

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

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TO: The Coastal Resources Commission

FROM: Christine A. Goebel, Assistant Attorney General
Amanda P. Little, Assistant Attorney General

*APL for CAG
AL*

DATE: July 26, 2011 (for the July 29, 2011 Special CRC Phone Meeting)

RE: Variance Request by Village of Bald Head Island

Petitioner, the Village of Bald Head Island, is a municipal corporation located in Brunswick County, North Carolina. On July 7, 2011, Petitioner applied for a minor modification to their CAMA major permit No. 9-95 to construct a 1,300 linear foot sandbag revetment along South Beach and the western part of the Point. The proposed sandbag revetment does not meet the requirements of 15A N.C.A.C. 07H .0308(a)(2)(B) for protecting an imminently threatened road and associated right of ways or buildings and their associated septic system. The proposed sandbag revetment would also exceed the size requirements set forth in 15A N.C.A.C. 07H .0308(a)(2)(K). A portion of the revetment would also likely be placed below mean high water inconsistent with 15A N.C.A.C. 07H .0308(a)(2)(A). As such, DCM denied Petitioner's permit application, and Petitioner now seeks a variance to allow the placement of sandbags, as proposed.

The following additional information is attached to this memorandum:

- Attachment A: Relevant Rules
- Attachment B: Stipulated Facts
- Attachment C: Petitioner's Position and Staff's Responses to Criteria
- Attachment D: Petitioner's Variance Request Materials
- Attachment E: Stipulated Exhibits

- cc: Charles Baldwin, Counsel for Petitioner, electronically
- Calvin Peck, Village Manager, electronically
- Chris McCall, CAMA LPO, Village of BHI, electronically
- Jennie W. Hauser and Mary Lucasse, CRC Counsel, electronically

RELEVANT STATUTES OR RULES

ATTACHMENT A

15A NCAC 07H .0301 OCEAN HAZARD CATEGORIES

The next broad grouping is composed of those AECs that are considered natural hazard areas along the Atlantic Ocean shoreline where, because of their special vulnerability to erosion or other adverse effects of sand, wind, and water, uncontrolled or incompatible development could unreasonably endanger life or property. Ocean hazard areas include beaches, frontal dunes, inlet lands, and other areas in which geologic, vegetative and soil conditions indicate a substantial possibility of excessive erosion or flood damage.

15A NCAC 07H .0303 MANAGEMENT OBJECTIVE OF OCEAN HAZARD AREAS

- (a) The CRC recognizes that absolute safety from the destructive forces indigenous to the Atlantic shoreline is an impossibility for development located adjacent to the coast. The loss of life and property to these forces, however, can be greatly reduced by the proper location and design of structures and by care taken in prevention of damage to natural protective features particularly primary and frontal dunes. Therefore, it is the CRC's objective to provide management policies and standards for ocean hazard areas that serve to eliminate unreasonable danger to life and property and achieve a balance between the financial, safety, and social factors that are involved in hazard area development.
- (b) The purpose of these Rules shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

15A NCAC 7H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

(a) This section describes natural and man-made features that are found within the ocean hazard area of environmental concern.

- (8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(2) Temporary Erosion Control Structures:

(A) Permittable temporary erosion control structures shall be limited to sandbags placed landward

of mean high water and parallel to the shore.

(B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure shall be considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

(C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

(D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or their designee.

(F) Temporary erosion control structures may remain in place for up to two years after the date of approval if they are protecting a building with a total floor area of 5000 sq. ft. or less and its associated septic system, or, for up to five years for a building with a total floor area of more than 5000 sq. ft. and its associated septic system. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.

(G) Temporary sandbag erosion control structures may remain in place for up to five years from the date of approval if they are located in a community that is actively pursuing a beach

nourishment project, and for up to eight years from the date of approval if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation project. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or inlet relocation project if it has:

- (i) an active CAMA permit, where necessary, approving such project; or
- (ii) been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
- (iii) received a favorable economic evaluation report on a federal project or,
- (iv) is in the planning stages of a project that has been designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and has been initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach nourishment or inlet relocation project.

If beach nourishment or inlet relocation is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

(H) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project or an inlet relocation project, it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

(I) Removal of temporary erosion control structures shall not be required if they are covered by dunes with stable and natural vegetation.

(J) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(K) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.

(L) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(M) An imminently threatened structure may be protected only once, regardless of ownership unless the threatened structure is located in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation project in accordance with (G) of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional eight year permit extension provided that the structure being protected is still

imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter and the community in which it is located is actively pursuing an inlet relocation project in accordance with Part (G) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (G) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:

(i) a building and septic system shall be considered as separate structures.

(ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) or (G) of this Subparagraph.

(N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

STIPULATED FACTS

ATTACHMENT B

1. The Village of Bald Head Island ("Petitioner"), is a North Carolina municipal body politic and corporate, organized and existing on Bald Head Island, Brunswick County, North Carolina (the "Island" or "BHI").
2. The western and southern shorelines of the Island converge at the "Point", which lies directly adjacent to the Cape Fear River Inlet. The Point is more particularly shown on Attachment D. *See* Petitioner's Variance Request Materials (Attachment D).
3. The Cape Fear River Inlet is a federally maintained shipping channel. The federal project includes a sand management plan. The Island is scheduled, under the Plan, to receive sand from maintenance dredging. Funding was not available for scheduled dredging on BHI in 2010-11 or 2011-12. BHI is scheduled to receive sand from the next channel maintenance dredging, if funding is available. BHI last received sand from the U.S. Army Corps of Engineers ("USACE") dredging in 2006. The sand from the USACE 2008 dredging went to Oak Island/Caswell Beach. No sand has been placed since the 2009-10 placement by Petitioner.
4. The current long-term average annual erosion rate in the vicinity of the Point is 8 feet (DCM 1998 long-term average annual shoreline change rate). However, this area has been subject to erosion.
5. Pursuant to N.C.G.S. § 77-20, the beaches along and adjacent to the Point are subject to public trust rights.
6. South Bald Head Wynd—a road owned by Petitioner—lies approximately 400 feet landward of the proposed work in the vicinity of the Point. According to Petitioner, South Bald Head Wynd is the primary evacuation route for the Island. *See* Exhibit 10.
7. Sandpiper Trail – a road owned by Petitioner – lies landward of the proposed work in the vicinity of the Point. Sandpiper Trail provides access to a public beach access and to three homes. *See* Exhibit 10.
8. Water, sewer, electric, cable and telephone transmission lines that belong to and/or serve Petitioner and its property owners are located in the vicinity of the Point.
9. Petitioner is the holder of CAMA Major Permit No. 9-95 (USACE Permit No. 199404687) ("Permit 9-95"). Permit 9-95 was issued on January 31, 1995, authorizing approximately 14,000 linear feet of beach nourishment along the South and West Beach sections of Bald Head Island's oceanfront shoreline.
10. On February 20, 1995, Petitioner applied for a variance from the Rules of the Coastal Resources Commission that prohibited construction of the sand tube groin field. On March 23, 1995, the Coastal Resources Commission granted a variance to the Petitioner allowing for the

- construction of 14 to 16 sand tube groins, 230 to 300 feet in length. Subsequently, Permit 9-95 was amended on July 7, 1995 to allow for the construction of the groin field. *See* Exhibit 1.
11. Numerous modifications to Permit 9-95 have been issued since the original permit was issued. These modifications have allowed for continued maintenance of the groin field, including reconstruction and slight realignments of the tubes.
 12. The beach within the vicinity of the groin tubes has received sand several times since the groin field was constructed, either as a result of the nourishment projects initiated by the Petitioner or from the placement of sand by the USACE.
 13. Petitioner's coastal engineer, Olsen Associates, Inc., has recommended adding a sandbag revetment to the sand tube groin field project permitted under Permit 9-95. *See* Exhibit 2(A) (Plan of Action). The coastal engineer has advised that severe erosion and shoreline recession near the Point is expected to occur to historical levels and irreparable impacts are imminent in this area because the USACE will not be performing maintenance dredging this winter (2011-2012). *Id.*; *See* Exhibit 12 (October 29, 2003 and December 14, 2003 photos); Exhibit 13 (August 25 and 22, 2009 photos).
 14. The proposed sandbag revetment would be a short-term, temporary measure pending the anticipated large-scale beach fill placement by the USACE.
 15. Currently, a sandbag structure protecting a portion of Sandpiper Trail, measuring approximately 300 feet in length, exists immediately to the southeast of the location of the proposed revetment. The proposed sandbag revetment would connect to the existing structure at its western end. Immediately east of the Sandpiper Trail sandbag structure is a line of sandbags currently protecting four houses totaling approximately 450 linear feet in length. Immediately east of these sandbags is a sandbag structure measuring approximately 1400 linear feet in length, currently protecting a portion of South Bald Head Wynd, which was constructed pursuant to a CRC variance.
 16. On July 7, 2011, the Petitioner applied for a minor modification to Permit 9-95, in which authorization was requested to construct a 1,300-linear-foot sandbag revetment along South Beach and the western edge of the Point. As proposed, the sandbag revetment would be installed in 2 segments. Both segments of the requested revetment would be placed oceanward of the eroding dunes. Segment A would involve the construction of a 350-linear-foot sandbag revetment at and to the north of Sand Tube Groin No. 16. Segment B would involve the future construction of a 950-linear-foot sandbag revetment to the south of Sand Tube 16. The July 7, 2011 minor modification request stated that the 950-foot Segment B revetment would only be installed "in consult with DCM as conditions necessitate it".
 17. Based on measurements taken on July 14, 2011 by DCM staff, the closest dwelling to the erosion escarpment in the project area is 97.5 feet. It is 400 feet to South Bald Head Wynd and 285 feet to Sandpiper Trail from the erosion escarpment in the project area.

18. As proposed, the sandbag revetment would be between 6 and 12 feet in height, with a base width of between 20 and 40 feet. Information submitted by Petitioner indicates that the actual height and width of the sandbag revetment would be determined by scarp elevation at the time of construction. Based on current conditions, all of the 350 linear foot Segment A revetment would be constructed below the mean high water line.
19. DCM denied the Modification Request on July 11, 2011. *See* Stipulated Exhibit 3.
20. DCM denied the Modification Request pursuant to N.C.G.S. § 113A-120(a)(8), which requires denial for projects inconsistent with State guidelines for Areas of Environmental Concern or local land use plans.
21. Rule 15A NCAC 07H .0308(a)(2) requires that sandbags may be used only to protect imminently threatened roads and associated right of ways, buildings and associated septic systems. Sandbags are not allowed to protect dunes, public beaches, habitat, and utilities. Individual sandbags must also be within the range of three to five feet wide and seven to 15 feet long when measured flat. The sandbag structure as a whole must not exceed six feet in height or 20 feet in base width. Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
22. As used in 15A NCAC 07H .0308, a structure is “imminently threatened” if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp, or if site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
23. The proposed development is inconsistent with strict application of 15A NCAC 07H .0308.
24. As shown on Exhibit 4, topographic exhibit of Cape Fear Trail, the interior of Bald Head Island is low-lying and subject to flooding. *See* Exhibit 11; Exhibit 12; and Exhibit 13.
25. The sandbag revetment is supported by major Island organizations, including, but not limited to, the Bald Head Island Conservancy, which has offered its technical support; the Island’s developer, Bald Head Island Limited, LLC; the Bald Head Island Club; and the Stage I Property Owners Association, the Bald Head Association. *See* Exhibits 6, 7, 8 and 9.
26. Petitioner filed this variance request on July 12, 2011, requesting approval to install and maintain a sandbag revetment immediately landward of its sand tube groin field in the vicinity of the Point.
27. As of July 26, 2011, Petitioner has withdrawn their variance request for Segment B of the proposed sandbag revetment project; therefore Petitioner is now seeking a variance only for construction of the proposed Segment A of such project.

Petitioner and Staff Positions**ATTACHMENT C**

- I. Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? If so, the petitioner must identify the hardships.**

Petitioner's Position: Yes.

Strict application of 15A NCAC 07H .0308 prevents the Village from constructing a sandbag revetment necessary to protect critical habitat, roads, homes and infrastructure in the vicinity of its sand tube groin field near the Point. A sandbag revetment is necessary to protect the Island's rare and unique habitat, public beaches, roads (including the Village's main evacuation route, South Bald Head Wynd and Sandpiper Trail), property and utilities, including water, sewer, electric, cable and telephone transmission lines that belong to and/or serve the Village and its property owners. The imminent threats to the foregoing are caused by rapid erosion in the area of the Point, and the loss of the same is a hardship the Village, the public, and Island residents and organizations should not be required to suffer.

Staff's Position: No.

While Staff agrees that the area of South Beach in the general vicinity of the groin field has suffered from the erosive forces of the ocean both recently and in the distant past, Staff does not believe that a strict application of the Commission's rules will cause the Petitioner an unnecessary hardship. Staff does not agree there are structures or roads currently in imminent danger of being damaged by these erosive forces. The danger presented by these forces can be reduced by natural protective features, such as the dunes that currently exist at the project site. These types of erosion events are normal occurrences along the coast of North Carolina, particularly near inlets. Therefore, Staff does not agree that the inability to use sandbags to protect dunes or to protect structures in advance of being imminently threatened, as defined by Rule 15A NCAC 7H .0308, is an unnecessary hardship.

II. Do such hardships result from conditions peculiar to the petitioner's property, such as location, size, or topography of the property? Explain.

Petitioner's Position: Yes.

Bald Head Island is unique in that it lies directly to the southeast of the Cape Fear River Inlet, which is a large, federally maintained shipping channel. The accelerated erosion that is plaguing the Point is far more severe than erosion affecting most other barrier islands in North Carolina. For example, during the twelve month period preceding April 2011, the beach in this vicinity lost approximately 350 linear feet. Further, because of the many factors peculiar to the Island, Erik J. Olsen, P.E.—the Village's coastal engineer—predicts that erosion in the vicinity of the Point will soon reach historic levels. *See* Olsen Associates, Inc., Plan of Action (Exhibit A to Permit Modification Request); *See also* Exhibit 11 (aerial photos of current erosion); Exhibit 12 (2003 historic erosion photos when USACE dredging was delayed one year). In Olsen's words, "irreparable impacts are imminent in the entire area of the proposed revetment." *Id.* at 2. Also, as shown on Exhibit 4, Topographic Exhibit of Cape Fear Trail, the interior of the Island behind the rapidly eroding frontal dune is low-lying. If the dune is allowed to breach, flooding of the roads and Island interior is threatened.

Staff's Position: No.

While staff does not agree that an unnecessary hardship exists, should the Commission find such a hardship, staff believes it is not a result of conditions peculiar to Petitioner's property. Erosion caused by waves, winds and currents, especially in areas close to inlets, is a common occurrence on Bald Head Island, as it is along much of the North Carolina coast. North Carolina beaches, dunes and inlets are in a permanent state of flux. Staff does not consider these conditions to be peculiar to this property. Bald Head Island's current long-term average annual erosion rate at the project site of 8 ft. is not rare or uncommon. There are several other sections of ocean beach that are similarly situated along the North Carolina coast including southern Dare County which has a long term annual erosion rate ranging from 7.5 feet to 14 feet per year.

III. Do the hardships result from the actions taken by the Petitioner? Explain.

Petitioner's Position: No.

The hardships do not result from the actions of the Village. Instead, the Village has—at great expense—endeavored to mitigate the hardships through, among other things, local beach fill projects, maintenance of its sand-filled tube groin field and an existing sandbag revetment. The U.S. Army Corps of Engineers (USACE) is obligated to perform periodic sand placement in the vicinity of the Point; however, such placement has not occurred in the past year and no funding has been allocated to the USACE for sand placement next fiscal year, despite the Village's active lobbying efforts. Without sand placement by the Corps, the erosion will only worsen. *See* Exhibit 12 (2003 historic erosion photos when USACE dredging was delayed one year).

Staff's Position: Yes.

While staff does not agree that an unnecessary hardship exists, should the Commission find such a hardship, staff does agree that coastal erosion in general does not result from actions taken by the Petitioner, but are natural processes that commonly occur along the North Carolina coast. However, because permanent erosion control structures, such as the existing groin field at Bald Head Island, have been shown to have adverse impacts by eroding adjacent properties, staff cannot say with any certainty that the existing groin field is not contributing to the erosion problem in this area as discussed in the Commission's Terminal Groin Study (Moffatt & Nichol, April 1, 2010). The study also noted that “due to a lack of historic natural resources data, it is difficult to draw conclusions on the effects of the construction and operation of the terminal groin on natural resources.” *Id.* at 5. Therefore, staff cannot agree that since Bald Head Island installed the groin field that it's hardship, if any, is not a result of actions taken by the Petitioner.

IV. Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

Petitioners's Position: Yes.

(d)(1) The variance requested by the Village will be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission.

One expressed goal of the Commission is to *preserve and protect habitat*. *See* 15A NCAC 07H .0209(c) (stating that official management objectives of coastal shorelines include “conserv[ing] and manag[ing] the important natural features of the estuarine and ocean system so as to safeguard and

perpetuate their biological, social, aesthetic, and economic values”). At present, the Island’s shoreline near the Point is quickly disappearing. By protecting the Point and the adjacent dunes with a more comprehensive response to the rapid erosion, the Village will be restoring and protecting vital habitat for sea turtles, birds and other natural resources. *See* 6 July 2011 letter from BHI Conservancy, “The BHI Conservancy supports efforts to protect critical dune habitat on our southwestern beaches”; 15A NCAC 07M .0202(a) (“shoreline erosion response projects shall avoid losses to North Carolina’s natural heritage”). Further, allowing the Village to construct a sandbag revetment to address the unique and severe erosion at the Point—rather than steadfastly adhering to the blanket prohibition of such structures in the Rules—is consistent with the Commission’s dedication to *rational management* of North Carolina’s shorelines. *See* 15A NCAC 07H .0101(a) and (b) (referring to CAMA’s “basic purpose” to provide for “rational management” of coastal resources). Additionally, by providing the Village a necessary tool in its fight to protect the Island’s public beaches from accelerated erosion, the variance would further the Commission’s stated goals regarding the *protection of public trust beaches*, including the following:

It is the objective of the Coastal Resources Commission to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines, as an interrelated group of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to the lands and waters of the coastal area.

15A NCAC 07H .0203; *see also* 15A NCAC 07H .0207(c) (establishing that official management objective of public trust areas is “[t]o protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value”); 15A NCAC 07H .0303(b) (“it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area”); 15A NCAC 07M .0202(a) (“The public right to use and enjoy the ocean beaches must be protected. The protected uses include traditional recreational uses (such as walking, swimming, surf-fishing, and sunbathing) as well as commercial fishing and emergency access for beach rescue services.”). The requested variance also comports with the Commission’s goals of *protecting life, property and amenities* from destruction of damage from rapid erosion, such as that impacting the Point:

It is hereby declared that . . . protection of the recreational use of the shorelines of the state is in the public interest. In order to accomplish these public purposes, the planning of future land uses, reasonable rules and public expenditures should be created or accomplished in a coordinated manner so as to minimize the likelihood of damage to private and public resources resulting from recognized coastal hazards.

15A NCAC 07M .0201 (“Declaration of General Policy”); *see also* 15A NCAC 07H .0303(a) (recognizing that “[t]he loss of life and property to [destructive forces indigenous to the Atlantic shoreline] . . . can be greatly reduced by . . . care taken in prevention of damage to natural protective features particularly primary and frontal dunes”). Finally, a standard of the Commission is that erosion control measures—such as sand bag revetments—be *temporary*:

Temporary measures to counteract erosion, such as the use of sandbags and beach pushing, should be allowed, but only to the extent necessary to protect property for a short period of time until threatened structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary stabilization measures must be compatible with public use and enjoyment of the beach.

See 15A NCAC 07M .0202(e). The sandbag revetment sought in this variance request is a temporary solution to the erosion-related problems at the Point. The goal of the sandbag revetment is to attempt to mitigate harm to the beach and dune at the Point until such time as the USACE performs sand dredging with beach placement on BHI under the existing Sand Management Plan.

(d)(2) The variance requested by the Village will secure the public safety and welfare.

The severe erosion threatens public safety and welfare, including public road Sandpiper Trail and South Bald Head Wynd, the Village’s primary evacuation route. Critical infrastructure, including, but not limited to, water, sewer, electric, cable and television transmission lines serving large portions of the Island run along South Bald Head Wynd. The erosion further threatens rare natural habitat, dunes, and homes. The revetment requested is a last resort and intended to protect public safety and welfare until the USACE performs channel maintenance dredging and sand placement on BHI under the existing Sand Management Plan.

(d)(3) The variance requested by the Village will preserve substantial justice.

The Village herein seeks a variance only after all other measures have been explored. Factors beyond the Village’s control—including the lack of USACE funding for maintenance dredging—have combined to cause an emergency situation that requires an immediate response by the Village. Substantial justice would be served by permitting the Village to install and maintain a sandbag revetment and connect it to that already existing sandbag revetment to the south of the proposed development site. The Village will undertake the proposed work at its expense as a short-term measure of last resort to attempt to protect from imminent and substantial harm to critical roads and infrastructure, habitat and homes.

Staff's Position: No.

(1) Staff disagrees that the proposed placement of sandbags for dune habitat protection or for the protection of roads or buildings at the proposed location is consistent with the spirit, purpose, and intent of the rules. The sandbag rules are, in effect, an exception to the General Assembly's and the Commission's ban on permanent erosion control structures such as seawalls. By setting limitations on the placement, size and duration of sandbags, as well as the type of structures that may be protected, the Commission recognized that *temporary erosion control structures* are to be used only in narrow well-defined circumstances.

In its Shoreline Erosion Policies, the Commission has determined that "[T]emporary measures to counteract erosion, such as the use of sandbags . . . should be allowed, but only to the extent necessary to protect property for a short period of time until threatened structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary stabilization measures must be compatible with public use and enjoyment of the beach." 15A NCAC 7M .0202(e). Based on this policy, it is clear that the purpose of these rules is to protect structures until they can be moved or the erosion event is reversed. The purpose is not to protect dune habitat, as is at issue here.

(2) Petitioner has not shown that the variance will secure public safety and welfare. Staff believes that there would be sufficient time to protect buildings, roads and utilities with sandbags *when and if* those structures become imminently threatened consistent with the current rules.

(3) The variance will not preserve substantial justice. Staff believes that the CRC's limitations on the use of sandbags should be enforced, and applied uniformly, as has been the case with this denial. Petitioner has not presented a truly peculiar situation for which it should be granted a variance.

ATTACHMENT D

PETITIONER'S VARIANCE REQUEST MATERIALS

ROUNTREE, LOSEE & BALDWIN, L.L.P.

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Partner

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July 12, 2011

VIA U.S MAIL AND EMAIL

Mr. James H. Gregson, Director
Division of Coastal Management
North Carolina Department of Environment and Natural Resources
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Morehead City, North Carolina 28557

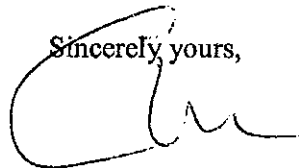
Re: Village of Bald Head Island
Sand Tube Groin Field
CAMA Major Permit No. 9-95
Department of Army Permit No. 199404687
Our File No. 4037.019

Dear Mr. Gregson:

Enclosed is the CAMA Variance Request Form submitted on behalf of the Village of Bald Head Island.

Thank you very much for your assistance.

Sincerely yours,



Charles S. Baldwin, IV

CSBIV/gw
Enclosures

pc: Christine Goebel, Esquire (via U.S. Mail and email)
J. Andrew Sayre, Village Mayor (via email)
Calvin R. Peck, Jr., Village Manager (via email)
Christopher McCall, Village Shoreline Protection Manager (via email)
Erik Olsen, P.E. (via email)

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: _____

PETITIONER'S NAME: VILLAGE OF BALD HEAD ISLAND

COUNTY WHERE THE DEVELOPMENT IS PROPOSED: BRUNSWICK

Pursuant to N.C.G.S. § 113A-120.1 and 15A N.C.A.C. 07J .0700 *et seq.*, the above named Petitioner hereby applies to the Coastal Resources Commission (CRC) for a variance.

VARIANCE HEARING PROCEDURES

A variance petition will be considered by the CRC at a regularly scheduled meeting, heard in chronological order based upon the date of receipt of a complete petition. 15A N.C.A.C. 07J .0701(e). A complete variance petition, as described below, must be *received* by the Division of Coastal Management (DCM) a minimum of six (6) weeks in advance of the first day of a regularly scheduled CRC meeting to be eligible for consideration by the CRC at that meeting. 15A N.C.A.C. 07J .0701(e). The final set of stipulated facts must be agreed to at least four (4) weeks prior to the first day of a regularly scheduled meeting. 15A N.C.A.C. 07J .0701(e). The dates of CRC meetings can be found at DCM's website: www.nccoastalmanagement.net

If there are controverted facts that are significant in determining the propriety of a variance, or if the Commission determines that more facts are necessary, the facts will be determined in an administrative hearing. 15A N.C.A.C. 07J .0701(b).

VARIANCE CRITERIA

The petitioner has the burden of convincing the CRC that it meets the following criteria:

- (a) Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.
- (b) Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain.
- (c) Do the hardships result from actions taken by the petitioner? Explain.
- (d) Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

Please make your written arguments that Petitioner meets these criteria on a separate piece of paper.

[SEE ATTACHMENT G]

The Commission notes that there are some opinions of the State Bar which indicate that non-attorneys may not represent others at quasi-judicial proceedings such as a variance hearing before the Commission. These opinions note that the practice of professionals, such as engineers, surveyors or contractors, representing others in quasi-judicial proceedings through written or oral argument, may be considered the practice of law. Before you proceed with this variance request, you may wish to seek the advice of counsel before having a non-lawyer represent your interests through preparation of this Petition.

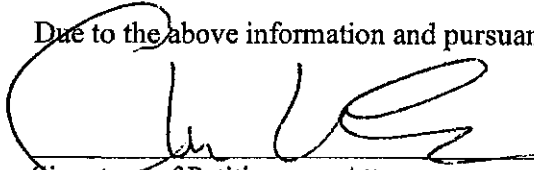
For this variance request to be complete, the petitioner must provide the information listed below. The undersigned petitioner verifies that this variance request is complete and includes:

Attachment

- A The name and location of the development as identified on the permit application;
- B A copy of the permit decision for the development in question;
- C A copy of the deed to the property on which the proposed development would be located;
- D A complete description of the proposed development including a site plan;
- E A stipulation that the proposed development is inconsistent with the rule at issue;
- F Proof that notice was sent to adjacent owners and objectors, as required by 15A N.C.A.C. 07J .0701(c)(7);
- Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable [**NOT APPLICABLE**];
- G Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;
- H A draft set of proposed stipulated facts and stipulated exhibits. Please make these verifiable facts free from argument. Arguments or characterizations about the facts should be included in the written responses to the four variance criteria instead of being included in the facts.
- ✓ This form completed, dated, and signed by the Petitioner or Petitioner's Attorney.

ALSO ATTACHED AS ATTACHMENT I ARE OTHER PROPOSED DOCUMENTS, FOR THE STAFF'S CONSIDERATION, THAT THE PETITIONER WANTS THE COMMISSION TO CONSIDER, PURSUANT TO 15 NCAC 07J .0701(c)(10)

Due to the above information and pursuant to statute, the undersigned hereby requests a variance.


Signature of Petitioner or Attorney

July 17, 2011
Date

Charles S. Baldwin, IV, Attorney

cbaldwin@rlblawfirm.com

Printed Name of Petitioner or Attorney

Email address of Petitioner or Attorney

2419 Market Street
Mailing Address

(910) 763 - 3404
Telephone Number of Petitioner or Attorney

Wilmington NC 28403
City State Zip

(910) 763 - 0080
Fax Number of Petitioner or Attorney

DELIVERY OF THIS HEARING REQUEST

This variance petition must be received by the Division of Coastal Management at least six (6) weeks before the first day of the regularly scheduled Commission meeting at which it is heard. A copy of this request must also be sent to the Attorney General's Office, Environmental Division, 15A N.C.A.C. 07J .0701(e).

Contact Information for DCM:

Contact Information for Attorney General's Office:

By mail, express mail or hand delivery:

Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

By mail:

Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

By Fax:

(252) 247-3330

By express mail:

Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

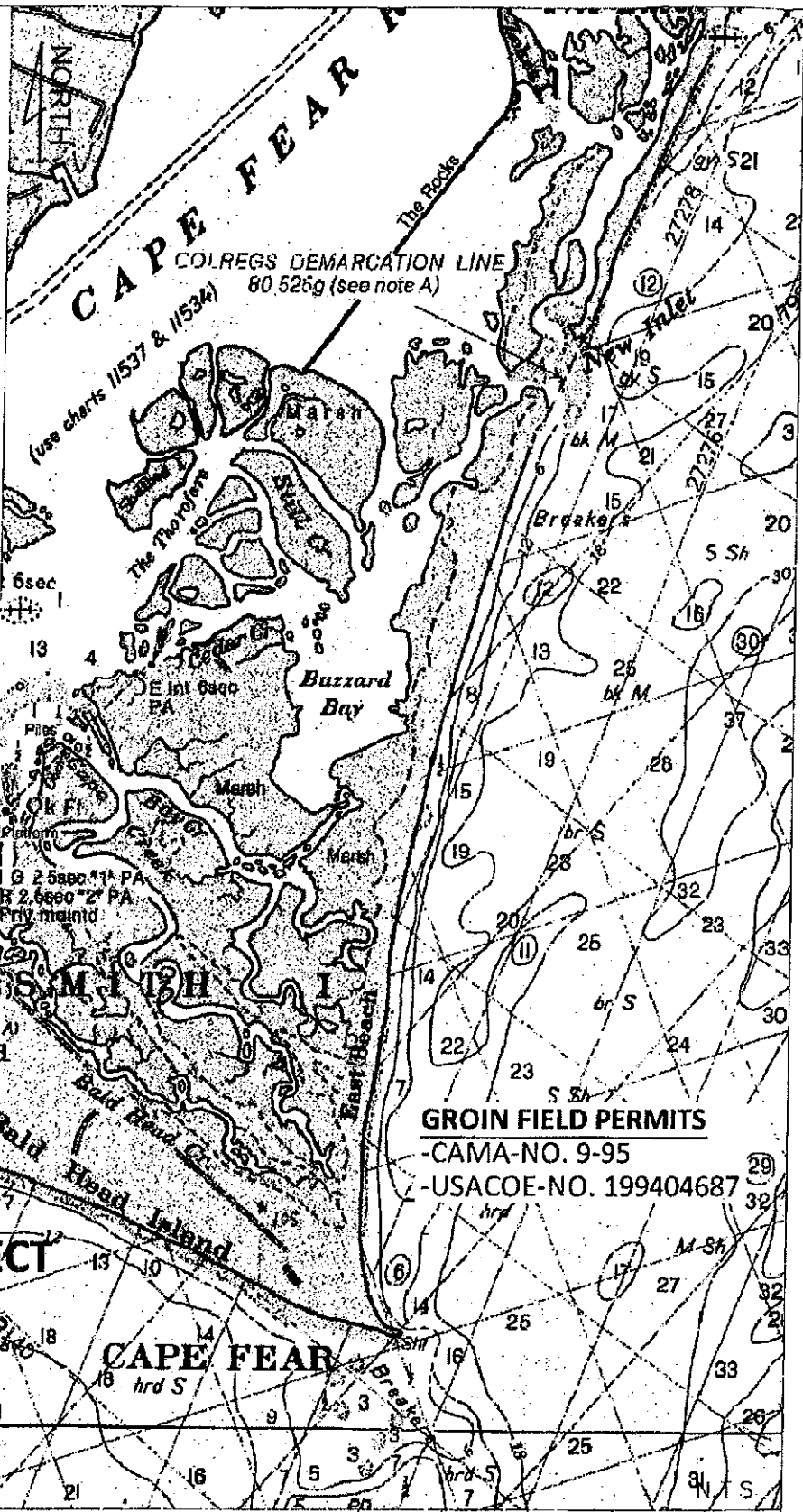
By Email:

Check DCM website for the email
address of the current DCM Director
www.nccoastalmanagement.net

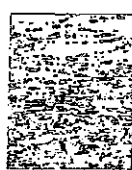
By Fax:

(919) 716-6767

ATTACHMENT A



GROIN FIELD PERMITS
 -CAMA-NO. 9-95
 -USACOE-NO. 199404687



olsen
 associates, inc.
 2618 Herschel Street
 Jacksonville, FL 32204
 (904) 387-6114
 (Fax) 384-7368

SAND BAG REVETMENT EXTENSION
 BALD HEAD ISLAND, NORTH CAROLINA

PROJECT LOCATION

DATE:	APPROVED:	REVISION:	DATE: 7/05/11
			DRAWN BY: ML
			SHEET 1 of 4

ATTACHMENT B



North Carolina Department of Environment and Natural Resources
Division of Coastal Management

Beverly Eaves Perdue
Governor

James H. Gregson
Director

Dee Freeman
Secretary

July 11, 2011

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

The Village of Bald Head Island
PO Box 3009
Bald Head Island, NC 28461

Dear Sirs:

This letter is in regards to your application request under the Coastal Area Management Act (CAMA) and the State Dredge and Fill Law to construct a sandbag revetment along a section of ocean beach on Bald Head Island, Brunswick County. Processing of the application, which was received by the Division of Coastal Management's Wilmington office on July 7, 2011, is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) CAMA Permit No. 9-95 was issued on January 31, 1995, authorizing approximately 14,000 linear feet of beach nourishment along the South and West Beach sections of Bald Head Island's oceanfront shoreline. This nourishment project was in response to continued erosion of the oceanfront beach in these areas. Due to inconsistencies with the Rules of the Coastal Resources Commission, CAMA Permit No. 9-95 specifically prohibited the construction of an associated sand tube groin field.
- 2) On February 20, 1995, the Village of Bald Head Island applied for a variance from the Rules of the Coastal Resources Commission that prohibited construction of the sand tube groin field. On March 23, 1995, the Coastal Resources Commission granted a variance to the Village of Bald Head Island allowing for the construction of 14 to 16 sand tube groins, 230 to 300 feet in length. Subsequently, CAMA Permit No. 9-95 was amended on July 7, 1995 to allow for the construction of the groin field.

Village of Bald Head Island

July 11, 2011

Page 2

- 3) Numerous modifications to CAMA Permit No. 9-95 have been issued since the original permit was issued. These modifications have allowed for continued maintenance of the groin field, including reconstruction and slight realignments of the tubes.
- 4) The beach within the vicinity of the groin tubes has received sand several times since the groin field was constructed, either as a result of the nourishment projects initiated by the Village of Bald Head Island or from the placement of sand by the U.S. Army Corps of Engineers resulting from the maintenance dredging of the Wilmington Harbor.
- 5) On July 7, 2011, The Village of Bald Head Island applied for a minor modification to Permit No. 9-95, in which authorization was requested to construct a 1,300-linear-foot sandbag revetment along South Beach and the western end of the Point. As proposed, the sandbag revetment would be installed in 2 segments. Both segments of the requested revetment would be placed oceanward of the eroding dunes. Segment A would involve the construction of a 350-linear-foot sandbag revetment at and to the north of Sand Tube Groin No. 16. Segment B would involve the future construction of a 950-linear-foot sandbag revetment to the south of Sand Tube 16. The July 7, 2011 minor modification request stated that the 950-foot Segment B revetment would only be installed "in consult with DCM as conditions necessitate it". The modification request does not describe what conditions would need to occur to initiate this consultation.
- 6) As proposed, the sandbag revetment would be between 6 and 12 feet in height, with a base width of between 20 and 40 feet. Information submitted by The Village of Bald Head Island indicate that the actual height and width of the sandbag revetment would be determined by scarp elevation at the time of construction.
- 7) Based upon current site conditions, all of the 350-linear-foot Segment A revetment would be constructed below the mean high water line.
- 8) The Division of Coastal Management has not determined that any imminently threatened roads, buildings or associated septic systems, as defined by 15A NCAC 07H .0308(a)(2)(B) exist within the project area.
- 9) Based upon the above referenced items, the Division of Coastal Management has determined that the proposed project is inconsistent with the following Rules of the Coastal Resources Commission:
 - i) 15A NCAC 07H .0308 (a)(2)(B), which states "Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure shall be considered imminently

Village of Bald Head Island

July 11, 2011

Page 3


threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure."

- ii) 15A NCAC 07H .0308 (a)(2)(B), which states "Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore."
- iii) 15A NCAC 07H .0308 (a)(2)(K), which states "Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet."

Given the preceding findings, it is necessary that your request for issuance of a CAMA Major Permit be denied. This denial is made pursuant to N.C.G.S. 113A-120 (a)(8), which requires denial for projects inconsistent with the state guidelines for Areas of Environmental Concern or local land use plans.

If you wish to appeal this denial, you are entitled to a hearing. The hearing will involve appearing before an Administrative Law Judge who listens to evidence and arguments of both parties and then makes a recommendation to the Coastal Resources Commission. Your request for a hearing must be in the form of a written petition, complying with the requirements of §150B of the General Statutes of North Carolina, and must be filed with the office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, (919) 733-2698, within twenty (20) days from the date of this letter. A copy of this petition should also be filed with this office. If you have any questions concerning this matter, please contact Mr. Doug Huggett at (252) 808-2808, ext. 212.

Sincerely,



James H. Gregson

cc: Colonel Jefferson Ryscavage – U.S. Army Corps of Engineers, Wilmington, NC
David Kennedy, Director – OCRM/NOAA, Silver Spring, MD

ATTACHMENT C

RET Grey Hill / Bald Head Assoc.
 TOTAL 200 REV _____ TC# _____
 REC# _____ CK AMT _____ CK# _____
 CASH 20 REP _____ BY 28

SPECIAL WARRANTY DEED

Prepared by: Judith A. Ward, Esq., P. O. Box 3069, Bald Head Island, NC 28461

STATE OF NORTH CAROLINA
 COUNTY OF BRUNSWICK

TS	AUX	CON	GR	PCL	SPL
See	last	Page	of	Inst.	200

THIS DEED made this 20th day of September, 2002, by and between **BALD HEAD ISLAND UTILITIES, INC.**, a North Carolina corporation, P. O. Box 3089, Bald Head Island, North Carolina 28461, (hereinafter called "Grantor"), and **BALD HEAD ASSOCIATION**, a North Carolina non-profit corporation, P. O. Box 3009, Bald Head Island, North Carolina 28461 (hereinafter called "Grantee"), (whether one or more persons, firms or corporations). The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH:

WHEREAS, by Agreement dated December 31, 1997, Bald Head Island Limited ("Limited") and Bald Head Association settled certain issues in controversy between them as to the ownership, use and disposition of real property referred to as "Common Area" as defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Stage I, Bald Head Island, duly recorded in the Office of the Register of Deeds for Brunswick County, North Carolina, in Book 498 at Page 260 ("Covenants"), some of which areas had previously been deeded to Grantor herein.

NOW THEREFORE, in fulfillment of Grantor's consent to convey certain properties owned by it and not needed for utility purposes, and in further consideration of the mutual covenants and promises contained in the aforesaid Agreement, and in performance and execution of the covenants and other documents establishing the residential development known as "Bald Head Island Stage One," the Grantor has, and by these presents does, grant, bargain, release, convey, and forever quitclaim unto the Grantee, its successors and assigns, in fee simple, that certain real property, together with rights, appurtenances and improvements thereunto belonging, but subject to the exclusions, reservations and restrictions hereinafter set forth, located in the County of Brunswick, State of North Carolina, described and defined as follows:

Parcel A: Being all of the land described as "Tract 3", "Tract 8", "Tract 9", "Tract 11", "Tract 13", "Tract 16", "Tract 17", "Tract 18", "Tract 20", "Tract 21" and "Tract 24", in that Deed recorded in Book 584, Page 520 in the office of the Register of Deeds for Brunswick County, North Carolina;

Parcel B: Being all of the land described as "Tract 2" in that Deed recorded in Book 584, Page 520 in the office of the Register of Deeds for Brunswick County, North Carolina, LESS AND EXCEPT that portion of land conveyed and described as "Tract 2A" and "Tract 2B" in deed recorded in Book 717, Page 1044, and as shown on map recorded in Map Cabinet S, Instruments 191 and 192 in the aforesaid Registry.

Parcel C: Being all of the land described as "Tract 5" in that Deed recorded in Book 584, Page 520 in the office of the Register of Deeds for Brunswick County, North Carolina, LESS AND EXCEPT that portion of land conveyed and described as "Tract 5A" in deed recorded in Book 717, Page 1044, and as shown on map recorded in Map Cabinet S, Instrument 188 in the aforesaid Registry.

Parcel D: Being all of the land described as "Tract 22" in that Deed recorded in Book 584, Page 520 in the office of the Register of Deeds for Brunswick County, North Carolina, LESS AND EXCEPT that portion of land conveyed and described as "Tract 22A" and "Tract 22B" in deed recorded in Book 717, Page 1044, and as shown on map recorded in Map Cabinet S, Instrument 186 in the aforesaid Registry.

Parcel E: Being all of the land described as "Tract 23" in that Deed recorded in Book 584, Page 520 in the office of the Register of Deeds for Brunswick County, North Carolina, LESS AND EXCEPT that portion of land conveyed and described as "Tract 23A" in deed recorded in Book 717, Page 1044, and as shown on map recorded in Map Cabinet S, Instrument 187 in the aforesaid Registry.

This conveyance is made SUBJECT, HOWEVER, to the following reservations and restrictions:

- A. The properties conveyed herein shall be subject to a continuing and perpetual easement for the benefit of Bald Head Island Utilities, Inc. and its successors and assigns, to utilize said above described property as reasonably necessary for the maintenance, location, relocation, installation & construction of water lines, sewer lines, pump stations and wells, as well as facilities and equipment reasonably appurtenant thereto. Any such utilization occurring subsequent to the recordation of this Deed shall be made only after prior notification to the Grantee sixty (60) days prior to said use. Bald Head Island Utilities, Inc. shall be fully responsible for restoration of any damage done within the Common Areas by virtue of its utilization thereof. Bald Head Island Utilities, Inc. further agrees to indemnify and hold harmless the Grantee from and against any claims made against the Grantee by virtue of such utilization, whether such claims be for injury to person or property.
- B. The property herein conveyed is subject to any existing roadways, walkways, or bike paths installed by Bald Head Island Limited, the Village of Bald Head Island, or any homeowners association, and to utility systems (including cable television lines, electrical utility lines and telephone utility lines) to the extent that the same have been installed and encroach upon any of the properties conveyed herein. The Grantee shall not impede any reasonable maintenance of such existing roadways or utility systems by the Village of Bald Head Island or by the person or entity required to maintain said utility systems.
- C. The property herein conveyed is subject to any express rights previously given to owners of residential lots on Bald Head Island to use any Common Area for purposes of ingress and egress to bodies of water adjoining Bald Head Island.
- D. This conveyance is made subject to the reservations, conditions, covenants and restrictions contained in the aforesaid Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded in Book 498 at Page 260 of the Brunswick County Registry, as amended from time to time, and to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bald Head Association recorded in Book 1359 at Page 1 of said Registry, as amended.
- E. The property herein conveyed may be subject to ad valorem real property taxes for 2002 and subsequent years as assessed by the County of Brunswick and the Village of Bald Head Island, North Carolina.
- F. The property herein conveyed is subject to such easements, restrictions and rights of way as shown on the plats of Bald Head Island Stage One recorded in the Brunswick County Registry.

TO HAVE AND TO HOLD the aforesaid lots or parcels of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

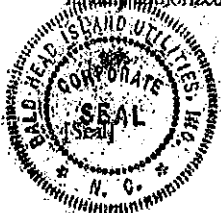
And as to the property herein conveyed, subject to the foregoing exclusions, reservations and restrictions, the Grantor warrants to the Grantee as follows:

- I. The property herein conveyed is subject to no lien or encumbrance of record, other than blanket utility easements encumbering substantial portions of Bald Head Island;

- II. Grantor has not caused any hazardous substance (as defined by any law or regulation) to be deposited on any of the property herein conveyed, nor does Grantor have any knowledge of any hazardous substance existing on any of the property herein conveyed.
- III. To the extent set out hereinabove and subject to the foregoing conditions and those set out in the Agreement, Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever.

The Grantee, by acceptance of this deed, agrees that the property herein conveyed shall be held, maintained and administered for the common use, benefit and enjoyment of its members, all in the exercise of the Covenants.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its name by its duly authorized agent and representative, the day and year first above written.



BALD HEAD ISLAND UTILITIES, INC.

By: [Signature]
Vice President

ATTEST:

By: [Signature]
Assistant Secretary

- Parcel A**
TR "3" = 300002643C0290100
TR "8" = 300002604B0420000
TR "9" = 326412642F0010900
TR "11" = 326422641L0170100
TR "13" = 300002642F0011100
TR "16" = 300002642F0011600
TR "17" = 300002642F0011200
TR "18" = 30000264310350000
TR "20" = 300002641C0810100
TR "21" = 300002642F0011300
TR "24" = 300002641G0011300
- Parcel B**
TR "2" = 300002642F0010700
- Parcel C**
TR "5" = 326042641G0011400
- Parcel D**
TR "22" = 326042642F0011400
- Parcel E**
TR "23" = 326042642F0011500

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, [Signature], a Notary Public for said County and State, do hereby certify that B.J. Gorman personally appeared before me this day and acknowledged that (s)he is Assistant Secretary of Bald Head Island Utilities, Inc., a North Carolina corporation, and that in authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by her/him as its Assistant Secretary.

WITNESS my hand and official seal, this the 28th day of June, 2002.



[Signature]
Notary Public
My commission expires 3/18/07

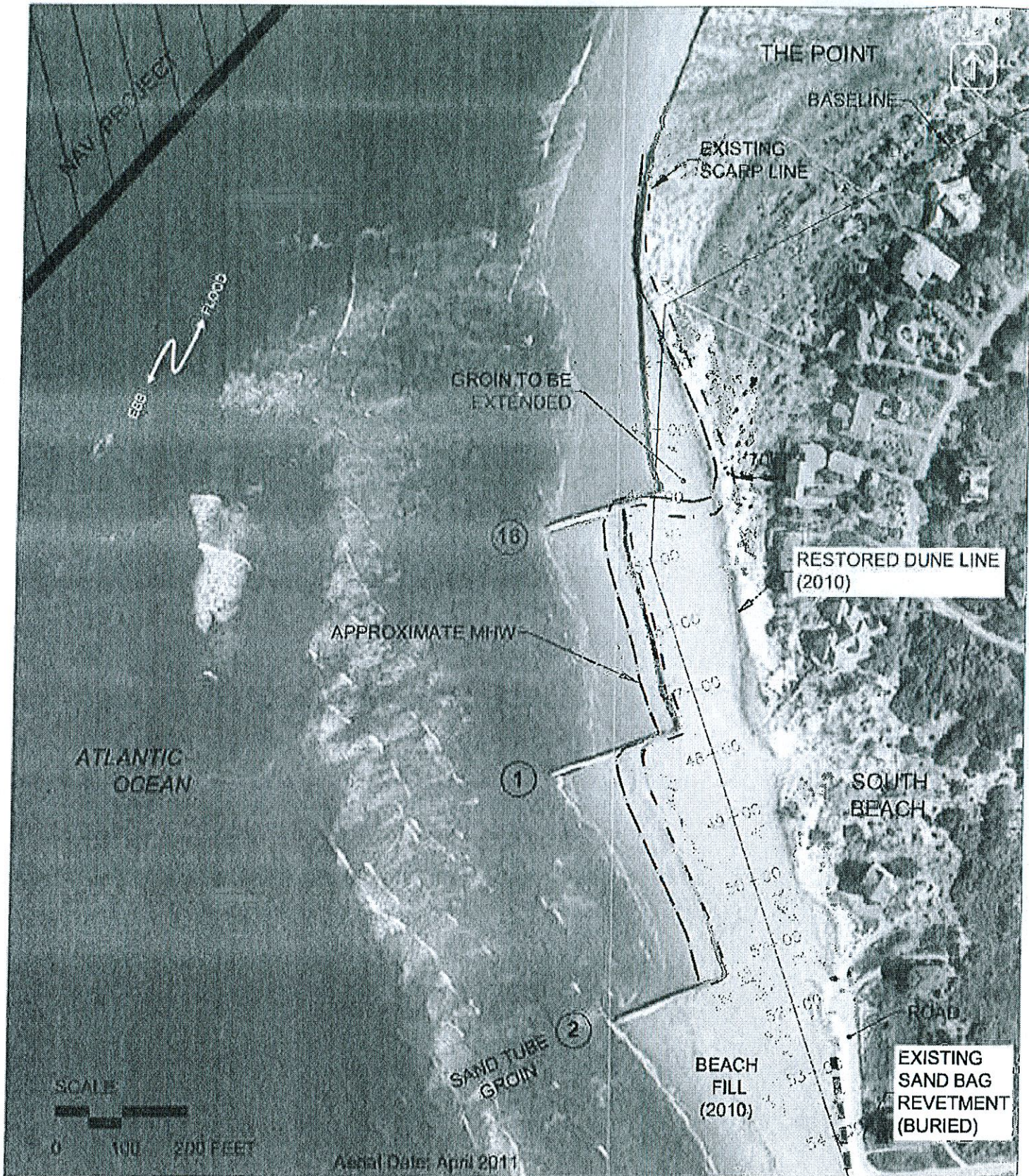
STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

The Foregoing (or annexed) Certificate(s) of PEGGY WILLIAMS

Notary(ies) Public is (are) Certified to be Correct.
This Instrument was filed for Registration on this 23rd Day of September 2002
in the Book and page shown on the First Page hereof.

[Signature]
ROBERT J. ROBINSON, Register of Deeds

ATTACHMENT D



Aerial Date: April 2011



olsen
 associates, inc.
 2618 Herschel Street
 Jacksonville, FL 32204
 (904) 387-6114
 (Fax) 384-7368

**SAND BAG REVETMENT EXTENSION
 BALD HEAD ISLAND, NORTH CAROLINA**

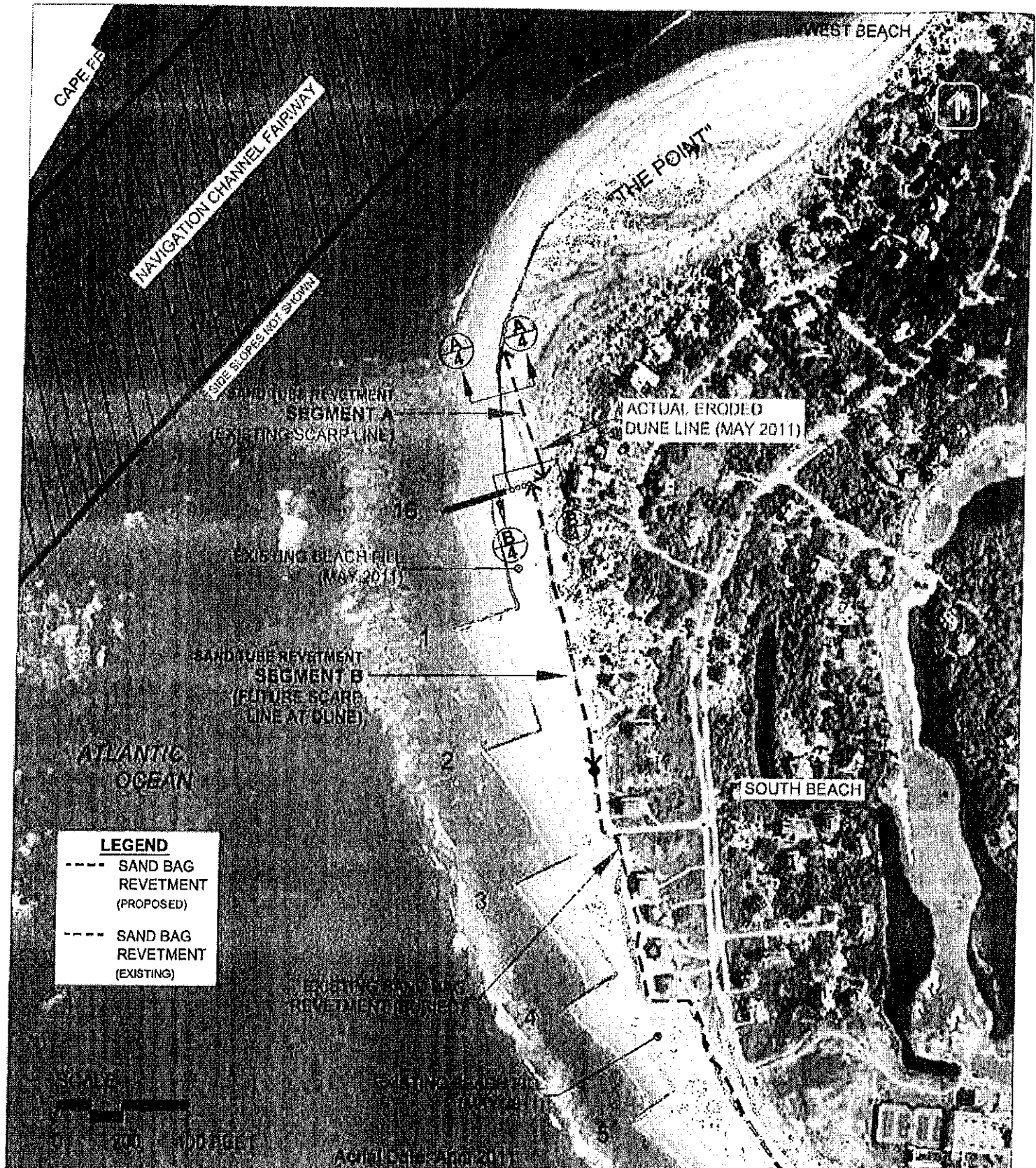
**EXISTING CONDITIONS
 (JUNE 2011)**

DATE: APPROVED: REVISION:

DATE: 7/05/11

DRAWN BY: ML

SHEET 2 OF 4



LEGEND

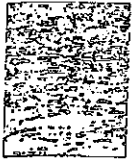
- - - SAND BAG REVETMENT (PROPOSED)
- - - SAND BAG REVETMENT (EXISTING)

olsen
 associates, inc.
 2618 Herschel Street
 Jacksonville, FL. 32204
 (904) 387-6114
 (Fax) 384-7368

SAND BAG REVETMENT EXTENSION
 BALD HEAD ISLAND, NORTH CAROLINA

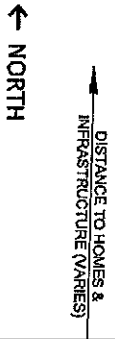
PLAN OF IMPROVEMENT

DATE:	APPROVED	REVISION	DATE: 7/05/11
			DRAWN BY: ML
			SHEET 3 of 4

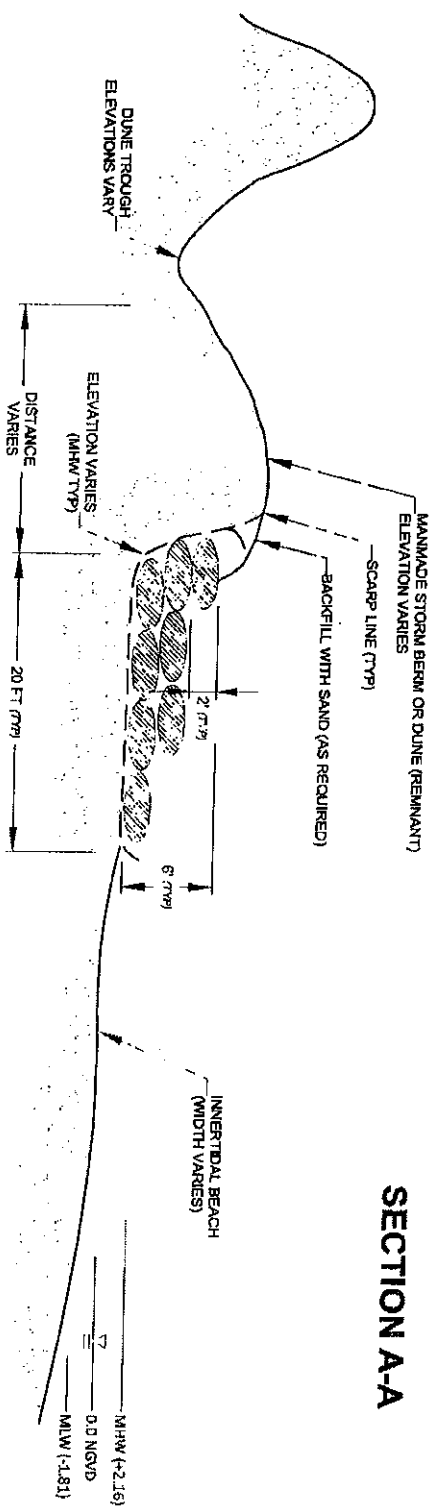


olsen
 associates, inc.
 2818 Herschel Street
 Jacksonville, FL 32204
 (904) 387-6114
 (Fax) 384-7368

**SAND BAG REVETMENT
 BALD HEAD ISLAND, NORTH CAROLINA
 TYPICAL SECTIONS**



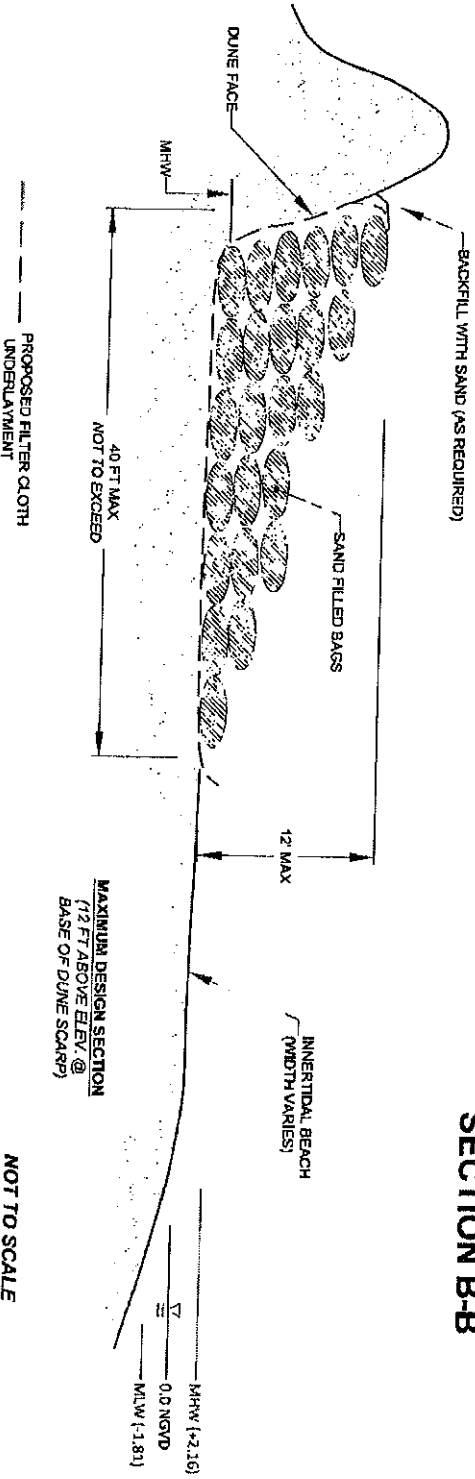
- NOTES:
 1) UNDERLAYMENT SHEETS TO OVERLAP BY 3FT (MIN)
 2) BAGS SHALL BE TAN COLORED W/DIMENSIONS
 OF 5FT WIDE BY 20FT LONG AND 2FT THICK



SECTION A-A

PROPOSED FILTER CLOTH UNDERLAYMENT

NOT TO SCALE



SECTION B-B

NOT TO SCALE

DATE: 7/05/11	REVISION	DRAWN BY: ML	SHEET 4 of 4
DATE:	APPROVED		

ATTACHMENT E

Petitioner Village of Bald Head Island stipulates that the proposed development is inconsistent with 15A NCAC 07H .0308.

ATTACHMENT F

15 CAPE FEAR RIVER
LOT 1025

**DIVISION OF COASTAL MANAGEMENT
ADJACENT PROPERTY OWNER NOTIFICATION FORM**

I hereby certify that I own property adjacent to the Bald Head Association "common area" property located at "the point", the convergence of west & south beach adjacent to the Cape Fear River and Wilmington Harbor Navigational Shipping Channel and Atlantic Ocean, in Brunswick County, North Carolina.

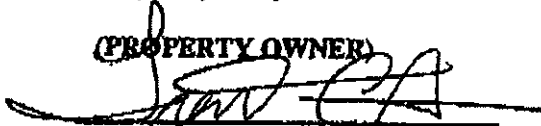
Chris McCall, Village of Bald Head Island Shoreline Protection Manager & CAMA LPO has described to me as shown below the development the Village of Bald Head Island, acting as Authorized Agent on behalf of the Bald Head Association, is proposing at that location, and I have no objections to the proposal.

DESCRIPTION AND/OR DRAWING OF PROPOSED DEVELOPMENT
(Individual proposing development must fill in description below or attach a site drawing)

SEE ATTACHED DRAWINGS AND ACTION PLAN

If you have objections to what is being proposed, you must notify the Division of Coastal Management (DCM) in writing within 10 days of receipt of this notice. Contact information for DCM offices is available at www.nccoastalmanagement.net/contact_dcm.htm or by calling 1-888-4RCOAST. No response is considered the same as no objection if you have been notified by Certified Mail.

(PROPERTY OWNER)



Signature

Brent C. Adams

Print or Type Name

1338 Ashley Square

Mailing Address

WINSTON-SALEM, NC 27103

City, State, Zip

336-765-2065 x 1000

Telephone Number

7/8/11

Date

BALD HEAD ASSOCIATION
"COMMON AREA"

DIVISION OF COASTAL MANAGEMENT
ADJACENT PROPERTY OWNER NOTIFICATION FORM

I hereby certify that I own property adjacent to the Bald Head Association "common area" property located at "the point", the convergence of west & south beach adjacent to the Cape Fear River and Wilmington Harbor Navigational Shipping Channel and Atlantic Ocean, in Brunswick County, North Carolina.

Chris McCall, Village of Bald Head Island Shoreline Protection Manager & CAMA LPO has described to me as shown below the development the Village of Bald Head Island, acting as Authorized Agent on behalf of the Bald Head Association, is proposing at that location, and I have no objections to the proposal.

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(Individual proposing development must fill in description below or attach a site drawing)

SEE ATTACHED DRAWINGS AND ACTION PLAN

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(PROPERTY OWNER)

Carrie McCall
Signature

Carrie McCall
Print or Type Name

PO Box 3030
Mailing Address

Bald Head Island, NC 28461
City, State, Zip

910. 457. 4676
Telephone Number

7.7.11
Date

DIVISION OF COASTAL MANAGEMENT
ADJACENT PROPERTY OWNER NOTIFICATION FORM

I hereby certify that I own property adjacent to the Bald Head Association "common area" property located at "the point", the convergence of west & south beach adjacent to the Cape Fear River and Wilmington Harbor Navigational Shipping Channel and Atlantic Ocean, in Brunswick County, North Carolina.

Chris McCall, Village of Bald Head Island Shoreline Protection Manager & CAMA LPO has described to me as shown below the development the Village of Bald Head Island, acting as Authorized Agent on behalf of the Bald Head Association, is proposing at that location, and I have no objections to the proposal.

DESCRIPTION AND/OR DRAWING OF PROPOSED DEVELOPMENT
(Individual proposing development must fill in description below or attach a site drawing)

SEE ATTACHED DRAWINGS AND ACTION PLAN

If you have objections to what is being proposed, you must notify the Division of Coastal Management (DCM) in writing within 10 days of receipt of this notice. Contact information for DCM offices is available at www.nccoastalmanagement.net/contact_dcm.htm or by calling 1-888-4RCOAST. No response is considered the same as no objection if you have been notified by Certified Mail.

(PROPERTY OWNER)

George Watts Carr, III
Signature

GEORGE WATTS CARR, III
Print or Type Name

203 Country Club Dr.
Mailing Address

Greensboro, NC 27408
City, State, Zip

910-457-0499 (BAH)
Telephone Number

336-691-1071 (Greensboro)

July 7, 2011
Date

DIVISION OF COASTAL MANAGEMENT
ADJACENT PROPERTY OWNER NOTIFICATION FORM

I hereby certify that I own property adjacent to the Bald Head Association "common area" property located at "the point", the convergence of west & south beach adjacent to the Cape Fear River and Wilmington Harbor Navigational Shipping Channel and Atlantic Ocean, in Brunswick County, North Carolina.

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(PROPERTY OWNER)

Lawrence A. Leonard
Signature

LAWRENCE A + MIRIAM R LEONARD
Print or Type Name

11 CAPE FEAR TRAIL
Mailing Address

BALD HEAD ISLAND, NC 28461
City, State, Zip

910.457.0918
Telephone Number

7/1/11
Date

#13 CAPE FEAR TRL
LOT 1026

DIVISION OF COASTAL MANAGEMENT
ADJACENT PROPERTY OWNER NOTIFICATION FORM

I hereby certify that I own property adjacent to the Bald Head Association "common area" property located at "the point", the convergence of west & south beach adjacent to the Cape Fear River and Wilmington Harbor Navigational Shipping Channel and Atlantic Ocean, in Brunswick County, North Carolina.

Chris McCall, Village of Bald Head Island Shoreline Protection Manager & CAMA LPO has described to me as shown below the development the Village of Bald Head Island, acting as Authorized Agent on behalf of the Bald Head Association, is proposing at that location, and I have no objections to the proposal.

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(Individual proposing development must fill in description below or attach a site drawing)

SEE ATTACHED DRAWINGS AND ACTION PLAN

If you have objections to what is being proposed, you must notify the Division of Coastal Management (DCM) in writing within 10 days of receipt of this notice. Contact information for DCM offices is available at www.nccoastalmanagement.net/contact_dcm.htm or by calling 1-888-4RCOAST. No response is considered the same as no objection if you have been notified by Certified Mail.

(PROPERTY OWNER)

Ethel
Signature

Ethan Wiesler
Print or Type Name

#13 Cape Fear Tr.
Mailing Address

BHI NC 28461
City, State, Zip

910-457-4349
Telephone Number

7-7-11
Date

5450 52EE 2000 09PT 600Z

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$.84
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Restricted Delivery Fee (Endorsement Required)	—
Total Postage & Fees	\$ 5.99

Postmark Here
JUL 11 2011
BALD HEAD ISLAND 28461

(LOT 1238)

Sent To: **SILT**
Street, Apt. No., or PO Box No.: **P.O. BOX 3109**
City, State, ZIP+4: **BALD HEAD ISLAND NC 28461**

2550 52EE 2000 09PT 600Z

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JUL 11 2011
BALD HEAD ISLAND 28461

(LOT 1239)

Sent To: **BRANCH BANKING & TRUST COMPANY**
Street, Apt. No., or PO Box No.: **P.O. BOX 167**
City, State, ZIP+4: **WINSTON-SALEM NC 27103**

9222 259E 1000 040E 010Z

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JUL 11 2011
BALD HEAD ISLAND 28461

(LOT 1240)

Sent To: **1240 SANDPIPER LLC**
Street, Apt. No., or PO Box No.: **2164 ORCHARD HOUSE ROAD**
City, State, ZIP+4: **CHARLOTTESVILLE VA 22903**

6222 259E 1000 040E 010Z

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Total Postage & Fees	\$ 5.99

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JUL 11 2011
BALD HEAD ISLAND 28461

(LOT 1241)

Sent To: **FRANCIS & SUSAN DAVIS**
Street, Apt. No., or PO Box No.: **4113 GOLF DR NE**
City, State, ZIP+4: **CONOVER NC 28613**

0222 259E 1000 040E 010Z

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Restricted Delivery Fee (Endorsement Required)	—
Total Postage & Fees	\$ 5.99

Postmark Here
JUL 11 2011
BALD HEAD ISLAND 28461

(LOT 1242)

Sent To: **JONATHAN NYBEAL**
Street, Apt. No., or PO Box No.: **P.O. BOX 292**
City, State, ZIP+4: **ARLINGTON MA 02476**

2622 259E 1000 040E 010Z

U.S. Postal Service
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Certified Fee	2.85
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	—
Total Postage & Fees	\$ 5.99

Postmark Here
JUL 11 2011
BALD HEAD ISLAND 28461

(LOT 1243)

Sent To: **INDIGO PUBLICAN LLC**
Street, Apt. No., or PO Box No.: **P.O. BOX 3059**
City, State, ZIP+4: **BALD HEAD ISLAND NC 28461**


7010 3090 0001 3657 2327

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Restricted Delivery Fee (Endorsement Required)	—
Total Postage & Fees	\$ 5.99



Sent To
JORDAN JESSE WASHBURN (LOT 1029)
Street, Apt. No. or PO Box No. **5 ELM RIDGE LN**
City, State, ZIP+4
GREENSBORO NC 27408

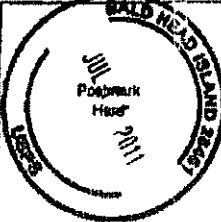
7010 3090 0001 3657 2327

U.S. Postal Service
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OFFICIAL USE

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Certified Fee	2.85
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	—
Total Postage & Fees	\$ 5.99



Sent To
RENBYUS LLC (LOT 1030)
Street, Apt. No. or PO Box No. **109 GLENDALE DRIVE**
City, State, ZIP+4
CHAPEL HILL NC 27814

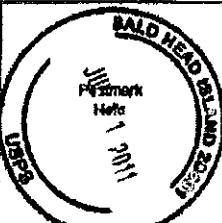
7010 3090 0001 3657 2327

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Restricted Delivery Fee (Endorsement Required)	—
Total Postage & Fees	\$ 5.99



Sent To
JESSE H. WASHBURN (LOT 1031)
Street, Apt. No. or PO Box No. **5 ELM RIDGE LANE**
City, State, ZIP+4
GREENSBORO NC 27408

ATTACHMENT G

WRITTEN REASONS AND ARGUMENTS

Petitioner Village of Bald Head Island (the "Village") meets the four variance criteria listed in the CAMA Variance Request Form, for the following reasons. The Village incorporates herein by reference in each section below the Attachments and Exhibits to this Petition.

(a) Will strict application of the applicable rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.

Yes. Strict application of 15A NCAC 07H .0308 prevents the Village from constructing a sandbag revetment necessary to protect critical habitat, roads, homes and infrastructure in the vicinity of its sand tube groin field near the Point. A sandbag revetment is necessary to protect the Island's rare and unique habitat, public beaches, roads (including the Village's main evacuation route, South Bald Head Wynd and Sandpiper Trail), property and utilities, including water, sewer, electric, cable and telephone transmission lines that belong to and/or serve the Village and its property owners. The imminent threats to the foregoing are caused by rapid erosion in the area of the Point, and the loss of the same is a hardship the Village, the public, and Island residents and organizations should not be required to suffer.

(b) Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain.

Yes. Bald Head Island is unique in that it lies directly to the southeast of the Cape Fear River Inlet, which is a large, federally maintained shipping channel. The accelerated erosion that is plaguing the Point is far more severe than erosion affecting most other barrier islands in North Carolina. For example, during the twelve month period preceding April 2011, the beach in this vicinity lost approximately 350 linear feet. Further, because of the many factors peculiar to the Island, Erik J. Olsen, P.E.—the Village's coastal engineer—predicts that erosion in the vicinity of the Point will soon reach historic levels. *See* Olsen Associates, Inc., Plan of Action (Exhibit A to Permit Modification Request); *See also* Exhibit 11 (aerial photos of current erosion); Exhibit 12 (2003 historic erosion photos when USACE dredging was delayed one year). In Olsen's words, "irreparable impacts are imminent in the entire area of the proposed revetment." *Id.* at 2. Also, as shown on Exhibit 4, Topographic Exhibit of Cape Fear Trail, the interior of the Island behind the rapidly eroding frontal dune is low-lying. If the dune is allowed to breach, flooding of the roads and Island interior is threatened.

(c) Do the hardships result from actions taken by the petitioner? Explain.

No. The hardships do not result from the actions of the Village. Instead, the Village has—at great expense—endeavored to mitigate the hardships through, among other things, local beach fill projects, maintenance of its sand-filled tube groin field and an existing sandbag revetment. The U.S. Army Corps of Engineers (USACE) is obligated to perform periodic sand placement in the vicinity of the Point; however, such placement has not occurred in the past year and no funding has been allocated to the USACE for sand placement next fiscal year, despite the Village's active lobbying efforts. Without sand placement by the Corps, the erosion will only worsen. *See* Exhibit 12 (2003 historic erosion photos when USACE dredging was delayed one year).

(d) Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

Yes. See below.

(d)(1) The variance requested by the Village will be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission.

One expressed goal of the Commission is to *preserve and protect habitat*. See 15A NCAC 07H .0209(c) (stating that official management objectives of coastal shorelines include “conserv[ing] and manag[ing] the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values”). At present, the Island’s shoreline near the Point is quickly disappearing. By protecting the Point and the adjacent dunes with a more comprehensive response to the rapid erosion, the Village will be restoring and protecting vital habitat for sea turtles, birds and other natural resources. See 6 July 2011 letter from BHI Conservancy, “The BHI Conservancy supports efforts to protect critical dune habitat on our southwestern beaches”; 15A NCAC 07M .0202(a) (“shoreline erosion response projects shall avoid losses to North Carolina’s natural heritage”). Further, allowing the Village to construct a sandbag revetment to address the unique and severe erosion at the Point—rather than steadfastly adhering to the blanket prohibition of such structures in the Rules—is consistent with the Commission’s dedication to *rational management* of North Carolina’s shorelines. See 15A NCAC 07H .0101(a) and (b) (referring to CAMA’s “basic purpose” to provide for “rational management” of coastal resources). Additionally, by providing the Village a necessary tool in its fight to protect the Island’s public beaches from accelerated erosion, the variance would further the Commission’s stated goals regarding the *protection of public trust beaches*, including the following:

It is the objective of the Coastal Resources Commission to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines, as an interrelated group of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to the lands and waters of the coastal area.

15A NCAC 07H .0203; see also 15A NCAC 07H .0207(c) (establishing that official management objective of public trust areas is “[t]o protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value”); 15A NCAC 07H .0303(b) (“it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area”); 15A NCAC 07M .0202(a) (“The public right to use and enjoy the ocean beaches must be protected. The protected uses include traditional recreational uses (such as walking, swimming, surf-fishing, and sunbathing) as well as commercial fishing and emergency access for beach rescue services.”). The requested variance also comports with the Commission’s goals of *protecting life, property and amenities* from destruction of damage from rapid erosion, such as that impacting the Point:

It is hereby declared that . . . protection of the recreational use of the shorelines of the state is in the public interest. In order to accomplish these public purposes, the planning of future land uses, reasonable rules and public expenditures should be created or accomplished in a

coordinated manner so as to minimize the likelihood of damage to private and public resources resulting from recognized coastal hazards.

15A NCAC 07M .0201 (“Declaration of General Policy”); *see also* 15A NCAC 07H .0303(a) (recognizing that “[t]he loss of life and property to [destructive forces indigenous to the Atlantic shoreline] . . . can be greatly reduced by . . . care taken in prevention of damage to natural protective features particularly primary and frontal dunes”). Finally, a standard of the Commission is that erosion control measures—such as sand bag revetments—be *temporary*:

Temporary measures to counteract erosion, such as the use of sandbags and beach pushing, should be allowed, but only to the extent necessary to protect property for a short period of time until threatened structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary stabilization measures must be compatible with public use and enjoyment of the beach.

See 15A NCAC 07M .0202(e). The sandbag revetment sought in this variance request is a temporary solution to the erosion-related problems at the Point. The goal of the sandbag revetment is to attempt to mitigate harm to the beach and dune at the Point until such time as the USACE performs sand dredging with beach placement on BHI under the existing Sand Management Plan.

(d)(2) The variance requested by the Village will secure the public safety and welfare.

The severe erosion threatens public safety and welfare, including public road Sandpiper Trail and South Bald Head Wynd, the Village’s primary evacuation route. Critical infrastructure, including, but not limited to, water, sewer, electric, cable and television transmission lines serving large portions of the Island run along South Bald Head Wynd. The erosion further threatens rare natural habitat, dunes, and homes. The revetment requested is a last resort and intended to protect public safety and welfare until the USACE performs channel maintenance dredging and sand placement on BHI under the existing Sand Management Plan.

(d)(3) The variance requested by the Village will preserve substantial justice.

The Village herein seeks a variance only after all other measures have been explored. Factors beyond the Village’s control—including the lack of USACE funding for maintenance dredging—have combined to cause an emergency situation that requires an immediate response by the Village. Substantial justice would be served by permitting the Village to install and maintain a sandbag revetment and connect it to that already existing sandbag revetment to the south of the proposed development site. The Village will undertake the proposed work at its expense as a short-term measure of last resort to attempt to protect from imminent and substantial harm to critical roads and infrastructure, habitat and homes.

STIPULATED EXHIBITS**ATTACHMENT E**

<u>Exhibit No.</u>	<u>Description</u>
1	A true and accurate copy of CAMA Permit No. 9-95, as modified on August 20, 2009.
2	A true and accurate copy of the revised Modification Request dated July 7, 2011, with exhibits.
3	A true and accurate copy of DCM's written denial of the Modification Request.
4	A true and accurate copy of topographic exhibit of Cape Fear Trail.
5	A true and accurate copy of June 17, 2011 Bald Head Association Authorized Agent Appointment.
6	A true and accurate copy of July 6, 2011 BHI Conservancy letter of support.
7	A true and accurate copy of July 8, 2011 BHI Limited LLC letter of support.
8	A true and accurate copy of July 8, 2011 BHI Club letter of support.
9	A true and accurate copy of July 6, 2011 Bald Head Association letter of support.
10	A true and accurate copy of map of South Bald Head Wynd and Sandpiper Trail.
11	A true and accurate copy of aerial photos of May 31, 2011 and July 12, 2011.
12	A true and accurate copy of photos from October 29 and December 14, 2003.
13	A true and accurate copy of photos from August 25 and 22, 2009.
14	A true and accurate copy of excerpts from Olsen Associates, Inc., Monitoring Report No. 8 (June 2009 to May 2010), pp. 8, 47, 60-62; Figures C-5 and D-5.
15	A true copy of Bald Head Island Conservancy beach monitoring data.
16	A true and accurate of copy of April 2010 and April 2011 shoreline data.
17	A true and accurate copy of a July 26, 2011 photo of groin 16.

Permit Class
RENEWAL
MAINTENANCE 5
MODIFICATION/MINOR

Permit Number
9-95

STATE OF NORTH CAROLINA
Department of Environment and Natural Resources
and
Coastal Resources Commission

Permit

for

Major Development in an Area of Environmental Concern
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

Issued to Village of Bald Head Island, PO Box 3009, Bald Head Island, NC 28461

Authorizing development in Brunswick County at Ocean Beach, south shore Bald head Island
and Cape Fear River Channel as requested in the permittee's letter dated 5/20/09

Including the attached workplan drawings (2) both dated 5/20/09

This permit, issued on August 20, 2009, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

- 1) Unless specifically altered herein, this minor modification/renewal authorizes the reconstruction and realignment of the previously authorized sand tube groin field, all as described in the letter dated 5/20/09 and as depicted in the attached workplan drawings dated 5/20/09.

(See attached sheet for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

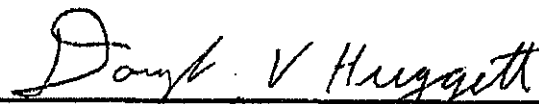
Any maintenance work or project modification not covered hereunder requires further Division approval.

All work must cease when the permit expires on

December 31, 2014

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DENR and the Chairman of the Coastal Resources Commission.


for James H. Gregson, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.

EXHIBIT

Signature of Permittee

ADDITIONAL CONDITIONS

Maintenance Clause

- 2) The Division of Coastal Management shall be notified in writing at least two (2) weeks in advance of any maintenance work authorized by this permit, and such notification shall include:
 - A. The number of the original permit.
 - B. A statement that no dimensional changes are proposed.
 - C. A copy of the original permit plans with cross-hatching indicating the area to be maintained, as well as a narrative of the maintenance work to be carried out.
 - D. The date of map revision and the permittee's signature shown anew on the original plan.

General

- 3) This renewal/minor modification shall be attached to the original of Permit No. 9-95, as well all modifications, renewals and refinements, and all documents shall be readily available on site when Division personnel inspect the project for compliance.
- 4) All conditions and stipulation of the active permit remain in force under this renewal/minor modification unless specifically altered herein.



The Village of Bald Head Island

July 7, 2011

VIA U.S. MAIL AND EMAIL

Division of Coastal Management ("DCM")
North Carolina Department of Environment and Natural Resources
400 Commerce Avenue
Morehead City, North Carolina 28557

Attn: Mr. James H. Gregson, *Director*
Jim.Gregson@ncdenr.gov

Doug Huggett, *Manager*
Doug.Huggett@ncdenr.gov

Re: Amended Minor Permit Modification Request
Village of Bald Head Island – Sand Tube Groin Field
CAMA Major Permit No. 9-95
Department of Army Permit No. 199404687

Ladies and Gentlemen:

Pursuant to 15A NCAC 07J .0405(a), the Village of Bald Head Island (the "Village") hereby requests a modification to the Village's above-referenced permit (the "Permit"). This request is to modify the Permit to allow the Village to construct a sandbag revetment within the boundaries of the sand tube groin field. The Village proposes to construct the work on an as needed basis. Segment A as shown in the "Plan of Improvement, Exhibit D" would be constructed immediately. Segment B, as shown in Exhibit D, would be constructed in consult with DCM as conditions necessitate it. This letter request and the Exhibits hereto amend and supersede the letter and Exhibits submitted June 29, 2011.

Both the Village and Olsen Associates, Inc. (the Village's coastal engineering firm) believe, based upon extensive study and past experience in 2003-04, that the revetment is necessary as a last resort to attempt to mitigate the adverse impacts of the rapid, non-natural erosion affecting Bald Head Island's western-most shoreline at "the Point". The rapid erosion imperils rare and unique habitat, public beaches, roads, including the Village's main evacuation route, South Bald Head Wynd, property and utilities, including water, sewer, cable and telephone transmission lines that belong to and/or serve the Village and its property owners.

The details of this proposed modification are shown in the enclosed Exhibits authored by Olsen Associates, Inc.:

P.O. BOX 3009 • BALD HEAD ISLAND, NC 28461
(910) 457-9700 • FAX (910) 457-6206 • WEBSITE: <http://www.villagebhi.org>



- A. The "Plan of Action";
- B. The "Project Location";
- C. The "Existing Conditions (June 2011)";
- D. The "Plan of Improvement." And
- E. The "Sand Bag Revetment Typical Section".

Photos of the existing revetment along South Bald Head Wynd, in the same dimensions as the proposed revetment, are attached as Exhibit F. The Village requests an expedited determination of this request, including through the minor modification request provisions of 15A NCAC 07J. At this time, the Village seeks the issuance of a modified Permit as described above and in the enclosed materials.

Thank you for your attention to this matter, and I look forward to hearing from you soon.

Sincerely,



Chris McCall
Village Shoreline Protection Manager

Enclosures

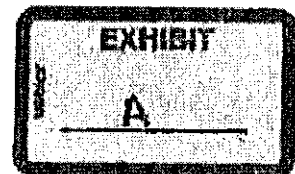
cc: Mayor J. Andrew Sayre
Manager Calvin R. Peck, Jr.
Charles S. Baldwin, IV, Esq.
George House, Esq.
Erik J. Olsen, P.E.

**Bald Head Island, N.C.
Sand Bag Revetment Extension**

PLAN OF ACTION

Background. The Wilmington District, USACOE has not been funded by Congress for purposes of performing maintenance dredging of the inner portion of the entrance channel for the Wilmington Harbor Navigation Project during the spring of 2011. Accordingly, episodic sand placement along South Beach at Bald Head Island, as prescribed by the Wilmington Harbor Sand Management Plan (WHSMP), did *not* occur. Moreover, funding for the requisite maintenance dredging in the spring of 2012 has likewise not been realized. As a result, severe erosion and shoreline recession along the westernmost segment of South Beach is expected to occur to historical levels similar to those which necessitated a Variance for major sand tube revetment modifications (height and width) in 2003 intended to protect public infrastructure and an evacuation route, South Bald Head Wynd. Currently, it is estimated that there are some 2,500 ± ft. of sand tube revetment (buried below beach fill and/or dune) westward of BHI baseline Sta. 71+00 ±. This interconnected sand tube revetment lies seaward of *both* individual private residences and public infrastructure (roads, sewer, water, etc.).

Monitoring surveys by the Village dated May 2011 indicate that currently some 3,400 ft of South Beach shorefront (Sta. 39+60 – 73+50) lies farther landward than where the shoreline existed prior to the 2000 federal Harbor deepening project. This documented navigation project impact is expected to become greatly exacerbated over the upcoming months without the construction of a federal beach disposal operation. As a result, significant loss of beach fill and dune (constructed in 2010 by the Village), as well as deterioration and loss of multiple sand tube groins (likewise replaced in 2010 by the Village) will in all probability occur. This predictable outcome is the basis of this request by the Village for a Variance to build a sand tube revetment within the most chronic area of erosion in the area of the groinfield. The revetment will extend the existing buried sand tube revetment sufficient to protect roads, including South Bald Head Wynd, homes, and public infrastructure, including water, sewer, electric and cable transmission lines.



27 June 2011

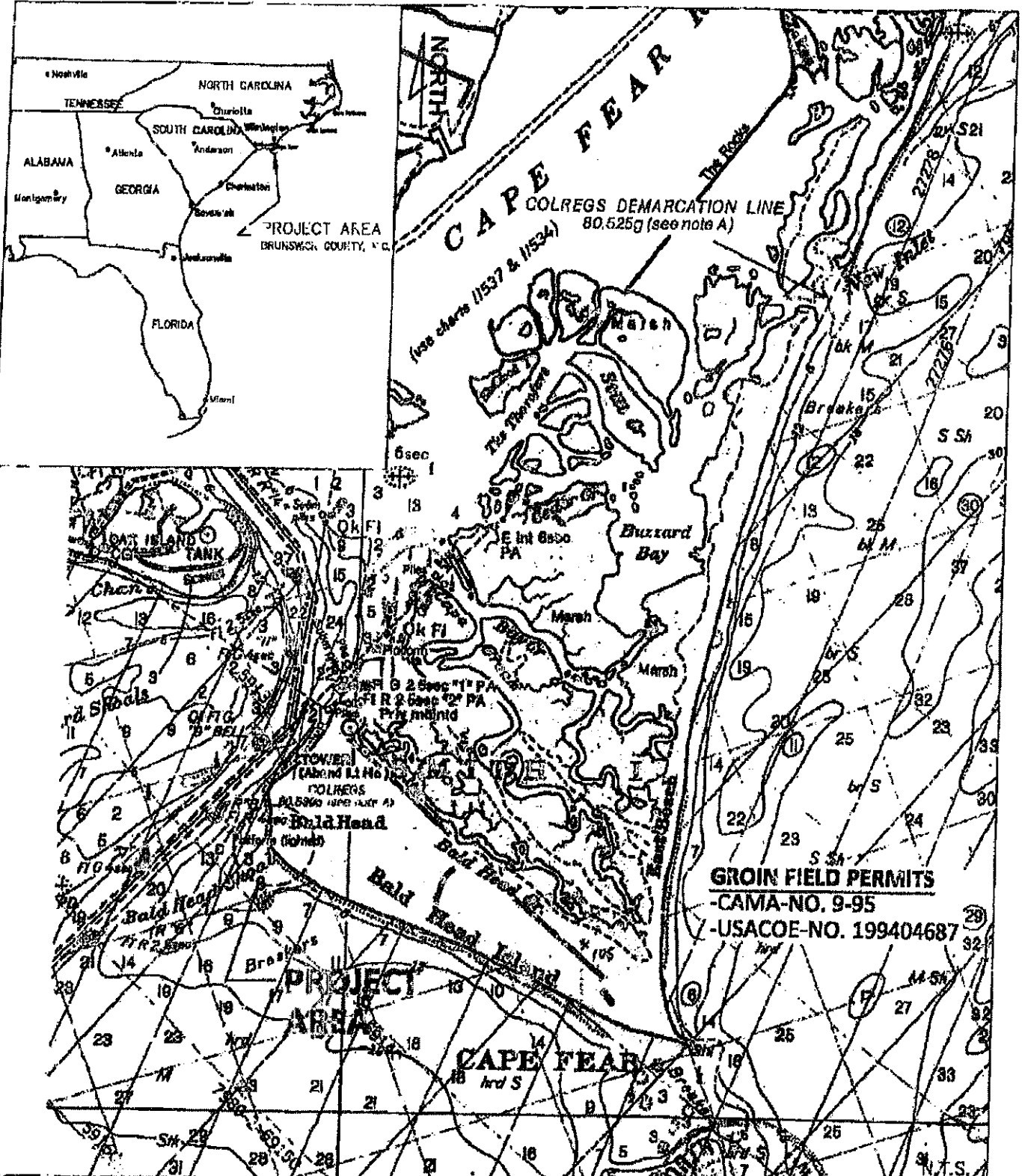
olsen associates, inc.

VARIANCE REQUEST

It is my professional engineering opinion that, unless beach fill placement on South Beach occurs every two years, irreparable harm will occur to the western end of South Beach (which includes the Point), as well as portions of West Beach. Therefore, as the Corps will not be performing maintenance dredging this winter (2011-12) with compensating fill placement on Bald Head Island, it is my opinion that irreparable impacts are imminent in the entire area of the proposed revetment. As such, the revetment is necessary as a last resort to attempt to mitigate the adverse and rapid impacts of the increasingly severe erosion. The revetment, however, is a temporary measure and only large-scale beach fill from Corps maintenance dredging, to occur at the earliest in the winter of 2012-13, will significantly improve the erosion.

27 June 2011

olsen associates, inc.



GROIN FIELD PERMITS
 -CAMA-NO. 9-95
 -USACOE-NO. 199404687



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SAND BAG REVETMENT EXTENSION
BALD HEAD ISLAND, NORTH CAROLINA

PROJECT LOCATION

DESIGNED	APPROVED	REVISION	DATE
			7/07/11
DRAWN BY:			

EXHIBIT

B