinson called the telephone conference call to order at 3:00 p.m. Chairperson Tomlinson advised that Executive Order One mandates that the Chairperson remind members of their duty to avoid conflict of interest or the appearance of conflict and to inquire whether any member had any known conflict or appearance of conflict with the matters coming before the CRC today. The Chairperson asked members to state, as the roll was called, if they had any conflict or appearance of conflict.

### Roll Call

Eugene Tomlinson:	Present. No conflict.
Bob Barnes:	Present. No conflict.
Renee Cahoon	Present. No conflict.
Bob Emory:	Not present.
Peggy Griffin:	Present. No conflict.
Courtney Hackney:	Present. No conflict.
Mary Price Harrison:	Present. No conflict.
Doug Langford:	Present. No conflict.
Jerry Old:	Present. No conflict.
Bill Peele:	Not present. Note: Mr. Peele joined the telephone conference call after the roll was called.
Larry Pittman:	Present. No conflict.
Melvin Shepard:	Not present.
Joan Weld:	Present. No conflict.
Bob Wilson:	Not Present. NOTE: Mr. Wilson joined the telephone conference call after the roll was called.
Lee Wynns:	Not present. NOTE: When Mr. Wynns was contacted concerning this emergency conference call he stated that, on advice of counsel, since he owned property that adjoins NC Highway 12, he was not going to participate in the discussion or vote on this variance request in order to avoid conflict of interest or the appearance of conflict.

### Variance Request

#### NCDOT (CRC-VR-03-08)

Merrie Jo Alcoke advised that present in the Raleigh office were Donna Moffitt, Ryke Longest who would be serving as the CRC's counsel today since Jill Hickey was on vacation, Dave Heeter, Doug Huggett, Brian Long and Mary Beth Brown. Ms. Alcoke said Fred Lamar from the Attorney General's Office who was serving as counsel to the Department of

Transportation (DOT) was also present along with his assistant counsel, Lisa Glover. Ms. Alcoke advised that Charles Jones was also on the line in the Morehead City District Office of the Division of Coastal Management (DCM). Ted Sampson, from DCM's Elizabeth City District Office, advised that he was on the line along with Clay Willis from DOT who was the Division Environmental Officer.

Ms. Alcoke stated that DOT applied for an emergency general permit last Wednesday and the permit was denied the same day. Ms. Alcoke said DOT applied for a variance from the permit that was denied on Thursday and the staff recommendation had been mailed out to CRC members on Friday. Ms. Alcoke advised that because of the emergency nature of this situation she and Dave Heeter had both worked on this variance request. She said that Mr. Heeter had primarily prepared the facts and she primarily prepared the positions. Ms. Alcoke said she would present the case but Mr. Heeter was available for questions as well.

Ms. Alcoke reviewed the Stipulated Facts contained in Attachment B of CRC-VR-03-08 (CRC VR 2003-08). Ms. Alcoke advised that it could be seen from the staff's positions to the variance criteria that DCM staff was generally supporting this variance request. Ms. Alcoke advised that staff was recommending, if the sandbags were approved, that they be removed in accordance with the CRC's general sandbag rules and if the vertical sheet pile was approved, that it would not be allowed for any more than three years. Ms. Alcoke said on the last page of the staff's recommendations the details of the staff's recommendation for removal were outlined.

Ms. Alcoke advised that it had been learned today that DCM staff had relied on a provision in the Kitty Hawk Land Use Plan (LUP) that was no longer in effect when they made the determination that the proposed development would be inconsistent with the LUP. Ms. Alcoke stated that the inconsistency with the LUP was no longer an issue. Ms. Alcoke reported they had drafted a fact that Mr. Lamar and Mr. Heeter had signed to indicate that. Ms. Alcoke advised that the CRC should remove that from their consideration.

Courtney Hackney said that in past problems with Highway 12 the big factor was that it was the only transportation route. Dr. Hackney asked if he was correct in understanding that this was not the primary road and there was a four lane road to the west of this which was the main route of movement of traffic. Ms. Alcoke responded that was correct.

Chairperson Tomlinson stated that when the CRC were promulgating all of their rules in the past, North Carolina Highway 12 kept cropping up at just about every turn. Chairperson Tomlinson said the CRC knew there were going to be problems all along that stretch that the CRC would have to handle on an individual basis. Courtney Hackney responded that the CRC that was correct and he thought the CRC recognized, particularly where there were locations where the islands were narrow, that there were going to be some major problems in the future and that DOT had started working on bridging and other resolutions. Dr. Hackney advised that the CRC knew they were going to face this exact situation as sea level kept rising, even if it did not accelerate. Dr. Hackney stated this was not a surprise and when he looked at this and it reminded him of the North Topsail road that used to be there and now was totally gone. Chairperson Tomlinson said this was one of the situations the CRC had envisioned happening. Dr. Hackney said when he looked at the photos and thought about the facts it appeared that the sandbags were doing just what hard structures did and the beach was gone. Dr. Hackney said putting in 1,300 feet of seawall here was admitting that this policy was not going to work here and we were not going to have a beach unless the renourishment money came through.

Doug Langford told the CRC about a situation similar to this just south of this location where there had been extreme erosion. Mr. Langford advised that the Town of Kitty Hawk had purchased the houses in this area and removed them from the beach and after their removal the beach had built back up and was now a beautiful beach. Mr. Langford said when the Town was able to remove all of the houses from this area now experiencing extreme erosion, he would hope that this area of the beach would also build back up.

Dr. Hackney asked how long this area had been undergoing accelerated erosion and Mr. Langford responded that this accelerated erosion had been occurring for approximately seven years.

Donna Moffitt advised that CRC members needed to limit their conversation right now to just questions to Ms. Alcoke about the facts and then after DOT gave their presentation, they could get into further discussion about other aspects of this.

Renee Cahoon asked Ms. Alcoke if it was correct that she had said the entire area due to be sandbagged and piled was in the transition zone of the beach nourishment project. Fred Lamar, DOT counsel, responded that it was not completely within the nourishment area based upon the Environmental Impact Statement (EIS) that the Corps of Engineers (COE) had

submitted. He said there was a portion of the project area not covered in the transition area but he would speak to that further when he presented DOT's case.

Ted Sampson stated that he was in Elizabeth City with Clay Willis of DOT and relative to the Stipulated Facts, he had indicated that he believed that the sheet pile was due to extend deeper than eight feet.

Fred Lamar said he would like to respond to the concern that this problem with Highway 12 was a reoccurring problem. Mr. Lamar stated there was no question that all of Highway 12 along the Outer Banks was a problematic road for DOT. He said, however, DOT had in the last decade or more begun to look at Highway 12 in different areas and they had highlighted certain hot spots and tried to concentrate attention to different areas. Mr. Lamar said that as the CRC may or may not know, there was an ongoing study right now for a replacement of bridge over Oregon Inlet and there were numerous alternatives that were being looked at to replace that portion of Highway 12 on Hatteras Island. Mr. Lamar advised that the stretch of Highway 12 in the southern part of Kitty Hawk and Nags Head was an area that was much more populated than other parts of the Outer Banks where Highway 12 was located and, in the opinion of DOT, required a different review and evaluation. Mr. Lamar said he could not emphasize to the CRC how important it was to understand that DOT concurs with DCM staff that this variance was temporary in nature. Mr. Lamar said it would be different if DOT were approaching the CRC and proposing that this would be the final solution and he thought that was why DCM had been careful to qualify their recommendation with the three year period where DOT would either have to remove the sheet pile or propose a final permanent solution to this section of Highway 12. He said, unfortunately, right now even though this was not the single, primary route of travel along this portion of Kitty Hawk, this portion of Highway 12 was traveled and there were a number of residences that were located along this road that would continue to use this road as ingress and egress for emergency and safety reasons.

Mr. Lamar stated that DOT concurred with everything Ms. Alcock stated in her presentation. Mr. Lamar then reviewed DOT's response to the four variance criteria contained in Attachment C of CRC-VR-03-08 (CRC VR 2003-08). Mr. Lamar urged the CRC to grant this variance for the erosion control structure proposed for a period of three years.

Courtney Hackney asked if it was correct that DOT's request did not mean that the sandbags and sheet pilings would be the permanent solution and would be removed as soon as a permanent solution was enacted and Mr. Lamar responded that was correct. Dr. Hackney advised that he was concerned that the sandbags and sheet pilings would be left there even if beach nourishment occurred and he wanted to make sure that this did not become a permanent structure as sandbags had a habit of becoming. Charles Jones advised that currently the rules would require that the sandbags be removed once a beach nourishment project occurred.

Doug Langford asked for clarification on the notification process to riparian landowners regarding the proposed project and Charles Jones and Dave Heeter explained what was required by law in this process and what had been done in this case.

Mary Price Harrison asked for clarification on how many houses remained in the project area and Lynn Mathis, Elizabeth City DCM Field Representative, advised that the last house had been removed from the project area last week so there were no more houses in the project area now.

Chairman Tomlinson said he realized that DCM staff had a lot of work to do but he thought it would be most helpful to the present members of the CRC if there could be a presentation on what DOT would do if North Carolina had a catastrophic storm that destroyed Highway 12. Ms. Moffitt responded that DOT had a Task Force looking at a lot of those issues for Highway 12 so we probably could get someone with fresh and good knowledge to come and speak to the CRC about that. Joan Weld asked if, as part of that, the CRC could receive a prognosis for federal and state funding.

Ryke Longest stated that the discussion was beginning to get away from the issue today. He said the item on the agenda today was a variance request and the standard for granting or denying the variance request were that the four factors be demonstrated by the petitioner and the facts on which that could be considered were only the facts that were stipulated. Mr. Longest said this other information would be useful for future understanding and policy decisions but the CRC really needed to stick in making their decision to the facts as stipulated.

Doug Langford asked Mr. Lamar if the three year time period being contemplated here for the temporary nature of this variance was a reasonable timeframe to not only develop but put in place a permanent solution. Mr. Lamar responded that to be honest he did not think a permanent solution would be in place in three years based on his understanding of the alternatives that had been looked at but he did believe DOT would have a plan in that time to assure the CRC as to the fate of the sheet piles. Mr. Lamar said DOT might be coming back to the CRC in three years and at that time they might

actually not be removing the sheet piles but they might be saying they now had a definite plan and it was only going to be one year or two years or something like that.

Ms. Alcock pointed out that, in acknowledgement of the difficulties of funding, Stipulated Fact No. 17 stated that funding had not been provided in this particular case and staff did realize this was a hurdle for these communities to overcome. Ms. Alcock said that in regard to removal and Mr. Langford's question about the appropriateness of the time period, the three year recommendation was just a recommendation and it certainly was within the CRC's discretion to do whatever they wanted with regard to the removal criteria.

Renee Cahoon said that according to the time table from the COE, the project on the table right now was scheduled to begin technically in November of 2004. She said, however, that only encompassed that part of the project that went through the transition zone and it would not extend any further north than the transition zone at this time.

Bob Wilson asked if there were any tie backs that were contemplated on this particular seawall and Clay Willis responded that there would be no tie backs.

**Jerry Old moved that this variance request be granted upon the condition that the sandbags and sheet pilings be removed within three years and his motion was seconded by Peggy Griffin.**

**Doug Langford asked Mr. Old if he would consider an amendment to his motion to grant the variance for five years instead of three. Mr. Old said he would have no problem with that as a friendly amendment and Ms. Griffin said as the second to the motion she would also accept that amendment.**

CRC members continued discussing and asking questions regarding this variance request. Doug Langford said that he would encourage as strongly as he possibly could that each member of the CRC vote for this variance and give DOT an opportunity to find a permanent solution. Ms. Cahoon stated that she agreed with Mr. Langford.

**The CRC voted in favor of Mr. Old's motion to grant the variance with the condition that the sandbags and sheet pilings be removed within five years by a vote of seven in favor of the motion (Bob Barnes, Renee Cahoon, Peggy Griffin, Doug Lanford, Jerry Old, Larry Pittman, Bob Wilson) and four opposed to the motion (Courtney Hackney, Mary Price Harrison, Bill Peele, Joan Weld).**

#### Other Business

**Peggy Griffin said that she would like to make a motion that the CRC pass a resolution in support of having the Raleigh office remain in its same location. Ms. Griffin's motion was seconded and approved by a vote of ten in favor of the motion (Bob Barnes, Peggy griffin, Courtney Hackney, Mary Price Harrison, Doug Langford, Jerry Old, Bill Peele, Larry Pittman, Joan Weld, Bob Wilson) and one opposed (Renee Cahoon).**

With no further business, the CRC adjourned at 4:00 p.m.

Respectfully submitted,

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Donna Moffitt, Executive Secretary

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Mary Beth Brown, Recording Secretary

**MINUTES APPROVED BY**  
**CRC 07/23/03 \_\_\_\_\_**