

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

68488

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

DOCKET NO. 08-ALJ-07-0365-CC

Beaufort County.....Appellant,

v.

South Carolina Department of Health and Environmental Control
and Pinckney Point, LLC..... Respondents.

JOINT MOTION TO DISMISS APPEAL

The South Carolina Department of Health and Environmental Control (SCDHEC) and Pinckney Point, LLC, hereby jointly move to dismiss this appeal. This motion is made pursuant to the terms of the settlement agreement between the parties, a copy of which is attached to this Joint Motion. Given there are no more issues in controversy, the parties jointly request this appeal be dismissed.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

RECEIVED

MAY 23 2013

SC Court of Appeals

McNair Law Firm, P.A.

By: 

Leslie S. Riley
Post Office Box 1431
Charleston, South Carolina 29402

Attorneys for Respondent
Pinckney Point, LLC

May 20, 2013

SCDHEC

By: 

Bradley D. Churdar
Chief Counsel
SCDHEC-OCRM
1362 McMillan Avenue Suite 400
Charleston, SC 29405

May 20, 2013

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MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (hereafter "Agreement") is entered into by and between Pinckney Point, LLC (Pinckney Point), a South Carolina limited liability company, and the South Carolina Department of Health and Environmental Control (DHEC), effective on the date last executed. Pinckney Point, LLC, and DHEC collectively sometimes referred to herein as "the Parties."

PARTIES

Pinckney Point, LLC, is a limited liability company formed for purposes of land acquisition and development and is the owner of approximately 233 upland acres, located in Beaufort County, South Carolina (the "Property"). Pinckney Point, LLC proposes to develop the Property as a residential development of approximately seventy-six (76) homesites (the "Development").

DHEC is a state agency charged with the administration of the Coastal Tidelands and Wetlands Act, S.C. Code Ann. §48-39-10 et seq., and the regulations promulgated thereunder.

RECITALS

1. The Parties hereto are currently involved in a contested case appeal initially before the South Carolina Administrative Law Court ("ALC") entitled *Pinckney Point, LLC v. South Carolina Department of Health and Environmental Control*, presently pending in the South Carolina Court of Appeals, Docket No. 08-ALJ-07-0365-CC (hereafter referred to as the "Appeal").

2. The Appeal arises from a challenge by Pinckney Point of the South Carolina Department of Health and Environmental Control (SCDHEC) Office of Ocean and Coastal Resource Management's

(OCRM) issuance of a critical area permit and 401 water quality certification, 2007-827-11W-P (the Permit) to Pinckney Point, which authorized the construction of three (3) community docks, a boat ramp, and a floating dock for the Development on and adjacent to the Okatie and Colleton Rivers and an unnamed tributary in Beaufort County, South Carolina. Beaufort County also challenged the issuance of the Permit and the two matters were consolidated for hearing purposes. The Beaufort County contested case was ultimately resolved and is not the subject of this agreement.

3. Pinckney Point's challenge to the Permit was based on its position that OCRM's regulations and DHEC's 401 water quality regulations allow for the issuance of seven community docks, a boat ramp, and a bridge.

4. The presiding Administrative Law Judge issued a Final Order and Decision on November 13, 2009, ordering Pinckney Point is entitled to five community docks, a boat ramp and a bridge. DHEC filed a Motion to Reconsider or Alter or Amend in the companion contested case and on November 13, 2009 the ALJ issued an Amended Final Order on January 6, 2010 (The "Amended Final Order and Decision"). DHEC filed an appeal of the Amended Final Order and Decision of the ALJ with the South Carolina Court of Appeals, where the Appeal is now pending.

5. Pinckney Point's claim that it is entitled to the structures authorized under the Amended Final Order and Decision and DHEC's claim its permit should be affirmed as initially issued constitute the disputes, allegations and averments in the Appeal and shall hereafter be collectively referred to as the "Claims."

6. The Parties desire to avoid further expense, controversy delay in implementation of development, burden and diversion of the Appeal and to fully resolve the Appeal by and among them. Further, the Parties have agreed on a compromise and settlement of this matter that each of the Parties believes to be in the best interest of the Parties. The terms of the compromise and settlement of this matter, which result in dismissal of the Appeal pending in the Court of Appeals and resolution of all of the Claims pending between the Parties, are set forth below.

COVENANTS

NOW THEREFORE, in consideration of the mutual covenants, agreements, promises and undertakings set forth herein, and for the good and valuable consideration to be received by the Parties hereto as provided in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Appeal before the Court of Appeals.** The Parties agree to file a joint Consent Motion with the Court of Appeals to dismiss the Appeal in accordance with the terms of this Agreement..

2. **Docks.** DHEC has issued the Permit to Pinckney Point, which includes a critical area permit and water quality certification authorizing the construction of three (3) community docks within the Development. As described above, the Permit was reviewed in the South Carolina Administrative Law Court ("ALC") in the form of a contested case. The ALC conducted a hearing on the combined contested cases filed by Beaufort County and Pinckney Point, LLC on July 14-15, 2009, and its Amended Final Order and Decision on modified the Permit to provide for five (5) community docks, boat ramp, floating dock and bridge. Notwithstanding the Amended Final Order and Decision, DHEC agrees to issue an Amended Permit authorizing the construction of four (4) community docks; which are identified as Community Docks One (1), Two (2), Three (3) and Four (4) as depicted in the drawing attached hereto as Exhibit B to this Agreement. Each Community Dock will have moorage for ten (10) boats. Moorage will be achieved by the construction of ten wet slips per dock, in the configuration depicted on the drawing

attached hereto as Exhibit B to this Agreement. Should Pinckney Point choose to alter the method of moorage of any or all of the permitted docks from wet slips to boat lifts (as was originally permitted), DHEC agrees to consider an amendment to the Amended Permit approving the construction of docks with boat lifts. Due to the boat lift configuration having already been placed on public notice during the initial review of the Permit, DHEC agrees to consider this amendment "in house;" that is, DHEC agrees to process the amendment without placing the amendment on public notice for a second time.

3. **Bridge and Jackass Island.** Pinckney Point shall have the right to construct a bridge to Jackass Island as applied for. Pinckney Point agrees not to construct any docks on Jackass Island.

4. **Eliminated Single Family Docks.** Pursuant to 23A S.C. Code Ann. Reg. 30-12(A)(5) and the Judge's Amended Final Order and Decision dated January 6, 2010, Pinckney Point shall have the right to seek permits for 15 private, recreational docks. Should Pinckney Point choose to construct less than four community docks, Pinckney Point or its successors in interest may seek more permits for private, recreational docks in accordance with S.C. Code Ann. Reg. 30-12(A)(5). Pinckney Point agrees that the appropriate number of lots will remain eliminated in accordance with Reg. 30-12(A)(5).

5. **Attorneys' Fees, Costs, and Expenses.** Each of the parties hereto shall be responsible for its own attorneys' fees, experts' and consultants' fees, and all other costs and expenses of any kind incurred in connection with or related in any way to the claims, allegations, litigation, or other matters to be compromised, dismissed, resolved or released pursuant to this Agreement.

6. **Disputed Liability.** The execution of this Agreement shall not constitute the admission by any Party of the allegations made against it in the Appeal or an admission of any liability or damage to any other party based on or arising out of the allegations made against them. The Parties hereto understand, agree, and acknowledge that the consideration being provided pursuant to this Agreement is not, is not intended to be, and shall not be construed to be, in any way whatsoever now or at any time in the future for any purpose or in any future proceeding an admission of liability or responsibility of any kind with respect to any of the matters at issue in the Appeal. Neither this Agreement, nor any of the terms or provisions hereof, nor the substance of this Agreement or any of its terms or provisions, shall be offered or received into evidence in any proceeding as evidence of or to prove the liability or wrongdoing of any type or nature whatsoever on the part of any party hereto, or to prove an admission or concession of any liability or wrongdoing by any party.

7. **Waiver and Modification.** No waiver or modification of any of the terms of this Agreement will be valid or effective unless in writing and signed by all parties to this Agreement. The failure of any party to enforce, at any time, any provision of this Agreement, or to require the performance of any provision hereof, shall not be and shall not be construed to be a waiver or modification of such provision, or of the right thereafter to enforce such provision or any other provision of this Agreement. No waiver of any breach of this Agreement shall be, nor shall such be construed to be, a waiver of any other or subsequent breach.

8. **Entire Agreement.** Except for the consideration provided to the Parties through this Agreement, the Parties hereto declare and represent that no promise, inducement, or agreement not expressed in this Agreement has been made or offered to them and that this Agreement contains and represents the entire agreement between the parties regarding the settlement of the claims in the Appeal and that the terms of this Agreement are contractual and are not merely recitals.

9. **Warranties and Representations of Authority.** The Parties hereto, and each of them, represent and warrant that all necessary authorizations and all other actions and approvals have been

taken and received such that execution, delivery, and performance of this Agreement and all other actions taken or to be taken pursuant to or in connection with this Agreement have been authorized and approved.

10. **Binding Effect**. This Agreement shall be binding on, and inure to the benefit of, all of the parties hereto, as well as all of their predecessors, successors, assigns, affiliated companies, shareholders, directors, officers, employees, agents, representatives, creditors, consultants, attorneys, heirs, executors, and administrators, as well as any corporation, partnership, or other entity into which any party hereto may merge or with which any party hereto may be consolidated.

11. **Consultation with Legal Counsel**.

- (a) Each party hereto, before executing this Agreement, had an opportunity to consult with legal counsel with respect to the full force and effect of this Agreement and each of the terms and provisions hereof, and each party fully understands and intends the full force and effect of this Agreement and each of its terms and provisions.
- (b) Each party to this Agreement has had a full and complete opportunity to investigate any and all matters believed by them to be appropriate or prudent for investigation or understanding prior to entering into this Agreement.

12. **Authorship of the Agreement**. The Parties agree that this Agreement has been drafted jointly by the Parties hereto and no one party shall be deemed to be the party who drafted the Agreement.

13. **Acknowledgement of Fair Consideration**. The Parties acknowledge that the consideration has been received in connection herewith and is fair, just and adequate, and constitutes lawful consideration supporting the execution and legally binding effect hereof.

14. **No Assignment of Rights**. Each of the Parties hereto represents and warrants that no part of any alleged claim or claims released herein have been assigned to any other entity, person, firm or corporation.

15. **Additional Documentation**. The Parties shall execute such additional documents as shall be necessary to implement or effect the provisions contained in this Agreement.

S.C. Department of Health &
Environmental Control

By: Brad Churston

Its: OCRM Chief Counsel

Date: 2-7-2013

Pinckney Point, LLC

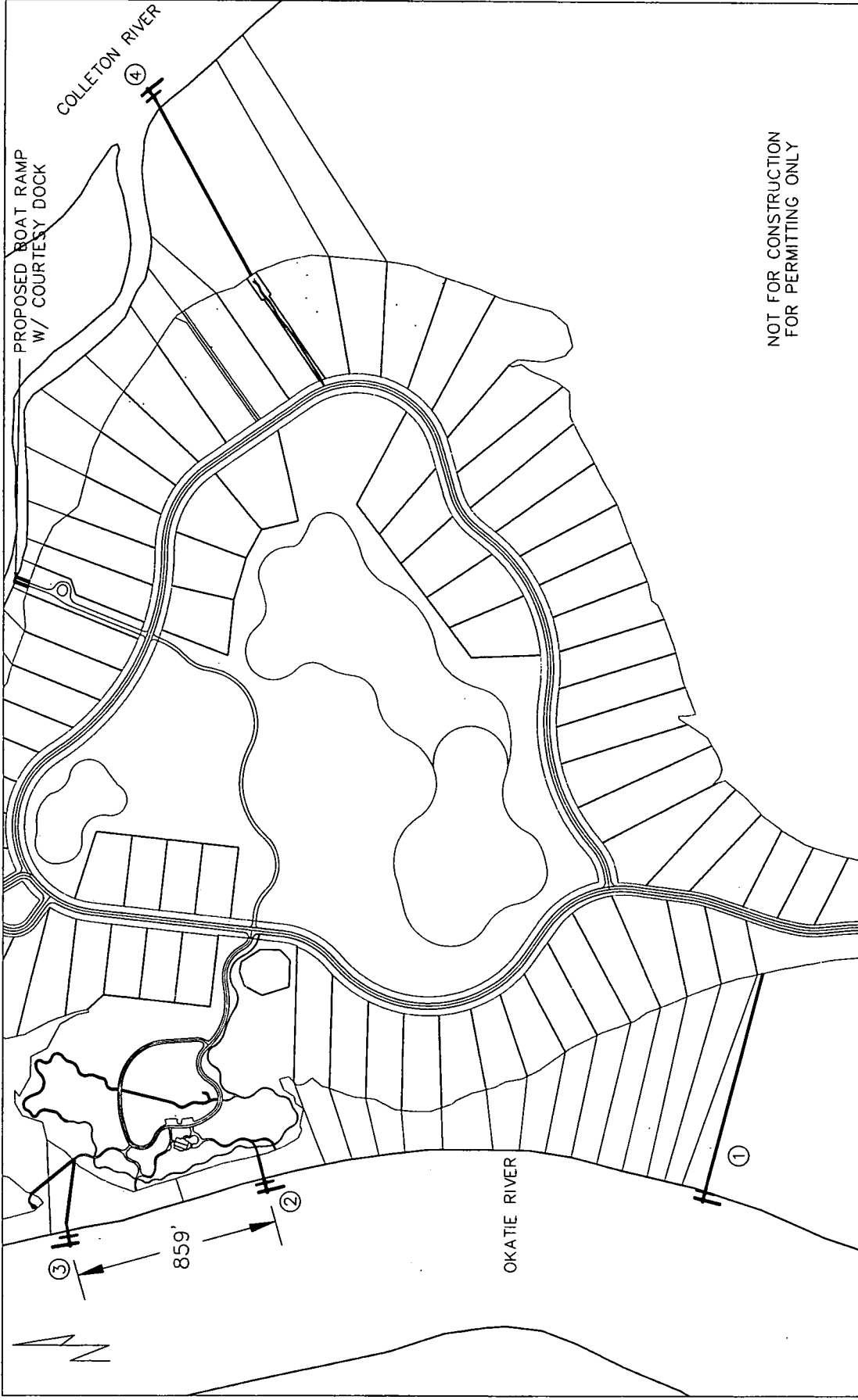
By: [Signature]

Its: PRESIDENT

Date: 3/21/13

EXHIBIT B

**Pinckney Point Conceptual Master Plan
prepared by Smith Engineering and Construction dated December 5, 2012**



NOT FOR CONSTRUCTION
FOR PERMITTING ONLY

PROPOSED ACTIVITY:
BOAT RAMP AND COMMUNITY DOCKS
COUNTY:
BEAUFORT
APPLICANT:
PINKNEY POINT LLC
DATE: DECEMBER 5, 2012

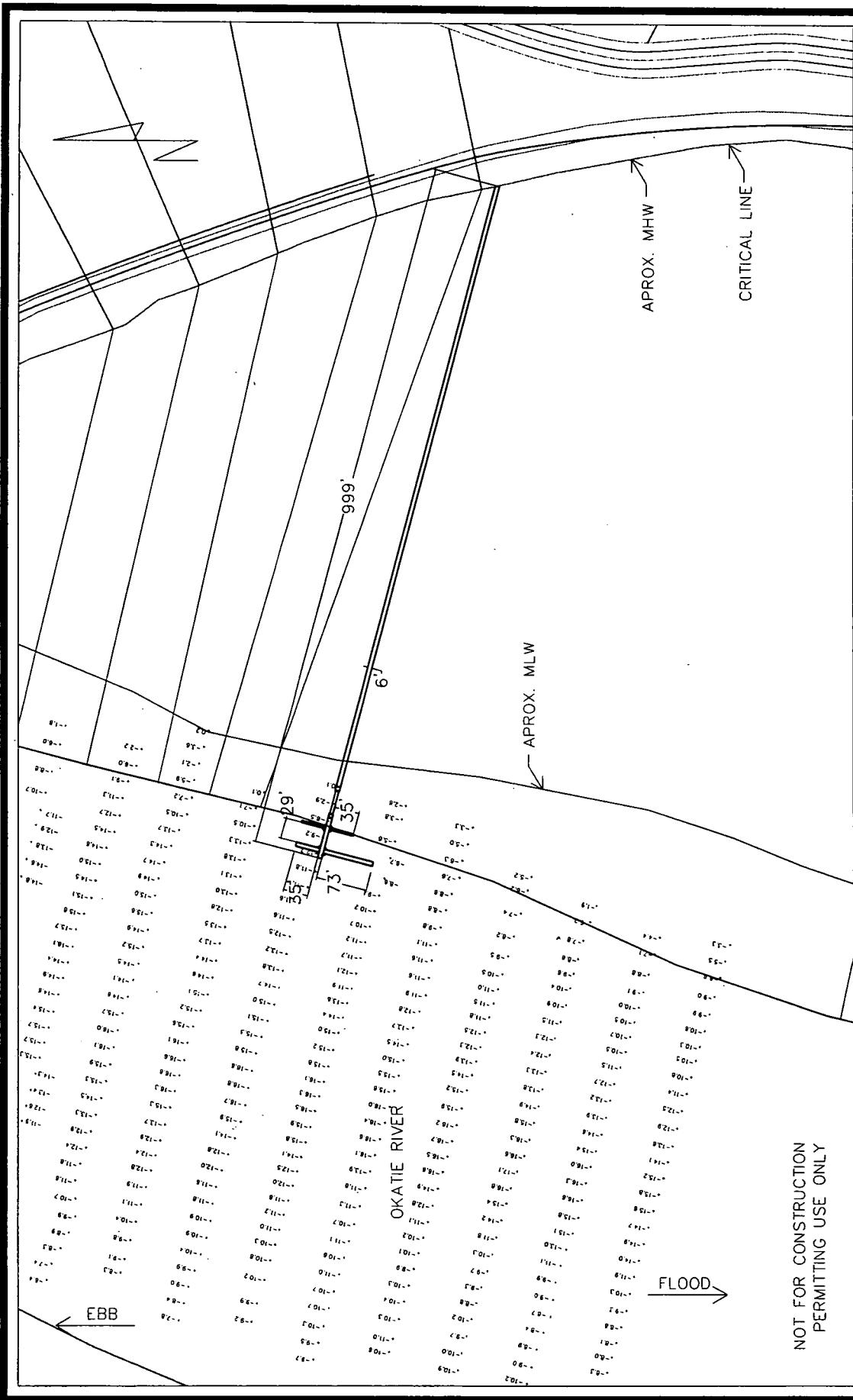
DOCK LOCATION PLAN

SHEET 1 OF 5

SCALE: 1" = 600'

SMITH ENGINEERING

 AND CONSTRUCTION
 PO BOX 13599
 CHARLESTON, SC 29422
 PHONE: 843-785-4000



PROPOSED ACTIVITY:
 BOAT RAMP AND COMMUNITY DOCKS
 COUNTY:
 BEAUFORT
 APPLICANT:
 PINKNEY POINT LLC
 DATE: DECEMBER 5, 2012

COMMUNITY DOCK 1 PLAN
 10 FLOATING SLIPS

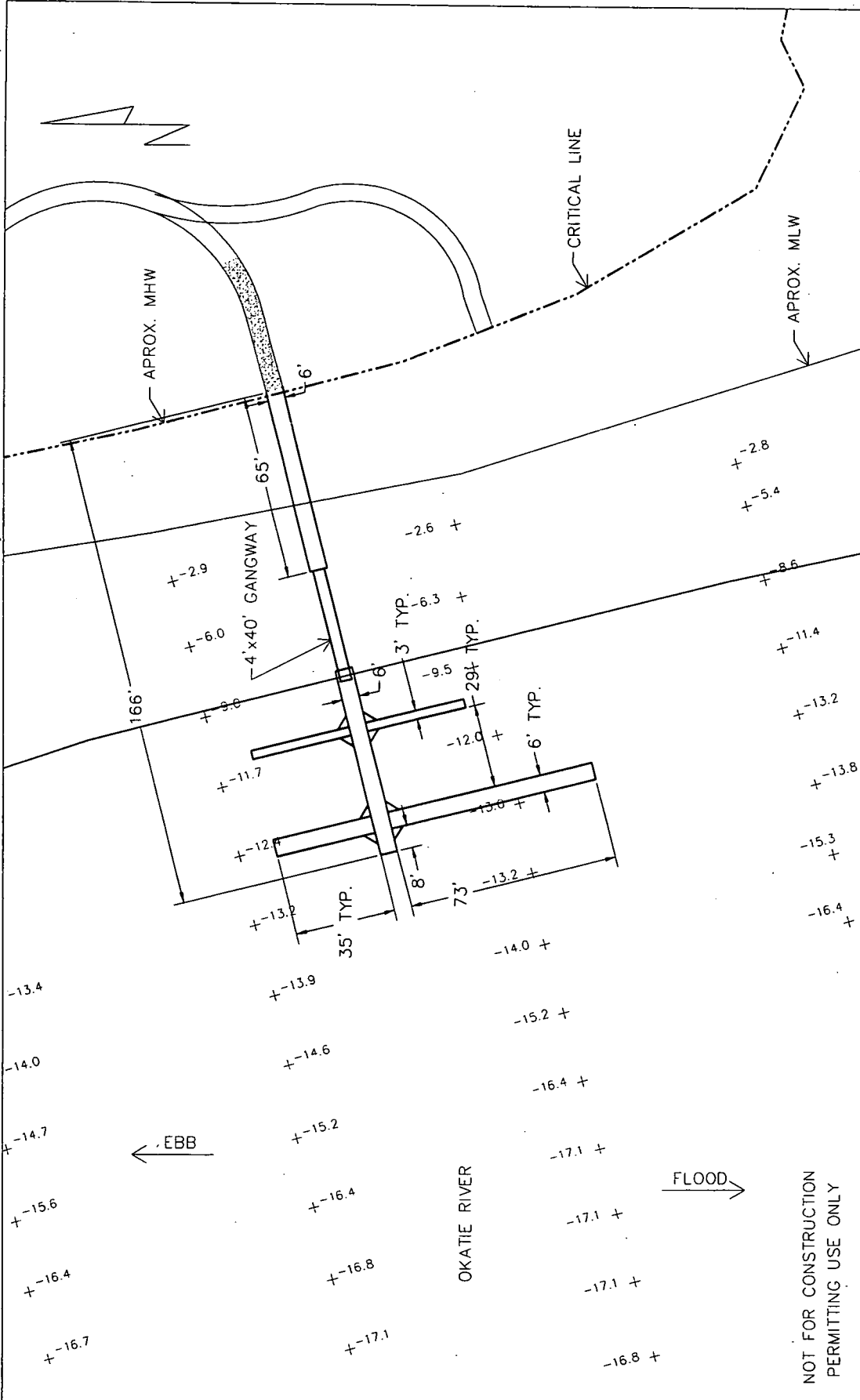
SCALE: 1" = 200'

SHEET 2 OF 5

NOT FOR CONSTRUCTION
 PERMITTING USE ONLY

SMITH ENGINEERING
SEC
 AND CONSTRUCTION

PO BOX 13599
 CHARLESTON, SC 29422
 PHONE: 853-782-5000



PROPOSED ACTIVITY:
 BOAT RAMP AND COMMUNITY DOCKS
 COUNTY:
 BEAUFORT
 APPLICANT:
 PINCKNEY POINT LLC
 DATE: NOV 6, 2012

COMMUNITY DOCK 2 PLAN
 10 WET SLIPS

SHEET 3 OF 5

SCALE: 1" = 50'

NOT FOR CONSTRUCTION
 PERMITTING USE ONLY



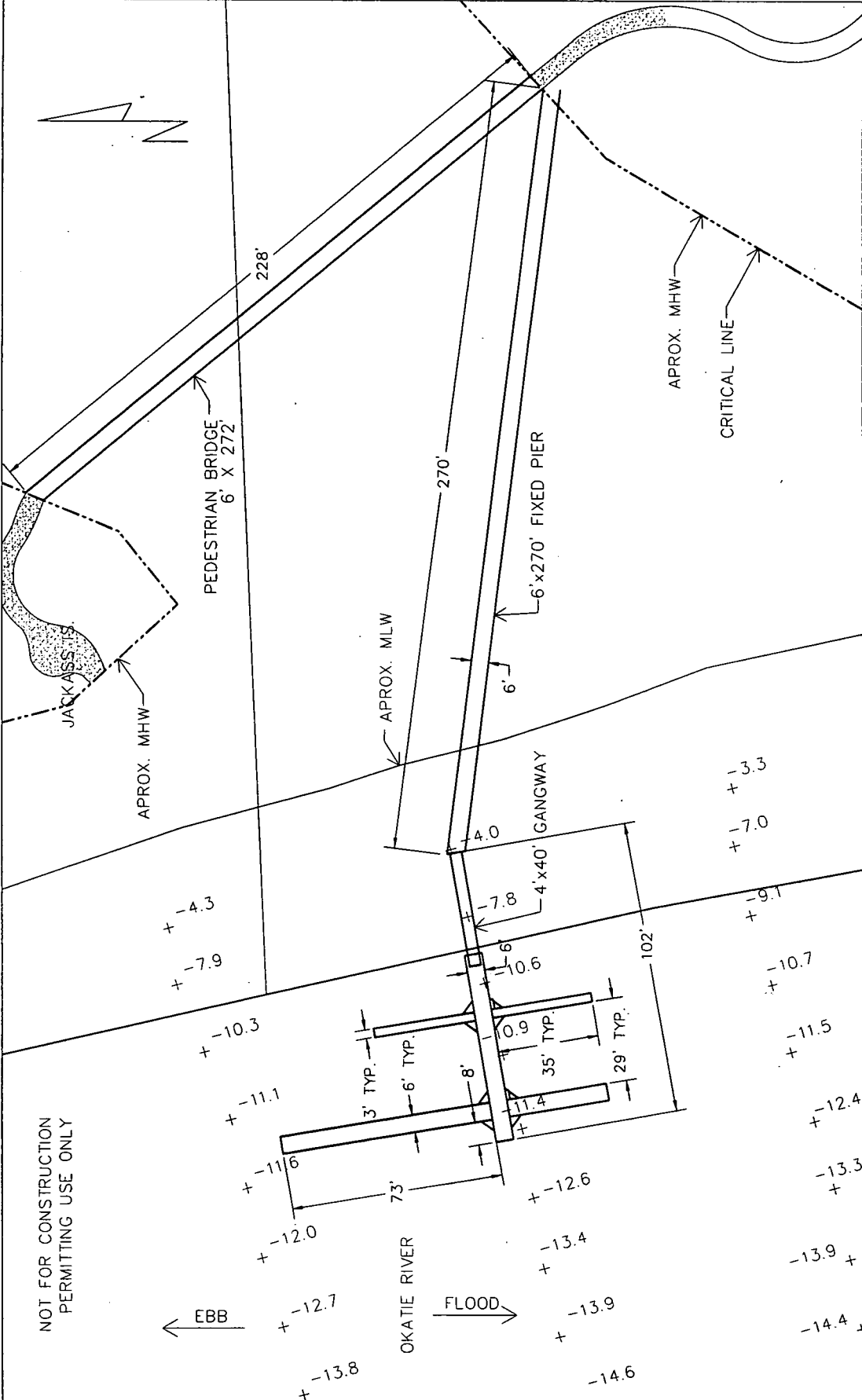
PO. BOX 13599
 CHARLESTON, SC 29422
 PHONE: 853-795-4000

NOT FOR CONSTRUCTION
PERMITTING USE ONLY

← EBB

FLOOD →

OKATIE RIVER



PROPOSED ACTIVITY:
BOAT RAMP AND COMMUNITY DOCKS
COUNTY:
BEAUFORT
APPLICANT:
PINCKNEY POINT LLC
DATE: DEC 5, 2012

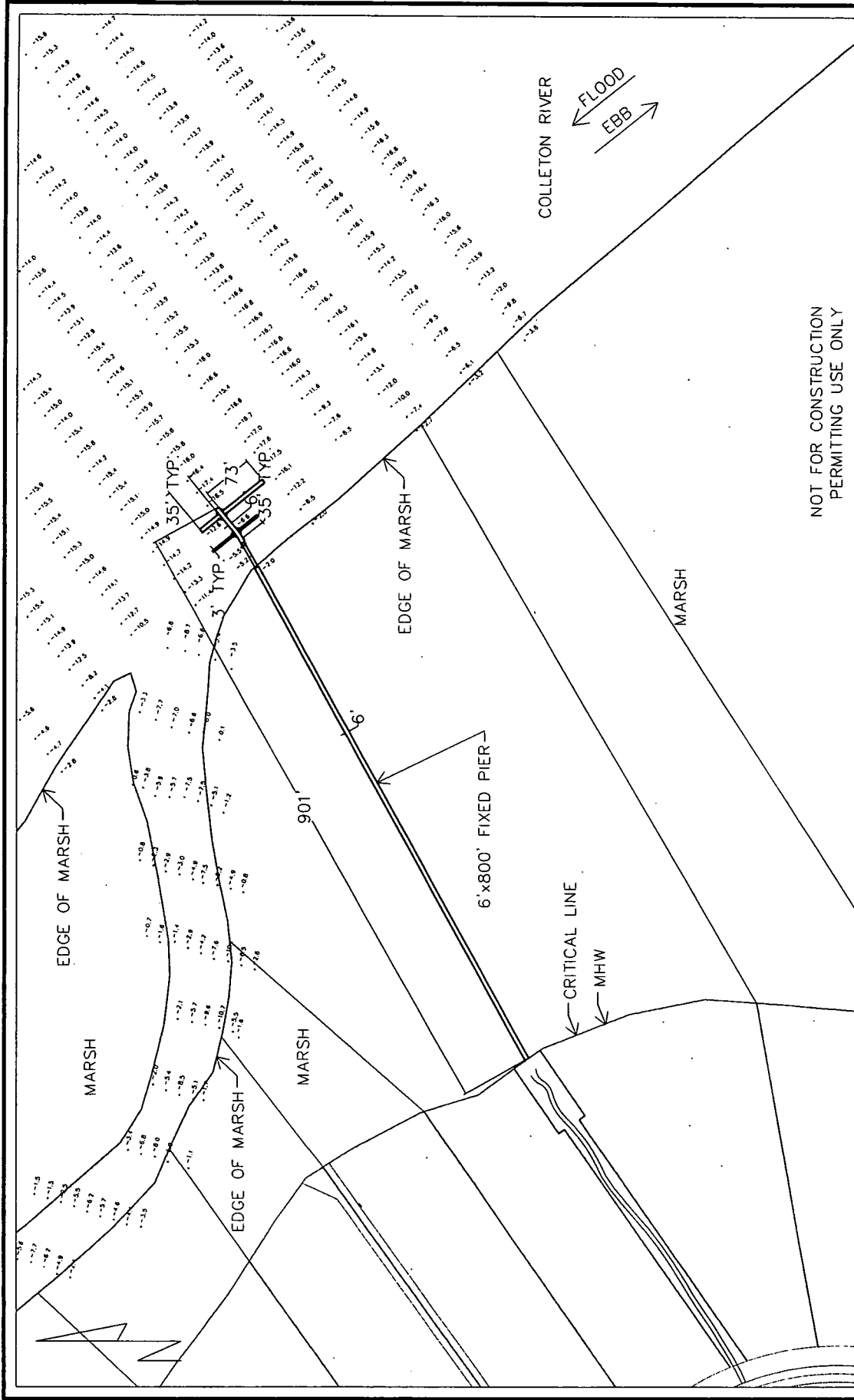
COMMUNITY DOCK 3 PLAN
10 WET SLIPS

SCALE: 1" = 50'

SHEET 4 OF 5

SMITH ENGINEERING AND CONSTRUCTION

 PO BOX 13599
 CHARLESTON, SC 29422
 PHONE: 843-782-4000



NOT FOR CONSTRUCTION
PERMITTING USE ONLY



PROPOSED ACTIVITY:
BOAT RAMP AND COMMUNITY DOCKS
COUNTY:
BEAUFORT
APPLICANT:
PINCKNEY POINT LLC
DATE: NOV 6, 2012

COMMUNITY DOCK 4 PLAN
10 FLOATING SLIPS

SCALE: 1" = 200' SHEET 5 OF 5