

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Judge

Docket No. 19-ALJ-07-0089-CC

South Carolina Coastal Conservation League, ...Appellant,

vs.

South Carolina Department of Health and Environmental Control and
Debordieu Colony Community Association, ... Respondents.

RECORD ON APPEAL
VOLUME 9 OF 9

Leslie S. Lenhardt
Benjamin D. Cunningham
P.O. Box 1380
Pawleys Island, SC 29585
Attorneys for Appellant

Sallie P. Phelan
Bradley D. Churdar
1362 McMillan Ave. Ste 400
Charleston, SC 29405
Attorneys for S.C. Dept. of Health and
Environmental Control

Tracey C. Green
Randolph R. Lowell
John Joseph Owens
133 River Landing Drive, Ste 200
Charleston, SC 29492
Attorneys for Respondent DeBordieu
Colony Community Association

To: Williams, Blair[WILLIABN@dhec.sc.gov]
Cc: Churdar, Bradley[churdabd@dhec.sc.gov]; Phelan, Sallie P.[phelansp@dhec.sc.gov]
From: Slagel, Matt 003844
Sent: Fri 02/21/2020 5:51:14 PM UTC
Subject: Fw: Graphic
Received: Fri 02/21/2020 5:51:24 PM UTC
Debidue ProposedGroin Shift 25ft 21Feb2020.pdf

Blair,

Please see attached for discussion.

Thanks,
Matt

--
Matt Slagel
Beachfront Permitting Project Manager
Critical Area Permitting Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0250
Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)

From: Tracey Green <TGreen@Willoughbyhoefer.com>
Sent: Friday, February 21, 2020 12:46 PM
To: Slagel, Matt <slagelmj@dhec.sc.gov>; Churdar, Bradley <churdabd@dhec.sc.gov>; Phelan, Sallie P. <phelansp@dhec.sc.gov>
Cc: rllowell@willoughbyhoefer.com <rllowell@willoughbyhoefer.com>; J. Joseph (Joe) Owens <JOwens@Willoughbyhoefer.com>
Subject: RE: Graphic

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***
Sorry.

From: Tracey Green
Sent: Friday, February 21, 2020 12:46 PM
To: 'slagelmj@dhec.sc.gov' <slagelmj@dhec.sc.gov>; Churdar, Bradley <churdabd@dhec.sc.gov>; 'Phelan, Sallie P.' <phelansp@dhec.sc.gov>
Cc: Randy Lowell <RLowell@Willoughbyhoefer.com>; J. Joseph (Joe) Owens <JOwens@Willoughbyhoefer.com>
Subject: Graphic

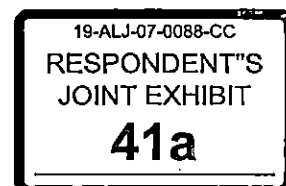
Here's what Tim has put together initially. This does not have property information. Tim says that the "revised landward end would be a minimum of 40 ft seaward of the OCRM Baseline which is on the seaward side of the house." Thanks.

Tracey



Tracey C. Green
WILLOUGHBY & HOEFER, P.A.
MAILING ADDRESS:
P.O. Box 8416
Columbia, SC 29202
PHYSICAL ADDRESS:
930 Richland Street
Columbia, SC 29201
(o) 803.252.3300 | (d) 803.771.2128 | (m) 803.727.4896
tgreen@willoughbyhoefer.com

003844



SCDHEC--005193

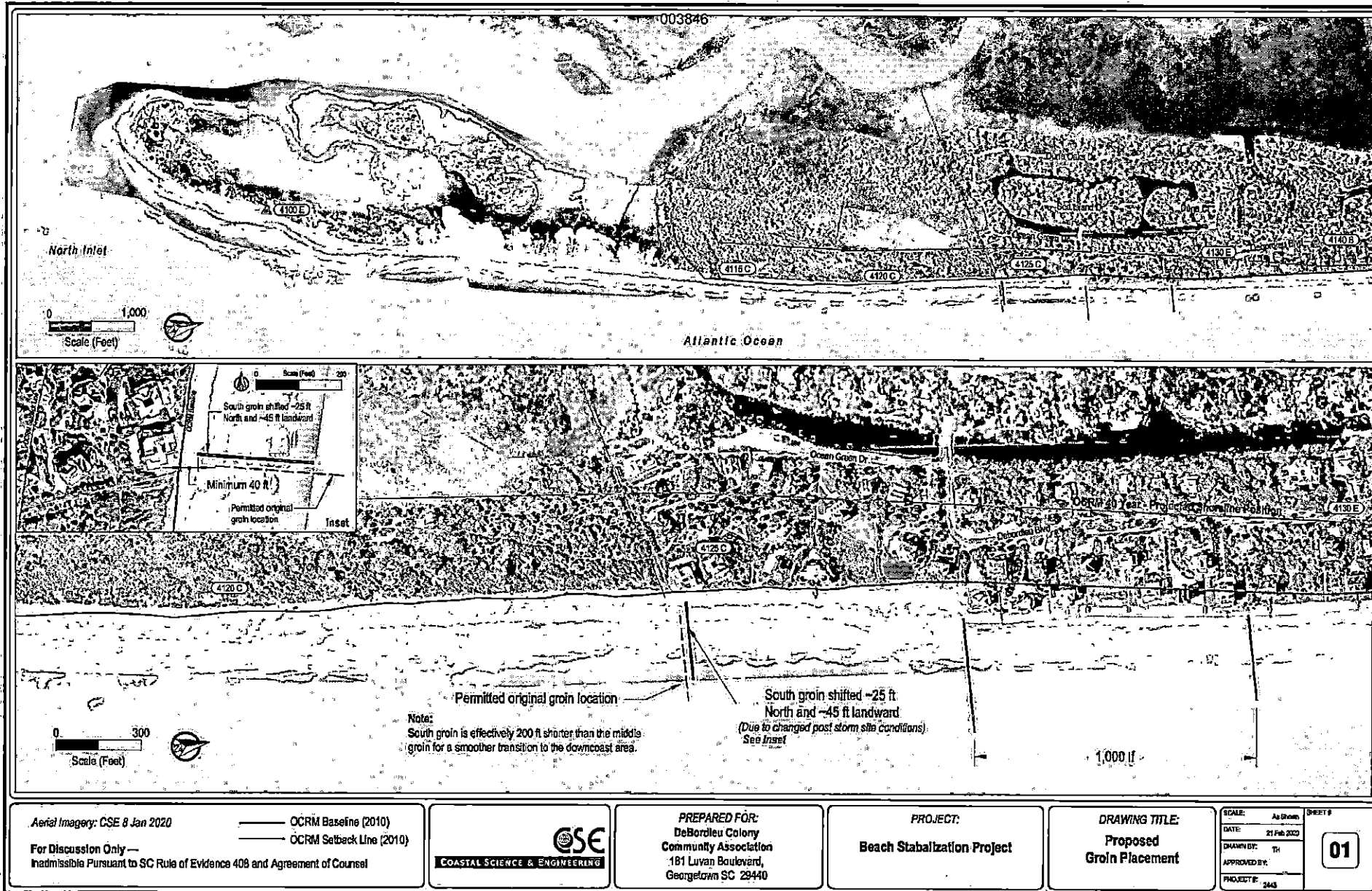
003845

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003845

SCDHEC--005194



003846

SCDHEC-005195

To: Tracey Green[tgreen@willoughbyhoefer.com]; Slagel, Matt[slagelmj@dhec.sc.gov]; Churdar, Bradley[churdabd@dhec.sc.gov]
Cc: rlowell@willoughbyhoefer.com[rllowell@willoughbyhoefer.com]; J. Joseph (Joe) Owens[JOWens@Willoughbyhoefer.com]; Williams, Blair[WillIABN@dhec.sc.gov]
From: Phelan, Sallie P.
Sent: Fri 02/21/2020 6:11:54 PM UTC
Subject: Re: Graphic
Received: Fri 02/21/2020 6:11:56 PM UTC

After seeing the drawing, the staff is only concerned with the southernmost property owner nearest the groin. (In other words, staff would require a no objection letter only from the one house and not two houses as we discussed earlier.)

Sallie P. Phelan
Assistant General Counsel
SC Department of Health and Environmental Control
1362 McMillan Avenue
Suite 400
Charleston, SC 29405
Office: (843) 953-0229
Fax: (843) 953-0201
Connect: www.scdhec.gov

From: Tracey Green <TGreen@Willoughbyhoefer.com>
Sent: Friday, February 21, 2020 12:46 PM
To: Slagel, Matt <slagelmj@dhec.sc.gov>; Churdar, Bradley <churdabd@dhec.sc.gov>; Phelan, Sallie P. <phelansp@dhec.sc.gov>
Cc: rlowell@willoughbyhoefer.com <rllowell@willoughbyhoefer.com>; J. Joseph (Joe) Owens <JOWens@Willoughbyhoefer.com>
Subject: RE: Graphic

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Sorry.

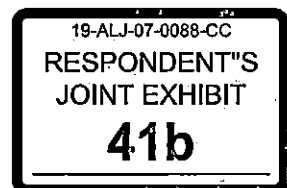
From: Tracey Green
Sent: Friday, February 21, 2020 12:46 PM
To: 'slagelmj@dhec.sc.gov' <slagelmj@dhec.sc.gov>; Churdar, Bradley <churdabd@dhec.sc.gov>; 'Phelan, Sallie P.' <phelansp@dhec.sc.gov>
Cc: Randy Lowell <RLowell@Willoughbyhoefer.com>; J. Joseph (Joe) Owens <JOWens@Willoughbyhoefer.com>
Subject: Graphic

Here's what Tim has put together initially. This does not have property information. Tim says that the "revised landward end would be a minimum of 40 ft seaward of the OCRM Baseline which is on the seaward side of the house." Thanks.

Tracey



Tracey C. Green
WILLOUGHBY & HOEFER, P.A.
MAILING ADDRESS:
P.O. Box 8416
Columbia, SC 29202
PHYSICAL ADDRESS:
930 Richland Street
Columbia, SC 29201
(o) 803.252.3300 | (d) 803.771.2128 | (m) 803.727.4896
tgreen@willoughbyhoefer.com



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003847

SCDHEC--005428

recipient, you are hereby notified that any disclosure, copying or distribution or the taking of any action in reliance on the contents of this transmittal is strictly prohibited. If you have received this transmittal in error, please contact the sender immediately by telephoning the sender at (803) 252-3300 and, also, please delete this transmittal from any computer or other data bank. Upon request, we will reimburse our reasonable costs of notifying us of a transmission error. Thank you.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it was sent) without our express written consent.

To: Williams, Blair[WILLIABN@dhec.sc.gov]
Cc: Phelan, Sallie P.[phelansp@dhec.sc.gov]; Churdar, Bradley[churdabd@dhec.sc.gov]
From: Slagel, Matt
Sent: Fri 02/21/2020 9:15:27 PM UTC
Subject: Fw: Permit 2017-01795
Received: Fri 02/21/2020 9:15:29 PM UTC
02-21-2020 Gressette to Slagel re Consent to Modification of Permit 2017-01795.pdf

Blair,

FYI attached.

Thanks,
Matt

--
Matt Slagel
Beachfront Permitting Project Manager
Critical Area Permitting Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0250
Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)

From: Thomas P. Gressette, Jr. <Gressette@WGFLAW.com>
Sent: Friday, February 21, 2020 4:04 PM
To: Slagel, Matt <slagelmj@dhec.sc.gov>; Phelan, Sallie P. <phelansp@dhec.sc.gov>; Churdar, Bradley <churdabd@dhec.sc.gov>;
Shaver, Candice A. <shaverca@dhec.sc.gov>
Subject: Permit 2017-01795

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Mr. Slagel,

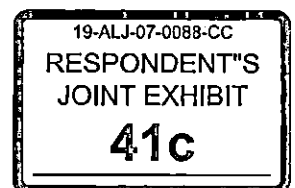
Attached is a letter for your review.

Thank you.

Tom

THOMAS P. GRESSETTE, JR.
843.727.2249 direct
Gressette@WGFLAW.com

PO Box 22167, Charleston, SC 29.
66 Hasell Street, Charleston, SC 2



003849

SCDHEC--005215

003850

WALKER GRESSETTE FREEMAN LINTON LLC

STRATEGIC, BOLD LAWYERING.

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003850

SCDHEC-005216



G. Trenholm Walker
Thomas P. Gressette, Jr.
Ian W. Freeman
John P. Linton, Jr.
Charles P. Summerall, IV
Jennifer S. Ivey

THOMAS P. GRESSETTE, JR.
Direct: 843.727.2249
Email: Gressette@WGFLAW.com

February 21, 2020

Mr. Matt Slagel
Beachfront Permitting Project Manager
South Carolina Department of Health & Environmental Control
Office of Coastal Resource Management
Email Only: slagelmj@dhec.sc.gov

RE: SCDHEC Permit 2017-01795

Dear Mr. Slagel:

As counsel for The Belle Baruch Foundation, I write to confirm that my client consents to the modifications to Permit 2017-01795 requested by Debordieu Colony Community Association in Mr. Lowell's letter to you dated February 21, 2020. As Mr. Lowell indicated, the Foundation and DCCA have agreed that Special Condition 22 of Permit 2017-01795 should be changed to the language set forth in Exhibit B to the letter.

If you have any questions or wish to discuss this matter in more detail, please contact me directly at 843-727-2249 or by email at Gressette@WGFLAW.com.

Sincerely,

/s/

Thomas P. Gressette, Jr.

To: Phelan, Sallie P.[phelansp@dhec.sc.gov]
Cc: J. Joseph (Joe) Owens[JOWens@Willoughbyhoefer.com]; Tracey Green[tgreen@willoughbyhoefer.com]; Churdar, Bradley[churdabd@dhec.sc.gov]
From: Randy Lowell
Sent: Mon 02/24/2020 10:34:31 PM UTC
Subject: Re: Landowner Consent
Received: Mon 02/24/2020 10:34:55 PM UTC

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We will get the drawings revised ASAP.

Based on my discussion with Brad this morning and Tom's email — which reiterated the position I espoused — what procedural issues remain? Tom and I — and Leslie, based on her comments Friday to Judge Anderson — all view this as CCL will be litigating the modifies permit. Does OCRM view this differently?

Randy Lowell
Sent from my iPhone

On Feb 24, 2020, at 5:16 PM, Phelan, Sallie P. <phelansp@dhec.sc.gov> wrote:

Thank you for the Landowner's consent.

For the staff to amend the permit, they would need the permit drawings in 1,2,3 and 11 changed to reflect the changes to groin 3 and for those drawings to be signed and stamped. We still also would need to resolve the procedural issues we have discussed before moving forward with this modification.

-Sallie

Sallie P. Phelan
Assistant General Counsel
SC Department of Health and Environmental Control
1362 McMillan Avenue

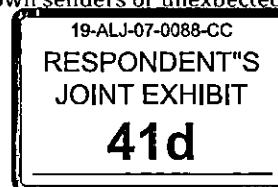
Suite 400
Charleston, SC 29405
Office: (843) 953-0229
Fax: (843) 953-0201
Connect: www.scdhec.gov

From: Randy Lowell <RLowell@Willoughbyhoefer.com>
Sent: Monday, February 24, 2020 8:58 AM
To: Slagel, Matt <slagelmj@dhec.sc.gov>
Cc: J. Joseph (Joe) Owens <JOWens@Willoughbyhoefer.com>; Williams, Blair <WILLIABN@dhec.sc.gov>; Tracey Green <tgreen@willoughbyhoefer.com>; Phelan, Sallie P. <phelansp@dhec.sc.gov>; Churdar, Bradley <churdabd@dhec.sc.gov>
Subject: RE: Landowner Consent

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Matt:

003852



SCDHEC--005234

Attached please find the consent letter from the southernmost landowner.

003853

Thank you.

Randy

<image001.jpg> Randolph R. Lowell

WILLOUGHBY & HOEFER, P.A.

133 River Landing Drive, Suite 200

Charleston, SC 29492

(o) 843.619.4426

(f) 843.619.4430

rlowell@willoughbyhoefer.com

Click [here](#) to report this email as spam.

To: Slagel, Matt[slagelmj@dhec.sc.gov]
Cc: J. Joseph (Joe) Owens[JOWens@Willoughbyhoefer.com]; Williams, Blair[WILLIABN@dhec.sc.gov]; Tracey Green[tgreen@willoughbyhoefer.com]; Phelan, Sallie P.[phelansp@dhec.sc.gov]; Churdar, Bradley[churdabd@dhec.sc.gov]
From: Randy Lowell
Sent: Mon 02/24/2020 1:58:49 PM UTC
Subject: RE: Landowner Consent
Received: Mon 02/24/2020 2:00:27 PM UTC
2020-02-21 44 eastland way groin no objection.pdf

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***
Matt:

Attached please find the consent letter from the southernmost landowner.

Thank you.

Randy



Randolph R. Lowell

WILLOUGHBY & HOEFER, P.A.

133 River Landing Drive, Suite 200

Charleston, SC 29492

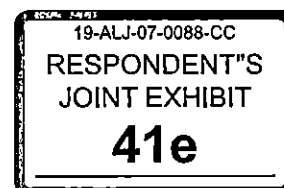
(o) 843.619.4426

(f) 843.619.4430

rlowell@willoughbyhoefer.com

Click [here](#) to report this email as spam.

003854



SCDHEC--005409

Steven B. Magnani

P.O. Box 879
Harlan, Kentucky 40831

February 21, 2020

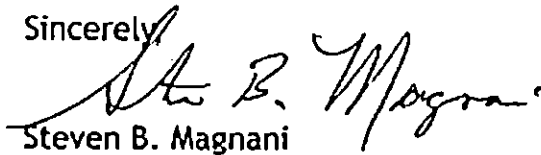
DeBordieu Colony Community Association
Attn: Blanche Brown
181 Luvan Blvd.
Georgetown, SC 29440

RE: DeBordieu Colony PN 2017-17095

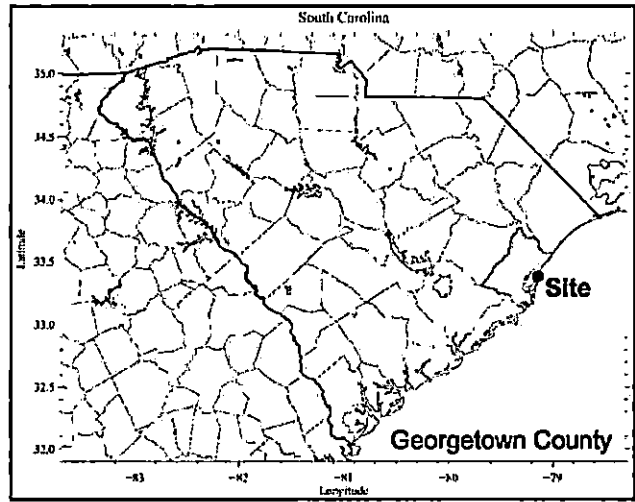
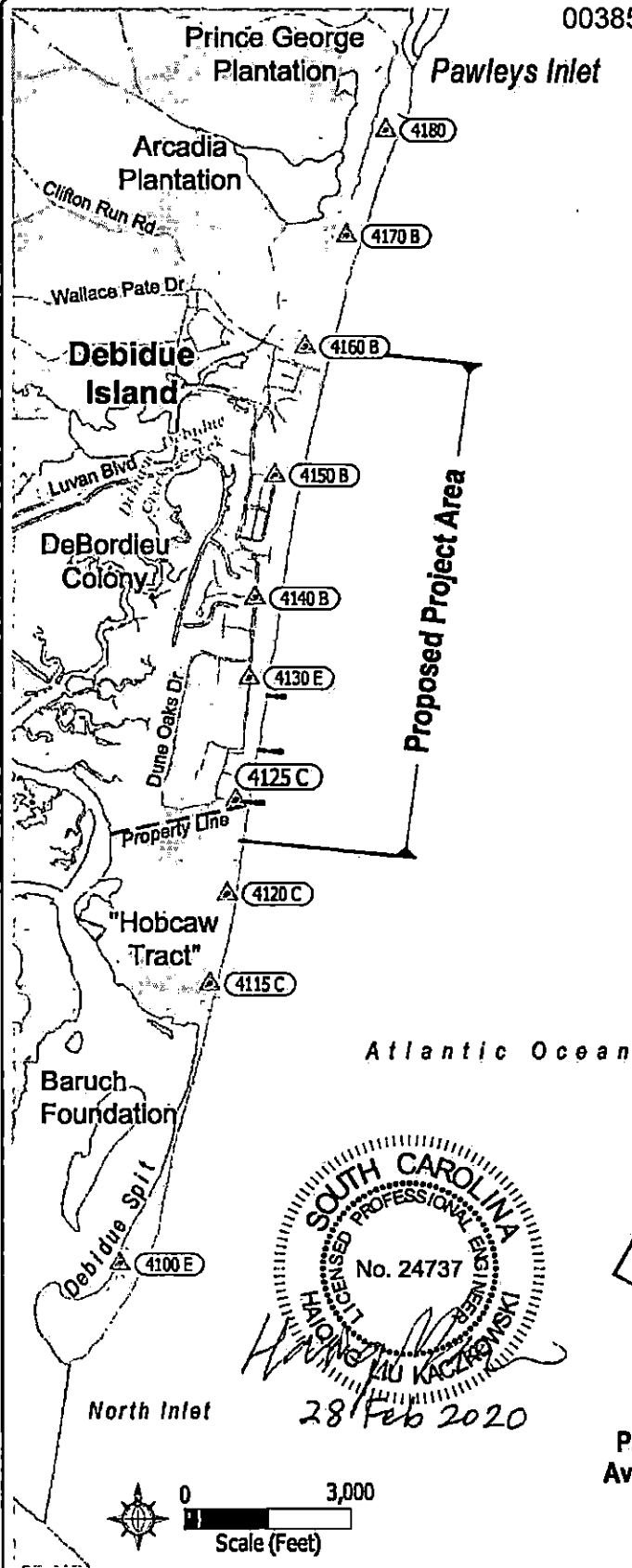
Dear Ms. Brown:

This letter will serve to confirm as the owner of the home located at 44 Eastland Way, Georgetown, SC 29440, I have no objection to the proposed shift of the southern groin to approximately 25 ft. north and -45 ft. landward as displayed in the attached graphic of the permitted location.

Sincerely,


Steven B. Magnani

003856

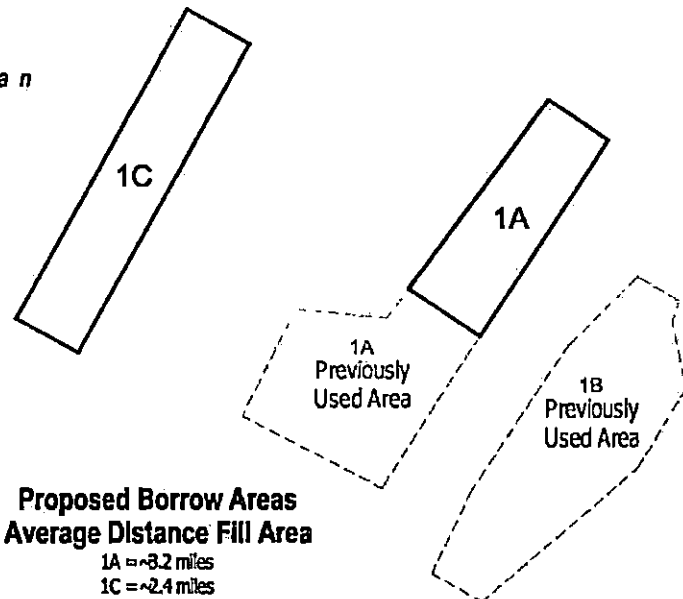


Project Location

[illegible]

Directions From US-17

Head northeast on US-17 N (3.7 mi)
Turn left onto County Rd S-22-255/Kings River Rd (0.7 mi)
Turn right onto County Rd S-22-758
Turn right onto Hagley Dr (0.5 mi)
Turn right at the 2nd cross street onto US-17 S (4.9 mi)
Turn left onto Luvan Blvd (4.1 mi)
Turn right onto Debordieu Blvd



Proposed Borrow Areas
Average Distance Fill Area

1A = ~3.2 miles
1C = ~2.4 miles

PROJECT TITLE:

Beach Stabilization Project

APPLICANT:

DeBordieu Colony Community Association
181 Luvan Boulevard, Georgetown SC 29440

DRAWING TITLE:

Vicinity Map

SCALE:

AS SHOWN

DATE:

19 Feb 2020

DRAYTON

2016-2017

SHEET 2

01

Revised

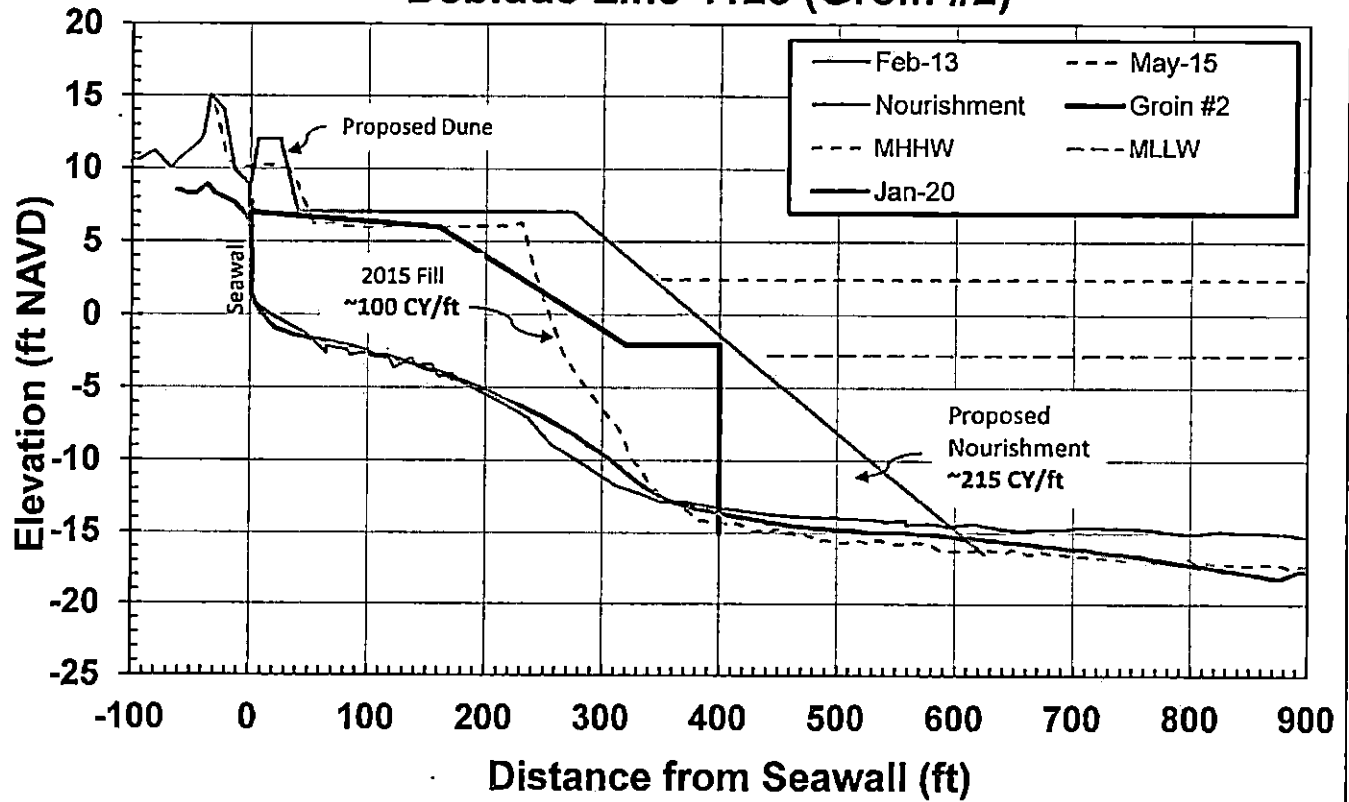
19-ALJ-07-0088-CC
RESPONDENT'S
JOINT EXHIBIT

41f

003856

SCDHEC--005310

Debidue Line 4128 (Groin #2)



SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 24737
H. KACZMAREK
28 Feb 2020

PROJECT TITLE:

Beach Stabilization Project

APPLICANT:

DeBordieu Colony Community Association
181 Luvan Boulevard, Georgetown SC 29440

DRAWING TITLE:

Proposed
Groin Section

SCALE:

AS SHOWN

DATE:

28 Feb 2020

DRAWN BY:

T Hair

PROJECT #:

2443

SHEET #:

12

Revised

WILLOUGHBY & HOEFER, P.A.
ATTORNEYS & COUNSELORS AT LAW

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
CHAD N. JOHNSTON
JOHN W. ROBERTS
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
R. WALKER HUMPHREY, II***
ANDREW R. HAND***
J. JOSEPH OWENS

ELIZABETH S. MABRY
JAMES PATRICK HUDSON
OF COUNSEL

JOSEPH H. FARRELL, III
SPECIAL COUNSEL

*ALSO ADMITTED IN TEXAS

**ALSO ADMITTED IN WASHINGTON, D.C.

***ALSO ADMITTED IN CALIFORNIA

***ALSO ADMITTED IN NORTH CAROLINA

OFFICES:

COLUMBIA

930 RICHLAND STREET
P.O. BOX 8416
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AREA CODE 803
TELEPHONE 252-3300
FAX 256-8062

CHARLESTON

151 MEETING STREET
SUITE 325
P.O. BOX 10
CHARLESTON, SC 29402

AREA CODE 843
TELEPHONE 619-4426
FAX 619-4430

March 2, 2020

Email to slagelmj@dhec.sc.gov

Matt Slagel

South Carolina Department of Health & Environmental Control

Office of Coastal Resource Management

1362 McMillan Ave.

North Charleston, SC 29405

Re: Permit No. 2017-01795

Dear Matt:

As requested, please find included with this correspondence numerous drawings completed by Coastal Science and Engineering, which are being submitted in support of the requested modification to Permit No. 2017-01795.

Furthermore, DCCA and The Belle Baruch Foundation have agreed that the following language adds greater protection and mitigation components and respectfully request that DHEC modify Special Condition 22 of the Permit to include the below provisions:

If the monitoring data collected according to Special Condition # 18 shows an increased erosion area or rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require either that the groins be reconfigured so that the erosion on the affected beach does not exceed the rate and area specified herein, that the groins be removed, and/or that the beach adversely affected by the groins be restored through renourishment.

Mr. Matt Slagel
February 21, 2020
Page 2 of 2

Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions. Specifically, if the erosion area landward of the seawardmost vegetation line within the Hobcaw Tract from the southernmost groin to 4,180 feet south of the southernmost groin exceeds a running average of 0.75 acre per year, mitigation will be required. Mitigation will also be required if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months. DCCA has obtained a commitment for a letter of credit in the amount of \$1,000,000, which shall be in place prior to the commencement of construction. DCCA has provided documentation regarding the beach fund approved by its members to pay for this installation of groins and renourishment and for any future work that may be required on the Debidue or Hobcaw beaches. This community approval is for 17 years. After paying for the project, DCCA will accumulate funds over the following 12 years, estimated to be approximately \$10-\$12 million (based on current estimates for the project cost). These funds will be available for additional beach renourishment and/or groin reconfiguration or removal if needed. These funds are in addition to the \$1 million Letter of Credit.

Please let me know if you have any questions or need further information. We look forward to hearing from you soon. Thank you.

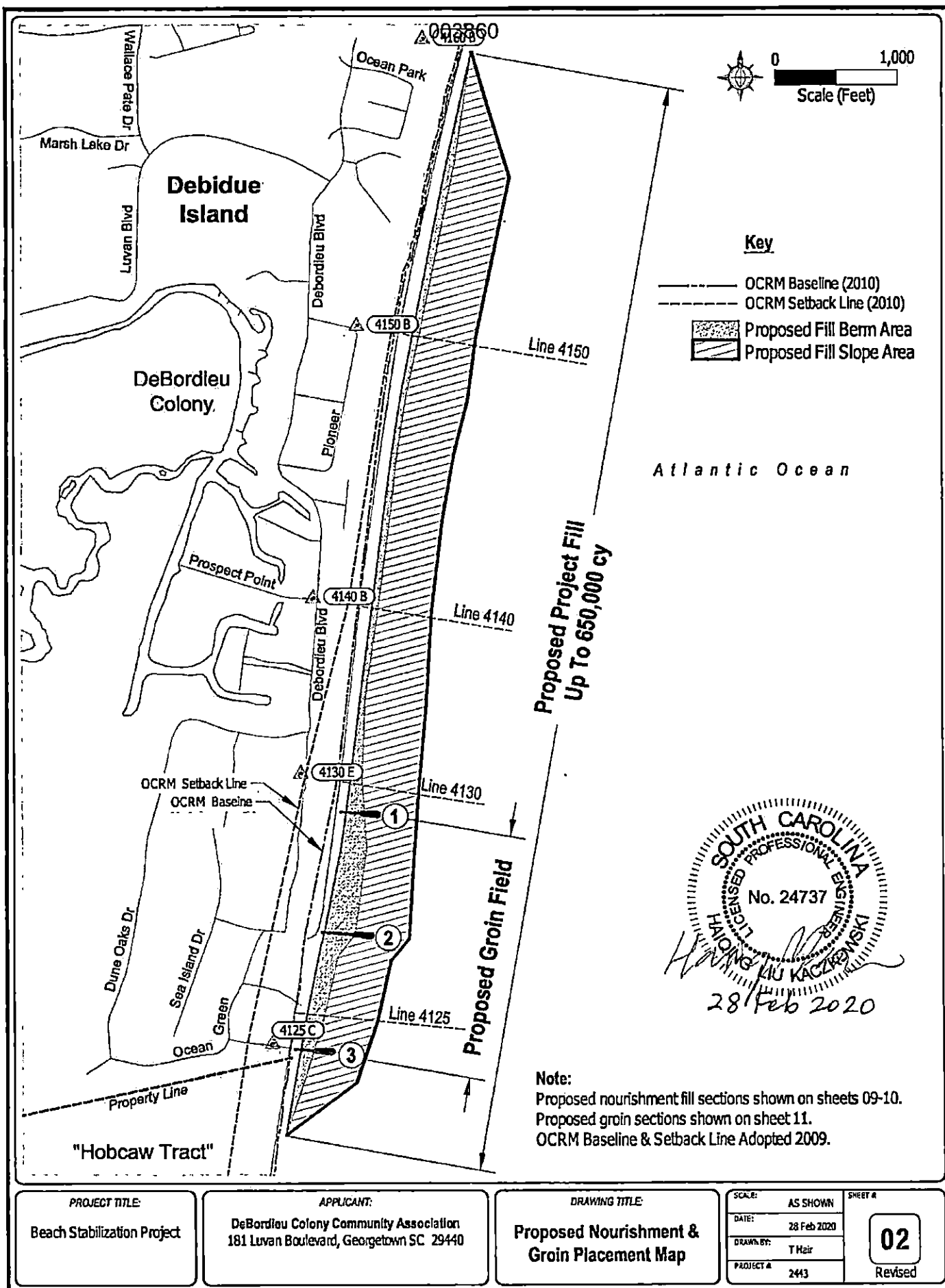
Sincerely,

Willoughby & Hoefer, P.A.



Randolph R. Lowell

Cc: Tom Gressette, Trenholm Walker
Sallie Phelan, Brad Churdar
Tracey Green



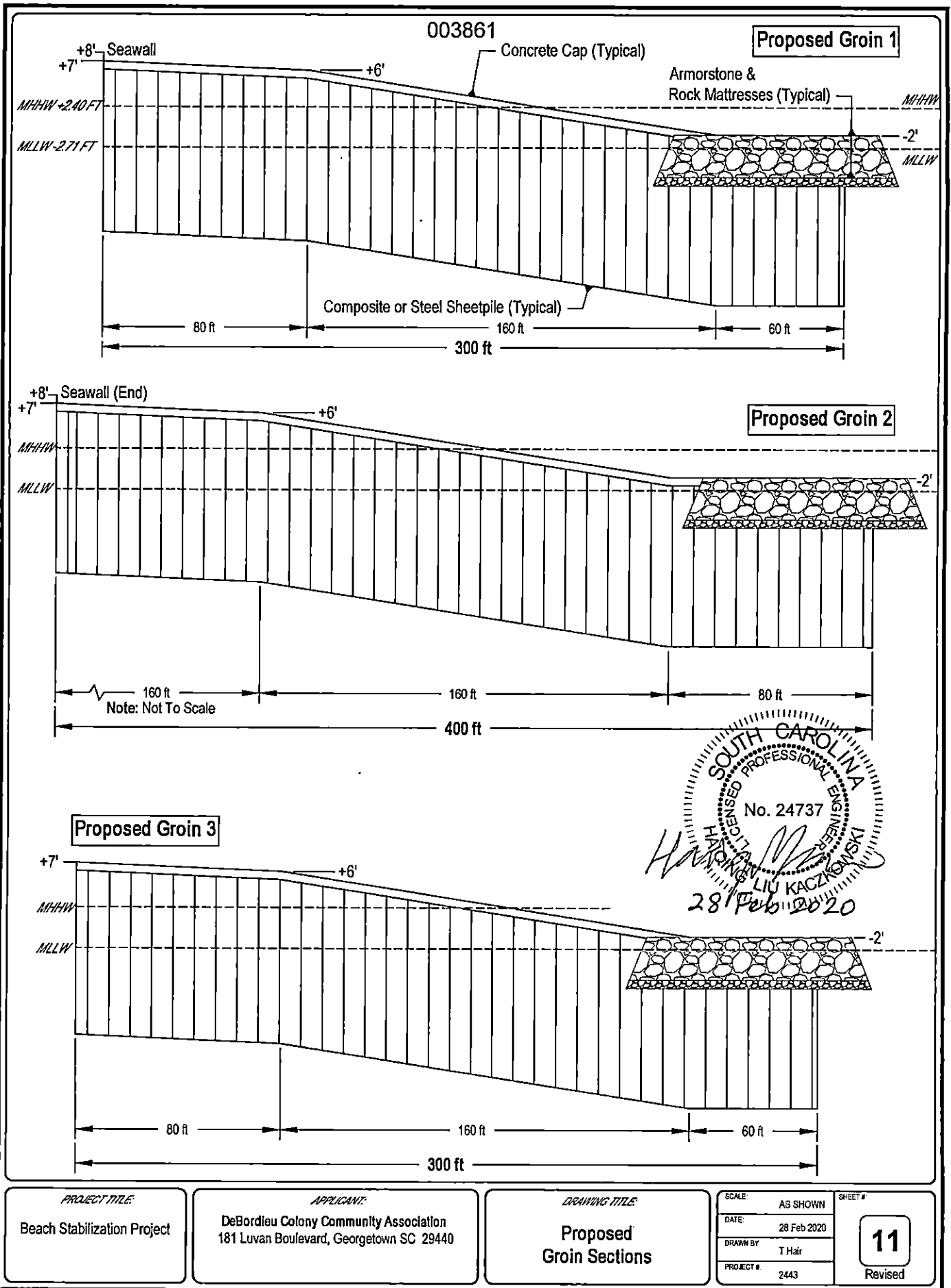
PROJECT TITLE:
Beach Stabilization Project

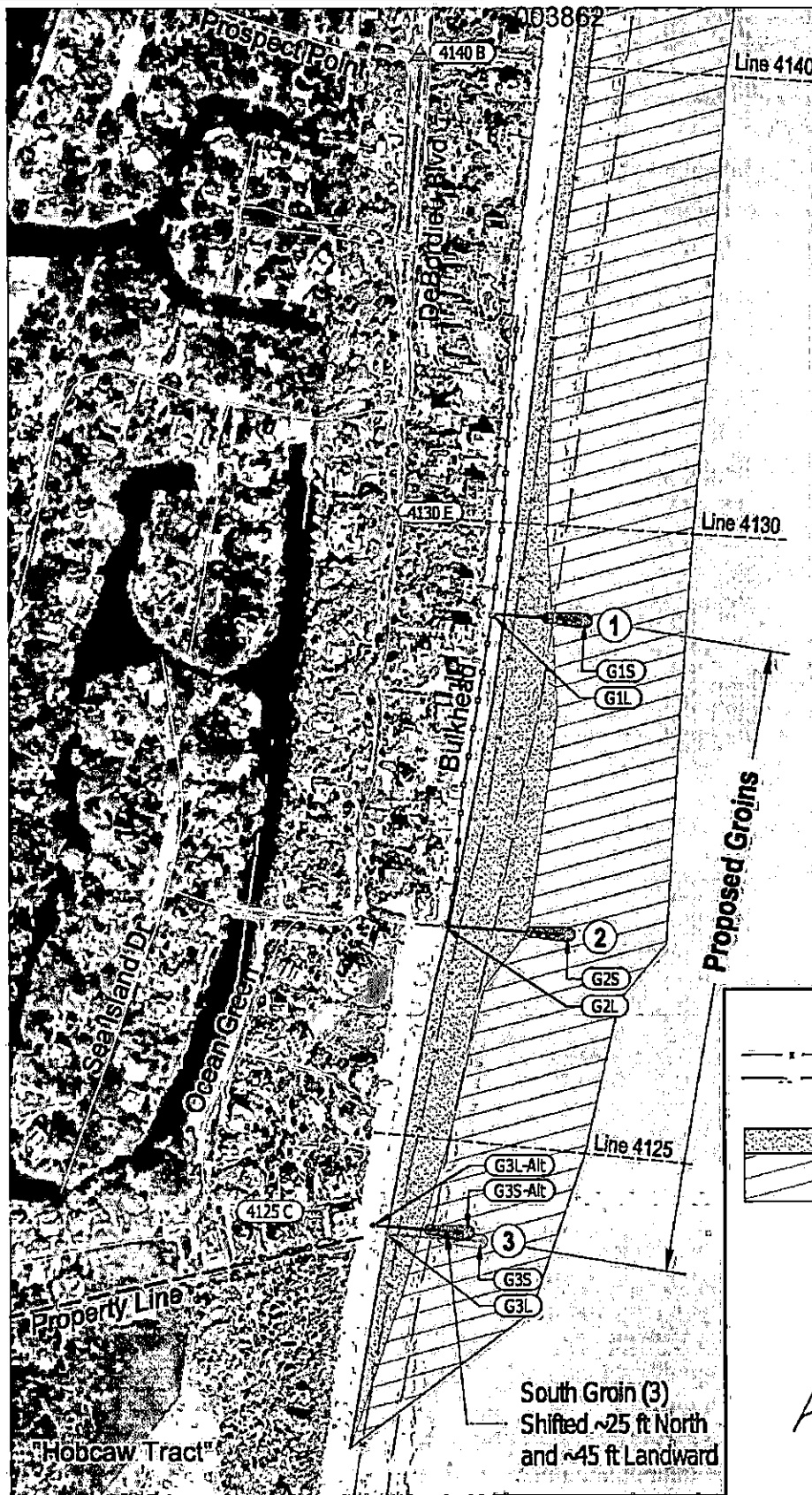
APPLICANT:
DeBordieu Colony Community Association
181 Luvan Boulevard, Georgetown SC 29440

DRAWING TITLE:
Proposed Nourishment &
Groin Placement Map

SCALE: AS SHOWN
 DATE: 28 Feb 2020
 DRAWN BY: T Hair
 PROJECT #: 2443

SHEET #
02
 Revised





0 500
Scale (Feet)

Groin End Coordinates

Permitted

Point	Northing	Easting
G1L	561,443.169	2,564,429.362
G1S	561,421.147	2,564,728.552
G2L	560,452.299	2,564,272.408
G2S	560,422.712	2,564,671.528
G3L	559,464.877	2,564,089.607
G3S	559,442.855	2,564,388.797

Revised Groin 3

G3L-Alt	559,492.730	2,564,047.222
G3S-Alt	559,470.708	2,564,346.412

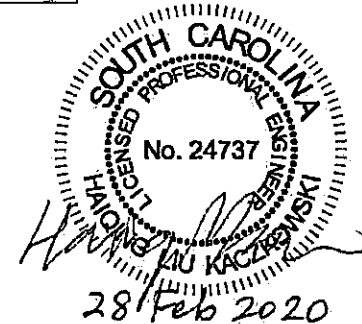
NAD83 South Carolina State
Planes, International Foot

Atlantic Ocean

Key

— MHHW +2.4' NAVD (Feb 2017)
— MLLW -2.7' NAVD (Feb 2017)

Proposed Fill Berm Area (+6 ft NAVD)
Proposed Fill Slope Area



PROJECT TITLE:

Beach Stabilization Project

APPLICANT:

DeBordieu Colony Community Association
181 Luvan Boulevard, Georgetown SC 29440

DRAWING TITLE:

Proposed Nourishment Plan
& Groin Placement Map
Photo: USGS 2017 / CSE 2020

SCALE: AS SHOWN

DATE: 28 Feb 2020

DRAWN BY: T Hall

PROJECT #: 2443

SHEET #

03

Revised

003862

SCDHEC--005316

To: Williams, Blair[WILLIABN@dhec.sc.gov]
Cc: Phelan, Sallie P.[phelansp@dhec.sc.gov]; Churdar, Bradley[churdabd@dhec.sc.gov]
From: Slagel, Matt
Sent: Tue 03/24/2020 9:27:43 PM UTC
Subject: Fw: Permit Modification
Received: Tue 03/24/2020 9:27:47 PM UTC
2020-03-24 TCG Letter to Slagel 2.0.pdf
2020-03-24 Slagel Letter-Exhibit A.pdf
Drawing-Exhibit B.pdf

Blair,

Please see below and attached in reference to DeBordieu renourishment and groins permit.

Thanks,
Matt

--
Matt Slagel
Beachfront Permitting Project Manager
Critical Area Permitting Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0250
Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov Facebook Twitter

From: Tracey Green <TGreen@Willoughbyhoefer.com>
Sent: Tuesday, March 24, 2020 4:58 PM
To: Slagel, Matt <slagelmj@dhec.sc.gov>
Cc: Phelan, Sallie P. <phelansp@dhec.sc.gov>; Churdar, Bradley <churdabd@dhec.sc.gov>; Thomas P. Gressette, Jr. <Gressette@WGFLAW.com>; Trenholm Walker <Walker@WGFLAW.com>; rlowell@willoughbyhoefer.com <rlowell@willoughbyhoefer.com>; J. Joseph (Joe) Owens <JOwens@Willoughbyhoefer.com>
Subject: Permit Modification

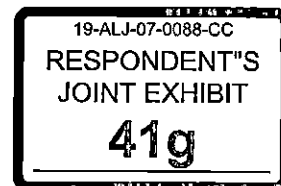
*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***
Matt,

Good afternoon. Attached is an updated permit modification request. I am not planning on sending a hard copy unless requested.
Thanks and let us know if you have any questions.

Tracey



Tracey C. Green
WILLOUGHBY & HOEFER, P.A.
MAILING ADDRESS:
P.O. Box 8416
Columbia, SC 29202
PHYSICAL ADDRESS:
930 Richland Street
Columbia, SC 29201
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003865

WILLOUGHBY & HOEFER, P.A.
ATTORNEYS & COUNSELORS AT LAW

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
CHAD N. JOHNSTON
JOHN W. ROBERTS
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
R. WALKER HUMPHREY, II**
ANDREW R. HAND****
J. JOSEPH OWENS

ELIZABETH S. MABRY
JAMES PATRICK HUDSON
OF COUNSEL

JOSEPH H. FARRELL, III
SPECIAL COUNSEL

*ALSO ADMITTED IN TEXAS

**ALSO ADMITTED IN WASHINGTON, D.C.

***ALSO ADMITTED IN CALIFORNIA

****ALSO ADMITTED IN NORTH CAROLINA

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TELEPHONE 252-3300
FAX 256-8062

CHARLESTON

151 MEETING STREET
SUITE 325
P.O. BOX 10
CHARLESTON, SC 29402

AREA CODE 843
TELEPHONE 619-4426
FAX 619-4430

March 24, 2020

Email to slagelmj@dhec.sc.gov
Matt Slagel
South Carolina Department of Health & Environmental Control
Office of Coastal Resource Management
1362 McMillan Ave.
North Charleston, SC 29405

Re: Permit No. 2017-01795

Dear Matt:

The purpose of this letter is to update our prior requests for a modification of Permit No. 2017-01795. Specifically, after further discussions, Debordieu Colony Community Association and the Belle W. Baruch Foundation have agreed to the following modifications to the Permit:

- As previously indicated, DCCA will move the southernmost groin 25 feet to the north and will also move that groin westward approximately 50 feet.
- Special Condition 22 of the Permit will be modified to state that the thresholds set forth in that condition are .75 acre per year or 6.0 cubic yds/ft/year for the Hobcaw area, as discussed in Special Condition 22 of the Permit. The language also has been further modified to specify and define the use of MHW with respect to the modified conditions in the Permit.

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SCDHEC--005198

Mr. Matt Slagel
March 24, 2020
Page 2 of 2

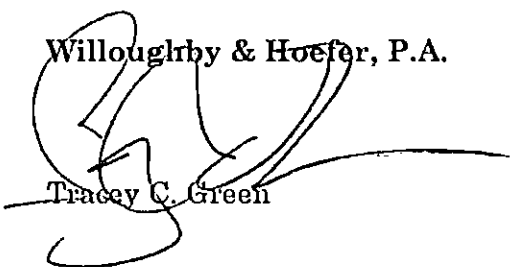
Attached as Exhibit A is the proposed language modifying Special Condition 22 of the Permit. Exhibit B is an updated Proposed Nourishment Plan & Groin Placement Map, Photo identifying the revised location of the southernmost groin.

I am authorized to state that counsel for the Belle W. Baruch Foundation has stated their agreement with this request. On behalf of Debordieu Colony Community Association and the Belle W. Baruch Foundation, please allow the requested modifications in this correspondence to replace all previous modification requests.

We would appreciate it if you could provide a response to this request as soon as is practicable. Thank you. Please let me know if you have any questions.

Sincerely,

Willoughby & Hoefler, P.A.



Tracey C. Green

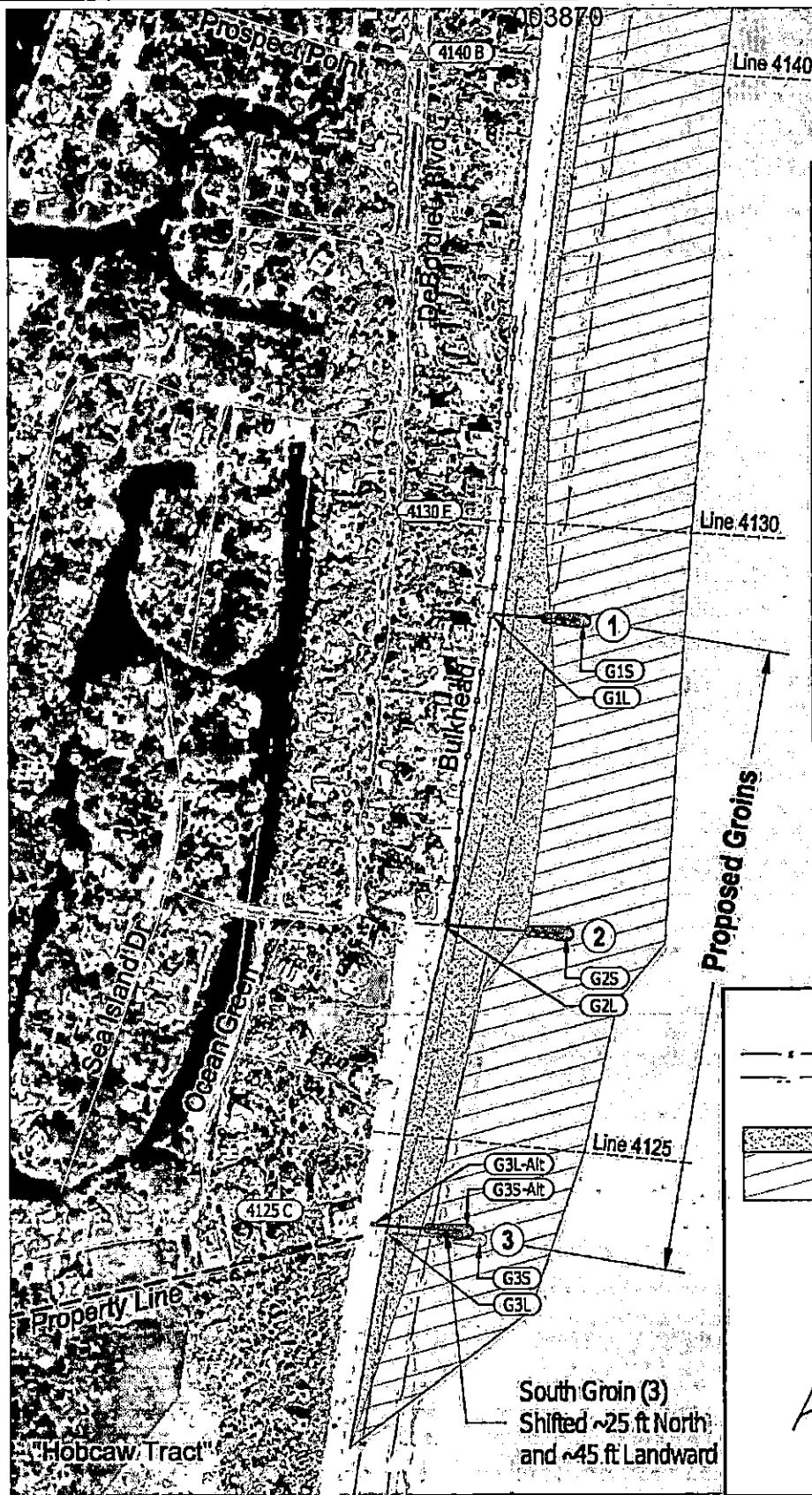
cc: Thomas P. Gressette, Jr.
Trenholm Walker
Sallie P. Phelan
Bradley Churdar

EXHIBIT A

If the monitoring data collected according to Special Condition #18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require mitigation as follows:

- a. that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the background rate of .75 acre per year or 6.00 cy/ft/yr, (as set forth below in paragraphs 1 and 2);
- b. that the groins be removed; and/or
- c. that the beach adversely affected by the groins be restored through renourishment. Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions.
 1. Specifically, if the average erosion area for two consecutive years above Mean High Water (MHW) within the Hobcaw Tract from the southernmost groin to 4,180 feet south of the southernmost groin exceeds .75 acre per year, mitigation will be required. For purposes of this provision, MHW is defined as 2.05' NAVD '88 and the initial baseline condition for MHW will be determined by a survey to be taken within one month prior to the beginning of Project construction. After completion of the Project, MHW will be determined annually by a survey taken in May of each year.
 2. Mitigation will also be required if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr.
 3. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months.
 4. DCCA has obtained a commitment for a letter of credit in the amount of \$1,000,000, which shall be in place prior to the commencement of construction. DCCA has provided documentation regarding the beach fund approved by its members to pay for this installation of groins and renourishment and for any future work that may be required on the Debidue or Hobcaw beaches. This community approval is for 17 years. After paying for the project, DCCA will accumulate funds over the following 12 years, estimated to be approximately \$10-\$12 million (based on current estimates for the project cost). These funds will be available for additional beach renourishment and/or groin reconfiguration or removal if needed. These funds are in addition to the \$1 million Letter of Credit.

EXHIBIT B



0 500
Scale (Feet)

Groin End Coordinates

Permitted

Point	Northing	Easting
G1L	561,443.169	2,564,429.362
G1S	561,421.147	2,564,728.552
G2L	560,452.299	2,564,272.408
G2S	560,422.712	2,564,671.528
G3L	559,464.877	2,564,089.607
G3S	559,442.855	2,564,388.797

Revised Groin 3

G3L-Alt	559,492.730	2,564,047.222
G3S-Alt	559,470.708	2,564,346.412

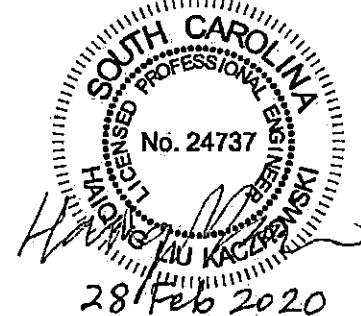
NAD83 South Carolina State
Planes, International Foot

Atlantic Ocean

Key

— MHHW +2.4' NAVD (Feb 2017)
- - - MLLW -2.7' NAVD (Feb 2017)

Proposed Fill Berm Area (+6 ft NAVD)
 Proposed Fill Slope Area



PROJECT TITLE:

Beach Stabilization Project

APPLICANT:

DeBordieu Colony Community Association
181 Luvan Boulevard, Georgetown SC 29440

DRAWING TITLE:

**Proposed Nourishment Plan
& Groin Placement Map**
Photo: USGS 2017 / CSE 2020

SCALE:

AS SHOWN

SHEET

DATE:

28 Feb 2020

DRAWN BY:

T Hair

PROJECT

2443

03

Revised

003870

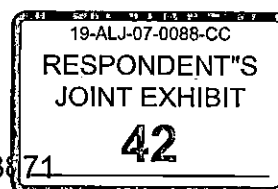
SCDHEC--005203

The Belle W. Baruch Foundation,	)	Docket No. 19-ALJ-07-0088-CC
	)	
Petitioner,	)	
	)	
vs.	)	ORDER OF DISMISSAL
	)	
South Carolina Department of Health and	)	
Environmental Control and DeBordieu	)	
Colony Community Association,	)	
	)	
Respondents.	)	
	)	

DCCA and the Foundation recently informed the Court they entered into a Settlement Agreement whereby DCCA agreed to certain modifications to the Permit.¹ Specifically, DCCA and the Foundation agreed to reduce the length of the southernmost groin, lower the trigger point for mitigation, and significantly increase the amount and quality of the mitigation should it become necessary. As a result, DCCA and the Foundation requested that DHEC modify the Permit consistent with the Settlement Agreement. DHEC reviewed the moving parties' proposal to

FILED

SC ADMIN. LAW COURT



modify Special Condition 22 and indicated it had no objections to the modifications to Special Condition 22. However, in light of the pending litigation, DHEC requested that the moving parties seek a dismissal order directing DHEC to modify the Permit in accordance with the terms of the Settlement Agreement and addressing the effect the modification has on the League's challenge to this same permit.

The Court conducted a telephonic hearing on Tuesday, March 31, 2020, with counsel. The League was unable to participate in the conference call on that date. However, the League did not object to a conference call addressing the settlement in Docket No. 19-ALJ-07-0088-CC with the understanding that its concerns could be addressed at a later date.

Having reviewed the Settlement Agreement and heard from the Parties, including DHEC, it is hereby ordered that:

1. The contested case captioned *The Belle W. Baruch Foundation v. South Carolina Department of Health and Environmental Control and Debordieu Colony Community Association* (Docket No. 19-ALJ-07-0088-CC) is dismissed with prejudice consistent with the Settlement Agreement;
2. As contemplated by the Settlement Agreement, Permit 2017-0179 is modified such that Special Condition 22 reads as follows:

If the monitoring data collected according to Special Condition #18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require mitigation as follows:

- a. that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the background rate of .75 acre per year or 6.00 cy/ft/yr, (as set forth below in paragraphs 1 and 2);
- b. that the groins be removed; and/or
- c. that the beach adversely affected by the groins be restored through renourishment. Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions.

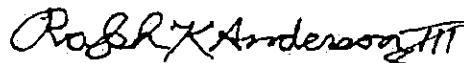
1. Specifically, if the average erosion area for two consecutive years above Mean High Water (MHW) within the Hobcaw Tract from the southernmost groin to 4,180 feet south of the southernmost groin exceeds .75 acre per year, mitigation will be required. For purposes of this provision, MHW is defined as 2.05' NAVD '88 and the initial baseline condition for MHW will be determined by a survey to be taken within one month prior to the beginning of Project construction. After completion of the Project, MHW will be determined annually by a survey taken in May of each year.
2. Mitigation will also be required if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the

southernmost groin exceeds the rate of 6.00 cy/ft/yr. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr.

3. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months.
4. DCCA has obtained a commitment for a letter of credit in the amount of \$1,000,000, which shall be in place prior to the commencement of construction. DCCA has provided documentation regarding the beach fund approved by its members to pay for this installation of groins and renourishment and for any future work that may be required on the Debidue or Hobcaw beaches. This community approval is for 17 years. After paying for the project, DCCA will accumulate funds over the following 12 years, estimated to be approximately \$10-\$12 million (based on current estimates for the project cost). These funds will be available for additional beach renourishment and/or groin reconfiguration or removal if needed. These funds are in addition to the \$1 million Letter of Credit.

Having dismissed this case, the Court will hold a contested case to address the issues raised in *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control and Debordieu Colony Community Association* (Docket No. 19-ALJ-07-0089-CC). The Court nevertheless emphasizes that the League will be allowed to object Permit 2017-0179 as modified by this Order.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

April 3, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Michelle Perez
Judicial Law Clerk

April 3, 2020
Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

The Belle W. Baruch Foundation,	)	Docket No. 19-ALJ-07-0088-CC
	)	
	)	
Petitioner,	)	
	)	
vs.	)	SETTLEMENT AGREEMENT
	)	
South Carolina Department of Health and	)	
Environmental Control and DeBordieu	)	
Colony Community Association,	)	
	)	
Respondents.	)	
	)	

WHEREAS, The Belle W. Baruch Foundation ("Hobcaw") is a non-profit organization and owner of Hobcaw Barony, a 16,000-acre property dedicated to research and education.

WHEREAS, Hobcaw initiated this contested case proceeding to challenge the South Carolina Department of Health and Environmental Control's issuance of Permit 2017-0179 ("the Permit") to DeBordieu Colony Community Association ("DCCA") for beach renourishment and the construction of three groin structures along a 1.5-mile section of Debidue Island in Georgetown County, South Carolina.

WHEREAS, Hobcaw and DCCA (collectively "the Parties") now wish to resolve the disputes between them related to the Permit and, therefore, in consideration of the recitals, promises and covenants set forth herein and for good and valuable consideration the Parties hereto agree to be legally bound as follows:

1. DCCA as used herein shall mean and include DeBordieu Colony Community Association, its employees, agents, invitees, and contractors.
2. DCCA will move the southernmost groin 25 feet to the north. The southernmost groin will also be moved westward approximately 50 feet. **EXHIBIT 1** hereto entitled "Proposed Nourishment Plan & Groin Placement Map, Photo: USGS 2017 / CSE 2020, dated 28 February 2020 [03 Revised]" shows the revised location of the groins and is specifically incorporated into and made part of this Settlement Agreement. A copy of **EXHIBIT 1** will also be included in and incorporated in the materials DCCA will submit to DHEC in conjunction with seeking modification of the Permit as required by the Agreement.
3. The parties have agreed that Special Condition 22 of the Permit shall be modified as follows: If the monitoring data collected according to Special Condition #18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require mitigation as follows:

- a. that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the background rate of .75 acre per year or 6.00 cy/ft/yr, (as set forth below in paragraphs 1 and 2);
 - b. that the groins be removed; and/or
 - c. that the beach adversely affected by the groins be restored through renourishment. Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions.
 - 1. Specifically, if the average erosion area for two consecutive years above Mean High Water (MHW) within the Hobcaw Tract from the southernmost groin to 4,180 feet south of the southernmost groin exceeds .75 acre per year, mitigation will be required. For purposes of this provision, MHW is defined as 2.05' NAVD '88 and the initial baseline condition for MHW will be determined by a survey to be taken within one month prior to the beginning of Project construction. After completion of the Project, MHW will be determined annually by a survey taken in May of each year.
 - 2. Mitigation will also be required if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr.
 - 3. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months.
 - 4. DCCA has obtained a commitment for a letter of credit in the amount of \$1,000,000, which shall be in place prior to the commencement of construction. DCCA has provided documentation regarding the beach fund approved by its members to pay for this installation of groins and renourishment and for any future work that may be required on the Debidue or Hobcaw beaches. This community approval is for 17 years. After paying for the project, DCCA will accumulate funds over the following 12 years, estimated to be approximately \$10-\$12 million (based on current estimates for the project cost). These funds will be available for additional beach renourishment and/or groin reconfiguration or removal if needed. These funds are in addition to the \$1 million Letter of Credit.
4. This Agreement is contingent upon:

- a. The ALC's approval of the modification of Special Condition 22 of the Permit as set forth above; and
 - b. Final court approval (including any appeals) of the modified permit; however, if the modified permit is denied or is further altered as a result of the pending Coastal Conservation League proceeding or for any other reason and DCCA decides as a result not to proceed with construction of groins, then this Agreement shall be null and void.
5. Hobcaw will prepare a written ten-year license agreement to allow DCCA non-exclusive access and use of a strip of land on the northernmost border of the Hobcaw property. The purpose of the license is to allow DCCA to use the specified area as a temporary staging/storage area for the equipment and materials to be used in conjunction with specific, limited-duration groin construction/renourishment projects authorized by the Permit. Generally, the license area is to be about 100 feet wide and 600 feet long and located along the dirt road connecting Ocean Green Drive to the beach. In addition to other terms to be negotiated, DCCA and Hobcaw agree:
- a. The license shall not be construed to be a lease or to grant a real property interest.
 - b. The license may not be used for any form of recreational access to the beach; provided, however, that DCCA shall not be responsible if the beach is accessed by someone proceeding through the area during the period that the gate is removed during the renourishment and groin construction process.
 - c. DCCA will pay Hobcaw \$35,000 per year for 10 years for this license, with the first payment due 30 days following the commencement of the groin construction that shall include the commencement of the use of the licensed area for staging and storing for the equipment and materials; provided, however, that if DCCA is required to remove the groins, its obligation to continue to paying for this license terminates once the groins are removed from the beach and all equipment and materials are removed from the license area.
 - d. A survey of the licensed area that shall include the boundaries, topography, and trees, prepared at DCCA's cost, that shall be an exhibit to the final license agreement.
 - e. Prior to conducting any activity on the licensed area, DCCA will obtain all necessary permits and consents for the use of the licensed area (including the necessary permits or approvals for any activities in the licensed area seaward of the beachfront jurisdictional lines, if any) and comply with all applicable federal, state, county and municipal laws, ordinances and regulations in its use of the licensed area.
 - f. DCCA shall not alter the natural dune area or conduct other activity that would be contrary to Hobcaw's primary mission to conserve Hobcaw Barony's unique natural and cultural resources for research and education.
 - g. If DCCA intends to remove vegetation from the licensed area, DCCA shall provide to Hobcaw for its approval the plan for removal of such vegetation as well as the

revegetation of the area at the end of the work, which approval shall not be unreasonably withheld. Notwithstanding the preceding, DCCA has authority to temporarily remove portions of the fence as necessary to enable equipment and materials to pass through to the beach.

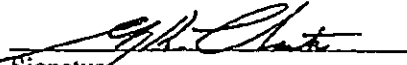
- h. DCCA will exercise due diligence in the protection of Hobcaw's property—including property adjacent to the area licensed—against fire or damage from any and all other causes including oil or other chemical contamination and DCCA will be responsible for any damage or contamination that may be caused to the property of Hobcaw by the actions of DCCA (or anyone acting on behalf of or under DCCA), its contractors, subcontractors, vendors, or others who may use the licensed area.
 - i. DCCA will ensure a minimum area of access roadway (to be shown on the survey) will remain passable and unobstructed for pedestrians and vehicles.
 - j. Hobcaw makes no representations as to the present or future condition of its property. DCCA assumes all risks of personal injury or damage to Hobcaw's property in connection with the DCCA's operations via the license. DCCA shall repair or pay for the repair of any damage to the Hobcaw's property resulting directly or indirectly from DCCA's activities within or use of the easement area.
 - k. DCCA will indemnify and hold harmless Hobcaw and its trustees, managers, employees, agents, invitees, or contractors, from and against any and all liability, damage, expense, claims, liens or judgments, including reasonable attorneys' fees, resulting from injury to persons or damage to property resulting from or in any fashion arising out of the actions of DCCA (or anyone acting on behalf of or under DCCA), its contractors, subcontractors, vendors, or others who may use the licensed area.
 - l. For the term of the license, DCCA will maintain insurance in the form of a General Commercial Liability insurance policy in the amount of \$1,000,000 per each occurrence and will annually provide Hobcaw with a copy of the policy and a valid Certificate of Insurance until completion of the project. DCCA further agrees that its contract with the general contractor will require the general contractor to maintain General Commercial Liability insurance and Commercial Automobile Liability insurance in the amount of \$1,000,000 per each occurrence, that designates Hobcaw and DCCA as additional insureds for purposes of the project and the licensed area. Such insurance coverage shall be maintained and effective until completion of the project. DCCA will annually provide Hobcaw with a copy of the general contractor's policy and a valid Certificate of Insurance until completion of the project and annually during any subsequent period of construction or renourishment.
- 6. The parties acknowledge that this Agreement is not an admission by any party, person, or entity of any violation of any federal, state, or local statute or regulation, or any violation of any right or of any duty.
 - 7. Should any party hereto violate any term of this Agreement, the party who violated such

provision shall pay to the non-breaching party all costs and expenses, including reasonable attorneys' fees and costs, incurred by the non-breaching party to enforce the terms of this Agreement.

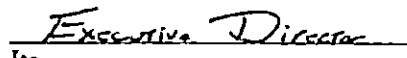
8. Each party to this Agreement hereby waives and releases the other parties from and against any and all claims against the other parties to the within lawsuit for attorney's fees and/or costs in connection with the within lawsuit and agrees to bear its respective attorneys' fees and costs.
9. The Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
10. The Parties each state that they have read and fully understand the foregoing Agreement and that the individuals executing the Agreement on behalf of each party have full and complete authority to agree to the representations contained herein.
11. This Agreement shall be governed by the laws of the State of South Carolina and of the United States.
12. All the terms and provisions of this agreement shall be binding upon and inure to the benefit of the parties, any person or entity released by this Agreement, and their respective heirs, successors and assigns.
13. If any of the provisions of this Agreement shall contravene or be invalid under the laws of the State of South Carolina and of the United States, such contravention or invalidity shall not invalidate the entire agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.
14. The waiver by either of the Parties of a breach of any provision of this Agreement shall not operate as, or be construed as a waiver of any subsequent breach thereof.
15. No modification shall be made to this Agreement except by written agreement of the Parties.
16. This Agreement may be executed in any number of counterparts which together shall constitute the Agreement of the parties.

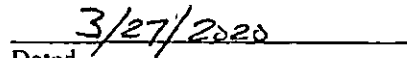
The parties hereto have executed or caused their duly authorized officers to execute this Agreement under seal as of the dates indicated on the Signature Pages. This Agreement shall be effective upon execution of all of the Signature Pages.

The Belle W. Baruch Foundation

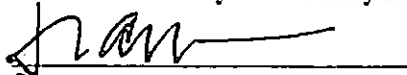

Signature

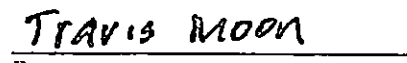

By


Its


Dated

DeBordieu Colony Community Association


Signature


By


Its

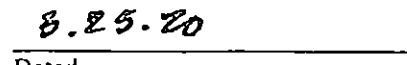
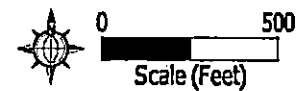
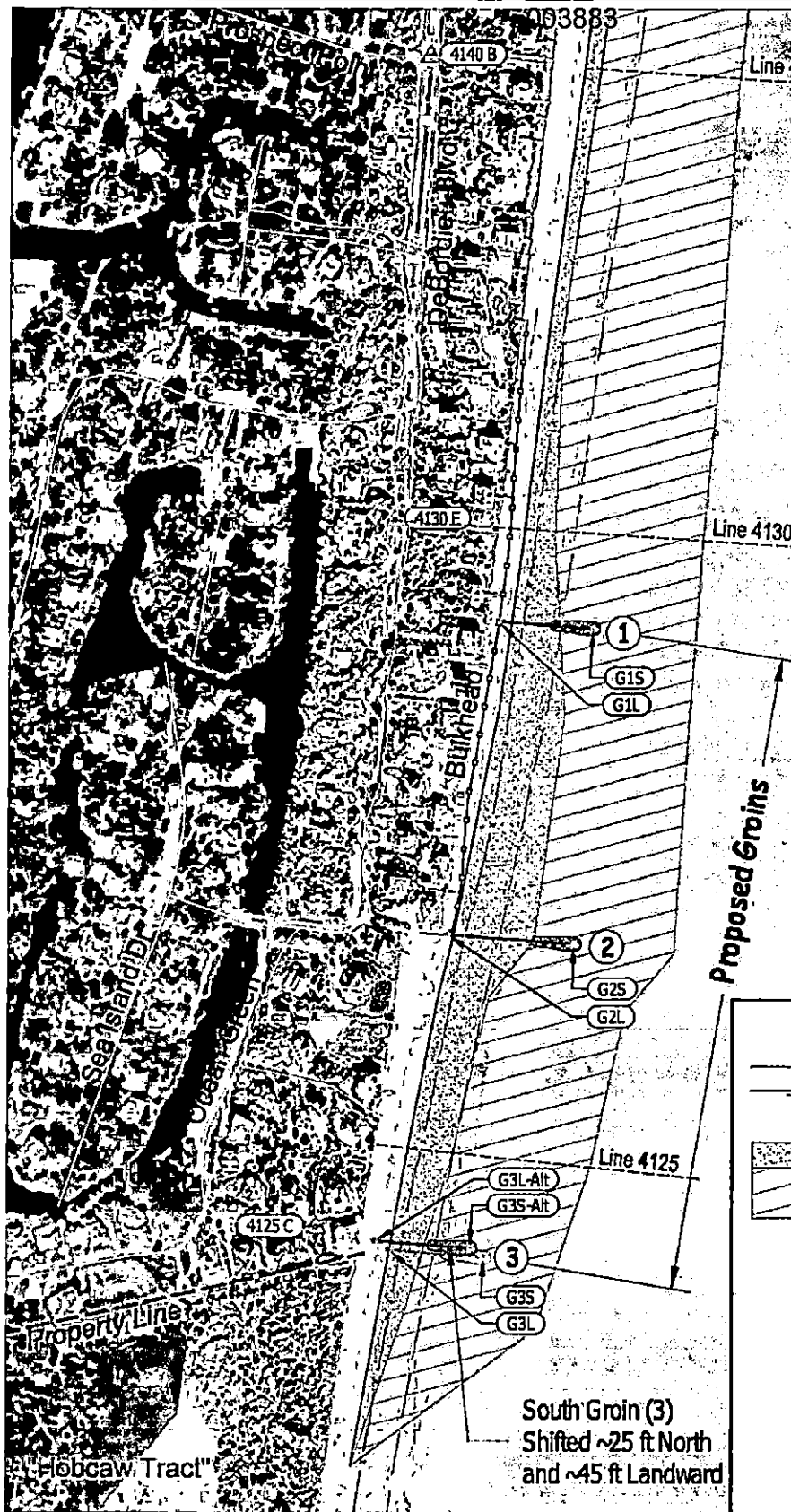

Dated

EXHIBIT 1



Groin End Coordinates		
Permitted		
Point	Northing	Easting
G1L	561,443.169	2,564,429.362
G1S	561,421.147	2,564,728.552
G2L	560,452.299	2,564,272.408
G2S	560,422.712	2,564,671.528
G3L	559,464.877	2,564,089.607
G3S	559,442.855	2,564,388.797
Revised Groin 3		
G3L-Alt	559,492.730	2,564,047.222
G3S-Alt	559,470.708	2,564,346.412
NAD83 South Carolina State Planes, International Foot		

Atlantic Ocean

Key

— MHHW +2.4' NAVD (Feb 2017)
 --- MLLW -2.7' NAVD (Feb 2017)

Proposed Fill Berm Area (+6 ft NAVD)
 Proposed Fill Slope Area

SOUTH CAROLINA
 LICENSED PROFESSIONAL ENGINEER
 No. 24737
Handwritten signature: H. KACZMOWSKI
 28 Feb 2020

PROJECT TITLE:
 Beach Stabilization Project

APPLICANT:
 DeBordieu Colony Community Association
 181 Luvan Boulevard, Georgetown SC 29440

DRAWING TITLE:
**Proposed Nourishment Plan
 & Groin Placement Map**
 Photo: USGS 2017 / CSE 2020

SCALE: AS SHOWN
 DATE: 28 Feb 2020
 DRAWN BY: T Helt
 PROJECT #: 2443

SHEET #
03
 Revised

To: Slagel, Matt[slagelmj@dhec.sc.gov]; tkana@coastalscience.com[tkana@coastalscience.com]; Tracey Green[tgreen@willoughbyhoefer.com]
Cc: Kelly Floyd[kfloyd@debordieucolony.org] 003884
From: Blanche Brown
Sent: Tue 04/21/2020 7:10:07 PM UTC
Subject: Signed Amended Permit Condition #22
Received: Tue 04/21/2020 7:11:57 PM UTC
2020-04-21 signed permit amendment Special Condition #22.pdf

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***
Hi Matt,

The signed DeBordieu Colony beach nourishment/groin permit amendment is attached. The original will be mailed to the Charleston office tomorrow.

Thank you,
Blanche Brown

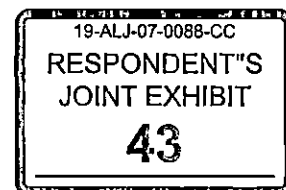


DeBordieu Colony

Blanche Brown

Blanche Brown, LSM PCAM
General Manager
181 Luvan Boulevard
Georgetown, SC 29440
bbrown@debordieucolony.org
telephone: 843.527.4436
fax: 843.546.8704

003884



SCDHEC--005362



April 15, 2020

DeBordieu Colony Community Association
ATTN: Ms. Blanche Brown
181 Luvan Blvd.
Georgetown, SC 29440

9489 0090 0027 6188 0224 96

Re: 2017-01795 – Permit Amendment for Modified Southernmost Groin Location and Monitoring/Mitigation Requirements

Dear Ms. Brown:

The above referenced permit has been amended pursuant to an Order of Dismissal, dated April 3, 2020, from the S.C. Administrative Law Court in the case of The Belle W. Baruch Foundation vs. SCDHEC & DeBordieu Colony Community Assoc., Docket No. 19-ALJ-07-0088-CC. Specifically, Special Condition #22 of the permit has been modified according to a settlement agreement entered into between DeBordieu Colony Community Association and the Belle W. Baruch Foundation in March 2020 and ordered by the ALC in its Order of Dismissal. This permit amendment lowers the erosion rate trigger for mitigation from 8.1 cy/ft/yr to 6.00 cy/ft/yr, adds a mitigation trigger based on erosion above Mean High Water, and documents the increased Letter of Credit amount of \$1,000,000. The location of the southernmost proposed groin will also be shifted 25 feet to the north and approximately 50 feet to the west as shown in the revised attached drawing entitled "Proposed Nourishment Plan & Groin Placement Map, Photo: USGS 2017 / CSE 2020, dated 28 February 2020 [03 Revised]."

Special Condition #22 of the permit has been modified with the following:

"22. If the monitoring data collected according to Special Condition #18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require mitigation as follows:

- a. that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the background rate of .75 acres per year or 6.00 cy/ft/yr, (as set forth below in paragraphs 1 and 2);
- b. that the groins be removed; and/or
- c. that the beach adversely affected by the groins be restored through renourishment. Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions.
 1. Specifically, if the average erosion area for two consecutive years above Mean High Water (MHW) within the Hobcaw Tract from the southernmost groin to 4,180 feet south of the southernmost groin exceeds .75 acre per year, mitigation will be required. For purposes of this provision, MHW is defined as 2.05' NAVD '88 and the initial baseline condition for MHW will be determined by a survey to be taken within one month prior to the beginning of Project construction. After completion of the Project, MHW will be determined annually by a survey taken in May of each year.
 2. Mitigation will also be required if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the southernmost groin exceeds the rate of

S.C. Department of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201 (803) 898-3432 www.scdhec.gov

Re: 2017-01795 – Permit Amendment for Modified Southernmost Groin Location and Monitoring/Mitigation Requirements

6.00 cy/ft/yr. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr.

- 3. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months.**
- 4. DCCA has obtained a commitment for a letter of credit in the amount of \$1,000,000, which shall be in place prior to the commencement of construction. DCCA has provided documentation regarding the beach fund approved by its members to pay for this installation of groins and renourishment and for any future work that may be required on the Deblue or Hobcaw beaches. This community approval is for 17 years. After paying for the project, DCCA will accumulate funds over the following 12 years, estimated to be approximately \$10-\$12 million (based on current estimates for the project cost). These funds will be available for additional beach renourishment and/or groin reconfiguration or removal if needed. These funds are in addition to the \$1 million Letter of Credit."**

This amendment is made a part of your permit and is subject to the full terms of the permit as issued.

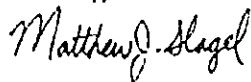
An as-built survey of the new groins and renourished beach area must be submitted to DHEC-OCRM within 90 days from completion of construction. The survey must be performed by a registered land surveyor, must show all components of the groins, and must list the starting and ending coordinates of the groins in the S.C. State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

This letter does not relieve you of the responsibility of acquiring any other applicable federal or local permits that may be required. Any person adversely affected by this action has the right to appeal as outlined in the enclosed "Guide to Board Review."

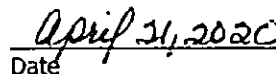
The construction placard must be posted conspicuously on site during authorized activities. If you do not possess a current placard, a new one must be obtained prior to start of construction.

If this amendment letter is not accepted within thirty (30) days of issuance, OR appealed as described on in the Guide to Board Review, the Department reserves the right to cancel this permit amendment. Please carefully review the Guide to Board Review for information and deadlines for appealing this permit amendment.

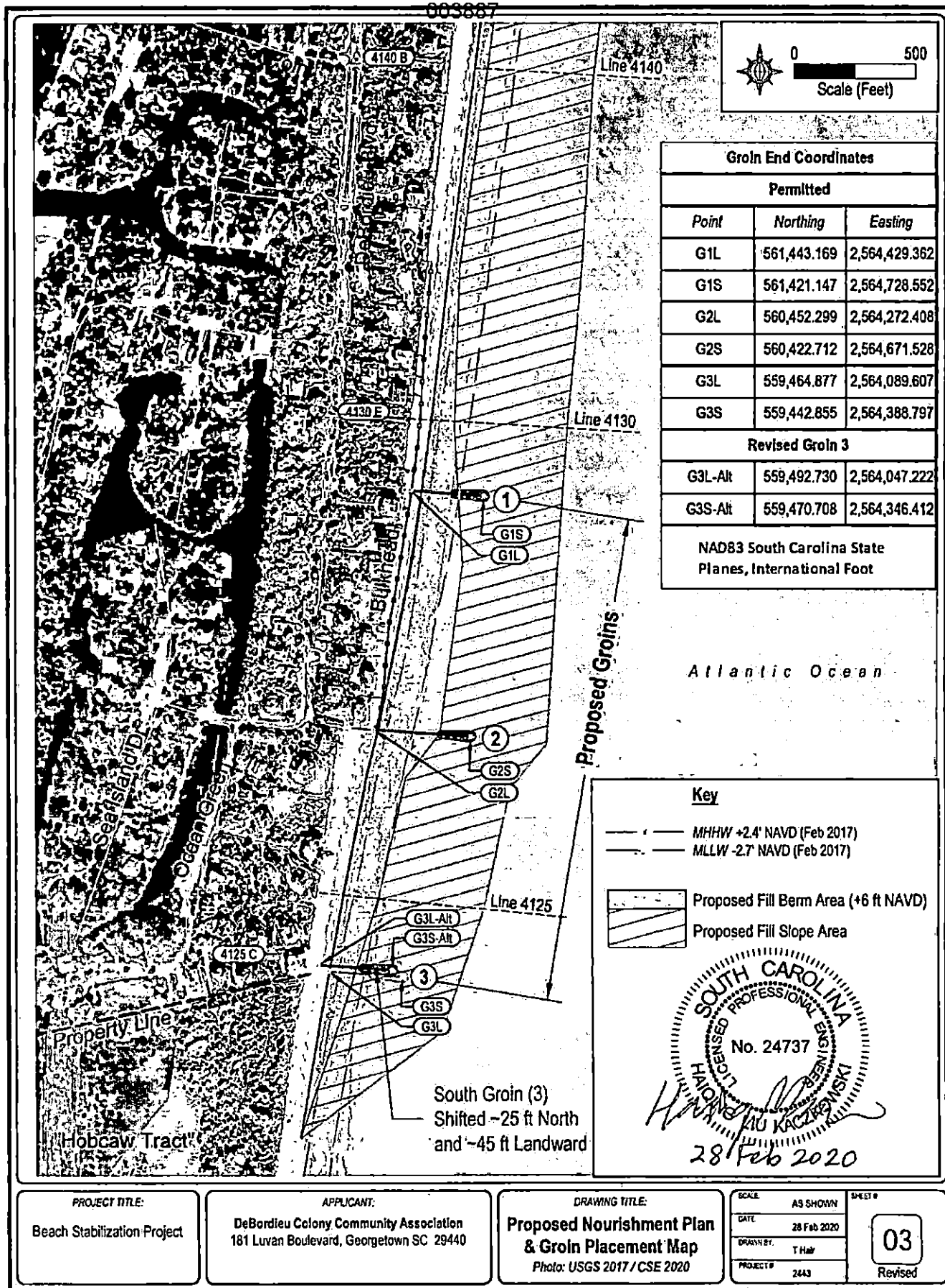
Sincerely,



Matthew J. Slagel
Beachfront Permitting Project Manager
Critical Area Permitting Section


DeBordieu Colony Community Association
Date

cc: Mr. Blair Williams, Critical Area Permitting Section Manager
Ms. Ann Eaddy, U.S. Army Corps of Engineers
Dr. Tim Kana, Coastal Science & Engineering, Agent



South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:
 South Carolina Board of Health and Environmental Control
 Attention: Clerk of the Board
 2600 Bull Street
 Columbia, South Carolina 29201
 Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.



South Carolina Environmental Law Project
Lawyers for the Wild Side of South Carolina

April 30, 2020

o 501 c3
 non-profit organization

Amy E. Armstrong
 Executive Director
 Michael G. Carley
 Staff Attorney
 Benjamin D. Cunningham
 Staff Attorney
 Leslie S. Lenhardt
 Staff Attorney
 Jessie A. White
 Staff Attorney

MAIN OFFICE
 430 Highmarket Street
 Georgetown, SC 29440

CONTACTS
 P.O. Box 1380
 Pawleys Island, SC 29585
 (843) 527-0078
 amy@scelp.org
 leslie@scelp.org

P.O. Box 5761
 Greenville, SC 29606
 (854) 412-7821
 michael@scelp.org

1214-A King Street
 Beaufort, SC 29902
 (843) 787-9864
 jessie@scelp.org

BOARD OF DIRECTORS

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 Robert Schofield

VIA E-MAIL & U.S. MAIL
 Clerk of the Board
 SCDHEC
 2600 Bull Street
 Columbia, SC 29201

Re: Request for Final Review Conference
 CCL v. DCCA & DHEC, Permit No. 2017-01795

Dear Madame Clerk:

Please find enclosed a Request for Final Review Conference being submitted on behalf of the Coastal Conservation League. The filing fee is being paid by credit card. Thank you for your kind consideration.

Respectfully,

Leslie S. Lenhardt

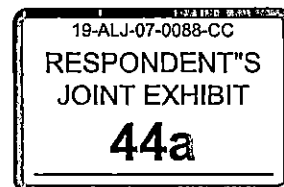
Cc: Tracey Green, Esq.
 Sallie Phelan, Esq.

RECEIVED

APR 30 2020

Clerk, Board of Health
 and Environmental Control

20-RFR-24



STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

Coastal Conservation League,

Requestor,

v.

Debordieu Colony Community Association and the South Carolina
Department of Health and Environmental Control,

Respondents.

Re: Amendment to Critical Area Permit # 2017-01795

REQUEST FOR FINAL REVIEW CONFERENCE

Coastal Conservation League, LLC (CCL) requests that the Board of the South Carolina Department of Health and Environmental Control (SCDHEC) conduct a Final Review Conference to review the staff decision to issue an amended Critical Area Permit and Coastal Zone Consistency Certification # 2017-01795 (Amended Permit) to Respondent Debordieu Colony Community Association (DCCA), authorizing beach renourishment and the construction of three groins on and adjacent to Debidue Beach in Georgetown, South Carolina. A copy of the Amended Permit is attached hereto as **Exhibit 1** to this request.

The basis for this request is as follows:

1. Debordieu Colony is located directly adjacent to the Baruch Foundation property, which is home to the North Inlet/Winyah Bay National Estuarine Research Reserve (NERR). It is one of the few pristine estuaries remaining in the United States and one of only 28 NERRS in the country. The majority of the waters of North Inlet are classified as Outstanding Resource Waters, the highest classification in the State. Scientists have been conducting long-term ecological studies here for decades because it is a test control site for the normal functions of estuaries.
2. CCL is a nonprofit membership corporation organized and existing under the laws of South Carolina. Its members enjoy the natural resources in and around Debidue Beach and the waters of the Inlet for harvesting oysters, fishing, boating, beach-walking, observing wildlife and other recreational purposes. In addition, members of CCL have a special interest in preserving one of thirteen pristine estuaries in the country, which is the site of scientific research that benefits these members. If the applicant proceeds with the proposed groin field, members of CCL will be harmed because it will deprive the downdrift beaches of sand, thus adversely affecting their use and enjoyment of these resources.
3. By way of background, DCCA applied in 2017 for the original Permit for beach renourishment and groin construction. On January 24, 2019, the staff issued the original Permit. Along with the beach renourishment, which CCL did not challenge, the original Permit authorized the construction of three groins consisting of aluminum sheet pile along the southern half of the project area varying in length from 300 to 400 feet. Armor stone scour aprons with approximately 1,500 tons of armor stone per apron will be placed around both sides of the seaward terminus of each groin. The southernmost groin was to be located

on the property boundary between DCCA and the Baruch Foundation. As aforementioned, CCL's appeal was limited to the groin portion of the Permit.

4. CCL instituted an appeal of the original Permit by filing a Request for Final Review Conference with this Board on February 7, 2019. After the Board denied the Request, CCL filed a Notice of Request for Contested Case Hearing with the Administrative Law Court (ALC) on April 8, 2019.
5. The Baruch Foundation also appealed the original Permit to the ALC and the two contested cases were consolidated for hearing purposes. After extensive discovery, the parties were preparing to conduct the hearing on February 20, 2020. The Friday immediately preceding the hearing, CCL was informed that the other parties to the cases had reached an agreement to resolve the appeal, through the alteration of certain conditions of the Permit, contained in Special Condition 22. For reference, a copy of the original Special Condition 22 is attached hereto as **Exhibit 2** to this Request. The ALC approved the settlement and dismissed the Baruch Foundation's appeal. CCL's appeal was unaffected by this dismissal.
6. Despite the original Permit being under appeal, and despite DHEC having no jurisdiction to do so, the staff issued an Amended Permit to DCCA, incorporating the new parameters of Special Condition 22. The Amended Permit contained instructions for challenging the issuance of the Permit. This Amended Permit is the subject of this Request for Final Review Conference.
7. CCL submits that the staff had no authority to alter a permit that is currently under appeal before the ALC. The ALC has sole jurisdiction to affirm or reverse or otherwise alter a Permit when a contested case is pending. Regardless of the resolution of the Baruch Foundation's appeal, there is no dispute that CCL's appeal is still active and a hearing will

be scheduled soon. The staff exceeded its authority by attempting to issue an amended Permit where there has been no remand of the contested case.

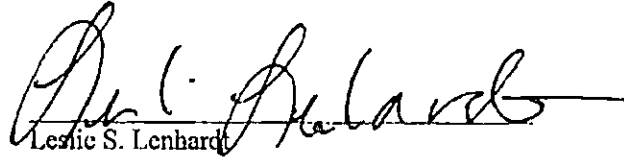
8. This illegal action by the staff has forced CCL to file this request in order to protect its rights and out of an abundance of caution, but CCL submits this Amended Permit is invalid and of no force and effect.
9. As for the merits of CCL's appeal, CCL submits the staff's decision was made in contravention of applicable statutes, regulations and rules contained in the South Carolina Coastal Zone Management Act (CZMA), S.C. Code Ann. §48-39-10 et seq.; specifically §48-39-20, 48-39-30, 48-39-150(A), 48-39-250, 48-39-260, 48-39-290; OCRM Regulations 30-1 et seq.; specifically 30-11, 30-15.G and 30-21; and the Coastal Management Program (CMP); specifically Section IV-56 & 57.
10. These ill-planned permitted groins are violated of the above provisions in the following respects:
 - a. There will be significantly negative impacts on the important natural resource of the public beach;
 - b. They are contrary to the CZMA's policy of protecting the State's sensitive and fragile areas from inappropriate development;
 - c. They will have impacts to wildlife, creation of erosion, the economic benefit analysis and other adverse environmental impacts;
 - d. There will be a significantly negative impact on the value and enjoyment of adjacent property owners;
 - e. They are contrary to the policies of discouraging unwise oceanfront development and encouraging the beach to accrete and erode naturally;

- f. They are contrary to the policies to “protect, preserve, and restore and enhance the beach/dune system” and to provide “a source for the preservation of dry sand beaches which provide recreation and a major source of state and local business revenue;
- g. They will have a detrimental effect on adjacent/downdrift areas;
- h. The particular sections or areas of Debidue Beach on which the applicant proposes to construct groins do not experience high erosion rates, contrary to the relevant statutory requirement and the arbitrary and capricious conclusion of the staff and not all of the structures within the groin field are sufficiently or imminently threatened, contrary to the statutory requirement and the arbitrary and capricious conclusion of the staff;
- i. The proposed monitoring is based on erroneous criteria with respect to the background historical erosion rate and the use of the running average erosion rate;
- j. There is no requirement as to when planning for supplemental renourishment should be commenced when the erosion rate is exceeded;
- k. The erosion rate calculated by DCCA is a volumetric measurement and not a beach profile measurement as utilized by DHEC;
- l. The Permit does not provide for and require for sufficient safeguards to be implemented to protect persons who may be injured by the groins either on the beach or as the groins extend into the ocean.

Therefore, based on the foregoing grounds, CCL respectfully requests this Board conduct a Final Review Conference and declare the amendment to the original Permit to be invalid and of no force and effect.

003896

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben D. Cunningham", written over a horizontal line.

Leslie S. Lenhardt
Benjamin D. Cunningham
South Carolina Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585
(843) 527-0078

April 30, 2020

003896

SCDHEC--005288



April 15, 2020

DeBordieu Colony Community Association
ATTN: Ms. Blanche Brown
181 Luvan Blvd.
Georgetown, SC 29440

9489 0090 0027 6188 0224 96

Re: 2017-01795 – Permit Amendment for Modified Southernmost Groin Location and Monitoring/Mitigation Requirements

Dear Ms. Brown:

The above referenced permit has been amended pursuant to an Order of Dismissal, dated April 3, 2020, from the S.C. Administrative Law Court in the case of The Belle W. Baruch Foundation vs. SCDHEC & DeBordieu Colony Community Assoc., Docket No. 19-ALJ-07-0088-CC. Specifically, Special Condition #22 of the permit has been modified according to a settlement agreement entered into between DeBordieu Colony Community Association and the Belle W. Baruch Foundation in March 2020 and ordered by the ALC in its Order of Dismissal. This permit amendment lowers the erosion rate trigger for mitigation from 8.1 cy/ft/yr to 6.00 cy/ft/yr, adds a mitigation trigger based on erosion above Mean High Water, and documents the increased Letter of Credit amount of \$1,000,000. The location of the southernmost proposed groin will also be shifted 25 feet to the north and approximately 50 feet to the west as shown in the revised attached drawing entitled "Proposed Nourishment Plan & Groin Placement Map, Photo: USGS 2017 / CSE 2020, dated 28 February 2020 [03 Revised]."

Special Condition #22 of the permit has been modified with the following:

"22. If the monitoring data collected according to Special Condition #18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require mitigation as follows:

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- b. that the groins be removed; and/or
- c. that the beach adversely affected by the groins be restored through renourishment. Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions.
 1. Specifically, if the average erosion area for two consecutive years above Mean High Water (MHW) within the Hobcaw Tract from the southernmost groin to 4,180 feet south of the southernmost groin exceeds .75 acre per year, mitigation will be required. For purposes of this provision, MHW is defined as 2.05' NAVD '88 and the initial baseline condition for MHW will be determined by a survey to be taken within one month prior to the beginning of Project construction. After completion of the Project, MHW will be determined annually by a survey taken in May of each year.
 2. Mitigation will also be required if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the southernmost groin exceeds the rate of

2600 Bull Street, Columbia, SC 29201 (803) 898-3432 www.scdhec.gov

Re: 2017-01795 – Permit Amendment for Modified Southernmost Groin Location and Monitoring/Mitigation Requirements

6.00 cy/ft/yr. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr.

- 3. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months.**
- 4. DCCA has obtained a commitment for a letter of credit in the amount of \$1,000,000, which shall be in place prior to the commencement of construction. DCCA has provided documentation regarding the beach fund approved by its members to pay for this installation of groins and renourishment and for any future work that may be required on the Debidue or Hobcaw beaches. This community approval is for 17 years. After paying for the project, DCCA will accumulate funds over the following 12 years; estimated to be approximately \$10-\$12 million (based on current estimates for the project cost). These funds will be available for additional beach renourishment and/or groin reconfiguration or removal if needed. These funds are in addition to the \$1 million Letter of Credit."**

This amendment is made a part of your permit and is subject to the full terms of the permit as issued.

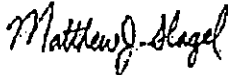
An as-built survey of the new groins and renourished beach area must be submitted to DHEC-OCRM within 90 days from completion of construction. The survey must be performed by a registered land surveyor, must show all components of the groins, and must list the starting and ending coordinates of the groins in the S.C. State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

This letter does not relieve you of the responsibility of acquiring any other applicable federal or local permits that may be required. Any person adversely affected by this action has the right to appeal as outlined in the enclosed "Guide to Board Review."

The construction placard must be posted conspicuously on site during authorized activities. If you do not possess a current placard, a new one must be obtained prior to start of construction.

If this amendment letter is not accepted within thirty (30) days of issuance, OR appealed as described on in the Guide to Board Review, the Department reserves the right to cancel this permit amendment. Please carefully review the Guide to Board Review for information and deadlines for appealing this permit amendment.

Sincerely,



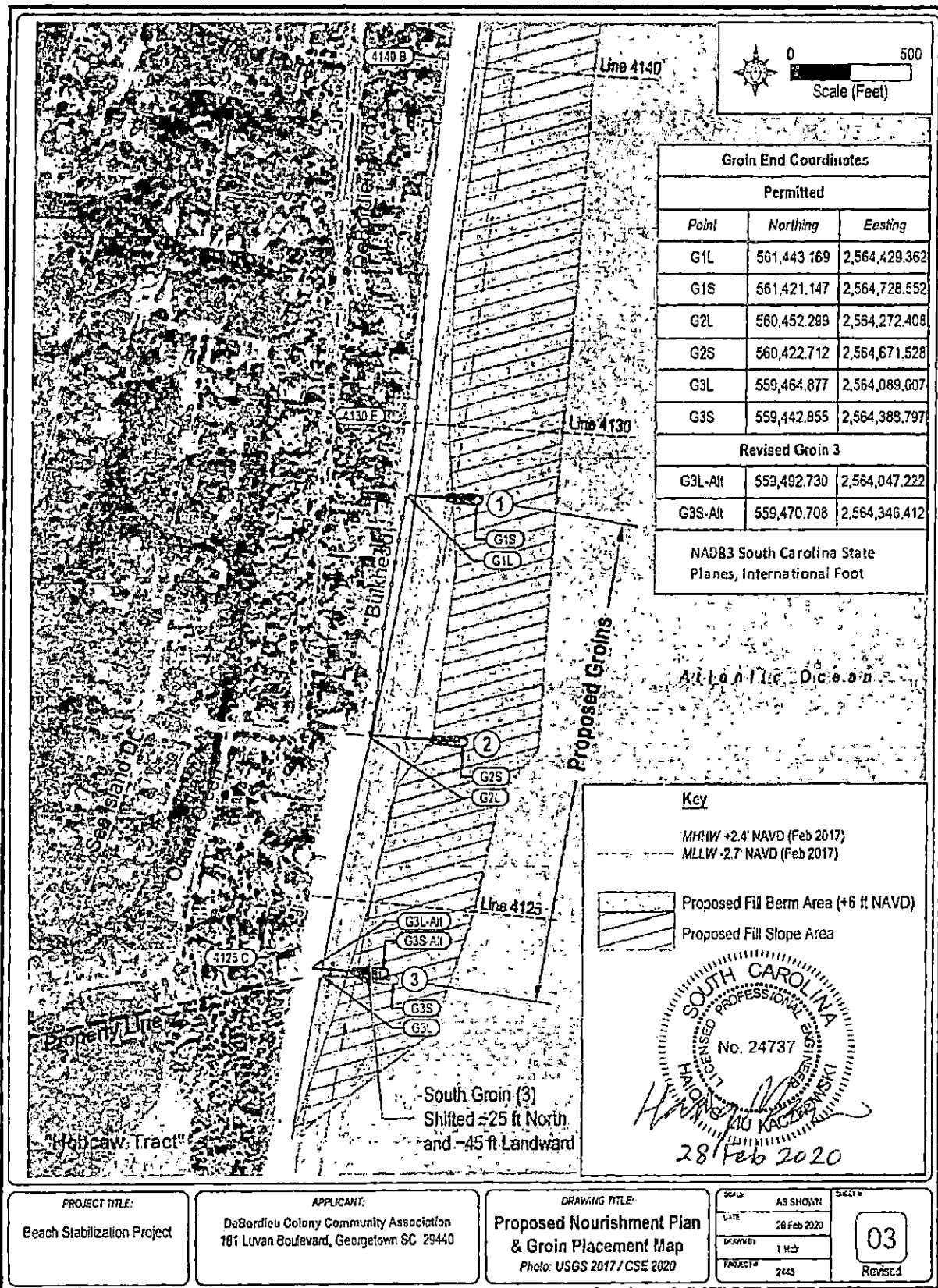
Matthew J. Slagel
Beachfront Permitting Project Manager
Critical Area Permitting Section

DeBordieu Colony Community Association

Date

cc: Mr. Blair Williams, Critical Area Permitting Section Manager
Ms. Ann Eaddy, U.S. Army Corps of Engineers
Dr. Tim Kana, Coastal Science & Engineering, Agent

S.C. Department of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201 (803) 896-3432 www.scdhec.gov



South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

1. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:
 - South Carolina Board of Health and Environmental Control
 - Attention: Clerk of the Board
 - 2600 Bull Street
 - Columbia, South Carolina 29201
 Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency. In subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

Permit Number: 2017-01795

SEE SPECIAL CONDITION(S)

Report	TABLE 1: Required Monitoring Information, Comparisons, and Analysis						
	Beach Profile Figures*	Bathymetric Survey Figures	Beach Sediment Samples	Borrow Area Sediment Samples	Aerial Photos	Compaction	Escarments
Pre-Project	X	X	X	X	X		
Post-Project	X	X	X	X	X	X	X
3-Months Post-Project	X				X		
6-Months Post-Project	X				X		
9-Months Post-Project	X				X		
Year 1 Annual Report	X	X		X	X	X	X
Year 2 Annual Report	X				X	X	X
Year 3 Annual Report	X	X		X	X	X	X
Year 4 Annual Report	X				X		
Year 5 Annual Report	X				X		
Year 6 Annual Report	X	X		X	X		
Year 7 Annual Report	X				X		
Year 8 Annual Report	X				X		
Year 9 Annual Report	X				X		
Year 10 Annual Report	X				X		
*Including post-storm surveys as needed							

22. If the monitoring data collected according to Special Condition # 18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require either that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the historical/background rate, that the groins be removed, and/or that the beach adversely affected by the groins be restored through nourishment. Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions. Specifically, if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the southernmost groin exceeds the historical/background rate of 8.1 cy/ft/yr, mitigation will be required. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds 8.1 cy/ft/yr. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months. The permittee's agent, in a letter dated May 15, 2018, estimates that it would cost approximately \$250,000 to

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SCDHEC File 2017-01795 - Page 001842

SEE SPECIAL CONDITION(S)

Permit Number: 2017-01795

reconfigure or remove the groins if required. The Letter of Credit dated August 17, 2018 serves as DeBordieu Colony Community Association's commitment to reconfigure groins, remove groins, and/or restore the adversely affected beach through renourishment should it be determined that the three groins contemplated under this permit resulted in increased erosion rates. DeBordieu Colony Community Association also implements a Beach Preservation Assessment, which generates funds solely dedicated to beach preservation.

23. Sand compaction must be monitored in the area of sand placement immediately after completion of the project and prior to May 1 for three subsequent years. If the compaction values of the renourished beach exceed 500 pounds per square inch (psi), the area may require tilling prior to May 1. USACE and SCDHEC-OCRM must be notified immediately if the compaction values exceed 500 psi to ensure coordination with the resource agencies. Any required tilling must occur landward of the wrack line and avoid all vegetated areas three square feet or greater with a three square foot buffer around the vegetated areas.
24. Visual surveys for escarpments along the project area must be made immediately after completion of the sand placement and within 30 days prior to May 1 for three subsequent years. If escarpments form along the renourished beach that interfere with sea turtle nesting or exceed 18 inches in height for a distance of 100 feet, the escarpments may require leveling prior to May 1 or during the sea turtle nesting and hatching season. USACE and SCDHEC-OCRM must be notified immediately if escarpments have formed to ensure coordination with the resource agencies.
25. An as-built survey of the new groins and renourished beach area must be submitted to DHEC-OCRM within 90 days from completion of construction. The survey must be performed by a registered land surveyor, must show all components of the groins, and must list the starting and ending coordinates of the groins in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.
26. In the event that any historic or cultural resources and/or archaeological materials are found during the course of work, the applicant must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology. Historic or cultural resources consist of those sites listed in the National Register of Historic Places and those sites that are eligible for the National Register. Archaeological materials consist of any items, fifty years old or older, which were made or used by man. These items include, but are not limited to, stone projectile points (arrowheads), ceramic shards, bricks, worked wood, bone and stone, metal and glass objects, and human skeletal materials.

7 of 42

SCDHEC File 2017-01795 - Page 001843

STATE OF SOUTH CAROLINA
BOARD OF HEALTH & ENVIRONMENTAL CONTROL

South Carolina Coastal Conservation)
League,)
)
Petitioner,)
)
v.)
)
South Carolina Department of Health and)
Environmental Control and Debordieu)
Colony Association,)
)
Respondents.)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on this date I have served the Request for Final Review Conference in the above-referenced matter on Respondent South Carolina Department of Health and Environmental Control and Respondent Debordieu Colony Association by depositing same in the U.S. Mail, postage paid, to the parties addressed to:

Sallie Phelan, Esq.
SCDHEC-OCRM
1362 McMillan Avenue Suite 400
Charleston, SC 29405

Tracey Green, Esq.
Willoughby & Hoefer, PA
930 Richland Street
Columbia, SC 29201


Leslie S. Lenhardt

April 30, 2020

003907
WILLOUGHBY & HOEFER, P.A.
ATTORNEYS & COUNSELORS AT LAW

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
CHAD N. JOHNSTON
JOHN W. ROBERTS
ELIZABETH ZECK*
ELIZABETHANN L. CARROLL
R. WALKER HUMPHREY, II***
ANDREW R. HAND****
J. JOSEPH OWENS

ELIZABETH S. MABRY
J. PATRICK HUDSON
OF COUNSEL

JOSEPH M. FARRELL, III
SPECIAL COUNSEL

*ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN WASHINGTON, D.C.
***ALSO ADMITTED IN CALIFORNIA
****ALSO ADMITTED IN NORTH CAROLINA

May 13, 2020

Sent Via US MAIL and EMAIL

Members of the Board
c/o The Honorable Denise Crawford
Clerk of the Board
S.C. Dep't of Health & Envtl. Control
2600 Bull Street
Columbia, S.C. 29201

RECEIVED

MAY 13 2020

Clerk, Board of Health
and Environmental Control

RE: Request for Final Review, P/N 2017-01795 (as amended)
Docket No. 20-RFR-24

Dear Members of the Board:

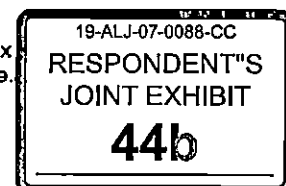
DeBordieu Colony Community Association (DeBordieu Colony) files this response to the renewed Request for Review (RFR) filed by the South Carolina Coastal Conservation League (CCL) regarding the above-referenced Permit, as amended April 15, 2020. DCCA respectfully requests that the Board decline to conduct a Final Review Conference for the reasons set forth in this letter.

As an initial matter, the renewed RFR is not necessary given the currently pending contested case between CCL, DHEC, and DeBordieu Colony before the Administrative Law Court (ALC) (Docket No. 19-ALJ-07- 0089-CC). The original Permit was issued on January 24, 2019, for the renourishment of Debiduc Beach and the construction of three groins. The inclusion of the groins in the Permit was challenged by both CCL and the Belle W. Baruch Foundation (Baruch), who separately filed RFRs at that time. Those RFRs were both denied by the Board. After the Board declined to conduct a Final Review Conference, CCL and Baruch separately initiated contested case hearings before the ALC. Those cases were later consolidated solely for purposes of trial.

After extensive discovery, the consolidated cases were scheduled for trial on February 20, 2020. Shortly before trial, DeBordieu Colony and Baruch entered into a Settlement Agreement, whereby they proposed for Special Condition #22 of the Permit to be amended to include stricter monitoring requirements and mitigation triggers. *See* Settlement Agreement.

OFFICES:
COLUMBIA | 930 RICHLAND STREET, COLUMBIA, SC 29201 | 803.252.3300 FAX
CHARLESTON | 133 RIVER LANDING DRIVE, SUITE 200, CHARLESTON, SC 29492 | 843.619.

003907



SCDHEC--005299

The Settlement Agreement also provided for an increased monetary commitment by DeBordieu Colony for potential mitigation. *Id.* The trial on CCL's claims was rescheduled for reasons unrelated to the substance of the matter and will be conducted later this year.

By Order of Dismissal dated April 3, 2020, the ALC approved the proposed settlement between Baruch and DeBordieu Colony, dismissed Baruch's appeal, and specifically directed DHEC to modify Special Condition #22 of the Permit in accordance with the terms of the Settlement Agreement. *See* Order of Dismissal, 2-3. The Order of Dismissal does not affect CCL's separate case against DeBordieu Colony and DHEC. Nor can CCL challenge the rights of DeBordieu Colony and Baruch to enter into a settlement with regard to their separate case. In any event, the Order of Dismissal also provides as follows:

Having dismissed this case, the Court will hold a contested case to address the issues raised in *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control and DeBordieu Colony Community Association* (Docket No. 19-ALJ-07-0089-CC). The Court nevertheless emphasizes that the League will be allowed to object [to] Permit 2017-0179 as modified by this Order.

Id. at 3. As such, CCL's ability to challenge the Permit as modified (which, as mentioned, includes stricter monitoring/mitigation requirements) is well preserved and not affected by the separate Order of Dismissal. Furthermore, CCL cites to no authority for its position that DHEC did not have jurisdiction to modify the Permit despite the ALC's Order of Dismissal directing it to do so.

CCL's decision to file a renewed RFR under these circumstances is an unwarranted extension of the regulatory process. On its face, the Permit as modified provides increased mitigation requirements for the project by virtue of the settlement between DeBordieu Colony and Baruch. CCL was given the opportunity to consent to the Permit amendment and proceed to trial against the project as outlined in the Permit as modified. Notably, as addressed in the next paragraph, CCL's substantive arguments in opposition to the project initially, and as changed by the amendment, are identical. As set forth in the ALC's Order of Dismissal, CCL will have a full and fair opportunity to raise their objections to the Amended Permit before the ALC in the pending contested case, thus allowing all issues to be considered as part of one proceeding. Accordingly, this Board should decline to hold a Final Review Conference based on CCL's procedural objections to the Permit as modified.

As to CCL's substantive arguments in opposition to the Permit as modified, each of those positions are identical to the ones raised by CCL in their original RFR. And they are also the same arguments previously rejected by the Board. Even a cursory review of the Permit (as initially issued, and as modified) reveals that OCRM staff evaluated each of the concerns raised

The Honorable Denise Crawford

May 13, 2020

Page 3

by CCL and imposed conditions to address the root cause of the alleged future and speculative harms. Furthermore, Special Condition #22 of the Permit as modified includes stricter monitoring requirements and mitigation triggers (and a \$1,000,000.00 Letter of Credit) which provide greater protections for these speculative harms. Accordingly, there is simply no basis for the Board to conduct a Final Review Conference with regard to CCL's substantive objections to the modified Permit.

Thank you for your time and consideration. If you have any questions, please do not hesitate to contact me at (843) 619-4426.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.



Randolph R. Lowell

cc: Counsel of Record

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW

Requestors: South Carolina Coastal Conservation League
Leslie S. Lenhardt, South Carolina Environmental Law Project, *Counsel for Requestors.*

Permittee: DeBordieu Colony Community Association
Amendment to Critical Area Permit # 2017-01795
Revised Monitoring and Mitigation Associated with Beach Renourishment
and Construction of Three Groin Structures

Docket No.: 20-RFR-24, Amendment to Critical Area Permit # 2017-01795

OGC No.: 2019-OCR-0001

RECEIVED

MAY 14 2020

Clerk, Board of Health
and Environmental Control

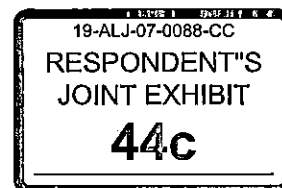
I. Summary

a. Type of Decision.

Amendment of a Critical Area Permit & Coastal Zone Consistency Certification consisting of beach renourishment and construction of three groin structures in accordance with the ALC Order of Dismissal dated April 3, 2020 in *Belle W. Baruch Foundation vs. SCDHEC and DeBordieu Colony Community Association*, 19-ALJ-07-0088-CC. The permit amendment, which is the subject of this Request for Final Review Conference (RFR), modified Special Condition #22 to increase monitoring and mitigation requirements of the original issued permit as set forth verbatim in the April 3, 2020 Order of Dismissal, and to relocate the southernmost groin consistent with the Settlement Agreement between The Belle W. Baruch Foundation and DeBordieu Colony Community Association attached as **Exhibit C** (Settlement Agreement and Order of Dismissal).

b. Location.

The original issued permit authorized the placement of up to 650,000 cubic yards of beach-compatible sand and three groin structures along a 1.5-mile section of Debidue Island in Georgetown County, South Carolina. The project area extends from Ocean Park Loop at the northern end to south of Ocean Green Drive at the southern end. The permitted work has not yet been constructed. The permit amendment pertains to monitoring and mitigation requirements south of the groins along the property of the Belle W. Baruch Foundation.



c. Decision.

On April 15, 2020, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management ("Department" or "DHEC") issued an Amendment to Critical Area Permit & Coastal Zone Consistency Certification # 2017-01795 to the DeBordieu Colony Community Association. The modified language shown in the permit amendment is to reflect the permit modification based on an Order of Dismissal from the Administrative Law Court (Docket No. 19-ALJ-07-0088-CC) consistent with the Settlement Agreement between the DeBordieu Colony Community Association and the Belle W. Baruch Foundation. The Department reviewed the Settlement Agreement and determined that the proposed changes to the permit were consistent with the statutes, regulations, and policies of the S.C. Coastal Management Program. The Department then issued the permit amendment in accordance with the ALC's Order once all necessary documents were received from the Permittee. See **Exhibit C** (Settlement Agreement and Order of Dismissal). Specifically, the permit amendment modified Special Condition #22 of the original issued permit to increase monitoring and mitigation requirements. The permit amendment lowers the erosion rate trigger for mitigation from 8.1 cubic yards per foot per year (cy/ft/yr) to 6.00 cy/ft/yr, adds a mitigation trigger based on erosion above Mean High Water, and documents the increased Letter of Credit amount of \$1,000,000. The location of the southernmost proposed groin will also be shifted 25 feet to the north and approximately 50 feet to the west. See **Exhibit A** (Special Condition #22 of the original issued permit) and **Exhibit B** (Permit Amendment).

d. Relevant Chronology.

November 27, 2017 – The Department received a permit application from the DeBordieu Colony Community Association (DCCA) and its agent, Coastal Science & Engineering (CSE) for beach renourishment and the construction of three groin structures.

January 24, 2019 – Department staff issued the original permit # 2017-01795, with special conditions, allowing for beach renourishment and three groin structures as requested in the application. The DHEC-OCRM Critical Area Permit & Coastal Zone Consistency Certification included an extensive monitoring program to evaluate potential downdrift impacts as a result of the groins. If the monitoring data collected according to Special Condition # 18 showed an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, DHEC-OCRM would require either that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the historical/background rate, that the groins be removed, and/or that the beach adversely affected by the groins be restored through renourishment.

February 7, 2019 – The Department received two Requests for Final Review (RFRs) of staff's decision; one from the S.C. Coastal Conservation League represented by the S.C. Environmental Law Project and one from the Belle W. Baruch Foundation (downdrift adjacent property owner).

March 7, 2019 – The DHEC Board notified the parties that it would not conduct a Final Review Conference on the original issued permit.

April 3, 2019 – The Belle W. Baruch Foundation filed a Notice of Appeal and Request for Contested Case Hearing with the Administrative Law Court (ALC).

April 8, 2019 – The S.C. Coastal Conservation League also appealed the original permit to the ALC, and the two contested cases were consolidated for hearing purposes.

March 24, 2020 – The Department received a request and supporting documentation from representatives of the DeBordieu Colony Community Association to amend permit # 2017-01795.

March 27, 2020 – Prior to trial, the DeBordieu Colony Community Association and Belle W. Baruch Foundation reached an agreement to resolve the appeal under Docket No. 19-ALJ-07-0088-CC by, among other things, agreeing to certain modifications to the permit. See **Exhibit C** (Settlement Agreement and Order of Dismissal). As a result, these parties requested that DHEC modify the Permit consistent with the Settlement Agreement. DHEC reviewed the amendment proposals and determined it had no objections. However, in light of the pending litigation over the original issued permit, DHEC requested that the moving parties seek a dismissal order from the ALC directing DHEC to modify the Permit in accordance with the terms of the Settlement Agreement and addressing the effect the modification would have on the S.C. Coastal Conservation League's challenge to the same permit prior to the Department issuing a permit amendment.

March 31, 2020 – The ALC conducted a telephonic hearing with counsel representing the DeBordieu Colony Community Association, Belle W. Baruch Foundation, and DHEC. The S.C. Coastal Conservation League was unable to participate in the conference call on this date. However, the League did not object to a conference call addressing the settlement in Docket No. 19-ALJ-07-0088-CC with the understanding that its concerns could be addressed before the ALC at a later date.

April 3, 2020 – The ALC ordered that the Belle W. Baruch Foundation's appeal be dismissed consistent with the Settlement Agreement. The ALC Order specified that the appeal of the S.C. Coastal Conservation League was unaffected by the dismissal of the Belle W. Baruch Foundation's appeal. The S.C. Coastal Conservation League's appeal is assigned Docket No. 19-ALJ-07-0089-CC. See **Exhibit C** (Settlement Agreement and Order of Dismissal).

April 15, 2020 – The Department issued the amendment to permit # 2017-01795 consistent with the Settlement Agreement and ALC Order, which modified the original issued permit to increase monitoring and mitigation requirements in Special Condition #22, to relocate the southernmost groin and to document the increased Letter of Credit amount of \$1,000,000. See **Exhibit A** (Special Condition #22 of the original issued permit) and **Exhibit B** (Permit Amendment).

April 30, 2020 – The Department received an RFR from the S.C. Coastal Conservation League represented by the S.C. Environmental Law Project of Staff's decision to issue an amended permit in accordance with the ALC Order and Settlement Agreement.

II. Relevant Law

a. Statutes.

§48-39-150(A)(1)-(10). "In determining whether a permit application is approved or denied the department shall base its determination on the individual merits of each application, the policies specified in Sections 48-39-20 and 48-39-30 and be guided by [ten] general considerations."

§ 48-39-260: Policy statement

§ 48-39-290: Restrictions on construction or reconstruction seaward of the baseline or between the baseline and the setback line; exceptions; special permits

§ 48-39-320: Comprehensive beach management plan

§ 48-39-350: Local comprehensive beach management plan

b. Regulations.

R.30-4(H): Amendment to a Permit

R.30-11(B): General Guidelines [Considerations] for All Critical Areas

R.30-11(C): Further Guidelines for All Critical Areas

R.30-11(D): General Guidelines for Beaches and the Beach/Dune System

R.30-13(L): Sand Fences, Minor Beach Renourishment, Dune Revegetation

R.30-13(N)(2): Protection of Beaches and Artificial Beach Nourishment

R.30-15(G): Groins

c. The South Carolina Coastal Zone Management Program Document.

Chapter III. Guidelines for Evaluation of All Projects

Chapter III. C.3 Management of Coastal Resources, Uses of Management Concern, Resource Policies, Guidelines for Evaluation of All Projects

Chapter IV. A.2.(8) Special Management Areas, GAPC policies on Threatened & Endangered Species Habitat

Chapter IV. C. Erosion Control Program, specifically subsection 2(C) "Erosion Control Policies" and the section on "Artificial Beach Renourishment"

III. Staff Response to Grounds Stated in Request for Review.

a. Regarding Whether the Department has the Authority to Amend the Permit:

Requestor states: "6. Despite the original Permit being under appeal, and despite DHEC having no jurisdiction to do so, the staff issued an Amended Permit to DCCA, incorporating the new parameters of Special Condition 22. The Amended Permit contained instructions for challenging the issuance of the Permit. This Amended Permit is the subject of this Request for Final Review Conference."

Requestor states: "7. CCL submits that the staff had no authority to alter a permit that is currently under appeal before the ALC. The ALC has sole jurisdiction to affirm or reverse or otherwise alter a Permit when a contested case is pending. Regardless of the resolution of the Baruch Foundation's appeal, there is no dispute that CCL's appeal is still active and a hearing will be scheduled soon. The staff exceeded its authority by attempting to issue an amended Permit where there has been no remand of the contested case."

Requestor states: "8. This illegal action by the staff has forced CCL to file this request in order to protect its rights and out of an abundance of caution, but CCL submits this Amended Permit is invalid and of no force and effect."

Staff response: CCL states that "the ALC has sole jurisdiction to affirm or reverse or otherwise alter a Permit when a contested case is pending." DHEC only amended the permit after it obtained the ALC Order of Dismissal dated April 3, 2020, dismissing the case consistent with the terms of the Settlement Agreement and addressing the League's rights. Prior to amending the permit, DHEC reviewed the proposed terms of the Settlement Agreement entered into by the DeBordieu Colony Community Association and Belle W. Baruch Foundation; determined that the proposed changes were consistent with the statutes, regulations, and policies of the S.C. Coastal Management Program; and collected the necessary documents to amend the permit. The ALC preserved CCL's rights in the present litigation providing in its Order of Dismissal that the Court will hold a contested case to address the issues raised in *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control and DeBordieu Colony Community Association* (Docket No. 19-ALJ-07-0089-CC) and the League will be allowed to object to permit # 2017-01795 as modified by the Order of Dismissal.

b. Regarding Grounds for Review #9 and #10a, b, c, d, e, f, g, h, and i Related to Whether DHEC Should Have Issued a Permit that Included Groins at this Location:

Requestor states: "9. As for the merits of CCL's appeal, CCL submits the staff's decision was made in contravention of applicable statutes, regulations and rules contained in the South Carolina Coastal Zone Management Act (CZMA), S.C. Code Ann. §48-39-10 et seq.; specifically §48-39-20, 48-39-30, 48-39-150(A), 48-39-250, 48-39-260, 48-39-290; OCRM Regulations 30-1 et seq.; specifically 30-11, 30-15.G and 30-21; and the Coastal Management Program (CMP); specifically Section IV-56 & 57."

Requestor states: "10. These ill-planned permitted groins are violated (sic) of the above provisions in the following respects:

- a. There will be significantly negative impacts on the important natural resource of the public beach;
- b. They are contrary to the CZMA's policy of protecting the State's sensitive and fragile areas from inappropriate development;
- c. They will have impacts to wildlife, creation of erosion, the economic benefit analysis and other adverse environmental impacts;
- d. There will be a significantly negative impact on the value and enjoyment of adjacent property owners;
- e. They are contrary to the policies of discouraging unwise oceanfront development and encouraging the beach to accrete and erode naturally;
- f. They are contrary to the policies to 'protect, preserve, and restore and enhance the beach/dune system' and to provide 'a source for the preservation of dry sand beaches which provide recreation and a major source of state and local business revenue';
- g. They will have a detrimental effect on adjacent/downdrift areas;
- h. The particular sections or areas of Debidue Beach on which the applicant proposes to construct groins do not experience high erosion rates, contrary to the relevant statutory requirement and the arbitrary and capricious conclusion of the staff and not all of the structures within the groin field are sufficiently or imminently threatened, contrary to the statutory requirement and the arbitrary and capricious conclusion of the staff;
- i. The Permit does not provide for and require for sufficient safeguards to be implemented to protect persons who may be injured by the groins either on the beach or as the groins extend into the ocean."

Staff response: These issues were raised by the League in its RFR submitted to the Department in February 2019 as they challenged the original issued permit (19-RFR-3). Staff's responses are also provided in the Staff Summary document dated February 22, 2019. See **Exhibit D** (Staff Summary in response to 19-RFR-3). Since these issues were addressed in the original RFR and are the subject of the ongoing appeal, Staff will not readdress them here. The ALC also reiterated in its Order of Dismissal that the Court will hold a contested case to address the issues raised in *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control and DeBordieu Colony Community Association* (Docket No. 19-ALJ-07-0089-CC) and the League will be allowed to object to permit # 2017-01795 as modified by the Order of Dismissal.

c. Regarding Grounds for Review #10i, j, and k Related to the Monitoring and Mitigation Requirements in the Amended Permit:

Requestor states: "10. These ill-planned permitted groins are violated (sic) of the above provisions in the following respects:

- i. The proposed monitoring is based on erroneous criteria with respect to the background historical erosion rate and the use of the running average erosion rate;**
- j. There is no requirement as to when planning for supplemental renourishment should be commenced when the erosion rate is exceeded;**
- k. The erosion rate calculated by DCCA is a volumetric measurement and not a beach profile measurement as utilized by DHEC."**

Staff response: The Staff amended the permit in accordance with the ALC Order of Dismissal that dismissed the case consistent with the Settlement Agreement and expressly modified Special Condition 22 containing these monitoring and mitigation requirements. The permit amendment lowers the erosion rate trigger for mitigation from 8.1 cy/ft/yr to 6.00 cy/ft/yr and adds a mitigation trigger based on erosion above Mean High Water. Lowering the erosion rate trigger for mitigation and adding a mitigation trigger based on erosion above Mean High Water will likely result in the permittee being required to mitigate for potential impacts sooner than would have been required under the original issued permit. Although the League claims that there is no requirement as to when planning for supplemental renourishment should be commenced, Special Condition # 22.c.3 of the amended permit states that "The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months." Additionally, the original permit application included the figure below, which shows that the permittee intends to initiate planning for required mitigation well in advance of reaching the erosion rate trigger.

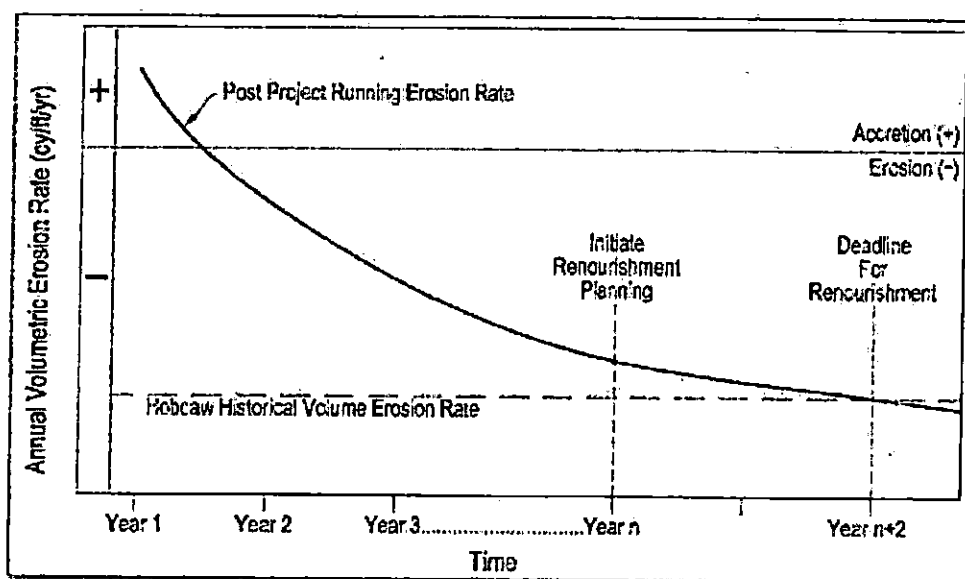


FIGURE 6.1. Recommended approach to establishing erosion-rate thresholds and renourishment triggers after the proposed project. Planning would be initiated before the running erosion rate reaches the historical volumetric change rate. This scenario assumes it may take up to two years to complete planning and permitting for renourishment.

Contrary to the League's assertion, the erosion rate calculated by DCCA is consistent with DHEC's methodologies for evaluating shoreline change. DHEC utilizes shoreline change data as well as volumetric beach profile data in its day-to-day work. Shoreline change data refers to rates of erosion or accretion as viewed from above and measured in units of feet per year (ft/yr). DHEC relies on historical and current aerial photographs to calculate rates of shoreline change over time. Since the 1980s, DHEC or contractors for the Department have also collected beach profile transect data at a series of over 400 survey monuments statewide. Beach profile data is useful for calculating how much sand exists within a given transect, or cross-section, of the shoreline from the ocean to the back of the dunes. Sand volume within a beach profile is measured in units of cubic yards per foot (cy/ft), and volume change over time is measured in units of cubic yards per foot per year (cy/ft/yr). Both shoreline change data and beach profile data are valuable, and DHEC uses these data in tandem to evaluate shoreline dynamics. The Department's network of beachfront survey monuments and beach profile data from the last several years are available to the public through the Beach Erosion Research and Monitoring (BERM) Explorer Profile Viewer: <https://gis.dhec.sc.gov/bermexplorer/>.

IV. Requested Action

Based on the foregoing, the Department requests that the Board decline to hold a final review conference in the above-referenced matter and uphold the staff decision as issued.

[SIGNATURES ON FOLLOWING PAGE]

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW

Docket No.: 20-RFR-24

Amendment to Critical Area Permit # 2017-01795:

**Revised Monitoring and Mitigation Associated with Beach Renourishment
and Construction of Three Groin Structures**

Respectfully Submitted,

Blair Williams

Blair N. Williams

Manager, Critical Area Permitting Section

Office of Ocean & Coastal Resource Management

Sallie P. Phelan

Sallie P. Phelan

Assistant General Counsel

Office of Ocean & Coastal Resource Management

Date: May 14, 2020

SEE SPECIAL CONDITION(S)

Permit Number: 2017-01795

Report	TABLE 1: Required Monitoring Information, Comparisons, and Analysis						
	Beach Profile Figures*	Bathymetric Survey Figures	Beach Sediment Samples	Borrow Area Sediment Samples	Aerial Photos	Compaction	Escarments
Pre-Project	X	X	X	X	X		
Post-Project	X	X	X	X	X	X	X
3-Months Post-Project	X				X		
6-Months Post-Project	X				X		
9-Months Post-Project	X				X		
Year 1 Annual Report	X	X		X	X	X	X
Year 2 Annual Report	X				X	X	X
Year 3 Annual Report	X	X		X	X	X	X
Year 4 Annual Report	X				X		
Year 5 Annual Report	X				X		
Year 6 Annual Report	X	X		X	X		
Year 7 Annual Report	X				X		
Year 8 Annual Report	X				X		
Year 9 Annual Report	X				X		
Year 10 Annual Report	X				X		
*Including post-storm surveys as needed							

22. If the monitoring data collected according to Special Condition # 18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require either that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the historical/background rate, that the groins be removed, and/or that the beach adversely affected by the groins be restored through renourishment. Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions. Specifically, if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the southernmost groin exceeds the historical/background rate of 8.1 cy/ft/yr, mitigation will be required. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds 8.1 cy/ft/yr. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months. The permittee's agent, in a letter dated May 16, 2018, estimates that it would cost approximately \$250,000 to

**SEE SPECIAL
CONDITION(S)**

Permit Number: 2017-01795

reconfigure or remove the groins if required. The Letter of Credit dated August 17, 2018 serves as DeBordieu Colony Community Association's commitment to reconfigure groins, remove groins, and/or restore the adversely affected beach through renourishment should it be determined that the three groins contemplated under this permit resulted in increased erosion rates. DeBordieu Colony Community Association also implements a Beach Preservation Assessment, which generates funds solely dedicated to beach preservation.

23. Sand compaction must be monitored in the area of sand placement immediately after completion of the project and prior to May 1 for three subsequent years. If the compaction values of the renourished beach exceed 500 pounds per square inch (psi), the area may require tilling prior to May 1. USACE and SCDHEC-OCRM must be notified immediately if the compaction values exceed 500 psi to ensure coordination with the resource agencies. Any required tilling must occur landward of the wrack line and avoid all vegetated areas three square feet or greater with a three square foot buffer around the vegetated areas.
24. Visual surveys for escarpments along the project area must be made immediately after completion of the sand placement and within 30 days prior to May 1 for three subsequent years. If escarpments form along the renourished beach that interfere with sea turtle nesting or exceed 18 inches in height for a distance of 100 feet, the escarpments may require leveling prior to May 1 or during the sea turtle nesting and hatching season. USACE and SCDHEC-OCRM must be notified immediately if escarpments have formed to ensure coordination with the resource agencies.
25. An as-built survey of the new groins and renourished beach area must be submitted to DHEC-OCRM within 90 days from completion of construction. The survey must be performed by a registered land surveyor, must show all components of the groins, and must list the starting and ending coordinates of the groins in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.
26. In the event that any historic or cultural resources and/or archaeological materials are found during the course of work, the applicant must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology. Historic or cultural resources consist of those sites listed in the National Register of Historic Places and those sites that are eligible for the National Register. Archaeological materials consist of any items, fifty years old or older, which were made or used by man. These items include, but are not limited to, stone projectile points (arrowheads), ceramic shards, bricks, worked wood, bone and stone, metal and glass objects, and human skeletal materials.



003921

RECEIVED

APR 23 2020

OCRM - CHARLESTON

April 15, 2020

DeBordieu Colony Community Association
ATTN: Ms. Blanche Brown
181 Luvan Blvd.
Georgetown, SC 29440

9489 0090 0027 6188 0224 96

Re: 2017-01795 – Permit Amendment for Modified Southernmost Groin Location and Monitoring/Mitigation Requirements

Dear Ms. Brown:

The above referenced permit has been amended pursuant to an Order of Dismissal, dated April 3, 2020, from the S.C. Administrative Law Court in the case of The Belle W. Baruch Foundation vs. SCDHEC & DeBordieu Colony Community Assoc., Docket No. 19-ALJ-07-0088-CC. Specifically, Special Condition #22 of the permit has been modified according to a settlement agreement entered into between DeBordieu Colony Community Association and the Belle W. Baruch Foundation in March 2020 and ordered by the ALC in its Order of Dismissal. This permit amendment lowers the erosion rate trigger for mitigation from 8.1 cy/ft/yr to 6.00 cy/ft/yr, adds a mitigation trigger based on erosion above Mean High Water, and documents the increased Letter of Credit amount of \$1,000,000. The location of the southernmost proposed groin will also be shifted 25 feet to the north and approximately 50 feet to the west as shown in the revised attached drawing entitled "Proposed Nourishment Plan & Groin Placement Map, Photo: USGS 2017 / CSE 2020, dated 28 February 2020 [03 Revised]."

Special Condition #22 of the permit has been modified with the following:

"22. If the monitoring data collected according to Special Condition #18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require mitigation as follows:

- a. that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the background rate of .75 acres per year or 6.00 cy/ft/yr, (as set forth below in paragraphs 1 and 2);
- b. that the groins be removed; and/or
- c. that the beach adversely affected by the groins be restored through renourishment. Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions.
 1. Specifically, if the average erosion area for two consecutive years above Mean High Water (MHW) within the Hobcaw Tract from the southernmost groin to 4,180 feet south of the southernmost groin exceeds .75 acre per year, mitigation will be required. For purposes of this provision, MHW is defined as 2.05' NAVD '88 and the initial baseline condition for MHW will be determined by a survey to be taken within one month prior to the beginning of Project construction. After completion of the Project, MHW will be determined annually by a survey taken in May of each year.
 2. Mitigation will also be required if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the southernmost groin exceeds the rate of

SC Department of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201 (803) 898-3432 www.scdhec.gov

003921

SCDHEC-005249

Re: 2017-01795 – Permit Amendment for Modified Southernmost Groin Location and Monitoring/Mitigation Requirements

6.00 cy/ft/yr. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr.

3. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months.
4. DCCA has obtained a commitment for a letter of credit in the amount of \$1,000,000, which shall be in place prior to the commencement of construction. DCCA has provided documentation regarding the beach fund approved by its members to pay for this installation of groins and renourishment and for any future work that may be required on the Debidue or Hobcaw beaches. This community approval is for 17 years. After paying for the project, DCCA will accumulate funds over the following 12 years, estimated to be approximately \$10-\$12 million (based on current estimates for the project cost). These funds will be available for additional beach renourishment and/or groin reconfiguration or removal if needed. These funds are in addition to the \$1 million Letter of Credit."

This amendment is made a part of your permit and is subject to the full terms of the permit as issued.

An as-built survey of the new groins and renourished beach area must be submitted to DHEC-OCRM within 90 days from completion of construction. The survey must be performed by a registered land surveyor, must show all components of the groins, and must list the starting and ending coordinates of the groins in the S.C. State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

This letter does not relieve you of the responsibility of acquiring any other applicable federal or local permits that may be required. Any person adversely affected by this action has the right to appeal as outlined in the enclosed "Guide to Board Review."

The construction placard must be posted conspicuously on site during authorized activities. If you do not possess a current placard, a new one must be obtained prior to start of construction.

If this amendment letter is not accepted within thirty (30) days of issuance, OR appealed as described on in the Guide to Board Review, the Department reserves the right to cancel this permit amendment. Please carefully review the Guide to Board Review for information and deadlines for appealing this permit amendment.

Sincerely,

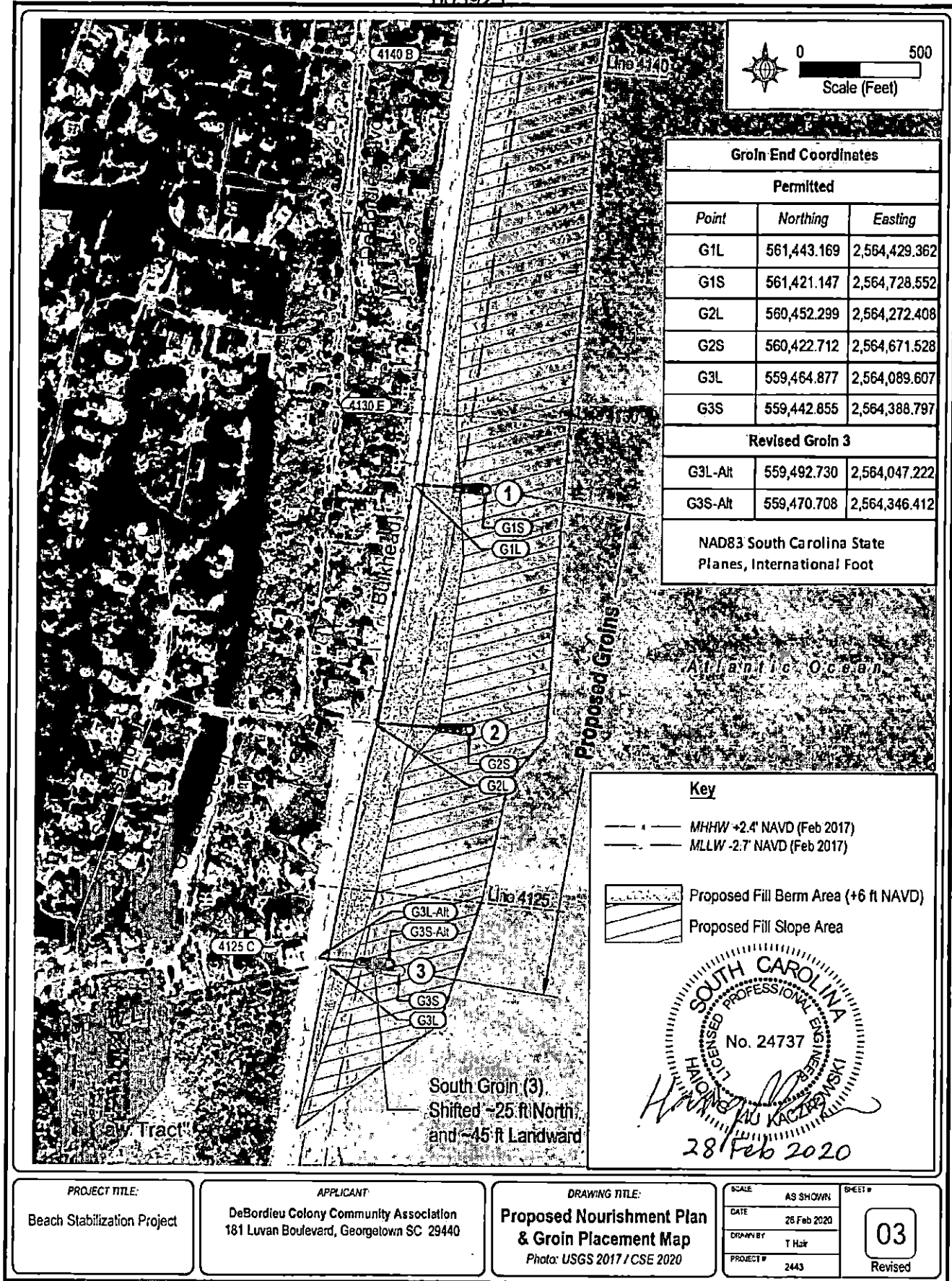
Matthew J. Slagel

Matthew J. Slagel
Beachfront Permitting Project Manager
Critical Area Permitting Section

Blanche Brown
DeBordieu Colony Community Association

April 21, 2020
Date

cc: Mr. Blair Williams, Critical Area Permitting Section Manager
Ms. Ann Eaddy, U.S. Army Corps of Engineers
Dr. Tim Kana, Coastal Science & Engineering, Agent



South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:
 South Carolina Board of Health and Environmental Control
 Attention: Clerk of the Board
 2600 Bull Street
 Columbia, South Carolina 29201
 Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

modify Special Condition 22 and indicated it had no objections to the modifications to Special Condition 22. However, in light of the pending litigation, DHEC requested that the moving parties seek a dismissal order directing DHEC to modify the Permit in accordance with the terms of the Settlement Agreement and addressing the effect the modification has on the League's challenge to this same permit.

The Court conducted a telephonic hearing on Tuesday, March 31, 2020, with counsel. The League was unable to participate in the conference call on that date. However, the League did not object to a conference call addressing the settlement in Docket No. 19-ALJ-07-0088-CC with the understanding that its concerns could be addressed at a later date.

Having reviewed the Settlement Agreement and heard from the Parties, including DHEC, it is hereby ordered that:

1. The contested case captioned *The Belle W. Baruch Foundation v. South Carolina Department of Health and Environmental Control and Debordieu Colony Community Association* (Docket No. 19-ALJ-07-0088-CC) is dismissed with prejudice consistent with the Settlement Agreement;
2. As contemplated by the Settlement Agreement, Permit 2017-0179 is modified such that Special Condition 22 reads as follows:

If the monitoring data collected according to Special Condition #18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require mitigation as follows:

- a. that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the background rate of .75 acre per year or 6.00 cy/ft/yr, (as set forth below in paragraphs 1 and 2);
- b. that the groins be removed; and/or
- c. that the beach adversely affected by the groins be restored through renourishment. Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions.
 1. Specifically, if the average erosion area for two consecutive years above Mean High Water (MHW) within the Hobcaw Tract from the southernmost groin to 4,180 feet south of the southernmost groin exceeds .75 acre per year, mitigation will be required. For purposes of this provision, MHW is defined as 2.05' NAVD '88 and the initial baseline condition for MHW will be determined by a survey to be taken within one month prior to the beginning of Project construction. After completion of the Project, MHW will be determined annually by a survey taken in May of each year.
 2. Mitigation will also be required if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the

southernmost groin exceeds the rate of 6.00 cy/ft/yr. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr.

3. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months.
4. DCCA has obtained a commitment for a letter of credit in the amount of \$1,000,000, which shall be in place prior to the commencement of construction. DCCA has provided documentation regarding the beach fund approved by its members to pay for this installation of groins and renourishment and for any future work that may be required on the Debidue or Hobcaw beaches. This community approval is for 17 years. After paying for the project, DCCA will accumulate funds over the following 12 years, estimated to be approximately \$10-\$12 million (based on current estimates for the project cost). These funds will be available for additional beach renourishment and/or groin reconfiguration or removal if needed. These funds are in addition to the \$1 million Letter of Credit.

Having dismissed this case, the Court will hold a contested case to address the issues raised in *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control and Debordieu Colony Community Association* (Docket No. 19-ALJ-07-0089-CC). The Court nevertheless emphasizes that the League will be allowed to object Permit 2017-0179 as modified by this Order.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

April 3, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Michelle Perez
Judicial Law Clerk

April 3, 2020
Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

The Belle W. Baruch Foundation,	)	Docket No. 19-ALJ-07-0088-CC
	)	
	)	
Petitioner,	)	
	)	
vs.	)	SETTLEMENT AGREEMENT
	)	
South Carolina Department of Health and	)	
Environmental Control and DeBordieu	)	
Colony Community Association,	)	
	)	
Respondents.	)	
_____	)	

WHEREAS, The Belle W. Baruch Foundation ("Hobcaw") is a non-profit organization and owner of Hobcaw Barony, a 16,000-acre property dedicated to research and education.

WHEREAS, Hobcaw initiated this contested case proceeding to challenge the South Carolina Department of Health and Environmental Control's issuance of Permit 2017-0179 ("the Permit") to DeBordieu Colony Community Association ("DCCA") for beach renourishment and the construction of three groin structures along a 1.5-mile section of Debidue Island in Georgetown County, South Carolina.

WHEREAS, Hobcaw and DCCA (collectively "the Parties") now wish to resolve the disputes between them related to the Permit and, therefore, in consideration of the recitals, promises and covenants set forth herein and for good and valuable consideration the Parties hereto agree to be legally bound as follows:

1. DCCA as used herein shall mean and include DeBordieu Colony Community Association, its employees, agents, invitees, and contractors.
2. DCCA will move the southernmost groin 25 feet to the north. The southernmost groin will also be moved westward approximately 50 feet. **EXHIBIT 1** hereto entitled "Proposed Nourishment Plan & Groin Placement Map. Photo: USGS 2017 / CSE 2020, dated 28 February 2020 [03 Revised]" shows the revised location of the groins and is specifically incorporated into and made part of this Settlement Agreement. A copy of **EXHIBIT 1** will also be included in and incorporated in the materials DCCA will submit to DHEC in conjunction with seeking modification of the Permit as required by the Agreement.
3. The parties have agreed that Special Condition 22 of the Permit shall be modified as follows: If the monitoring data collected according to Special Condition #18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require mitigation as follows:

- a. that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the background rate of .75 acre per year or 6.00 cy/ft/yr, (as set forth below in paragraphs 1 and 2);
 - b. that the groins be removed; and/or
 - c. that the beach adversely affected by the groins be restored through renourishment. Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions.
 - 1. Specifically, if the average erosion area for two consecutive years above Mean High Water (MHW) within the Hobcaw Tract from the southernmost groin to 4,180 feet south of the southernmost groin exceeds .75 acre per year, mitigation will be required. For purposes of this provision, MHW is defined as 2.05' NAVD '88 and the initial baseline condition for MHW will be determined by a survey to be taken within one month prior to the beginning of Project construction. After completion of the Project, MHW will be determined annually by a survey taken in May of each year.
 - 2. Mitigation will also be required if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr.
 - 3. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months.
 - 4. DCCA has obtained a commitment for a letter of credit in the amount of \$1,000,000, which shall be in place prior to the commencement of construction. DCCA has provided documentation regarding the beach fund approved by its members to pay for this installation of groins and renourishment and for any future work that may be required on the Debidue or Hobcaw beaches. This community approval is for 17 years. After paying for the project, DCCA will accumulate funds over the following 12 years, estimated to be approximately \$10-\$12 million (based on current estimates for the project cost). These funds will be available for additional beach renourishment and/or groin reconfiguration or removal if needed. These funds are in addition to the \$1 million Letter of Credit.
4. This Agreement is contingent upon:

- a. The ALC's approval of the modification of Special Condition 22 of the Permit as set forth above; and
 - b. Final court approval (including any appeals) of the modified permit; however, if the modified permit is denied or is further altered as a result of the pending Coastal Conservation League proceeding or for any other reason and DCCA decides as a result not to proceed with construction of groins, then this Agreement shall be null and void.
5. Hobcaw will prepare a written ten-year license agreement to allow DCCA non-exclusive access and use of a strip of land on the northernmost border of the Hobcaw property. The purpose of the license is to allow DCCA to use the specified area as a temporary staging/storage area for the equipment and materials to be used in conjunction with specific, limited-duration groin construction/renourishment projects authorized by the Permit. Generally, the license area is to be about 100 feet wide and 600 feet long and located along the dirt road connecting Ocean Green Drive to the beach. In addition to other terms to be negotiated, DCCA and Hobcaw agree:
- a. The license shall not be construed to be a lease or to grant a real property interest.
 - b. The license may not be used for any form of recreational access to the beach; provided, however, that DCCA shall not be responsible if the beach is accessed by someone proceeding through the area during the period that the gate is removed during the renourishment and groin construction process.
 - c. DCCA will pay Hobcaw \$35,000 per year for 10 years for this license, with the first payment due 30 days following the commencement of the groin construction that shall include the commencement of the use of the licensed area for staging and storing for the equipment and materials; provided, however, that if DCCA is required to remove the groins, its obligation to continue to paying for this license terminates once the groins are removed from the beach and all equipment and materials are removed from the license area.
 - d. A survey of the licensed area that shall include the boundaries, topography, and trees, prepared at DCCA's cost, that shall be an exhibit to the final license agreement.
 - e. Prior to conducting any activity on the licensed area, DCCA will obtain all necessary permits and consents for the use of the licensed area (including the necessary permits or approvals for any activities in the licensed area seaward of the beachfront jurisdictional lines, if any) and comply with all applicable federal, state, county and municipal laws, ordinances and regulations in its use of the licensed area.
 - f. DCCA shall not alter the natural dune area or conduct other activity that would be contrary to Hobcaw's primary mission to conserve Hobcaw Barony's unique natural and cultural resources for research and education.
 - g. If DCCA intends to remove vegetation from the licensed area, DCCA shall provide to Hobcaw for its approval the plan for removal of such vegetation as well as the

revegetation of the area at the end of the work, which approval shall not be unreasonably withheld. Notwithstanding the preceding, DCCA has authority to temporarily remove portions of the fence as necessary to enable equipment and materials to pass through to the beach.

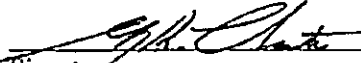
- h. DCCA will exercise due diligence in the protection of Hobcaw's property—including property adjacent to the area licensed—against fire or damage from any and all other causes including oil or other chemical contamination and DCCA will be responsible for any damage or contamination that may be caused to the property of Hobcaw by the actions of DCCA (or anyone acting on behalf of or under DCCA), its contractors, subcontractors, vendors, or others who may use the licensed area.
 - i. DCCA will ensure a minimum area of access roadway (to be shown on the survey) will remain passable and unobstructed for pedestrians and vehicles.
 - j. Hobcaw makes no representations as to the present or future condition of its property. DCCA assumes all risks of personal injury or damage to Hobcaw's property in connection with the DCCA's operations via the license. DCCA shall repair or pay for the repair of any damage to the Hobcaw's property resulting directly or indirectly from DCCA's activities within or use of the easement area.
 - k. DCCA will indemnify and hold harmless Hobcaw and its trustees, managers, employees, agents, invitees, or contractors, from and against any and all liability, damage, expense, claims, liens or judgments, including reasonable attorneys' fees, resulting from injury to persons or damage to property resulting from or in any fashion arising out of the actions of DCCA (or anyone acting on behalf of or under DCCA), its contractors, subcontractors, vendors, or others who may use the licensed area.
 - l. For the term of the license, DCCA will maintain insurance in the form of a General Commercial Liability insurance policy in the amount of \$1,000,000 per each occurrence and will annually provide Hobcaw with a copy of the policy and a valid Certificate of Insurance until completion of the project. DCCA further agrees that its contract with the general contractor will require the general contractor to maintain General Commercial Liability insurance and Commercial Automobile Liability insurance in the amount of \$1,000,000 per each occurrence, that designates Hobcaw and DCCA as additional insureds for purposes of the project and the licensed area. Such insurance coverage shall be maintained and effective until completion of the project. DCCA will annually provide Hobcaw with a copy of the general contractor's policy and a valid Certificate of Insurance until completion of the project and annually during any subsequent period of construction or renourishment.
- 6. The parties acknowledge that this Agreement is not an admission by any party, person, or entity of any violation of any federal, state, or local statute or regulation, or any violation of any right or of any duty.
 - 7. Should any party hereto violate any term of this Agreement, the party who violated such

provision shall pay to the non-breaching party all costs and expenses, including reasonable attorneys' fees and costs, incurred by the non-breaching party to enforce the terms of this Agreement.

8. Each party to this Agreement hereby waives and releases the other parties from and against any and all claims against the other parties to the within lawsuit for attorney's fees and/or costs in connection with the within lawsuit and agrees to bear its respective attorneys' fees and costs.
9. The Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
10. The Parties each state that they have read and fully understand the foregoing Agreement and that the individuals executing the Agreement on behalf of each party have full and complete authority to agree to the representations contained herein.
11. This Agreement shall be governed by the laws of the State of South Carolina and of the United States.
12. All the terms and provisions of this agreement shall be binding upon and inure to the benefit of the parties, any person or entity released by this Agreement, and their respective heirs, successors and assigns.
13. If any of the provisions of this Agreement shall contravene or be invalid under the laws of the State of South Carolina and of the United States, such contravention or invalidity shall not invalidate the entire agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.
14. The waiver by either of the Parties of a breach of any provision of this Agreement shall not operate as, or be construed as a waiver of any subsequent breach thereof.
15. No modification shall be made to this Agreement except by written agreement of the Parties.
16. This Agreement may be executed in any number of counterparts which together shall constitute the Agreement of the parties.

The parties hereto have executed or caused their duly authorized officers to execute this Agreement under seal as of the dates indicated on the Signature Pages. This Agreement shall be effective upon execution of all of the Signature Pages.

The Belle W. Baruch Foundation

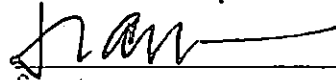

Signature

George K. Chestnut
By

Executive Director
Its

3/27/2020
Dated

DeBordieu Colony Community Association

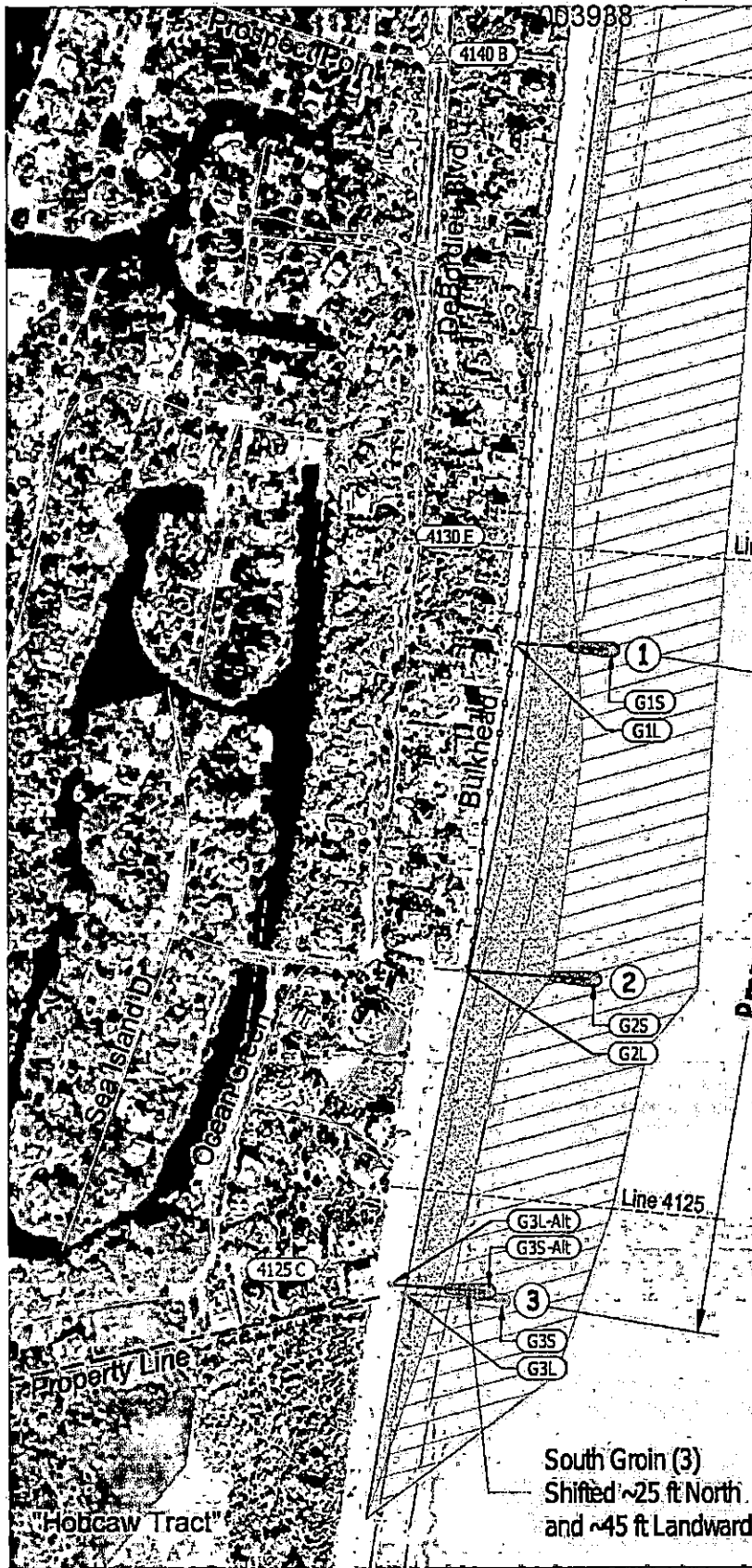

Signature

TRAVIS MOON
By

President
Its

8.25.20
Dated

EXHIBIT 1



0 500
Scale (Feet)

Groin End Coordinates

Permitted

Point	Northing	Easting
G1L	561,443.169	2,564,429.362
G1S	561,421.147	2,564,728.552
G2L	560,452.299	2,564,272.408
G2S	560,422.712	2,564,671.528
G3L	559,464.877	2,564,089.607
G3S	559,442.855	2,564,388.797

Revised Groin 3

G3L-Alt	559,492.730	2,564,047.222
G3S-Alt	559,470.708	2,564,346.412

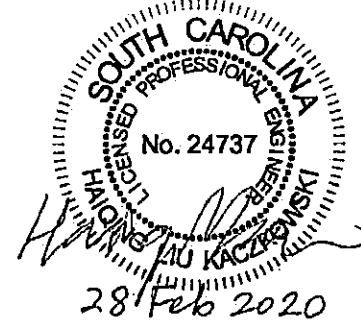
NAD83 South Carolina State
Planes, International Foot

Atlantic Ocean

Key

— x — MHHW +2.4' NAVD (Feb 2017)
— — — MLLW -2.7' NAVD (Feb 2017)

Proposed Fill Berm Area (+6 ft NAVD)
 Proposed Fill Slope Area



PROJECT TITLE:
Beach Stabilization Project

APPLICANT:
DeBordieu Colony Community Association
181 Luvan Boulevard, Georgetown SC 29440

DRAWING TITLE:
Proposed Nourishment Plan
& Groin Placement Map
Photo: USGS 2017 / CSE 2020

SCALE: AS SHOWN
DATE: 28 Feb 2020
DRAWN BY: T Hair
PROJECT #: 2443

SHEET #
03
Revised

003938

SCDHEC--005266

**BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW**

Requestors: South Carolina Coastal Conservation League
Amy E. Armstrong, South Carolina Environmental Law Project, *Counsel for Requestors.*

The Belle W. Baruch Foundation
Thomas P. Gressette, Jr., Walker Gressette Freeman Linton, LLC, *Counsel for Requestors.*

Permitee: DeBordieu Colony Community Association
2017-01795
Beach Renourishment and Construction of Three Groin Structures

Docket No.: 19-RFR-3, Critical Area Permit 2017-01795

OGC No.: 2019-OCR-0001

I. Summary

a. Type of Decision.

Critical Area Permit & Coastal Zone Consistency Certification to consist of beach renourishment and construction of three groin structures.

b. Location.

The permit authorized the placement of up to 650,000 cubic yards of beach-compatible sand and three groin structures along a 1.5-mile section of Debidue Island in Georgetown County, South Carolina. The project area extends from Ocean Park Loop at the northern end to south of Ocean Green Drive at the southern end.

c. Decision.

On January 24, 2019, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management ("Department" or "DHEC") issued a Critical Area Permit & Coastal Zone Consistency Certification, with special conditions, to the DeBordieu Colony Community Association. Specifically, the permit authorized the placement of up to 650,000 cubic yards of beach-compatible sand along approximately 1.5 miles of shoreline along Debidue Island and the installation of three sheet pile-type groins along the southern end of the project site. Each groin would be constructed of vertical sheet pile walls (sheets ~ 15-20 feet long) and extend between 300 and 400 feet from the back beach/bulkhead to the low tide line. Armor stone scour aprons would be installed along either side of the sheet piles at the seaward end of each structure, and each scour apron would consist of approximately 1,500 tons of armor stone

placed on 5,600 square feet of marine mattresses. The groins would be constructed to a profile matching the native beach slope and desired berm width. The sheet piles would be made of steel or composite reinforced fiberglass material and would be capped with concrete or composite material. The purpose of the project is to restore the recreational beach, protect infrastructure and homes, reduce potential storm damages, maintain property values and the community tax base, maintain dry beach habitat for shorebirds and sea turtles, reduce renourishment frequency, and provide excess nourishment volume beyond the trapping capacity of each groin so that sand bypassing occurs to the downcoast area and erosion rates are reduced below the background erosion rate of 8.1 cy/ft/yr for the downcoast area. Both Requestors are contesting the approval of the three groin structures. See **Exhibit A. (Permit)**

d. Relevant Chronology.

The chronology shows the Department conducted a thorough review and was responsive to specific inquiries and public participation.

November 27, 2017 – The Department received a permit application from the DeBordieu Colony Community Association (DCCA) and its agent, Coastal Science & Engineering (CSE) for beach renourishment and the construction of three groin structures. The application included a Downdrift Impacts Analysis. See **Exhibit B. (Downdrift Impacts Analysis)**

November 28, 2017 – The Department placed the permit request on a 30-day public comment period, which expired on December 28, 2017. During the comment period, the Department received several letters expressing concerns about the proposed groins and their impact on the downdrift beach to the south, threatened and endangered species, Essential Fish Habitat (EFH), and cultural resources. Some comments also stated that other practicable alternatives were not explored by the applicant and that the renourishment only (no groins) alternative should have been pursued by the applicant. Some comments also expressed concern that the North Inlet/Winyah Bay National Estuarine Research Reserve (NERR) could be negatively impacted by the proposed groins because the mouth of North Inlet is located approximately 2 miles downdrift of the proposed groins.

December 21, 2017 – On behalf of the South Carolina Coastal Conservation League, the South Carolina Environmental Law Project (SCELP) submitted a comment letter and stated their concerns that the application is contrary to the statutory and regulatory requirements of the S.C. Coastal Zone management Act. Specifically, S.C. Code Ann. §48-39-290(A)(8) states that “Groins may be permitted only after thorough analysis demonstrates that the groin will not cause a detrimental effect on adjacent or downdrift areas.” SCELP states that the applicant has not demonstrated that there will be no detrimental effect on downdrift beaches. SCELP also believes that the groins will result in downdrift impacts that will affect the North Inlet/Winyah Bay NERR.

December 21, 2017 – On behalf of the South Carolina Wildlife Federation, the Southern Environmental Law Center (SELC) submitted a comment letter and stated their concerns

that the project will fail to address the landowners' desire to decrease the frequency of beach renourishment and possibly even intensify erosional problems. SELC also stated that the groins would have detrimental impacts to the beachfront, public safety, and sea turtle access. SELC noted that the downdrift impacts analysis submitted by the applicant found that the groins would increase erosion downdrift of the structures compared to the nourishment-only alternative and would require at least historic levels of renourishment to keep up with increased erosion rates.

January 11, 2018 – Following the public comment period, the U.S. Army Corps of Engineers (USACE) sent a letter to the applicant asking for more information about the alternatives analysis that was performed. USACE also forwarded copies to the applicant of letters received from the SC Department of Natural Resources (SCDNR), SC State Historic Preservation Office (SHPO), National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), US Fish & Wildlife Service (USFWS), SELC, and SCELPL.

January 16, 2018 – On behalf of the Belle W. Baruch Foundation (Foundation), who owns the oceanfront property adjacent to and south of the proposed project, Humiston & Moore Engineers submitted a comment letter based on the public notice materials including the downdrift impacts analysis report and permit application. The Foundation is primarily concerned about the potential impact to the downdrift beaches to the south. The letter states that the location of the 300-foot terminal groin at the north boundary of Foundation property is a major concern because they expect it to exacerbate the erosion downdrift such that sand placement alone would not adequately mitigate for the structure's impacts. The placement of the southernmost groin is also a concern for the Foundation because it does not provide for any transition of impacts on DCCA property before adversely impacting Foundation property. The letter also stated concerns about insufficient information to determine the shape and magnitude of downdrift shoreline response, an insufficient alternatives analysis, impacts to sea turtle and shorebird nesting habitat, cumulative impacts of additional groins on the beach in the future, and monitoring requirements.

January 23, 2018 – CSE responded to the concerns raised by the Foundation and stated that the Hobcaw Tract would experience less erosion with the three groins augmented by planned periodic sand replenishment at a reduced level than it did historically before DCCA began its practice of periodic beach renourishment, or than it would from DCCA taking no action. CSE stated that the proposed plan anticipates the need to provide sand to the downcoast area, and the initial nourishment will extend at least 500 feet into the downcoast shoreline. CSE also stated that the volume of nourishment sand will be approximately four times greater than the estimated sand trapping capacity of the proposed groins.

February 12, 2018 – DHEC-OCRM sent copies of all comment letters received to DCCA and CSE and requested responses. DHEC-OCRM also requested more information about the downdrift impacts analysis, a financially binding commitment to mitigate any

downdrift impacts caused by the groins, and a more detailed alternatives analysis that also evaluated alternative groin lengths or configurations.

April 6, 2018 – CSE provided responses to USACE about the concerns raised in the comment letters. The Department also reviewed these responses. In response to the concerns raised by SELC and SCEL, CSE stated that the groins at DeBordieu Colony would expand the length of beachfront that retains a dry sand beach and will increase habitat area for sea turtles relative to the no-action alternative. CSE stated that the proposed project will provide excess sand to feed the downcoast area at historical rates. CSE also stated that, over a 30-year period, the proposed project and associated maintenance renourishment is likely to cost less than 50 percent of the nourishment-only alternative.

May 4, 2018 – At the request of the USACE Charleston District Northeast Branch, the USACE Engineer Research and Development Center (ERDC) reviewed the permit application and provided technical comments back to USACE Charleston District for consideration. The Department also reviewed the comments from ERDC.

June 4, 2018 – On behalf of the South Carolina Wildlife Federation, SELC submitted an additional comment letter and reiterated their belief that “Based on the recurrence interval of renourishment without the groins, the ongoing presence of a seawall and its erosive forces, the evidence that the groins would increase erosion compared to a nourishment-only alternative, and the knowledge that rising sea levels and more intense storms are increasing erosional forces along the coast, there is significant potential for this project to require renourishment on a scale equal to or greater than historic levels in order to maintain the groin capacity and prevent the interruption of longshore transport.” SELC stated that other alternatives that do not include constructing groins should be more rigorously assessed.

June 13, 2018 – Transmittal of the USFWS Biological Opinion, which concludes that the renourishment and groins are not likely to jeopardize the continued existence of listed species and is not likely to destroy or adversely modify the designated critical habitats of listed species. The Biological Opinion contains Reasonable and Prudent Measures and Terms and Conditions. Those that fall under the Department’s purview were incorporated in the Critical Area Permit.

June 19, 2018 – Department Staff conducted a site inspection to evaluate the existing conditions at the project site.

July 25, 2018 – In response to the additional concerns raised by SELC, CSE provided more information about the “30-Year Plan” that was developed for DCCA in 2015 and alternatives that were considered.

July 27, 2018 – USACE requested an alternatives analysis from the applicant that addresses different configurations and designs for the groin portion of the project.

August 7, 2018 – DHEC-OCRM requested more information from the applicant about the downdrift impacts analysis and specifically, the erosion rate threshold for required mitigation. DHEC-OCRM also noted that a comment letter from Georgetown County had not yet been received expressing the County's views on the proposed project. S.C. Code Ann. Regs. 30-15(G)(7) regarding groins states "The applicant must have written approval from the local government which has jurisdiction in the area where the project is proposed." DHEC-OCRM also requested additional financial information regarding the dollar amount available in the reserve fund, a copy of the Letter of Credit and the maximum credit available, and the dollar amount that has been raised through the bylaw's amendment.

August 15, 2018 – DHEC-OCRM received a comment letter from Georgetown County, which stated that the County has no objections to the project as proposed.

August 21, 2018 – DCCA responded to DHEC-OCRM with the requested financial information.

August 22, 2018 – CSE responded to DHEC-OCRM with additional information about projected downcoast land loss with and without the proposed alternative (renourishment and three groins).

October 18, 2018 – CSE responded to the USACE request for additional alternatives analysis information. The three-groin configuration is based on previous experience building groins in South Carolina and modeled results from several prior studies. The applicant considered a terminal groin/breakwater, a five-groin alternative, geotextile groins, elimination of a groin at the south property line of the applicant, high-profile groins, and alternative groin profiles.

October 25, 2018 – USACE requested additional information from the applicant regarding the alternatives considered and additional detail on why each alternative was dismissed.

October 31, 2018 & December 3, 2018 – CSE responded to USACE and DHEC-OCRM with additional alternatives analysis information. Four primary alternatives to the proposed project were considered: (1) Do nothing, (2) Abandon property, (3) Renourish the beach, and (4) Combine renourishment with sand retaining structures (groins). Several secondary alternatives related to the fourth primary alternative were also assessed including detached breakwaters and groins of various numbers, lengths, and configurations. The applicant believes that beach renourishment alone has not been able to keep pace with erosion along DeBordieu Colony's beach and will be unsustainable in the long-term. The alternatives analysis and downdrift impacts analysis showed that three shorter, low-profile groins (as proposed) could accomplish the project goals while minimizing downdrift impacts. A longer, higher-profile single groin or pair of groins would reduce or eliminate natural sand bypassing over or around the structure and increase the potential for erosion downdrift of the structure. See **Exhibit C. (Alternatives Analysis)**

November 29, 2018 – Department staff conducted an additional site inspection to evaluate the existing conditions at the project site.

January 24, 2019 – Department staff issued the permit, with special conditions, allowing for beach renourishment and three groin structures as requested in the application. The DHEC-OCRM Critical Area Permit & Coastal Zone Consistency Certification includes an extensive monitoring program to evaluate potential downdrift impacts as a result of the groins. If the monitoring data collected according to Special Condition # 18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins. DHEC-OCRM will require either that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the historical/background rate, that the groins be removed, and/or that the beach adversely affected by the groins be restored through renourishment.

February 7, 2019 – The Department received two Requests for Final Review of staff's decision.

II. Relevant Law

a. Statute(s).

§48-39-150(A)(1)-(10). "In determining whether a permit application is approved or denied the department shall base its determination on the individual merits of each application, the policies specified in Sections 48-39-20 and 48-39-30 and be guided by [ten] general considerations."

§ 48-39-260: Policy statement

§ 48-39-290: Restrictions on construction or reconstruction seaward of the baseline or between the baseline and the setback line; exceptions; special permits

§ 48-39-320: Comprehensive beach management plan

§ 48-39-350: Local comprehensive beach management plan

b. Regulation(s).

R.30-11(B): General Guidelines [Considerations] for All Critical Areas.

R.30-11(C): Further Guidelines for All Critical Areas.

R.30-11(D): General Guidelines for Beaches and the Beach/Dune System

R.30-13(L): Sand Fences, Minor Beach Renourishment, Dune Revegetation

R.30-13(N)(2): Protection of Beaches and Artificial Beach Nourishment

R.30-15(G): Groins**c. The South Carolina Coastal Zone Management Program Document.****Chapter III. Guidelines for Evaluation of All Projects****Chapter III. C.3 Management of Coastal Resources, Uses of Management Concern, Resource Policies, Guidelines for Evaluation of All Projects****Chapter IV. A.2.(8) Special Management Areas, GAPC policies on Threatened & Endangered Species Habitat****Chapter IV. C. Erosion Control Program, specifically subsection 2(C) "Erosion Control Policies" and the section on "Artificial Beach Renourishment"****III. Staff Response to Grounds Stated in Request for Review.****a. Regarding Potential Downdrift Impacts Caused by the Three Groins:**

Requestor (S.C. Coastal Conservation League) states: "The South Carolina Coastal Conservation League ('League') is a non-profit membership corporation organized and existing under the laws of the State of South Carolina. Members of the League enjoy the natural resources in and around Debidue Beach and the associated Outstanding Resource Waters of North Inlet for harvesting oysters, fishing, boating, beach-walking, observing wildlife and other recreational purposes. In addition, members of the League have a special interest in preserving one of thirteen pristine estuaries in the country, which is the site of scientific research that benefits these members. If the applicant proceeds with the proposed groin field, members of the League will be harmed because it will deprive the downdrift beaches of sand, thus adversely affecting their use and enjoyment of these resources."

Requestor (S.C. Coastal Conservation League) states: "The League submits that the DHEC staff's decision to issue the Permit was made in violation of applicable statutes, regulations and rules contained in the S.C. Coastal Zone Management Act ('CZMA'), S.C. Code Ann. §48-39-10, *et seq.*, OCRM Regulations 30-1, *et seq.*, the Coastal Management Program ('CMP'), and DHEC Regulations 61-101, *et seq.* Most specifically, the Permit was issued in spite of the applicant's multiple concessions that the permitted project will in fact have downdrift impacts in violation of applicable statutory and regulatory law."

Requestor (S.C. Coastal Conservation League) states: "The CZMA recognizes that the 'coastal zone and the fish, shellfish, other living marine resources and wildlife therein, may be ecologically fragile and consequently extremely vulnerable to destruction by man's alterations,' and that '[i]mportant ecological, cultural, natural,

geological and scenic characteristics...are being irretrievably damaged or lost by ill-planned development that threatens to destroy these values." S.C. Code Ann. §48-39-20(D). Upon information and belief, to be supported by live testimony should a final review conference be granted, the proposed groins would harm the sensitive and ecologically fragile North Inlet NERR and have adverse impacts on the research being conducted at that facility."

Requestor (S.C. Coastal Conservation League) states: "The Permit also violates the CZMA policies of protecting resources of the coastal zone and the quality of the coastal environment in that they authorize a project that will place artificial steel and concrete structures on a natural beach, and likely will have significant downdrift impacts on the Baruch Foundation property, including the North Inlet NERR. S.C. Code Ann. §48-39-30."

Requestor (S.C. Coastal Conservation League) states: "The proposed groins will endanger the adjacent property of the Baruch Foundation and the North Inlet NERR, as well as public resources in that area, by trapping sand in the groin field, depriving the downdrift beach of sand, and causing exacerbated erosion on the Baruch Foundation property."

Requestor (S.C. Coastal Conservation League) states: "The BMA's policy is to 'protect, preserve, restore and enhance the beach/dune system' S.C. Code Ann. §48-39-260(A). Upon information and belief, to be supported by live testimony should a final review conference be granted, the proposed groins violate this policy in that they will cause damage and degradation to the downdrift beach/dune system."

Requestor (S.C. Coastal Conservation League) states: "The applicable regulation provides that groins 'may only be permitted after thorough analysis demonstrates that the groin will not cause a detrimental effect on adjacent or downdrift areas.' S.C. Code Ann. Regs. 30-15.G(2). Upon information and belief, which will be supported by live testimony should final review conference be granted, the proposed groins will cause a detrimental effect on adjacent and downdrift areas. The applicant has recognized that these negative downdrift impacts will occur, including through the submittal of their Downdrift Impacts Analysis, created in 2017 by Coastal Science and Engineering. 'Downcoast areas are expected to benefit more in the early years following the proposed project. Over time the volume of sand moving past Debordieu Colony will diminish and erosion rates downcoast will increase.' Downdrift Impacts Analysis, CSE, November 2017, p. 104. The Analysis estimates an increase in downdrift erosion of approximately 6,800 cubic yards in the first year."

Requestor (S.C. Coastal Conservation League) states: "The Requestor is informed and believes that the impacts of the proposed groins will cause significant degradation to the downdrift beach/dune system and other natural resources of the Baruch Foundation property at North Inlet, will reduce the value of surrounding property and will have severe negative impacts on wildlife, the pristine North Inlet

and the research being conducted at the North Inlet-Winyah Bay National Estuarine Research Reserve.”

Requestor (Belle W. Baruch Foundation) states: “The Board should review the Permit to allow the Foundation to have a complete opportunity to address the Permit’s reliance upon the Downdrift Impacts Analysis prepared by Coastal Science & Engineering, Inc. In granting the Permit, the Department did not fully take into account at least the following inadequacies of the Downdrift Impacts Analysis:

- The report does not quantify the shape and magnitude of the expected shoreline response on the adjacent property to the south. The initial fill taper proposed south of the groin field will have a limited life after which impacts are anticipated from the groin field.
- The proposed groin field extends down to the north property boundary of the Foundation and does not provide for any transition of impacts on the applicant’s property before adversely impacting the Foundation property.
- Historical evidence indicates that construction of groin structures like those allowed by the Permit result in long-range cumulative impacts as downdrift properties require similar structures to address the impacts of their neighbors’ groins. This chain of events continues until the terminal end of the system/inlet. The Permit, then, effectively establishes a requirement for similar future groin installation which is inconsistent with the Foundation’s commitment to preserving its rights and interests as well as the public trust and public interest in the beach shoreline.”

Staff response: The primary concerns expressed by both requestors in their Requests for Final Review (RFRs) pertain to the potential for downdrift impacts caused by the three groin structures. S.C. Code Ann. Regs. 30-15(G) requires that new groins can only be permitted on beaches with high erosion rates, where erosion is threatening existing development or public parks, in conjunction with an ongoing beach renourishment program, and only after a thorough analysis demonstrates that the groin will not cause a detrimental impact on adjacent or downdrift areas. In addition, the applicant must provide a financially binding commitment to cover the cost of performing remedial work if the groin has an adverse impact on the downdrift beach. DHEC-OCRM staff found that the permit application satisfied these requirements.

A threshold maximum downcoast erosion rate along the Hobcaw Tract is established under the mitigation plan at 8.1 cy/ft/yr based on the running average erosion rate as detailed in the Downdrift Impacts Analysis Report (CSE 2017). Based on a natural berm elevation at +7 ft NAVD and depth of closure off Debidue Island at ~-15 ft NAVD, 8.1 cy/ft/yr of erosion is roughly equivalent to shoreline recession of ~10 ft/yr. The applicant proposed that renourishment would be performed along DeBordieu Colony and downdrift areas when the running average erosion rate along the entire Hobcaw Tract reached 8.1 cy/ft/yr (ie ~10 ft/yr). Since the applicant’s modeling shows that downdrift impacts of the proposed groins are most possible to approximately 1,600 feet south of the third groin, this area will likely erode at higher rates than the remainder of the Hobcaw Tract. By using a running average erosion rate along the entire 4,180-ft length of the Hobcaw tract as

proposed by the applicant, potential erosion immediately downdrift of the groins could reach rates greater than 8.1 cy/ft/yr before mitigation would be required. The historical/background rate of erosion for the Hobcaw Tract as calculated by the applicant averages 8.1 cy/ft/yr. Humiston & Moore Engineers submitted a letter on February 8, 2018 on behalf of the downdrift property owner, the Belle W. Baruch Foundation, and stated "By expanding the downdrift areas into segments over 4000 feet in width, the impacts to the immediate downdrift area become diluted when averaged over an area as long as the proposed groin field." DHEC-OCRM agrees with this comment and has therefore required mitigation to occur if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the southernmost groin exceeds 8.1 cy/ft/yr. Mitigation will also be required once the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds 8.1 cy/ft/yr. Profiles will be spaced 200 feet apart from the southernmost groin to 2,000 feet south of the southernmost groin. Throughout the remainder of the project area, profiles will be spaced 500 feet apart. The applicant proposed 500-foot profile spacing throughout the project area, but the Department believes the finer 200-foot spacing is warranted downdrift of the southernmost groin where modeling suggests impacts could occur. The 200-foot profile spacing is also consistent with the required monitoring associated with the terminal groin installed at the southern end of Folly Beach under Permit Number 2012-237-21G.

The required mitigation will not be limited to renourishment along DeBordieu Colony. Required mitigation could include reconfiguration of the groins so that the erosion rate on the affected beach does not exceed the historical/background rate, removal of the groins, and/or restoration of the beach adversely affected by the groins through renourishment.

DHEC-OCRM believes that due to North Inlet's ~2-mile distance from the installation site of the proposed groins, it is unlikely that the inlet will experience significant direct impacts or indirect impacts from the installation of the groins. The applicant's modeling analysis suggests that the groins may impact the downdrift beach up to 1,600 feet from the southernmost groin. If downdrift erosion rates increase to more than 8.1 cy/ft/yr, mitigation will be required as described above and in the permit conditions.

A letter from CSE dated May 16, 2018 states that the probable costs for removing or modifying the groins is around \$250,000. This opinion is based on discussions with contractors familiar with the work.

A letter from DCCA dated May 17, 2018 states that DCCA represents approximately 1,200 homes and has the ability to finance the project, including monitoring and any remedial work that may be required. DCCA funded renourishment projects in 1990, 1998, 2006, and 2015. All four of these projects were funded entirely by the property owners. DCCA has a reserve fund for infrastructure replacement as well as a letter of credit and a line of financing devoted to beachfront management and has also levied a special assessment. DCCA will monitor the condition of the beach and will set aside funds to monitor, maintain, and/or remove the groins as required. DCCA will earmark \$250,000 for maintenance of the project, including possible removal of the groins. A bylaws

amendment was approved by property owners in 2017 which raises approximately \$1.8 million annually for the sole purpose of preserving the beach.

A subsequent letter from DCCA dated August 21, 2018 provided more detailed information on their financial commitment to mitigation work and future beach renourishment. This letter states that the applicant has a financially binding \$500,000 Letter of Credit from First Citizens Bank, which is updated annually. As of July 31, 2018, the DCCA Balance Sheet reflects a balance of \$3,209,781 in the Reserve fund and \$3,633,200 in the Beach Preservation fund. The Beach Preservation assessment generates approximately \$1,882,000 annually, and in accordance with the recorded Bylaw Amendment, is maintained in a separate escrow account. The assessment will generate \$31,990,000 over a 17-year period, solely dedicated to beach preservation. The financially binding commitment requirement has been satisfied pursuant to S.C. Code Ann. Regs. 30-15(G)(2). See **Exhibit D.** (Financial Commitment Letter from DCCA to DHEC-OCRM, dated August 21, 2018).

b. Regarding Impacts of the Project on Marine Life or Wildlife:

Requestor (S.C. Coastal Conservation League) states: "The Permit is inconsistent with general considerations of the project's impact on the production of fish, shrimp, oysters, crabs, clams, other marine life, wildlife or other natural resources; the extent to which the activity could cause erosion; the extent of the economic benefits as compared with the benefits from preservation of an area in its unaltered state; and the extent to which the project will affect the value and enjoyment of adjacent owners. S.C. Code Ann. §48-39-150(A) and S.C. Code Ann. Regs. 30-11.B. The groins will exacerbate erosion downdrift of the project, altering a pristine beach/dune system and harming the marine and wildlife which are dependent upon it."

Requestor (Belle W. Baruch Foundation) states: "The adjacent property to the south contains habitat for sea turtle and shorebird nesting which will be potentially impacted by the groin field."

Staff response: The U.S. Fish & Wildlife Service (USFWS) recommended that project construction should be limited to November 1 through June 30 to account for multiple threatened or endangered species. The S.C. Department of Natural Resources (SCDNR) recommended that project construction should be limited to November 1 through April 30 (outside of sea turtle nesting season). DHEC-OCRM's Critical Area Permit & Coastal Zone Consistency Certification is conditioned to follow the USFWS recommendation of construction allowable between November 1 and June 30 with appropriate safeguards and monitoring for nesting and hatching sea turtles as well as sea turtles in the ocean. Project construction via hopper dredge is limited to November 1 through March 31. If hopper dredging occurs outside of this authorized dredge window, the operation protocols for hopper dredging in the September 25, 1997 South Atlantic Regional Biological Opinion (SARBO) issued by the National Marine Fisheries Service (NMFS) must be adhered to.

According to the applicant, total anticipated land losses along the Hobcaw Tract under the No-Action Alternative (no renourishment and no groins) are projected to measure ~25 acres over the next 20 years. Anticipated losses under the Proposed-Action Alternative (renourishment and groins) are expected to measure ~15 acres over the next 20 years. The submitted information shows that land losses due to erosion over a 20-year span would be less with the Proposed-Action Alternative than with the No-Action Alternative, and wildlife habitat would therefore benefit.

c. Regarding the Alternatives Analysis Completed by the Applicant

Requestor (S.C. Coastal Conservation League) states: "Upon information and belief, the DHEC staff erred in issuing the Permit by failing to consider the extent of the groins' impact on updrift or downdrift areas and by failing to promote the use of natural features of the beach/dune system, rather than through the use of artificial protections. CMP, IV-56 & 57."

Requestor (Belle W. Baruch Foundation) states: "The Department failed to require the alternatives analysis mandated by law. Pursuant to the South Carolina Coastal Zone Management Act of 1977 and Section 30-15 of Rules and Regulations of the Office of Ocean and Coastal Resource Management for permitting in the Critical Areas of the Coastal Zone, 'Groins may be permitted only after thorough analysis demonstrates that the groin will not cause a detrimental effect on adjacent or downdrift areas.' However, the downdrift impact analysis provided by the Applicant did not include a thorough analysis of the detrimental impacts or a proper alternatives assessment. No consideration was given to varying groin field designs and locations to determine a design which would minimize impact(s) on the downdrift property owner and the adjacent beach shoreline."

Staff response: As seen above in the Relevant Chronology section of this Staff Summary, several letters were sent from USACE and DHEC-OCRM to DCCA and CSE regarding the required Alternatives Analysis. CSE responded to these requests for more information in a timely fashion. At the conclusion of its permit application review, DHEC-OCRM felt that CSE had submitted sufficient documentation about the alternatives that were considered and why the preferred alternative was selected. The alternatives analysis identified four primary alternatives and several secondary alternatives to the proposed project. The four primary alternatives identified are: (1) Do nothing; (2) Abandon property; (3) Renourish the beach; and (4) Combine renourishment with sand retaining structures (groins). Secondary alternatives relate to the fourth primary alternative and address a number of sand retention methods including detached breakwaters and groins of various numbers, lengths, and configurations. The alternatives analysis and downdrift impacts analysis showed that three shorter, low-profile groins with lengths tapered from north to south (as proposed) could accomplish the project goals while minimizing downdrift impacts. A longer, higher-profile single groin or pair of groins would reduce or eliminate natural sand bypassing over or around the structure and increase the potential for erosion downdrift of the structure. CSE also reviewed several previous studies and

reports about shoreline management on Debidue Island dating from 1989 to 2015 and incorporated the findings from these studies in the design of the groins. See Exhibit C. (Alternatives Analysis)

d. Regarding Proposed Changes to the Permit

Requestor (Belle W. Baruch Foundation) states: "If the project is to proceed then there are additional changes to and/or additional special conditions that should be applied to the Permit. Without conceding the appropriateness of the project or its design, the Foundation should be allowed to present evidence that the following changes to the Permit would reduce the potential for harm to the Foundation's beach shorefront while still allowing DCCA to actively improve stabilization of its shoreline. The Foundation intends to demonstrate that the project's risk requires that the Permit be modified to implement a more prudent, staged approach as follows:

• Phased Construction:

Due to the impermeable design and anticipated impact on sediment transport pathways to the south, it is recommended that construction of the south groin be done under a second phase pending satisfactory performance of the north and central groins. The same monitoring standards, as recommended herein, may apply to the groin system beginning with the land immediately south of the central groin. In this manner, both the DCCA and the Foundation will benefit from the knowledge to be gained from the monitoring of the two northern groins before committing to construction, monitoring and potential mitigation for the third groin. In this manner, adjustments to the north two groins can be implemented and monitored as needed to achieve satisfactory performance in stabilizing the beach to the north and addressing potential impacts to the south.

• Shoreline Change Criteria:

In addition to the volumetric change criteria for determination of downdrift impacts, a similar condition should be applied with regard to shoreline recession. As part of that plan, profile stations should be set at 100 feet intervals in the downdrift monitoring area and maximum shoreline recession (trigger) should be established south of the installed groins. Remedial action would be necessary if the shoreline at any one station erodes more than a total of 50 feet over two consecutive years.

• Refinement of the Required Monitoring:

In order to facilitate the implementation of the monitoring program, it would be beneficial for the permittee and the Foundation to have the projected shoreline change as a result of the design annually for the first five years following construction. This will also help to determine if the project performance is meeting the projected design goals updrift and downdrift of the structures. Future beach management recommendations should be based on monitoring results and may include design modifications with respect to the groin's permeability and sand placement frequency to improve project performance and avoid impacts.

Staff response: The Requestor stated above that remedial action should be necessary if the shoreline at any one monitoring station erodes more than a total of 50 feet over two consecutive years. According to the applicant, -8.1 cy/ft/yr (the historical/background erosion rate threshold along the Hobcaw Tract) is equivalent to approximately 10 ft/yr of shoreline recession at Debidue Island. In other words, if the running average shoreline recession rate exceeds approximately 10 ft/yr downdrift of the groins, mitigation will be required.

The DHEC-OCRM Critical Area Permit & Coastal Zone Consistency Certification includes an extensive monitoring program to evaluate potential downdrift impacts as a result of the groins. Pre-project, beach profile surveys (topographic and hydrographic) will be completed at the specified spacing and aerial photos will be taken to document the pre-project condition of the beach from the northern limits of renourishment to the sandy shoreline of North Inlet. Post-project, beach profile surveys will be completed at the specified spacing and aerial photos will be taken immediately post-project, 3-months post-project, 6-months post-project, 9-months post-project, 1-year post-project, and then annually for 10 years post-project. The surveyed data, historical photos, and required monitoring reports will enable DHEC-OCRM to determine if the historical/background erosion rate of -8.1 cy/ft/yr along the Hobcaw Tract has been exceeded. If the monitoring data collected according to Special Condition # 18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, DHEC-OCRM will require either that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the historical/background rate, that the groins be removed, and/or that the beach adversely affected by the groins be restored through renourishment. The applicant is responsible for the design of the project, and the Department is responsible for reviewing the proposed design to determine whether or not it is consistent with the regulations, laws, and policies of the S.C. Coastal Zone Management Program. The permitted project, as approved with special conditions, meets these requirements.

IV. Requested Action

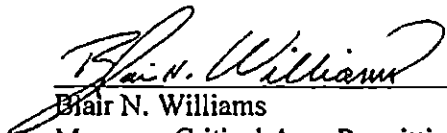
Based on the foregoing, the Department requests that the Board decline to hold a final review conference in the above-referenced matter and uphold the staff decision as issued.

[SIGNATURES ON FOLLOWING PAGE]

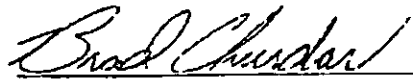
BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW

Docket No.: 19-RFR-3 Critical Area Permit, P/N# 2017-01795; Beach renourishment and construction of three groin structures for the DeBordieu Colony Community Association.

Respectfully Submitted,



Blair N. Williams
Manager, Critical Area Permitting Section
Office of Ocean & Coastal Resource Management



Brad Churdar
Associate General Counsel
Office of Ocean & Coastal Resource Management

Date: February 22, 2019



003954

Board:

Mark R. Elam, Chairman
Jim P. Creel, Jr., Vice-Chairman
Charles M. Joye, II, P.E., Secretary
J.B. (Sonny) Kinney

Seema Shrivastava-Patel
Richard V. Lee, Jr.
Alex A. Singleton

May 21, 2020

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1417 5085 99

Leslie S. Lenhardt, Esquire
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Benjamin D. Cunningham, Esquire
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SC Environmental Law Project
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SCHEC – Office of General Counsel
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

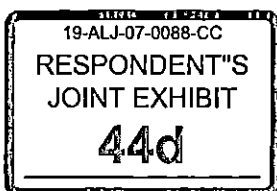
RE: Docket Nos. 20-RFR-24
DeBordieu Colony Community Association
Issuance of Amendment to Critical Area Permit and Coastal Zone Consistency Certification, Permit
No. 2017-01795

Dear Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.

CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within



S.C. Department of Health and Environmental Control
2600 Bull Street, Columbia, SC 29203 803.890.3437 www.dhec.sc.gov

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SCDHEC--005302

thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

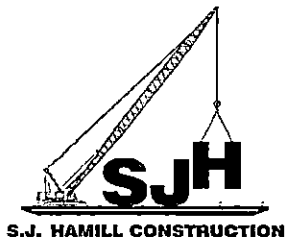
If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



M. Denise Crawford
Clerk
S.C. Board of Health and Environmental Control

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.



003956

S.J. Hamill Construction Company, LLC

2008 Cherry Hill Lane

Charleston, SC 29405

(843)-872-8000

Thursday, February 06, 2020

Letter No. SJH-002

Mr. Steven Traynum
Coastal Scientist
Coastal Science & Engineering
PO Box 8056
Columbia, SC 29202

RE: DeBordieu Island Groin Removal and Restoration
Non- Binding Industry Reference

Mr. Traynum,

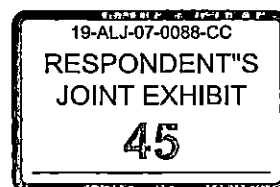
Through our conversations, I understand that a condition of new groin construction in South Carolina is predicated on removal of structures if downdrift impacts adversely affect real property. Given this requirement, fiscally responsible pricing estimates must be completed to establish a market value for removing such structures if need arises.

My understanding is that DeBordieu Island has in planning or has currently constructed groins which are similar in composition, depth, and length to the sheet pile groins we are currently constructing and upgrading on Hunting Island. In my opinion, a reasonable cost estimate to remove the existing and newly constructed would be approximately \$435,000 or 60% of construction costs less permanent material. This assumption takes into account the following considerations:

- Groin material (Sheet Piling) can remain onsite once extracted.
- Work areas can be accessed between tides cycles with non-floating equipment.
- Project access is not restricted or overly precarious to achieve.

Thank you,

Jordan K. Adams, PE



S.J. HAMILL CONSTRUCTION COMPANY, LLC

CHARLESTON, SC

003956



May 29, 2020

DeBordieu Colony Community Association, Inc.
C/O Blanche Brown
181 Luvan Blvd
Georgetown, SC 29440

Dear Blanche,

South State Bank (hereinafter, the "Bank") is pleased to commit to you the following credit facility (hereinafter the "Loan"), subject to the following terms and conditions.

Borrower: DeBordieu Colony Community Association, Inc. (DCCA)

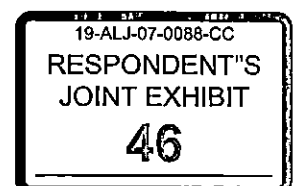
Type: Irrevocable Standby Letter of Credit

Purpose: Satisfy requirement of South Carolina Department of Health and Environmental Control (SCDHEC) with evidence of necessary funds to cover the cost of reconstructing or removing the groin(s) which are the subject of SCDHEC permit number 2019-01795 issued January 24, 2019, and, if required, to cover the cost of renourishment to restore an adjacent beach adversely affected by the groin(s).

Loan Amount: The principal amount of the loan will not exceed One Million dollars (\$1,000,000)

Interest Rate: The interest rate will be floating at WSJ Prime (currently 3.25%) per annum, provided that the Loan is closed on or before October 15, 2020.

Fees: Loan processing fee of \$350 and origination fee of \$2,000. Processing fee and origination fee would be charged annually upon renewal of the Loan.



Repayment Terms: The Loan would be structured as a fund up, non-revolving line of credit to be drawn upon at the beneficiary's request. The letter will be in effect for up to twelve (12) months and will automatically renew for an additional twelve (12) months at each expiration date unless the Bank notifies the Borrower and Beneficiary in writing at least 120 days prior to the expiration date. Should the Irrevocable Standby Letter of Credit be drawn upon, all funds would be due on demand by the Bank with any interest accruing immediately and due monthly. All outstanding interest, principal, and fees will be due and payable at or prior to maturity.

Collateral: The Loan will also be secured by lien on a combination of a South State Bank Certificate of Deposit in the amount of \$250,000 and United States Government Bonds in the amount of at least \$883,000 held with the Bank.

Beneficiary: South Carolina Department of Health and Environmental Control (SCDHEC) or related entity/or entities as may be directed by a court of competent jurisdiction with respect to the Permit referred to above, satisfactory to the Bank.

Banking Relationship: Borrower will agree to establish a primary depository banking relationship with Bank prior to closing, and to maintain such a relationship throughout the life of this loan.

Financial Information and Requirements: Borrower and any Guarantors agree, as a condition of the Loan and until the Loan has been fully repaid, to the following:

As affirmative covenants, Borrower and any Guarantor agree to:

1. Furnish to Bank within 90 days of each fiscal year-end audited financial statement or other financial statements issued by acceptable accountants in a format satisfactory to Bank.
2. Inform Bank immediately of any material adverse change in financial condition of Borrower, and furnish to Bank whatever information on Borrower's financial condition that Bank may reasonably require.

Assignability: Borrower cannot assign this commitment without Bank's prior written approval, nor shall any third party rely hereon or be deemed a party beneficial hereby.

Material Adverse Change: This commitment is conditioned upon there having occurred no material adverse change in the business, assets, liabilities, financial condition, results of operations, or business prospects of the Borrower, collateral, or upon the ability of the Borrower to perform its material obligations arising under the Loan and any loan documents.

Closing Requirements: Closing requirements for a loan of this nature will apply, to be determined by Bank and its counsel, and can be furnished to you or your attorney upon acceptance of this commitment. Borrower will pay all fees and expenses of Bank in

connection with the Loan. In connection with the closing, Borrower's counsel may be asked to provide an opinion letter to Bank as to the validity and enforceability of the Loan documents and such other matters as Bank may reasonably require.

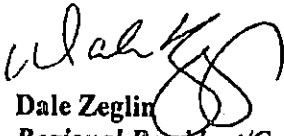
Survivability: Should you accept this commitment, then it is hereby agreed between Bank and Borrower that it will survive the closing, that it will become an integral part of the Loan documents, and that its terms, conditions, and agreements will become terms, conditions, and agreements of the Loan. Should there be any inconsistencies between any term of the Note, security documents, or Loan Agreement and any term of this commitment letter, then the term of the Note, security documents, or Loan Agreement will prevail; remaining terms, conditions, and agreements will not be affected.

Waiver of Jury Trial: Borrower shall waive trial by jury with respect to any action, claim, suit or proceeding on or arising out of the Loans, the obligations, and the conduct of the relationship between Borrower and Bank.

You may indicate your acceptance of the terms and conditions offered by signing below and returning the original copy of this letter to Bank. If not accepted by September 15, 2020, and if a resulting loan is not closed by October 15, 2020, then this commitment will expire and neither Bank nor Borrower will be obligated hereunder.

It is a pleasure to extend this financing offer. We look forward to hearing from you and having the opportunity to provide financial services to you and your company.

Sincerely,

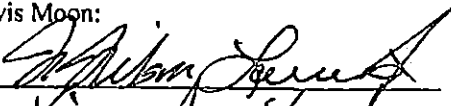


Dale Zeglin
Regional President/Grand Strand
 4331 Grissom Parkway
 Myrtle Beach, SC 29577
 (843) 353-5061 / VOIP 35061
SouthStateBank.com
dale.zeglin@southstatebank.com

This commitment is agreed to and accepted this 8 day of June, 2020.

Borrower: DeBordieu Colony Community Association, Inc.

Travis Moon:

By 
 Its Vice President

**VIA FACSIMILE
843-744-5847**

To: Mr. Bill Eiser
OCRM

From: Bill Weeks
Manager of Capital Projects
Georgetown County Government
843.545.3255

Date: September 14, 2005

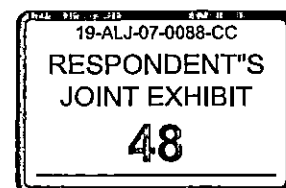
Subject: Emergency Sand Scraping Order

Mr. Eiser;

Please find attached an Emergency Sand Scraping Order signed today by Mr. Thomas Edwards, County Administrator for a 1,000 foot section of beach located at Debordieu Beach, Georgetown County. Escarpments have reached within 10 feet of the residential structures on both ends of this stretch. Photo documentation is available in my files.

As always we appreciate your concern and guidance.

003960



SCDHEC--006052

EMERGENCY ORDER
Georgetown County

WHEREAS, the South Carolina Department of Ocean and Coastal Resource Management finds emergency conditions, caused by erosion from storm events over the past few months, endangers the health, safety, welfare, and resources of citizens living in the Ocean Green Community at the Debordieu in Georgetown County.

NOW, THEREFORE BE IT ORDERED that the Georgetown County Administrator, pursuant of the authority of Section 48-39-139 (D) (1) of the 1977 Coastal Zone Management Act (as amended), hereby issues an emergency order to allow the Ocean Green Community in Debordieu to engage the services of a contractor to scrape sand in front of the houses in their community. The houses in this development are in immediate threat from erosion due and caused directly by the aforementioned winds and storm tides.

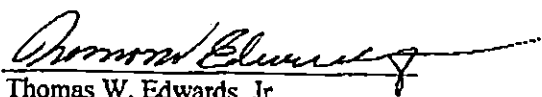
BE IT FURTHER ORDERED, that this emergency order allows the sand scraping according to the South Carolina Department of Ocean and Coastal Resource Management guidelines.

BE IT FURTHER ORDERED, that nothing herein is to be constructed or implied as relieving the affected property owners of any responsibilities, duties or liabilities he may have to other agencies, local, state, or federal, exercising authority and jurisdiction over the affected area.

BE IT FURTHER ORDERED, that this emergency order is to cease to have any force effect one month (30 days) from the date hereof and will expire at midnight on October 13, 2005.

BE IT FURTHER ORDERED, that a copy of this order be published in a newspaper of general circulation in the coastal zone of South Carolina and the original to be on file at the office on South Carolina Department of Ocean and Coastal Resource Management, 1362 MacMillan Ave., Suite 400, Charleston, SC 29405.
AND IT IS SO ORDERED

9-14-05
Date


Thomas W. Edwards, Jr.
Georgetown County Administrator

Georgetown County:

- (1) The work will begin at the south end of parcel 4-191A-33 and continue north to the north end of parcel 4-191A-17. The total distance is approximately 1,028 feet.

EXHIBIT A- EMERGENCY ORDER
SOUTH CAROLINA DEPARTMENT OF OCEAN AND COASTAL RESOURCE
MANAGEMENT

Guidelines for Emergency Sand Scraping

Scraping of beach sand shall be discouraged. This practice has been shown to be of little practical value and in many cases produces an overall adverse effect on the beach system. However, in view of no feasible alternative, a public official may issue an emergency order and allow sand scraping for a building which is in imminent danger as a result of storm related erosion. Sand scraping must be minimized to only that necessary to prevent further damage to buildings from storm related erosion. The Department of Ocean and Coastal Resource Management reserves the right to evaluate the need for the declared emergency and the appropriateness of scraping sand.

- 1) Emergency sand scraping may only be ordered and performed seaward of existing buildings. It may not be allowed in front of erosion control devices.
- 2) Sand may be scraped only from the intertidal beach and only between extended property lines of the affected property.
- 3) The depth of scraping may not exceed one foot.
- 4) Sand may be placed against an erosional escarpment or to replace an eroded dune. This dune shall not exceed six feet above grade or twenty feet in width. Sand may be used to shore up a habitable structure in imminent danger of collapse.
- 5) No sand may be placed behind an erosion control device.
- 6) The sand scraping may be performed one time only under one emergency order.
- 7) The applicant shall provide before and after photographs to assist in the determination of an emergency and compliance with these guidelines. Photos shall be site specific, labeled, and dated.
- 8) A copy of these guidelines signed by the property owner or his agent shall be forwarded to the nearest Ocean and Coastal Resource Management office when the order is issued.
- 9) A copy of these signed guidelines shall be in the possession of anyone performing beach scraping.
- 10) All work performed pursuant to this emergency order must be in compliance with all local ordinances governing such work.

003963



SAC 2019-01533

Hurricane Dorian - DeBordieu Colony

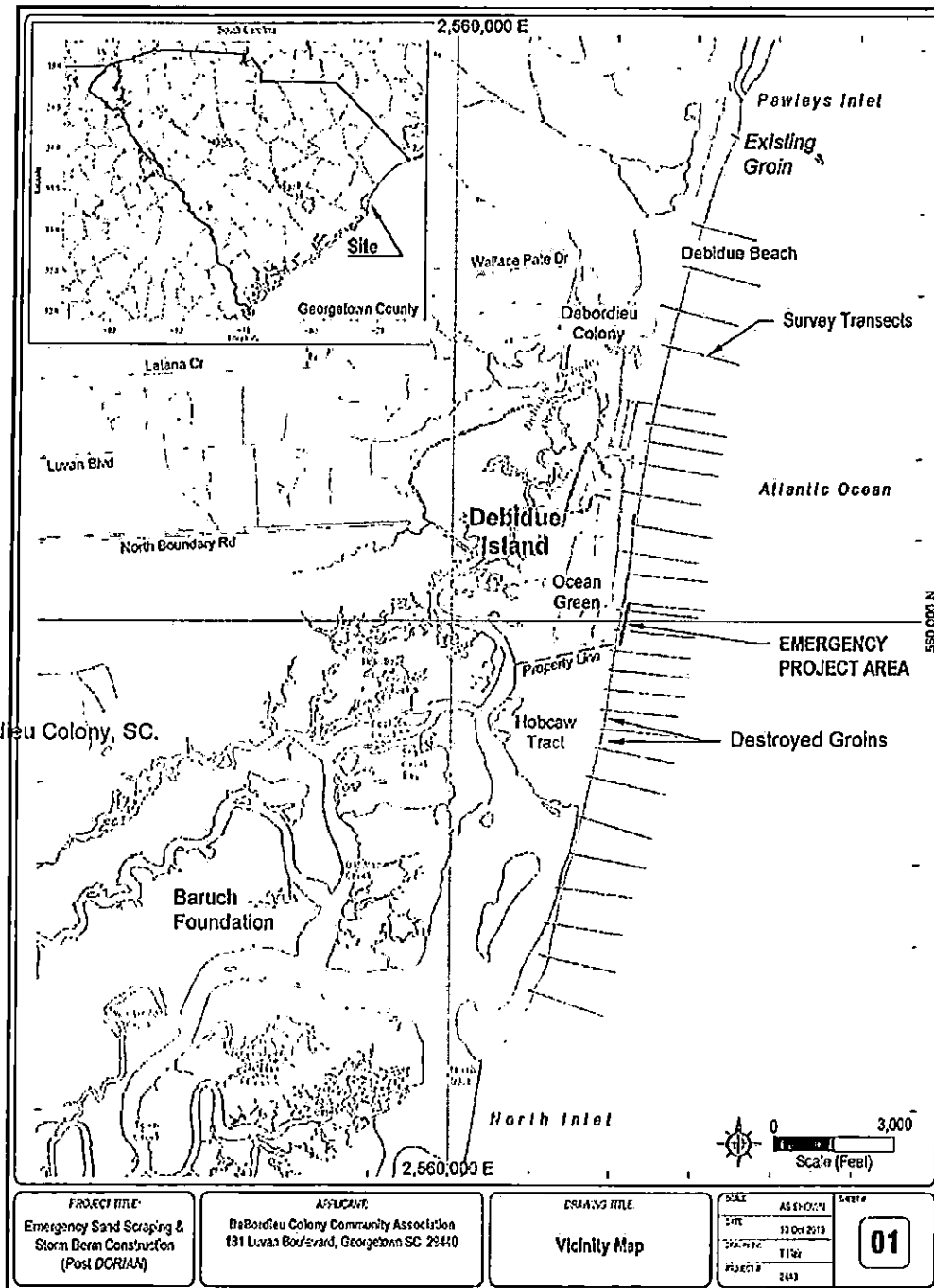
Emergency Sand Scraping Project

Date: September 25, 2019 Sheet 1 of 3

September 13, 2019

Page 10 of 13

**PERMITTED
PLANS**



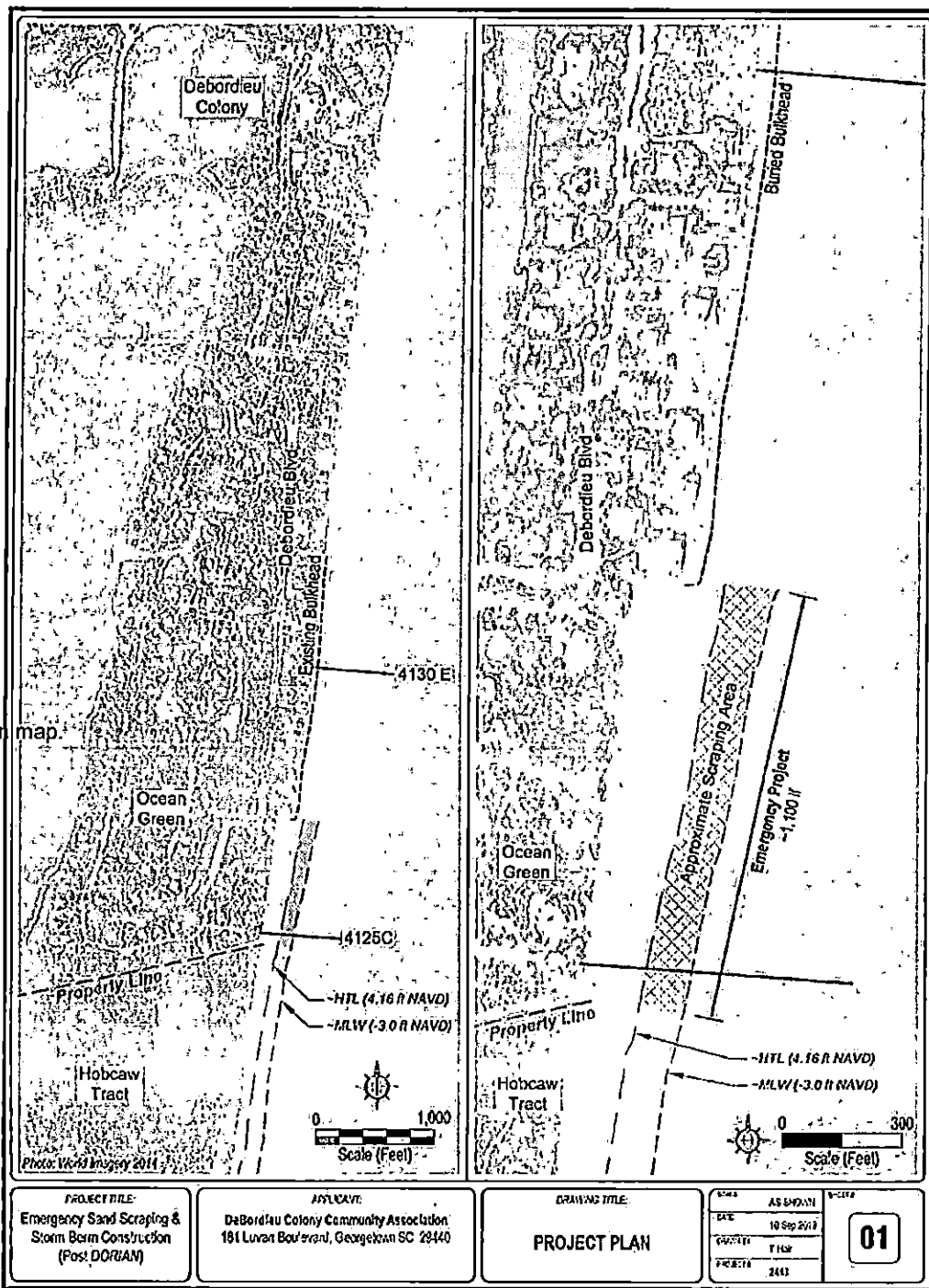
003963

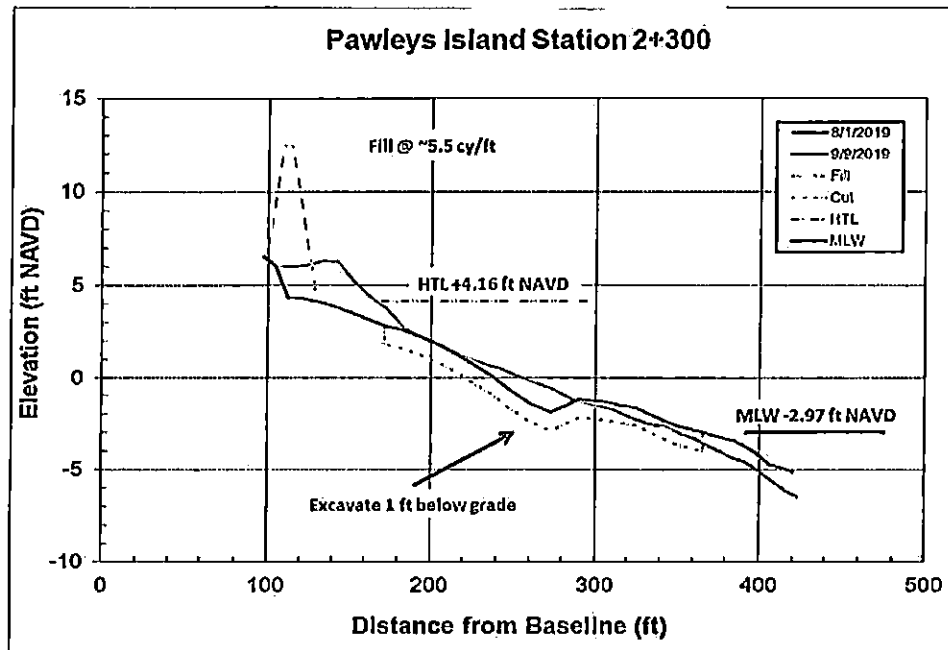
SCDHEC--006058



PERMITTED
PLANS

emergency scraping plan map





PERMITTED
PLANS

Figure 1. Typical section for sand scraping and construction of an emergency berm. Excavations are limited to 1 ft below grade. The berm will be placed adjacent to the seaward side of oceanfront structures. Similar sections apply to all affected areas considered under this emergency application.

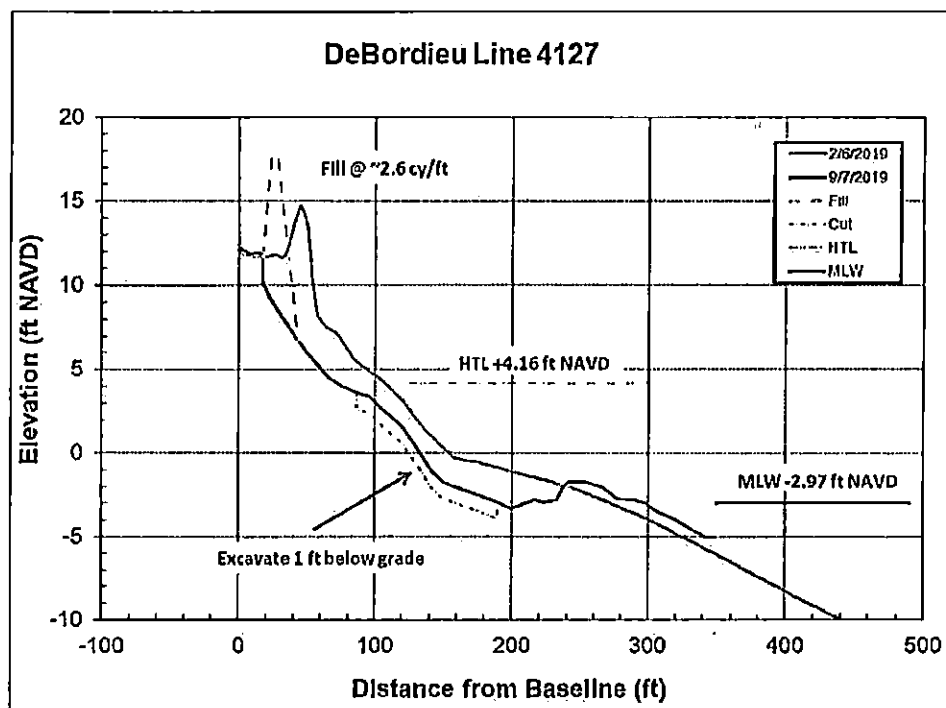


Figure 2. Typical section for sand scraping and construction of an emergency berm. Excavations are limited to 1 ft below grade. The berm will be placed adjacent to the seaward side of oceanfront structures. Similar sections apply to all affected areas considered under this emergency application.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

EMERGENCY ORDER

WHEREAS, Georgetown County believes that emergency conditions exist at a specific area of the DeBordieu Colony Community beachfront, and

WHEREAS, these emergency conditions were caused by erosion as a result of a Nor'easter which passed through this area on March 1, 2014 and a subsequent storm event on March 6, 2014 creating gale strength winds, strong longshore currents, and pounding surf/rip currents, and

WHEREAS, these conditions, as they currently exist, may endanger the health, safety, and welfare of the County residents affected, specifically located at the parcels identified at Georgetown County Tax Map No. 04-0191A-024-00-00 (51 Cheraw Way), 04-0191A-025-00-00 (54 Cheraw Way), 04-0191A-032-00-00 (43 Eastland Way) and 04-0191A-033-00-00 (44 Eastland Way), and

WHEREAS, the houses located on these parcels are in immediate threat from erosion directly caused by the aforementioned storm events and associated winds and high storm tides.

NOW, THEREFORE BE IT ORDERED, that the Georgetown County Administrator, pursuant to the authority of the State of South Carolina Code of Laws (1976), specifically §48-39-139 (D)(1) being known as the Coastal Zone Management Act of 1977 (as amended), hereby issues an emergency order authorizing the Ocean Green Community Association, on behalf of the record owners at TMS No. 04-0191A-024-00-00, TMS No. 04-0191A-025-00-00, TMS No. 04-0191A-032-00-00 and TMS No. 04-0191A-033-00-00 to engage the services of a certified, licensed and insured contractor to renourish said beachfront by means of performing sand scraping in accordance with SCDHEC-OCRM guidelines. Said renourishment is authorized to apply only to that beachfront that is located within the areas defined herein.

BE IT FURTHER ORDERED, that this emergency order allows only the renourishment by means of sand scraping, which provides critical protection to upland dwellings and infrastructure, in accordance with the stipulations as set forth in the State of South Carolina Code of Laws (1976), §48-39-139(D)(1) (as amended). In accordance with R.30-15.(H) Emergency Orders (2) Sandscraping: (b) Sand may only be scraped from the intertidal beach and only between extended property lines of the structure receiving the sand. The depth of scraping may not exceed one foot below the existing beach level. (c) Sand may be placed against an eroded scarp or to replace an eroded dune that is seaward of a threatened structure. The dune shall not exceed six (6) feet above grade or twenty (20) feet in width as measured from dune toe to dune toe. (e) Sandscraping may be performed one time only per property for each Emergency Order issued by the local official without prior approval by the Department. Any other plans of renourishment falling outside the scope of this order must be submitted to the appropriate

State or Federal agency and all necessary permits must be acquired before renourishment commences, specifically those required as evidenced in guidelines, requirements and prohibitions that are prescribed by the South Carolina Department of Ocean and Coastal Resource Management.

BE IT FURTHERED ORDERED, that nothing herein is to be construed or implied as granting permission or relieving the affected property owners of any responsibilities, duties, liabilities or requirements for permitting and agency review that he or she may be subject to regarding other Local, State or Federal agencies, who may also exercise authority and jurisdiction over the affected area to be renourished.

BE IT FURTHER ORDERED, that this Emergency Order is only valid and of force and effect for thirty (30) calendar days from the date hereof as evidenced below and will expire at midnight on the 20th day of March 2014.

IT IS SO ORDERED this 20th day of March, 2014.

WITNESSED

Ollie W. Leech

Joseph B. Grant

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

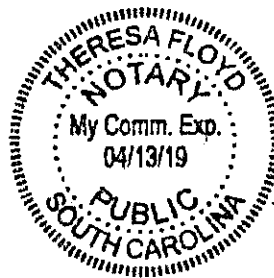
SEL HEMINGWAY
Georgetown County Administrator

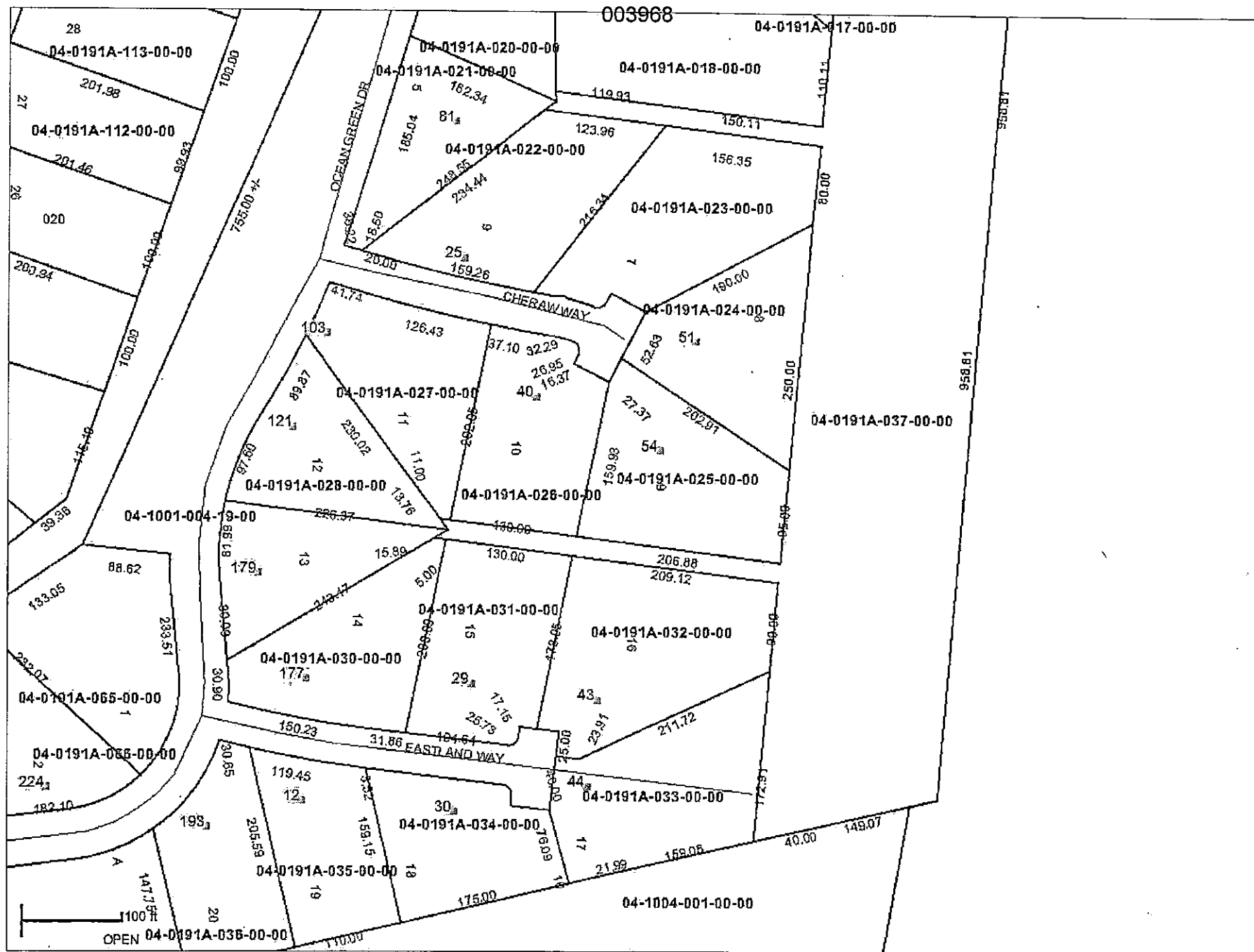
ACKNOWLEDGMENT

THE foregoing instrument was acknowledged before me this 20 day of March, 2014 by **GEORGETOWN COUNTY ADMINISTRATOR SEL HEMINGWAY**.

[Signature]
Notary Public for South Carolina

My Commission Expires: 4-13-19





003968

**GEORGETOWN
COUNTY
SOUTH
CAROLINA**

003969

FEB 05 1996

DHEC-OC
CHARLESTON OFFICE

Post Office Drawer 1270

715 Prince Street

Georgetown, South Carolina 29442

Telephone (803) 546-4189

Fax (803) 546-4730

February 6, 1996

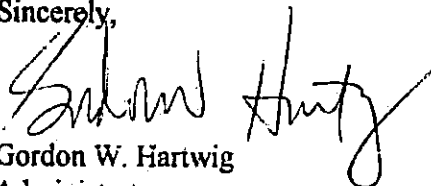
Mr. John B. Trotter
DeBordieu
1801 Luvan Way
Georgetown, SC 29440

Dear Mr. Trotter:

This letter is an emergency order authorizing you to scrape sand on the beach at DeBordieu to reinforce the seawall. This order is conditional on any requirements established by OCRM. I have discussed this with Steve Moore at OCRM, Charleston and he will work with you to achieve the temporary solution as you work on a permanent solution. Please contact Steve Moore to discuss the conditions.

Please contact me if you have any questions. This authorization will terminate March 25, 1996.

Sincerely,



Gordon W. Hartwig
Administrator

cc: ~~Steve Moore, OCRM~~
Robert Cox, Building Official

003969

SCDHEC--006102

Joint Federal and State Application Form For Activities Affecting Waters of the United States Or Critical Areas of the State of South Carolina		This Space for Official Use Only	
<i>Authorities:</i> 33 USC 401, 33 USC 403, 33 USC 407, 33 USC 408, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 48-39-10 et. Seq. of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both the Federal and/or State permit(s).		Application No. _____ Date Received _____ Project Manager _____ Watershed # _____	
<i>Drawings and Supplemental Information Requirements:</i> In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See the attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information.			
1. Applicant Last Name: Brown		11. Agent Last Name (agent is not required): Giles	
2. Applicant First Name: Blanche		12. Agent First Name: Andrew	
3. Applicant Company Name: DeBordieu Colony Community Association		13. Agent Company Name: Coastal Science and Engineering	
4. Applicant Mailing Address: 181 Luvan Blvd		14. Agent Mailing Address: PO Box 8056	
5. Applicant City: Georgetown		15. Agent City: Columbia	
6. Applicant State: SC	7. Applicant Zip: 29440	16. Agent State: SC	17. Agent Zip: 29202
8. Applicant Area Code and Phone No.: 843-527-4436		18. Agent Area Code and Phone No.: 803-799-8949	
9. Applicant Fax No.: 843-546-8704		19. Agent Fax No.: 803-799-9481	
10. Applicant E-mail: bbrown@debordieucolony.org		20. Agent E-mail: dgiles@coastalscience.com	
21. Project Name: DeBordieu Colony Emergency Sand Scraping Post Dorian		22. Project Street Address: 117 Norris Dr	
23. Project City: DeBordieu Colony	24. Project County: Georgetown	25. Project Zip Code: 29585	26. Nearest Waterbody: Atlantic Ocean
27. Tax Parcel ID: See additional letter with plan sheets.		28. Property Size (acres):	
29. Latitude: 33.4566 N		30. Longitude: 79.1038 W	
31. Directions to Project Site (Include Street Numbers, Street Names, and Landmarks and attach additional sheet if necessary): From Hwy 17 in Georgetown County, turn on to Luvan Blvd, turn on to DeBordieu Blvd			
32. Description of the Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas (attach additional sheets if needed): See additional sheets.			
33. Overall Project Purpose and the Basic Purpose of Each Activity in or Affecting U.S. Waters (attach additional sheets if needed): See additional sheets.			
34. Type and quantity of Materials to Be Discharged Dirt or Topsoil: _____ ☐ cubic yards Clean Sand: _____ ☒ cubic yards Mud: _____ ☐ cubic yards Clay: _____ ☐ cubic yards Gravel, Rock, or Stone: _____ ☐ cubic yards Concrete: _____ ☐ cubic yards Other (describe): _____ ☐ cubic yards TOTAL: _____ ☒ cubic yards		35. Type and Quantity of Impacts to U.S. Waters (including wetlands). Filling: ¹ _____ ☒ acres ☐ sq. ft. ^{+1,000} ☒ cubic yards Backfill & Bedding: _____ ☐ acres ☐ sq. ft. ☐ cubic yards Landclearing: _____ ☐ acres ☐ sq. ft. ☐ cubic yards Dredging: _____ ☐ acres ☐ sq. ft. ☐ cubic yards Flooding: _____ ☐ acres ☐ sq. ft. ☐ cubic yards Draining/Excavation: ² _____ ☒ acres ☐ sq. ft. ⁺⁵⁰⁰⁰ ☒ cubic yards Shading: _____ ☐ acres ☐ sq. ft. ☐ cubic yards TOTALS: ³ _____ acres _____ sq. ft. ^{+5,000} _____ cubic yards	

36. Individually list wetland impacts including mechanized clearing, fill, excavation, flooding, draining, shading, etc. and attach a site map with location of each impact (attach additional sheets if needed).

Impact No.	Wetland Type	Distance to Receiving Water body (LF)	Purpose of Impact (road crossing, impoundment, flooding, etc)	Impact Size (acres)
1	Intertidal Beach	-	Beach Nourishment	~2.3
Total Wetland Impacts (acres)				~2.3

37. Individually list all seasonal and perennial stream impacts and attach a site map with location of each impact (attach additional sheets)

Impact No.	Seasonal or Perennial Flow	Average Stream Width (LF)	Impact Type (road crossing, impoundment, flooding, etc)	Impact Length (LF)
Total Stream Impacts (Linear Feet)				0

38. Have you commenced work on the project site? ☐ YES ☒ NO If yes, describe all work that has occurred and provide dates.

39. Describe measures taken to avoid and minimize impacts to Waters of the United States:

See additional sheets.

40. Provide a brief description of the proposed mitigation plan to compensate for impacts to aquatic resources or provide justification as to why mitigation should not be required (Attach a copy of the proposed mitigation plan for review).

See additional sheets.

41. See the attached sheet to list the names and addresses of adjacent property owners.
See additional sheets.

42. List all Corps Permit Authorizations and other Federal, State, or Local Certifications, Approvals, Denials received for work described in this application.

OCRM Emergency Order 19-EO-HD2 and 19-EO-HD4

43. Authorization of Agent. I hereby authorize the agent whose name is given on page one of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application.

Blanchett Brown 9/11/19
Applicant's Signature Date

44. Certification. Application is hereby made for a permit or permits to utilize the work and use of the work as described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent for the applicant.

Blanchett Brown 9/11/19 [Signature] 9/13/19
Applicant's Signature Date Agent's Signature Date

¹The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 41 and 43 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.



DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
1949 INDUSTRIAL PARK ROAD, ROOM #140
CONWAY, SOUTH CAROLINA 29526

September 26, 2019

Regulatory Division

Ms. Blanche Brown
DeBordieu Colony Community Association
181 Luvan Boulevard
Georgetown, South Carolina 29440
bbrown@debordieucolony.org

Dear Ms. Brown:

This is in response to a Pre-Construction Notification (PCN) (SAC-2019-01533) received on September 16, 2019, and considered complete on September 16, 2019. In submitting the PCN, you requested verification the proposed project is authorized by a Department of the Army (DA) General Permit No. SAC-2014-00299.

The PCN contains identifying information for this project. The work affecting waters of the United States is part of an overall project known as Hurricane Dorian – DeBordieu Colony Emergency Sand Scraping Project, to restore a section of Debidue Island beach recently eroded due to Hurricane Dorian, a major storm event, in September of 2019. The activities in waters of the United States include the excavation (mechanical scraping) of sand to a depth not to exceed 2' below current grade from between the high tide line (HTL) and the mean low water (MLW) for the purpose of refurbishing the beach. The project involves impacts to not more than 1,100 linear feet of waters of the United States. The project is located along approximately 1,100 linear feet of beach shoreline along 6 individual contiguous lots located south of DeBordieu Boulevard, in DeBordieu Colony, in Georgetown County, South Carolina. The center-point for this project is approximately Latitude: 33.3588 °N, Longitude: -79.1521 °W. The PCN also includes the following supplemental information:

- a. Drawing sheets ex. 1-3 of 3 titled "SAC-2019-01533 / Hurricane Dorian – DeBordieu Colony / Emergency Sand Scraping Project" and dated September 25, 2019.
- b. A delineation of wetlands, other special aquatic sites, and other waters.

Based on a review of the PCN, including the supplemental information indicated above, the Corps has determined the proposed activity will result in minimal individual and cumulative adverse environmental effects and is not contrary to the public interest. Furthermore, the activity meets the terms and conditions of Department of the Army General Permit No. SAC-2014-00299.

For this authorization to remain valid, the project must comply with: (1) the terms and conditions listed in the attached copy of the Department of the Army General Permit No. SAC-2014-00299; and (2) the following special conditions:

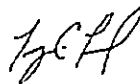
- a. That prior to beginning the authorized work the permittee must obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations (e.g., Coastal Zone Management Act concurrence, State Navigable Waters Permit, etc.).
- b. That impacts to aquatic areas do not exceed those specified in the above mentioned PCN, including any supplemental information or revised permit drawings that were submitted to the Corps by the permittee.
- c. That the construction, use, and maintenance of the authorized activity is in accordance with the information given in the PCN, including the supplemental information listed above, and is subject to any conditions or restrictions imposed by this letter.
- d. That the permittee shall submit the attached signed compliance certification to the Corps within 30 days following completion of the authorized work.
- e. That for any work conducted between May 1st and October 31st the permittee shall coordinate with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) for the length of the project. NPPL should be consulted each morning prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult turtle is encountered, all work should cease and the MTCP should be contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843-953-9052 (office) or 843-303-2097 (cell).
- f. Only large sandbags are authorized. Large sandbags are defined as UV resistant bags one (1) cubic yard in size commercially manufactured to hold sand. No sandbags shall be placed waterward of the high tide line or buried by emergency beach nourishment activities. In the event of continual erosion that shifts sandbags below the high tide line, it is the permittee's responsibility to immediately remove such sandbags. Any sandbags remaining in the project area must be removed and hauled offsite prior to beach nourishment activities.
- g. If the permittee, prior to or during the performance of the work authorized herein, encounters previously unidentified archeological remains or cultural resources within the area subject to Department of the Army authorization, the applicant agrees to cease work and contact the District Engineer, so that further coordination with the South Carolina Institute of Archaeology and Anthropology and the South Carolina Department of Archives and History may be conducted.

This verification is valid until Department of the Army General Permit expires on December 31, 2020, unless prior to this date the subject General Permit is suspended, revoked, or is modified such that the activity no longer complies with the terms and conditions of the General Permit.

This authorization is being verified under Department of the Army General Permit No. SAC-2014-00299 based on the information you have provided. It is your responsibility to read the attached General Permit before you begin work. If your project fails to meet all of the terms and conditions of the subject General Permit, including the special conditions above, at any time (i.e., prior to commencement of the authorized work, during construction, or after project completion), the activity is considered unauthorized, and you should contact the Corps immediately.

In all future correspondence, please refer to file number SAC-2019-01533. A copy of this letter is being forwarded to State and/or Federal agencies for their information. If you have any questions, please contact Ann Eaddy, Project Manager, at (843) 365-1709, or by email at Ann.W.Eaddy@usace.army.mil.

Sincerely,



Digitally signed by
FENNELTOMMY.E.12599
92903
Date: 2019.09.26
13:23:47 -04'00'

Tommy Fennel
Chief, Northeast Branch

Attachments

Permit Drawings
General Permit No. SAC-2014-00299
Certification of Compliance

Copy Furnished:

Mr. Andrew Giles
Coastal Science and Engineering
Post Office Box 8056
Columbia, South Carolina 29403
dgiles@coastalscience.com

South Carolina Department of Health
and Environmental Control
Office of Ocean and Coastal
Resource Management
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405
williabn@dhec.sc.gov

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

EMERGENCY ORDER

WHEREAS, Georgetown County believes that emergency conditions exist at a specific area of the DeBordieu Colony Community beachfront, and

WHEREAS, these emergency conditions were caused by erosion as a result of a Nor'easter which passed through this area on March 1, 2014 and a subsequent storm event on March 6, 2014 creating gale strength winds, strong longshore currents, and pounding surf/rip currents, and subsequent storms in mid-April, 2014; and

WHEREAS, these conditions, as they currently exist, may endanger the health, safety, and welfare of the County residents affected, specifically located at the parcels identified at Georgetown County Tax Map No. 04-0191A-024-00-00 (51 Cheraw Way), 04-0191A-025-00-00 (54 Cheraw Way), 04-0191A-032-00-00 (43 Eastland Way) and 04-0191A-033-00-00 (44 Eastland Way), and

WHEREAS, the houses located on these parcels are in immediate threat from erosion directly caused by the aforementioned storm events and associated winds and high storm tides.

NOW, THEREFORE BE IT ORDERED, that the Georgetown County Administrator, pursuant to the authority of the State of South Carolina Code of Laws (1976), specifically §48-39-139 (D)(1) being known as the Coastal Zone Management Act of 1977 (as amended), hereby issues an emergency order authorizing the Ocean Green Community Association, on behalf of the record owners at TMS No. 04-0191A-024-00-00, TMS No. 04-0191A-025-00-00, TMS No. 04-0191A-032-00-00 and TMS No. 04-0191A-033-00-00 to engage the services of a certified, licensed and insured contractor to renourish said beachfront by means of performing sand scraping in accordance with SCDHEC-OCRM guidelines. Said renourishment is authorized to apply only to that beachfront that is located within the areas defined herein.

BE IT FURTHER ORDERED, that this emergency order allows only the renourishment by means of sand scraping, which provides critical protection to upland dwellings and infrastructure, in accordance with the stipulations as set forth in the State of South Carolina Code of Laws (1976), §48-39-139(D)(1) (as amended). In accordance with R.30-15.(H) Emergency Orders (2) Sandscraping: (b) Sand may only be scraped from the intertidal beach and only between extended property lines of the structure receiving the sand. The depth of scraping may not exceed one foot below the existing beach level. (c) Sand may be placed against an eroded scarp or to replace an eroded dune that is seaward of a threatened structure. The dune shall not exceed six (6) feet above grade or twenty (20) feet in width as measured from dune toe to dune toe. (e) Sandscraping may be performed one time only per property for each Emergency Order issued by the local official without prior approval by the Department. Any other plans of renourishment falling outside the scope of this order must be submitted to the appropriate

State or Federal agency and all necessary permits must be acquired before renourishment commences, specifically those required as evidenced in guidelines, requirements and prohibitions that are prescribed by the South Carolina Department of Ocean and Coastal Resource Management.

BE IT FURTHERED ORDERED, that nothing herein is to be construed or implied as granting permission or relieving the affected property owners of any responsibilities, duties, liabilities or requirements for permitting and agency review that he or she may be subject to regarding other Local, State or Federal agencies, who may also exercise authority and jurisdiction over the affected area to be renourished.

BE IT FURTHER ORDERED, that this Emergency Order is only valid and of force and effect from the date hereof as evidenced below and will expire at the close of business on the 1st day of May, 2014.

IT IS SO ORDERED this 28th day of April, 2014.

WITNESSED

[Signature]
[Signature]

[Signature]
 SEL HEMINGWAY
 Georgetown County Administrator

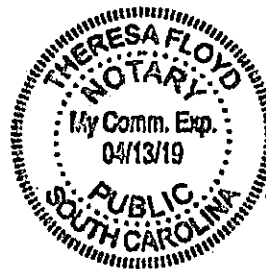
STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

ACKNOWLEDGMENT

THE foregoing instrument was acknowledged before me this 28th day of April, 2014 by **GEORGETOWN COUNTY ADMINISTRATOR SEL HEMINGWAY**.

[Signature]
 Notary Public for South Carolina

My Commission Expires: 4-13-19



Project Number: SAC-2019-01533

Name of Permittee: Blanche Brown
DeBordieu Colony Community Assn

Date of Issuance: September 26, 2019

Upon completion of the activity authorized by this Nationwide Permit/General Permit authorization letter, including any compensatory mitigation, sign this certification and return it to the following address:

U.S. Army Corps of Engineers
 Regulatory Division – Northeast Branch
 1949 Industrial Park Road, Suite 140
 Conway, South Carolina 29526

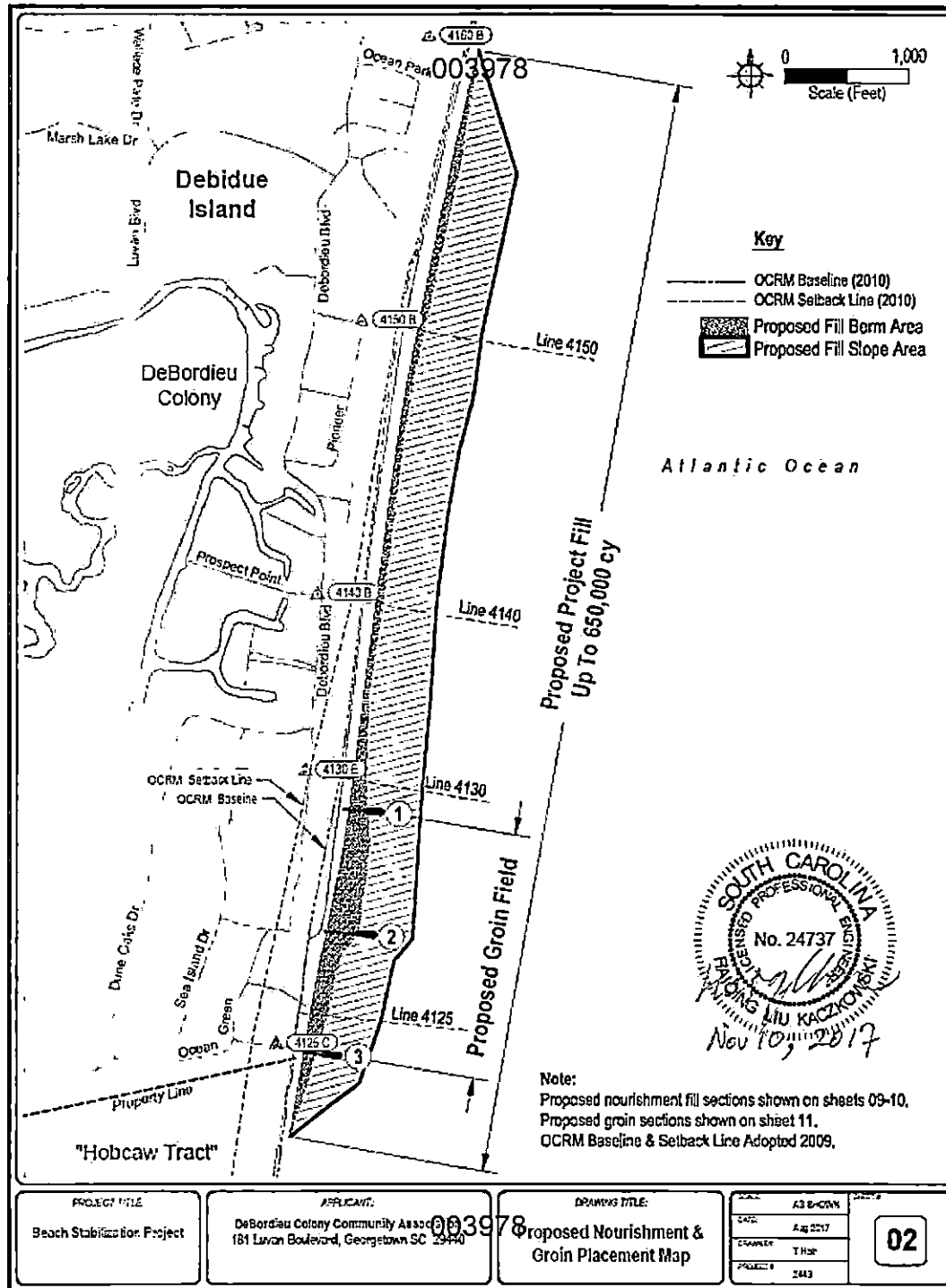
Please note that the authorized activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of your Nationwide Permit authorization letter this office may suspend, modify, or revoke this authorization.

PM:AD

=====

I hereby certify that the work authorized by the above referenced Nationwide Permit/General Permit authorization letter has been completed in accordance with the terms and conditions of said authorization letter, including the performance of any required compensatory mitigation.

 Signature of Permittee

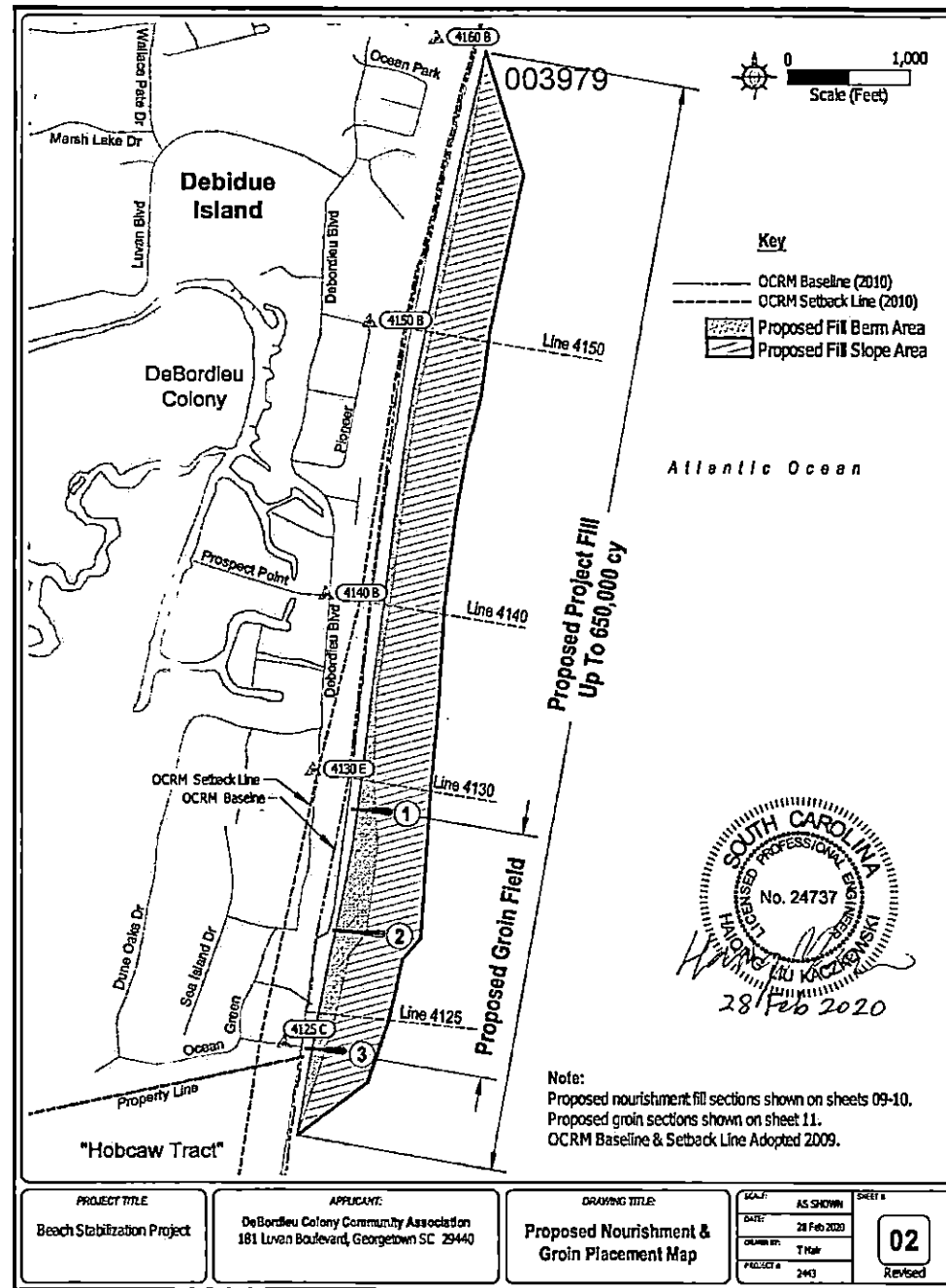


SCDHEC 000022

Ex. 29

19-ALJ-07-0088-CC
 RESPONDENT'S
 JOINT EXHIBIT
 52

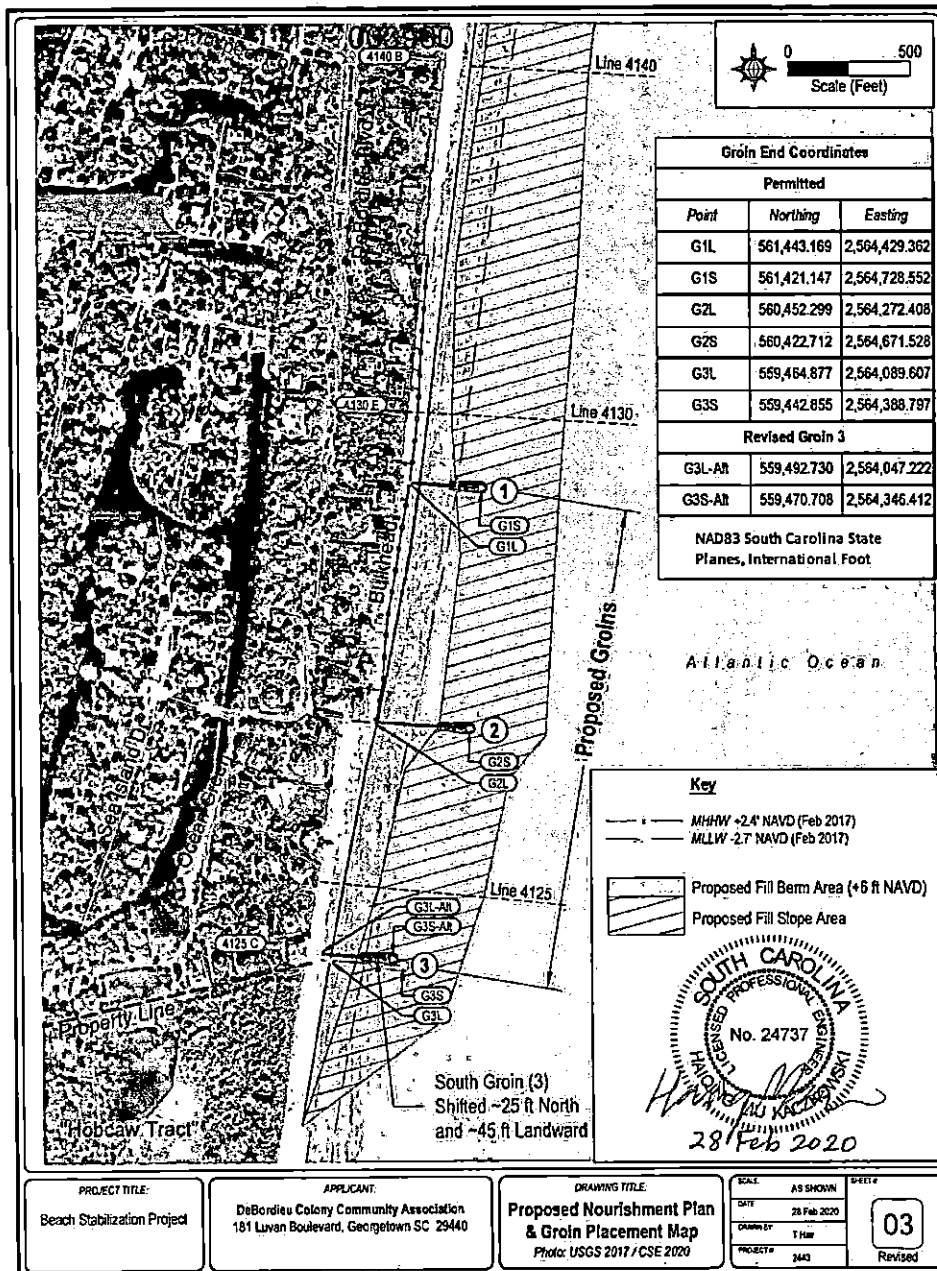
Ex. 41



003979

SCDHEC-005314

Ex. 43



003980

SCDHEC-005365

003981

SEE SPECIAL CONDITION(S)

Permit Number: 2017-01795

11. Sand used must consist of appropriate grain sizes, quality, and color to be compatible for beach renourishment. If muddy sediments or excessively coarse sediments (rocks, large shell fragments, etc.) are observed while sand is being placed on the beach, dredging of that portion of the borrow area must be terminated immediately and the dredge must be moved to another location.
12. Qualified personnel, under the direction of a registered professional geologist or registered professional engineer, must be present on the beach during sand pumping activities to monitor the sediment quality and correlate it with borrow area conditions.
13. If accumulations of mud rollers or coarse sediments (rocks, large shell fragments, etc.) exceed the equivalent of one 15-cubic yard dump truck per 100 linear feet of beach, the material must be removed from the beach using hand labor or a beach-sweeping device as soon as practicable upon completion of the section or upon completion of the project.
14. Sand fencing and dune vegetation that is installed must be consistent with the South Carolina Critical Area Permitting Regulations in S.C. Code Ann. Regs. 30-13(L) and in accordance with the attached diagram (Attachment C).
15. Access along the beach in the vicinity of the new groins must be maintained or improved. If access is impacted or eliminated, temporary access around or over the groins must be established immediately. Within 30 days of notification from the Department, a plan to provide permanent access around or over the groins must be submitted by the entity responsible for the groin construction. This permanent access plan must be implemented within 90 days of the Department approval.
16. No dredging should occur within 400 feet of hardbottom habitat that may be present within the borrow areas.
17. Within the borrow areas, the contractor must begin dredge operations at the outer edges of higher elevation mounds of suitable material and proceed inwards rather than dig deep pits in the center of the borrow area whenever possible. Maximum authorized dredge depth is 6 feet below the seafloor, or the limit of suitable material, whichever is shallower.
18. The applicant shall perform monitoring of the project and borrow sites, and monitoring reports shall be submitted to SCDHEC-OCRM, the U.S. Army Corps of Engineers (USACE) Charleston District, and the USFWS South Carolina Field Office according to the schedule described in Special Condition # 20. The monitoring will include the following:
 - a. Beach profile (topographic and hydrographic) surveys beginning at a point landward of the stable dune or bulkhead and extending at least 3,000 feet seaward of the shoreline shall be performed at profiles not to exceed 500 feet in spacing in the alongshore direction. Within the first 2,000 feet south of the southernmost groin, the profiles must not exceed 200 feet in spacing in the alongshore direction. All profile data collection for all years shall include both land-based and hydrographic surveys. The profile data shall be collected for all of Debidue Beach, including the areas north and south of the groins and continuing along the spit into the sandy shoreline of North Inlet. S.C. Code Ann. Regs. 30-15(G)(1)(a) requires the establishment of new monuments. Modern Real-Time Kinematic Geographic Positioning System (RTK-GPS) technology allows for virtual monuments to be established along the beach instead of physical monuments installed in the ground. Virtual monuments allow for precise latitude, longitude, and elevation measurements to be obtained along replicable beach profile transects. Beach profile transects at virtual monuments at the spacing described above satisfy the regulatory requirements in S.C. Code Ann. Regs. 30-15(G)(1)(a). Post-construction surveys shall compare beach

Joint Ex. 1

003982

**SEE SPECIAL
CONDITION(S)**

Permit Number: 2017-01795

- volumes and contour positions to before-and-after project conditions to document beach volume changes, fillet geometries, groin exposure, and erosion hotspots.
- b. Post-storm surveys after major events shall be performed to evaluate short-term changes in relation to historical data along Debidue Island and to track the growth and landward limits of washovers along Debidue Spit.
 - c. Bathymetric surveys of the borrow area utilized for the renourishment project shall encompass the boundaries of the dredge areas and shall include a minimum 400-foot buffer along the outside of each area. Bathymetric surveys shall be completed using track lines at a spacing not to exceed 500 feet, and shall be analyzed by the permittee to calculate infilling rates.
 - d. Beach sediment samples shall be collected at stations spaced 200 feet apart along the shoreline. Samples from each station shall be taken using a push core at the toe of the dune, crest of the berm, mid beach face, and shallow underwater zone. Samples shall be dried and tested for grain size distribution and shell content.
 - e. Borrow area surficial sediment samples shall be taken using push cores with a diameter of 10 centimeters and a depth of 10 centimeters. A total of 10 random samples shall be taken from the borrow area utilized for the project. Samples will be analyzed for grain size, shell content, and mud content.
 - f. Aerial photographs of the project area and adjacent and downdrift beach areas to North Inlet shall be collected at low tide.
 - g. Compaction of the renourished beach shall be monitored at 500-foot intervals along the sand placement template. One station shall be at the seaward edge of the dune/seawall line, and one station shall be midway between the dune line and the high water line. At each station, the cone penetrometer must be pushed to a depth of 6, 12, and 18 inches three times (three replicates). Replicates must be located as close to each other as possible, without interacting with the previous hole or disturbed sediments. The three replicate compaction values for each depth must be averaged to produce final values for each depth at each station. Monitoring reports shall include all 18 values for each transect line, and the final six averaged compaction values.
 - h. Escarpment formation along the renourished beach shall be monitored.
19. In addition to the monitoring requirements described in Special Condition # 18, if dredging extends into the spring or summer season (April 1 to September 30), the applicant shall perform benthic infauna monitoring of the beach and borrow areas. Monitoring will include collecting 10 random samples within the impact areas (borrow areas and fill area) and 10 samples in surrounding control areas. For the borrow areas, samples will be collected immediately before and after dredging, and 1 year and 3 years post dredging (during the same season as the immediate post-dredging survey). For the beach area, samples will be collected immediately before dredging, and then 1 month, 6 months and 1 year post dredging. The 1 year post sample will be collected during the same season as the pre-dredging survey. For the beach samples, the sampling design will follow procedures for recent similar studies in South Carolina with each site sampled over a 100 meter area along transects spaced 10 meters apart and samples collected at a random location along the transect between the MSL and MLW contours. The benthic infauna monitoring data and analysis shall be included in the annual monitoring reports submitted to SCDHEC-OCRM, the USACE Charleston District, and the USFWS South Carolina Field Office.

Joint Ex. 1

CSE Downdrift Impacts Analysis

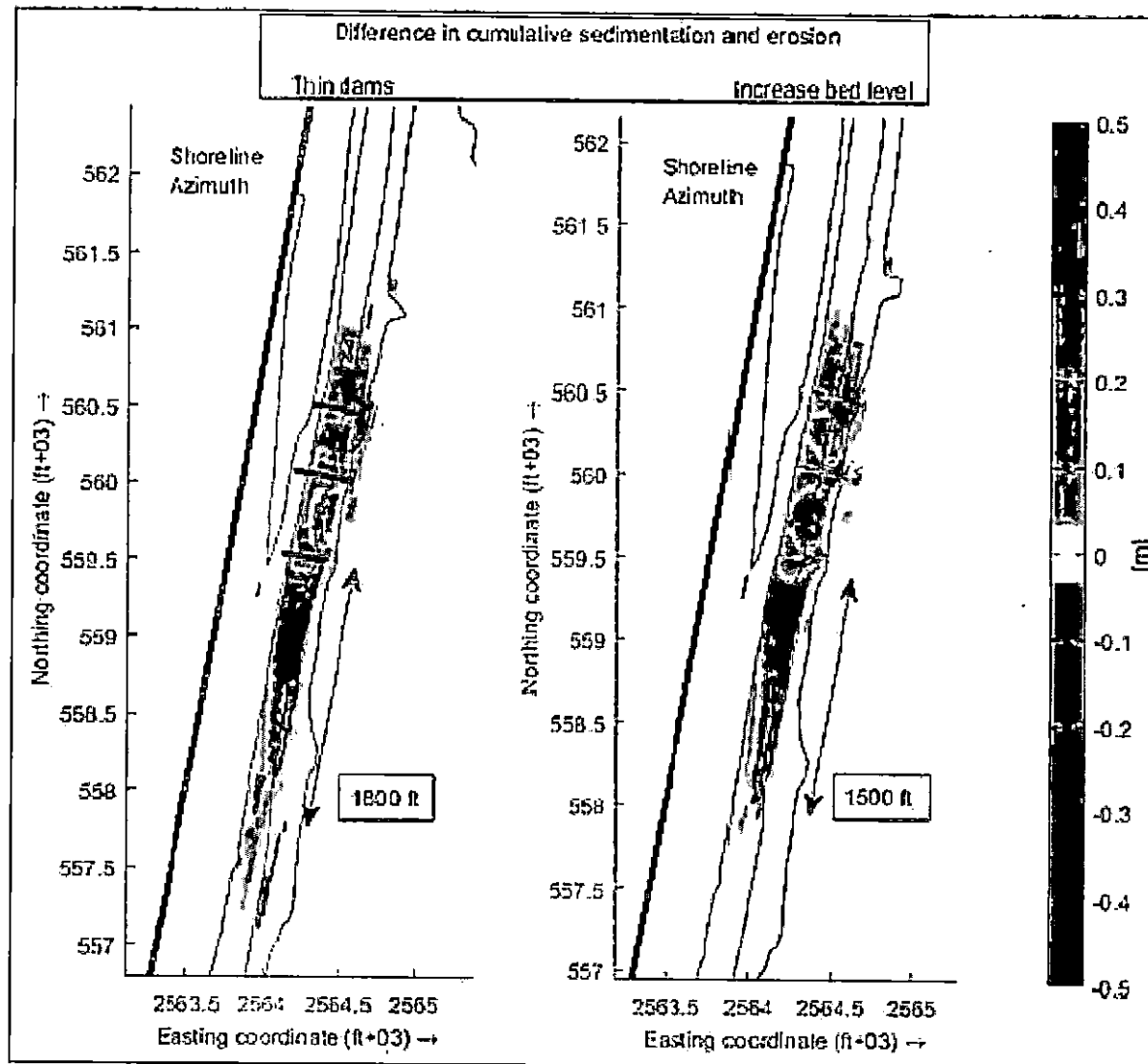


FIGURE 4.16. Differences in cumulative sedimentation and erosion for the "thin-dams" scenario (left) and treating groins by increasing the bed level (right). The "thin-dams" scenario simulates a total littoral barrier and indicates erosion downcoast increases by ~8,900 cy/yr. The other simulation uses more realistic groin profiles that follow natural contours and allow some bypassing. The result is a net increase in erosion totaling ~8,200 cy/yr along ~1,500 ft of the downcoast reach.



SCDHEC 000334

Ex. 1f

003983

003984

**SEE SPECIAL
CONDITION(S)**

Permit Number:

2017-01795

Report	TABLE 1: Required Monitoring Information, Comparisons, and Analysis						
	Beach Profile Figures*	Bathymetric Survey Figures	Beach Sediment Samples	Borrow Area Sediment Samples	Aerial Photos	Compaction	Escarments
Pre-Project	X	X	X	X	X		
Post-Project	X	X	X	X	X	X	X
3-Months Post-Project	X				X		
6-Months Post-Project	X				X		
9-Months Post-Project	X				X		
Year 1 Annual Report	X	X		X	X	X	X
Year 2 Annual Report	X				X	X	X
Year 3 Annual Report	X	X		X	X	X	X
Year 4 Annual Report	X				X		
Year 5 Annual Report	X				X		
Year 6 Annual Report	X	X		X	X		
Year 7 Annual Report	X				X		
Year 8 Annual Report	X				X		
Year 9 Annual Report	X				X		
Year 10 Annual Report	X				X		
*Including post-storm surveys as needed							

22. If the monitoring data collected according to Special Condition # 18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require either that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the historical/background rate, that the groins be removed, and/or that the beach adversely affected by the groins be restored through renourishment. Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions. Specifically, if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the southernmost groin exceeds the historical/background rate of 8.1 cy/ft/yr, mitigation will be required. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds 8.1 cy/ft/yr. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months. The permittee's agent, in a letter dated May 16, 2018, estimates that it would cost approximately \$250,000 to

Joint Ex. 1

003985



April 15, 2020

DeBordieu Colony Community Association
ATTN: Ms. Blanche Brown
181 Luvan Blvd.
Georgetown, SC 29440

9489 0090 0027 6188 0224 96

Re: 2017-01795 – Permit Amendment for Modified Southernmost Groin Location and Monitoring/Mitigation Requirements

Dear Ms. Brown:

The above referenced permit has been amended pursuant to an Order of Dismissal, dated April 3, 2020, from the S.C. Administrative Law Court in the case of The Belle W. Baruch Foundation vs. SCDHEC & DeBordieu Colony Community Assoc., Docket No. 19-ALJ-07-0088-CC. Specifically, Special Condition #22 of the permit has been modified according to a settlement agreement entered into between DeBordieu Colony Community Association and the Belle W. Baruch Foundation in March 2020 and ordered by the ALC in its Order of Dismissal. This permit amendment lowers the erosion rate trigger for mitigation from 8.1 cy/ft/yr to 6.00 cy/ft/yr, adds a mitigation trigger based on erosion above Mean High Water, and documents the increased Letter of Credit amount of \$1,000,000. The location of the southernmost proposed groin will also be shifted 25 feet to the north and approximately 50 feet to the west as shown in the revised attached drawing entitled "Proposed Nourishment Plan & Groin Placement Map, Photo: USGS 2017 / CSE 2020, dated 28 February 2020 [03 Revised]."

Special Condition #22 of the permit has been modified with the following:

"22. If the monitoring data collected according to Special Condition #18 shows an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins, SCDHEC-OCRM will require mitigation as follows:

- a. that the groins be reconfigured so that the erosion rate on the affected beach does not exceed the background rate of .75 acres per year or 6.00 cy/ft/yr, (as set forth below in paragraphs 1 and 2);
 - b. that the groins be removed; and/or
 - c. that the beach adversely affected by the groins be restored through renourishment. Baseline volume and shoreline position conditions will be based on the pre-project survey conditions. Subsequent analyses of project performance will be made relative to these baseline conditions.
1. Specifically, if the average erosion area for two consecutive years above Mean High Water (MHW) within the Hobcaw Tract from the southernmost groin to 4,180 feet south of the southernmost groin exceeds .75 acre per year, mitigation will be required. For purposes of this provision, MHW is defined as 2.05' NAVD '88 and the initial baseline condition for MHW will be determined by a survey to be taken within one month prior to the beginning of Project construction. After completion of the Project, MHW will be determined annually by a survey taken in May of each year.
 2. Mitigation will also be required if the running average erosion rate within the Hobcaw Tract from the southernmost groin to 1,600 feet south of the southernmost groin exceeds the rate of

Ex. 43

SC Department of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201 (803) 898-3432 www.scdhec.gov

003985

003986

Re: 2017-01795 – Permit Amendment for Modified Southernmost Groin Location and
Monitoring/Mitigation Requirements

6.00 cy/ft/yr. Mitigation will also be required if the running average erosion rate from 1,600 feet south of the southernmost groin to 4,180 feet south of the southernmost groin exceeds the rate of 6.00 cy/ft/yr.

3. The exact form of mitigation required will depend on the location and extent of the adverse impact. When mitigation work is required, it must be completed as soon as possible, normally within three months.
4. DCCA has obtained a commitment for a letter of credit in the amount of \$1,000,000, which shall be in place prior to the commencement of construction. DCCA has provided documentation regarding the beach fund approved by its members to pay for this installation of groins and renourishment and for any future work that may be required on the Deblidue or Hobcaw beaches. This community approval is for 17 years. After paying for the project, DCCA will accumulate funds over the following 12 years, estimated to be approximately \$10-\$12 million (based on current estimates for the project cost). These funds will be available for additional beach renourishment and/or groin reconfiguration or removal if needed. These funds are in addition to the \$1 million Letter of Credit."

This amendment is made a part of your permit and is subject to the full terms of the permit as issued.

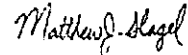
An as-built survey of the new groins and renourished beach area must be submitted to DHEC-OCRM within 90 days from completion of construction. The survey must be performed by a registered land surveyor, must show all components of the groins, and must list the starting and ending coordinates of the groins in the S.C. State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

This letter does not relieve you of the responsibility of acquiring any other applicable federal or local permits that may be required. Any person adversely affected by this action has the right to appeal as outlined in the enclosed "Guide to Board Review."

The construction placard must be posted conspicuously on site during authorized activities. If you do not possess a current placard, a new one must be obtained prior to start of construction.

If this amendment letter is not accepted within thirty (30) days of issuance, OR appealed as described on in the Guide to Board Review, the Department reserves the right to cancel this permit amendment. Please carefully review the Guide to Board Review for information and deadlines for appealing this permit amendment.

Sincerely,



Matthew J. Slagel
Beachfront Permitting Project Manager
Critical Area Permitting Section


DeBordieu Colony Community Association

April 24, 2020
Date

cc: Mr. Blair Williams, Critical Area Permitting Section Manager
Ms. Ann Eaddy, U.S. Army Corps of Engineers
Dr. Tim Kana, Coastal Science & Engineering, Agent

S.C. Department of Health and Environmental Control
2600 Bull Street, Columbia SC 29201 (803) 898-3432 www.scdhec.gov

Ex. 43

003986

SCDHEC-005364

003987
CSE Downdrift Impacts Analysis

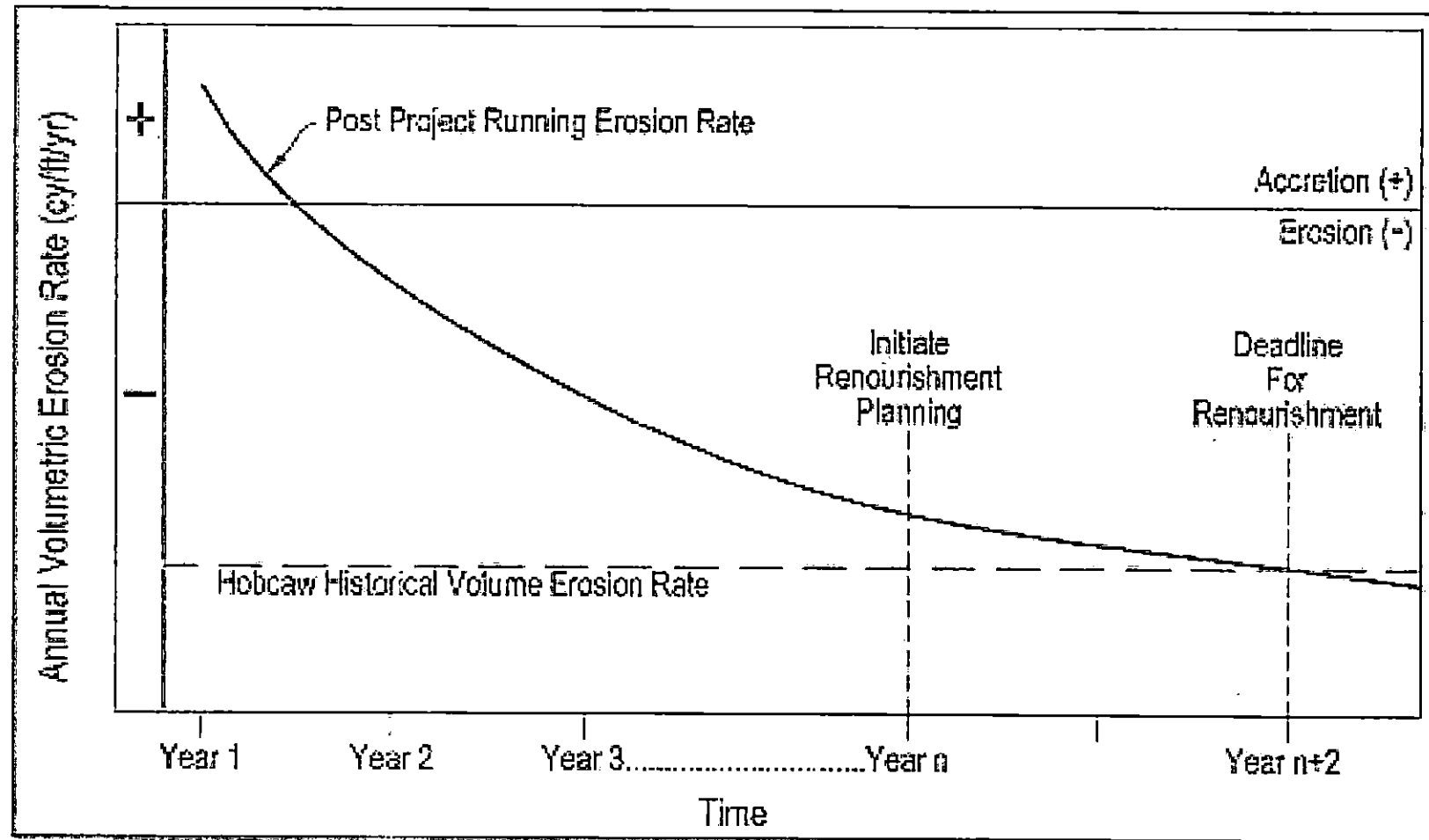
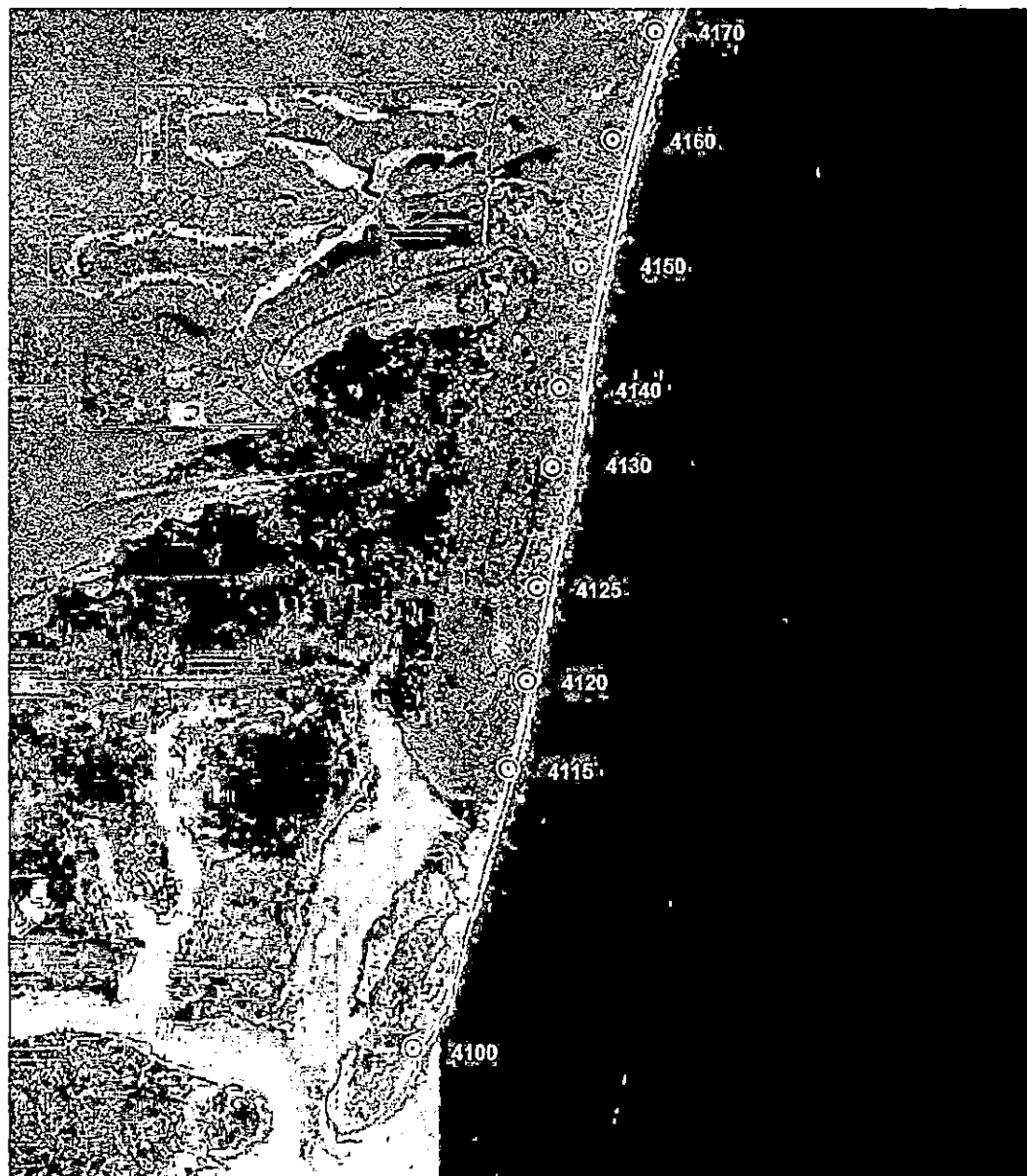


FIGURE 6.1. Recommended approach to establishing erosion-rate thresholds and renourishment triggers after the proposed project. Planning would be initiated before the running erosion rate reaches the historical volumetric change rate. This scenario assumes it may take up to two years to complete planning and permitting for renourishment.



003988

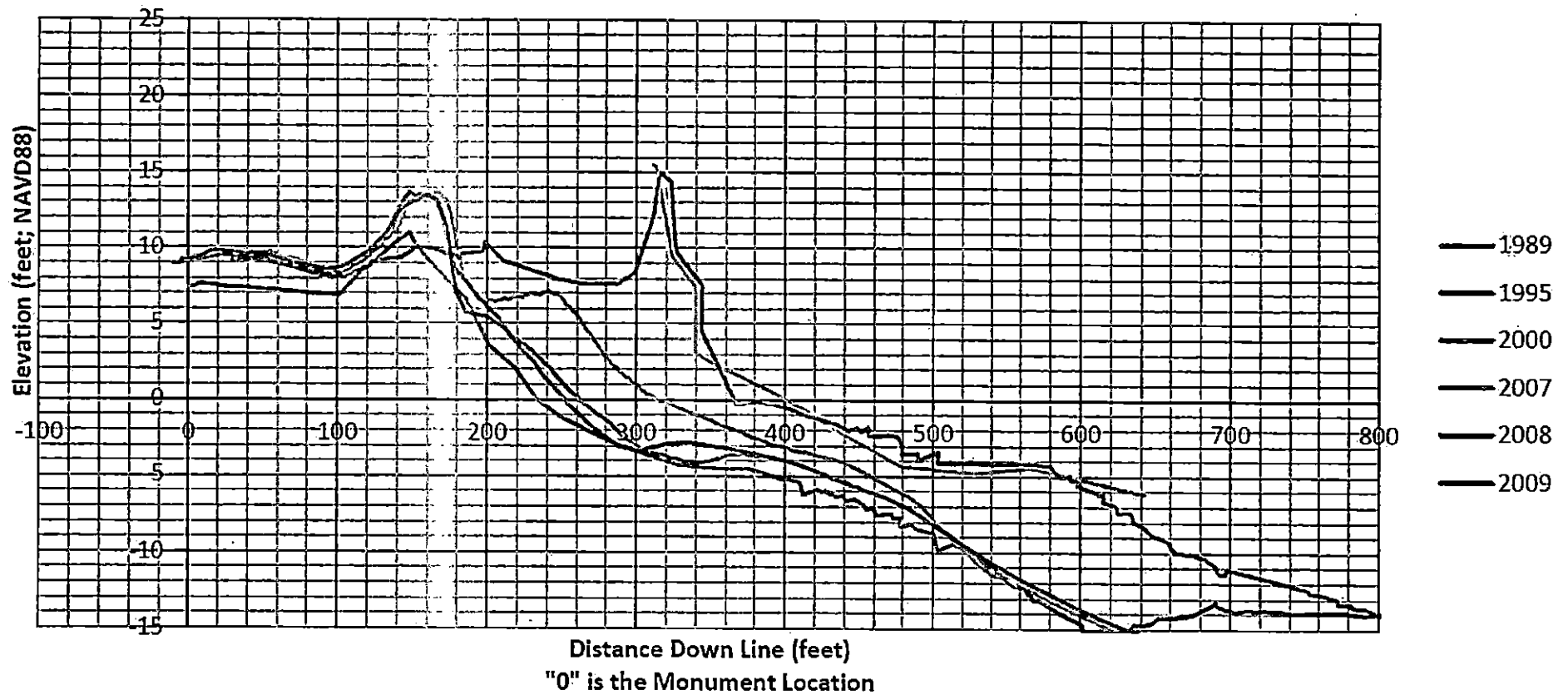


003988

003989

Beach Profile Data

Monument 4130: Debidue Beach, SC



SCDHEC 003647

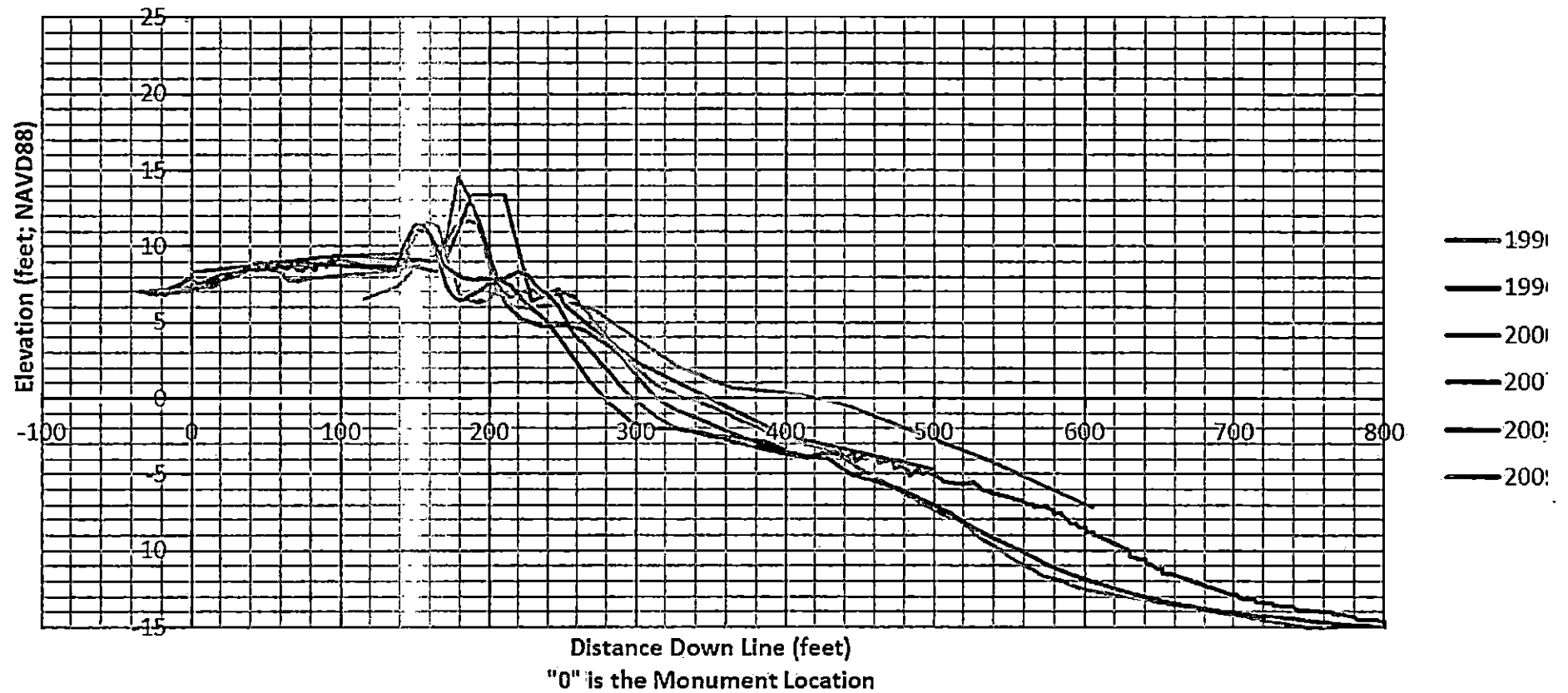
Ex. 34

003989

003990

Beach Profile Data

Monument 4125: Debidue Beach, SC



SCDHEC 003988

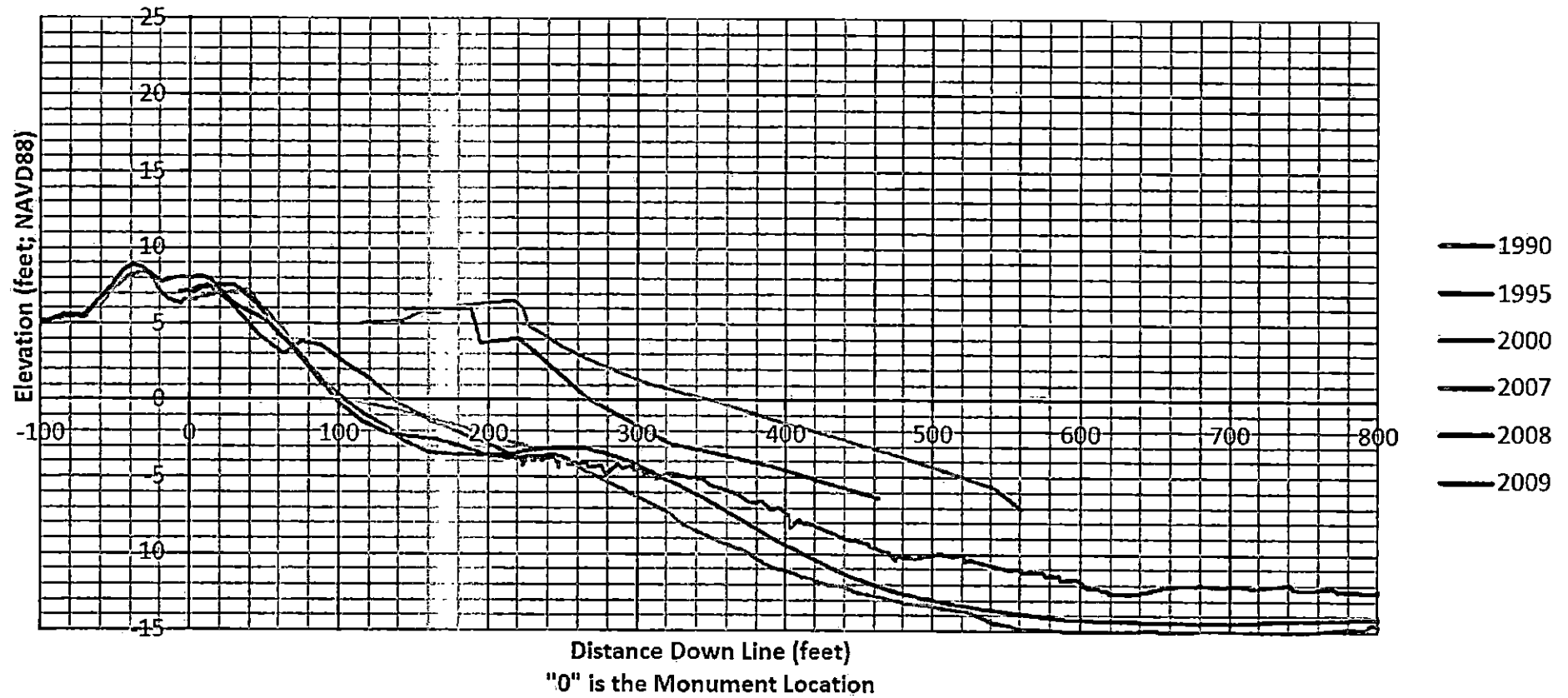
Ex. 34

003990

003991

Beach Profile Data

Monument 4120: Debidue Beach, SC



SCDHEC 004286

Ex. 34

003991

003992
Calculation of South Carolina Coastal Council
Jurisdictional Baselines and Setback Lines
Debidue Beach May 1990

Table 1. Distances are in feet and volumes are in cubic yards yards per foot.

Monument	Zone	Distance to +10 ft Contour	Actual +10 to -5 Volume	Smoothed +10 to -5 Volume	Ideal Volume	Volume Surplus (+) or Deficit (-)	Deficit Offset	Distance from Ideal +10 to Ideal Dune Crest	Ideal Method Derived Baseline	Actual Dune Crest	BL	NCL	Shoreline Change Rate (ft/yr)	SBL
4100	Iu		99.2											
4105	S	12.0	69.4	73.3	68.0	+	—	-20	-8.0	0	-8	-28	-11.5	-168
4110	S	17.6	77.4	74.2	68.0	+	—	-20	-2.4	7	-25	-45	-11.0	-465
4115M	S	23.2	62.1	63.4	68.0	-4.6	-10.7	-20	-31.0	0	-31	-51	-10.8	-463
4120	S	28.8	57.5	58.4	68.0	-9.6	-22.3	-20	-42.3	-14	-42	-62	-10.0	-412
4125	S	34.4	59.2	57.4	68.0	-10.6	-24.6	-20	-44.6	-73	-73	-93	-8.8	-425
4130	S	40.0	37.5	39.1	68.0	-28.9	-75.4	-20	-79.9	0	-80	-100	-6.6	-344
4140	S	45.6	39.4	41.1	68.0	-26.9	-68.6	-20	-67.5	0	-68	-88	-2.0	-148
4150	S	51.2	62.0	60.0	68.0	-8.0	-18.6	-20	-11.6	0	-12	-32	+0.4	-32
4150	S	97.3	63.2	63.3	68.0	-4.7	-10.9	-20	66.4	78	66	46	+1.7	46
4170	S	99.6	64.2	64.8	68.0	-3.2	-7.4	-20	72.2	72	72	52	+1.7	52
4180	S	150.4	72.2	72.3	68.0	+	—	-20		117	136	116	+3.8	116

M - April 1989 data

RM - Entire profile below +10 ft



SCDHEC
001909-1911

Ex. 33a

003992

SCDHEC -- Page 001906

Debidue Line Revisions
Bill Eiser, 4/12/00

The long-term erosion rates from 1990 were retained, as follows (expressed in ft/yr):

4115: -10.8	4130: -6.6	4160: S/A
4120: -10.0	4140: -2.0	4170: S/A
4125: -8.8	4150: S/A	4180: S/A

SCDHEC -- Page 001916

Ex. 33b

003994

Debidue Beach Baseline and Setback Line Revisions Bill Eiser, 4/19/00

All erosion rates at all OCRM beach monitoring stations state-wide have been revised by Dr. Scott Harris at the College of Charleston working under contract to OCRM. Dr. Harris utilized all available shoreline data, in some cases going back to the 1850s, and determined the long-term erosion rate using a least-squares best fit through all data points. While these revised erosion rates have been used for other islands and beaches in South Carolina, the decision was made to retain the original erosion rates for Debidue based on site-specific geomorphology. Prior to 1935, the North Inlet complex consisted of two channels: the southern channel, located in the approximate location of today's North Inlet channel, and the northern channel, which was located just south of the maritime forest on the Baruch Foundation property. During the time period prior to 1935, this maritime forest shoreline was fairly stable. After the northern channel naturally closed around 1935, the maritime forest shoreline became extremely erosional in response to this significant change in the geomorphology of North Inlet. As a result, it is not considered appropriate to include shorelines prior to 1935 in the erosion rate analysis, and the revised erosion rates calculated by Dr. Harris will not be used. Instead, the original erosion rates for Debidue Beach will be retained, which are as follows:

<u>Station</u>	<u>Rate</u> <u>(feet/yr.)</u>	<u>Station</u>	<u>Rate</u> <u>(feet/yr.)</u>	<u>Station</u>	<u>Rate</u> <u>(feet/yr.)</u>
4115	-10.8	4130	-6.6	4160	0
4120	-10.0	4140	-2.0	4170	0
4125	-8.8	4150	0	4180	0



SCDHEC 001921

Ex. 33c

003994

003995
Line Report: Proposed Baseline and Setback Line
Debidue Beach, 10/6/2017 Revised 5/3/2018

Debidue Beach Setback Line

The following table identifies average annual shoreline change rates, from south to north.

Location Description	Shoreline Change Rate (ft/year) *	Multiplier	Setback Distance (ft)
Wrapping the south end of Debidue for 459 feet	^	N/A	20
Transition north for 344 feet, then north for 231 feet	-1.8225	40	73
Transition north for 187 feet, then north for 339 feet	-4.344	40	174
Transition north for 174 feet, then north for 2,474 feet	-5.308	40	212
Transition north for 185 feet, then north for 531 feet to Eastland Way	-3.9056	40	156
Transition north for 181 feet, then north for 362 feet along Ocean Green Drive	-2.6057	40	104
Transition north for 181 feet, then north for 179 feet to the intersection of Ocean Green Drive and Debordieu Boulevard	-1.2443	40	50
Transition north for 195 feet, then north to the intersection of Vanderbilt Road and Beach Bridge Road	^	N/A	20
Transition north for 244 feet, then north for 1,237 feet	-1.5759	40	63
Transition north for 216 feet, then north for 293 feet along Vanderbilt Road	-4.0016	40	160

* A negative number indicates erosion.

^ When this symbol is present, it indicates that the minimum setback is required. The shoreline change rate in these areas is between -0.5 and +31.0 ft/year.



SCDHEC 001925

Ex. 33d

003995

003996



SCDHEC 005188

003996

March 2015
During 2015 Beach Renourishment

CSE Downdrift Impacts Analysis

003997

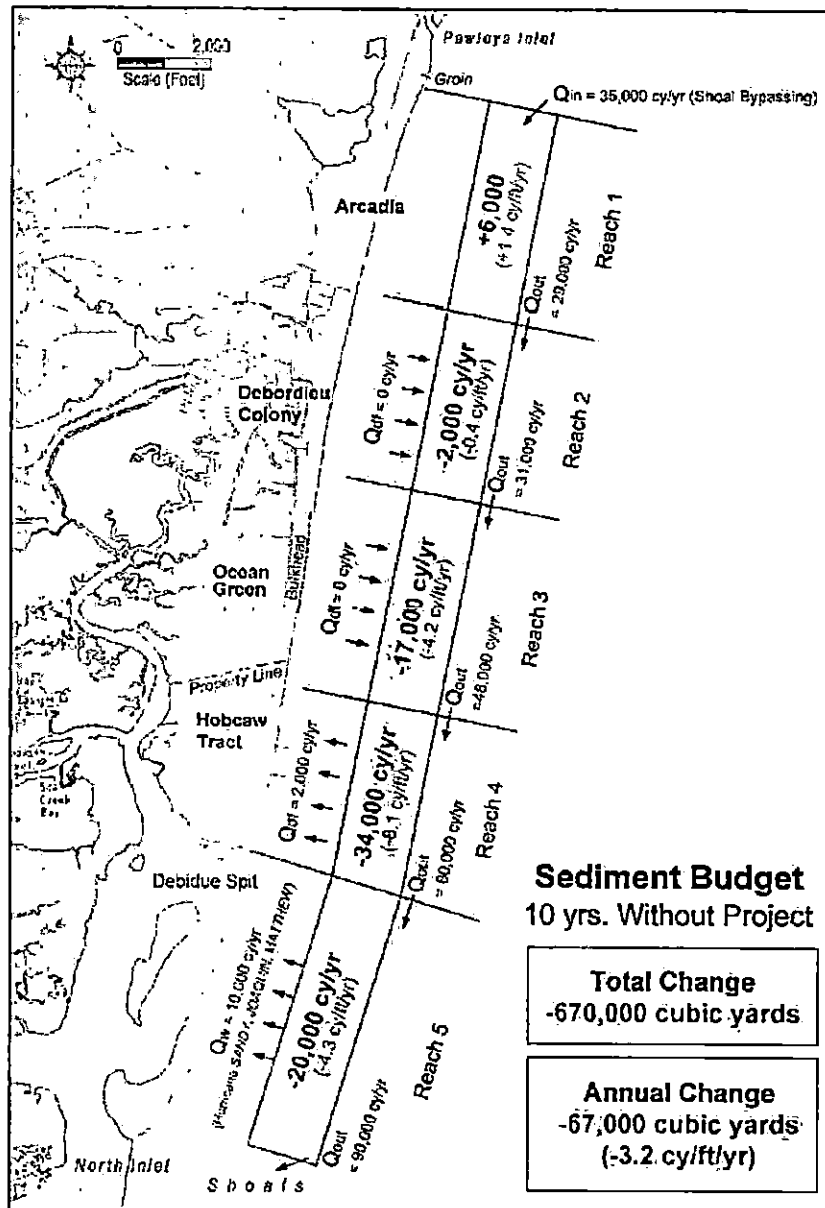


FIGURE 5.5.

Sediment budget for Debidue Island over a "10-year" period under the "no structures" alternative. Rates of change area based on best-available data as given in Section 2.0 and Table 5.1.



SCDHEC 000352

Ex. 1f

003997

CSE Downdrift Impacts Analysis

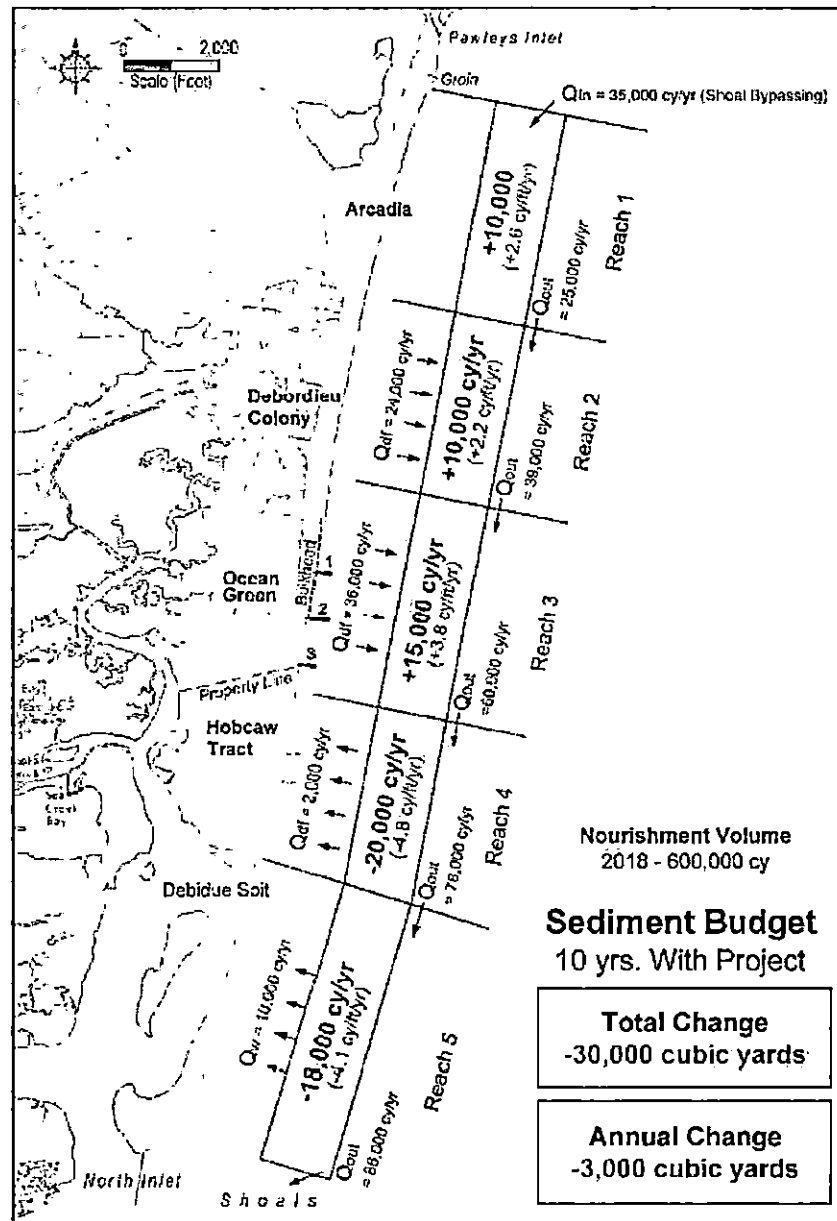


FIGURE 5.6.

Sediment budget for Debidue Island over a "10-year" period under the proposed project involving 600,000 cy of nourishment and installation of three groins having an estimated trapping capacity of ~150,000 cy.

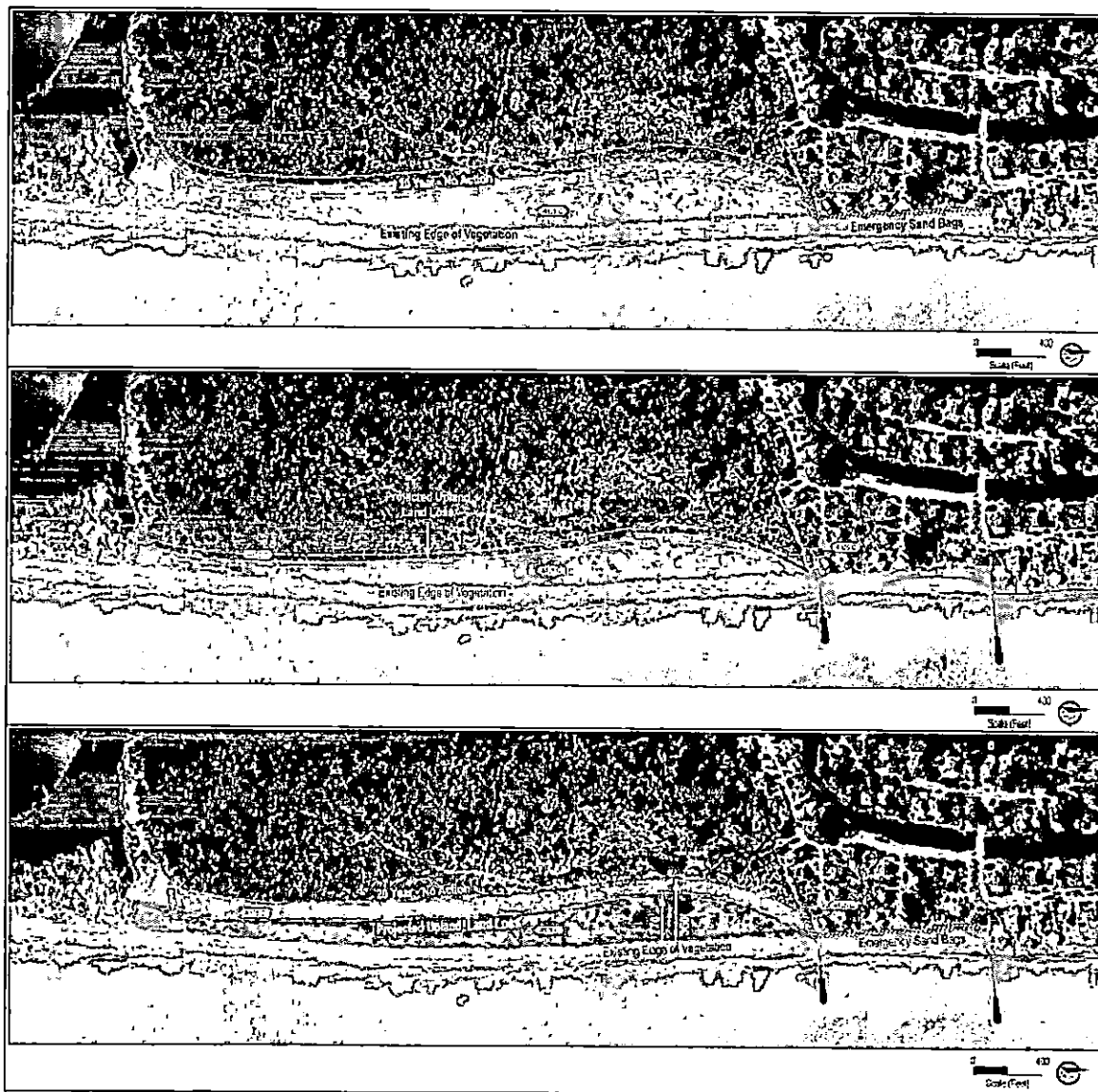


SCDHEC 000353

Ex. 1f

003998

003999
CSE Supplementary Report 1
Review and Analysis Alternatives



SCDHEC 000672

Ex. 3

003999
FIGURE 3. Projection of likely shoreline position in 2038 (ie – 20-yr projection) under a Do-Nothing Alternative (upper), compared to the Proposed-Action Alternative (middle). The two projected shorelines are overlaid for ease of visualization (lower). Error bands assume a ± 25 percent variance in actual recession distances at the 20-yr mark. For more explanation of this diagram, see Attachment

CSE Addendum to Supplemental
Review and Analysis Alternatives
Terminal Groin Alternative

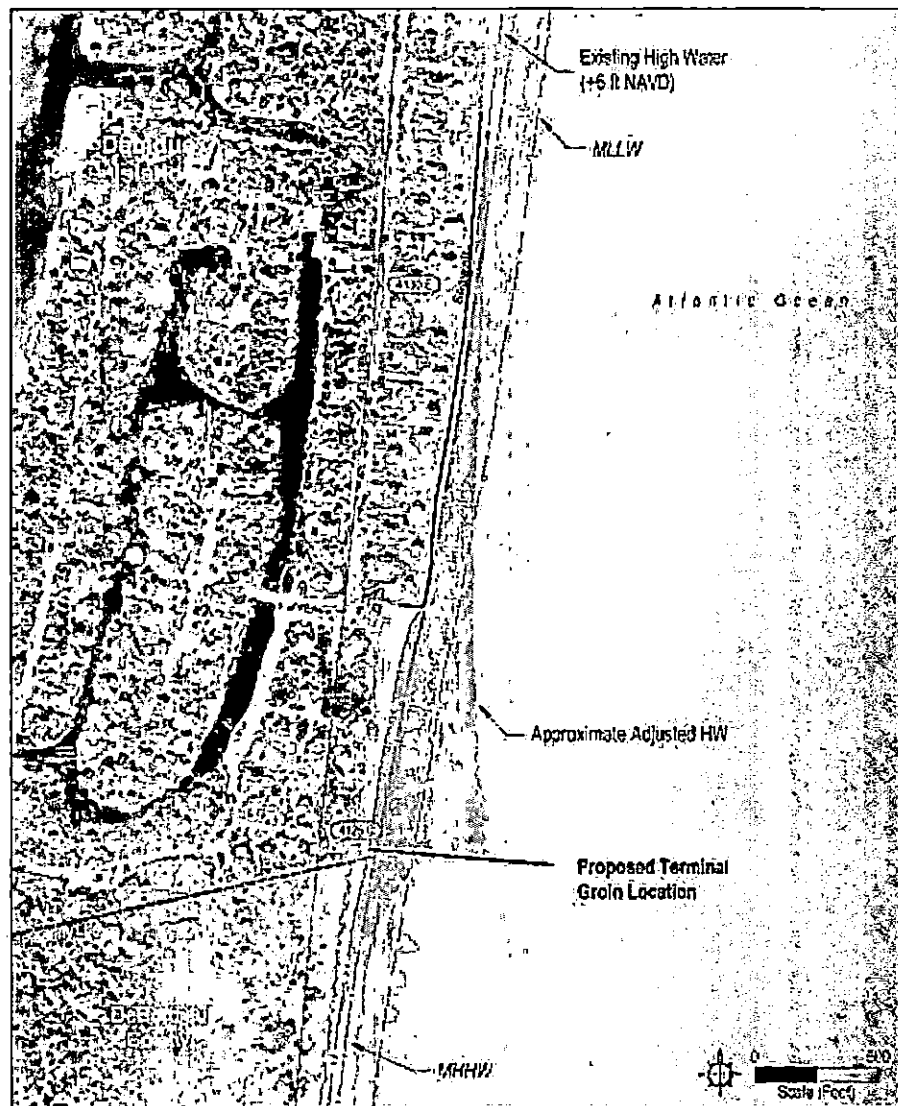


FIGURE A. Schematic illustrating the alternative terminal groin plan (rejected by the applicant). The design calls for an updrift fillet length (hatched area) of ~3,000 lf.



SCDHEC 000826

Ex. 4

CSE Addendum to Supplementary Report 1 Review and Analysis Alternatives 2 Groin Alternative

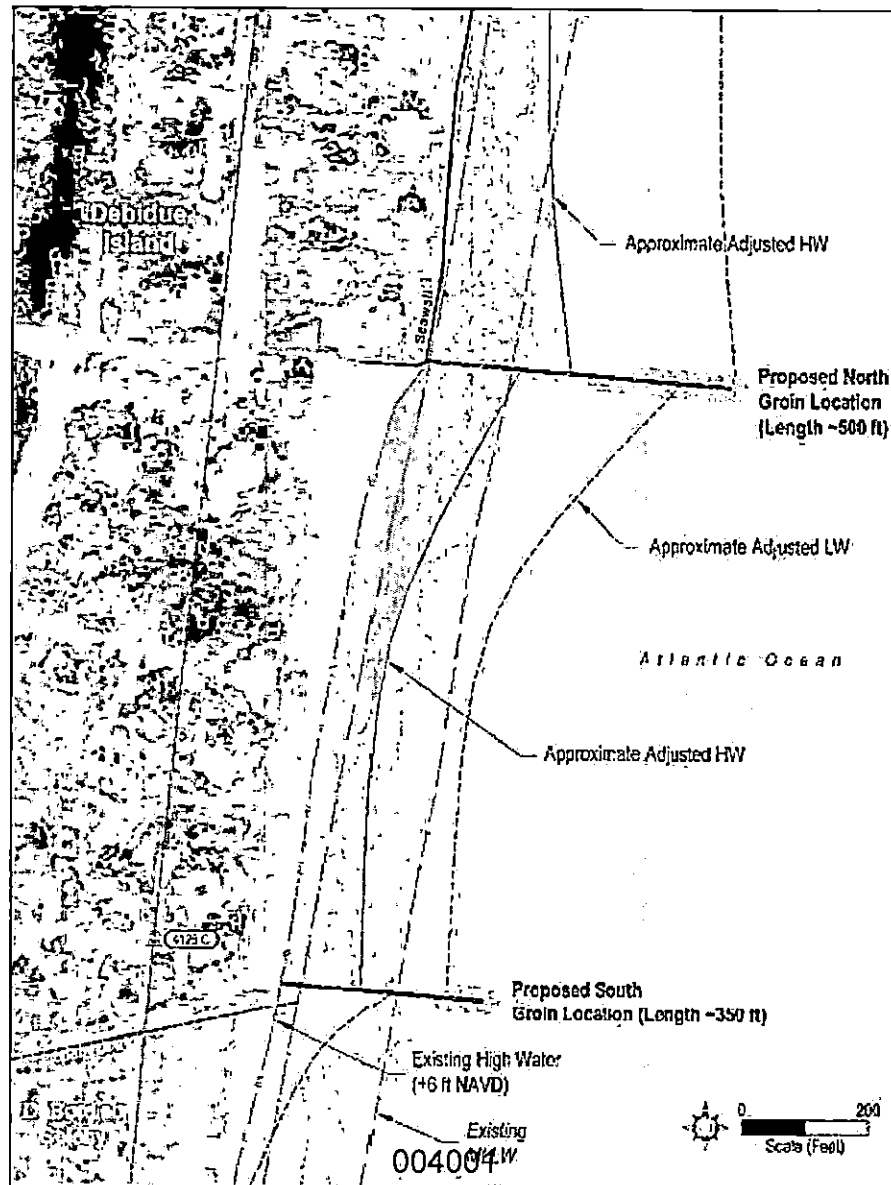


FIGURE C. Aerial view of the design plan proposed for the Two-groin Alternative.



SCDHEC 000827

Ex. 4

004002



004002

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004003



004003

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004004



Ex 23a

004004

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004005



SCDHEC4053

Ex. 23a

004005

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004006



Ex. 23b.

004006

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004007



004007

004008



004008

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004009



004009

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9/18/2019 (IMG_4051.MOV)



Ex. 32e

004010

004011
9/18/2019 (DBBC 2.MOV)



Ex. 32b

004011

004012
9/18/2019 (IMG_4040.MOV)



Ex. 32c

004012

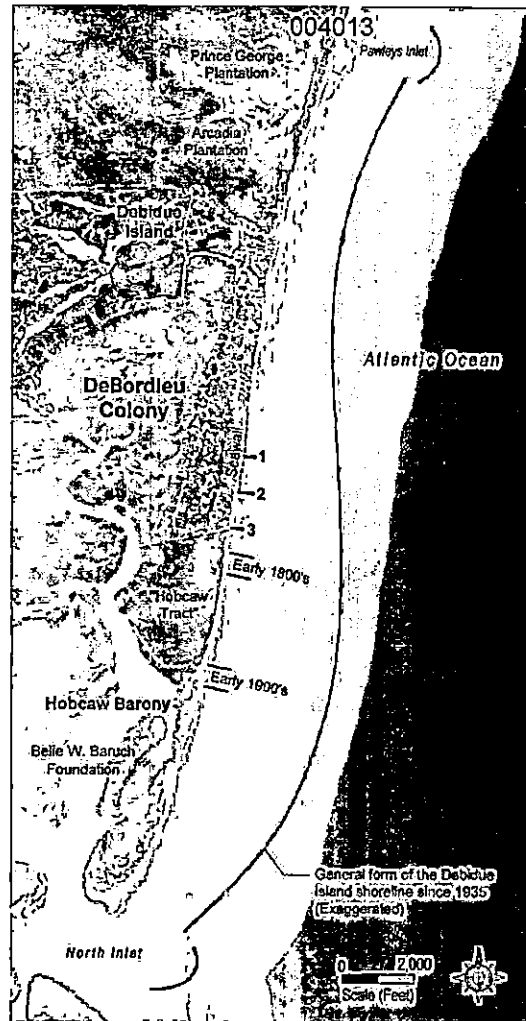


Figure 2.2, Page 11

CSE-Baird (1996) Results									
Short-term Change (1989-1996)						Nourishment			
With Nourishment						Nourishment	Unit Nourishment	Remaining	Without Nourishment
Reach	Length (ft)	cy/ft/yr	cy/yr	Volume (cy)	Rate (cy/ft/yr)	@ 1996 (cy)	cy/ft/yr	cy/yr	
1	4,170	0.5	2,000	0	0.0	~15,000	0.0	0	
2	4,625	1.3	6,000	70,000	2.2	43,400	-0.9	-4,000	
3	3,745	-3.2	-12,000	121,700	4.6	0	-7.8	-29,300	
4	3,700	-9.2	-34,000	0	0.0	~40,000	-10.7	-39,500	
5	6,640	-5.1	-34,000	0	0.0	~10,000	-5.3	-35,500	
Totals	22,880		-72,000	191,700		~150,000		-108,300	
Long-term Change (1939-1992)						Nourishment			
With Nourishment						Nourishment	Unit Nourishment	Remaining	Without Nourishment
Reach	Length (ft)	cy/ft/yr	cy/yr	Volume (cy)	Rate (cy/ft/yr)	@ 1992 (cy)	cy/ft/yr	cy/yr	
1	4,170	1.3	5,500	0	0.0	ND	1.3	5,500	
2	4,625	0.0	0	70,000	0.3	ND	-0.3	-1,350	
3	3,745	-2.9	-11,000	121,700	0.6	ND	-3.5	-13,250	
4	3,700	-6.1	-22,500	0	0.0	ND	-6.1	-22,600	
5	6,640	-3.1	-20,500	0	0.0	ND	-3.1	-20,700	
Totals	22,880		-48,500	191,700				-52,400	
ATM (2008) Results									
Short-term Change (2003-2006)									
With Nourishment						Nourishment	Unit Nourishment		
Reach	Length (ft)	cy/ft/yr	cy/yr	Volume (cy)	Rate (cy/ft/yr)				
1	2,130	-0.1	763	ND	ND	Note: Results by ATM			
2	4,615	-4.3	-19,315	ND	ND	Exclude 2006 Nourishment			
3	3,910	-6.6	-25,639	ND	ND				
4	4,180	-12.2	-45,600	ND	ND				
5	4,410	-3.5	-15,900	ND	ND				
Totals	19,245		-105,782						
Long-term Change (1939-2003)									
With Nourishment						Nourishment	Unit Nourishment	Remaining	Without Nourishment
Reach	Length (ft)	cy/ft/yr*	cy/yr*	Volume (cy)	Rate (cy/ft/yr)	@ 1992 (cy)	cy/ft/yr	cy/yr	
1	2,130	1.3	5,500	0	0.0	ND	1.3	2,800	
2	4,615	0.0	0	160,000	0.5	ND	-0.5	-2,500	
3	3,910	-2.9	-11,000	292,000	1.2	ND	-4.1	-16,000	
4	4,180	-8.9	-36,300	0	0.0	ND	-8.9	-37,200	
5	4,410	-4.9	-21,000	0	0.0	ND	-4.9	-21,600	
Totals	19,245		-62,800	452,000				-74,500	

004014
Table 2.1, Page 25

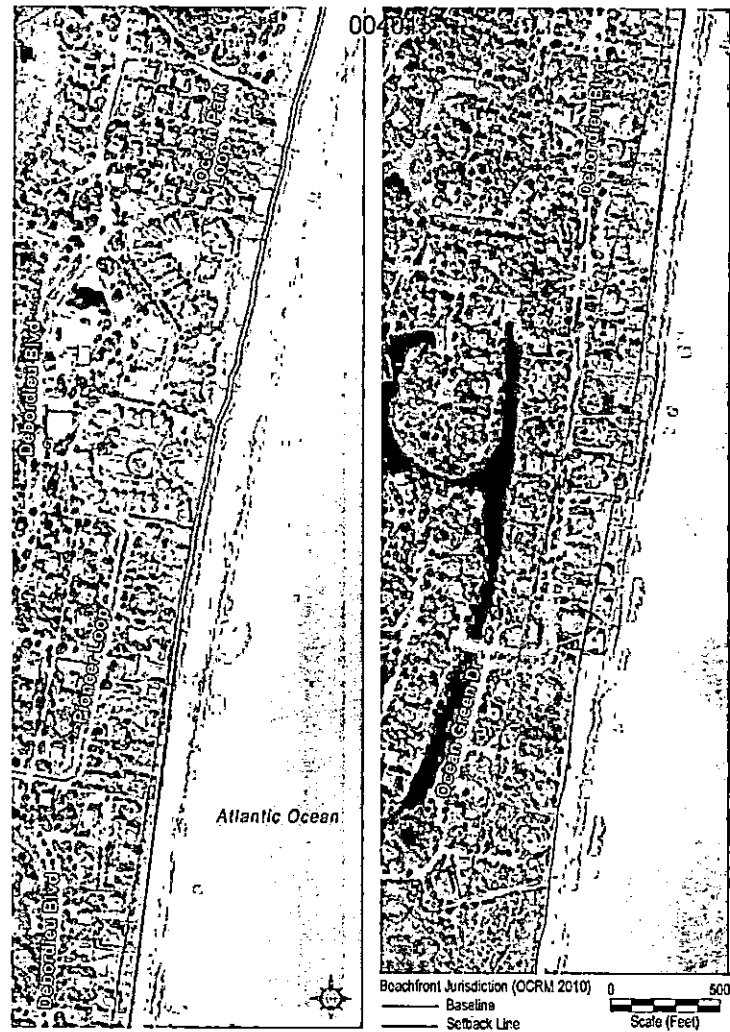


Figure 204013 Page 16

004016

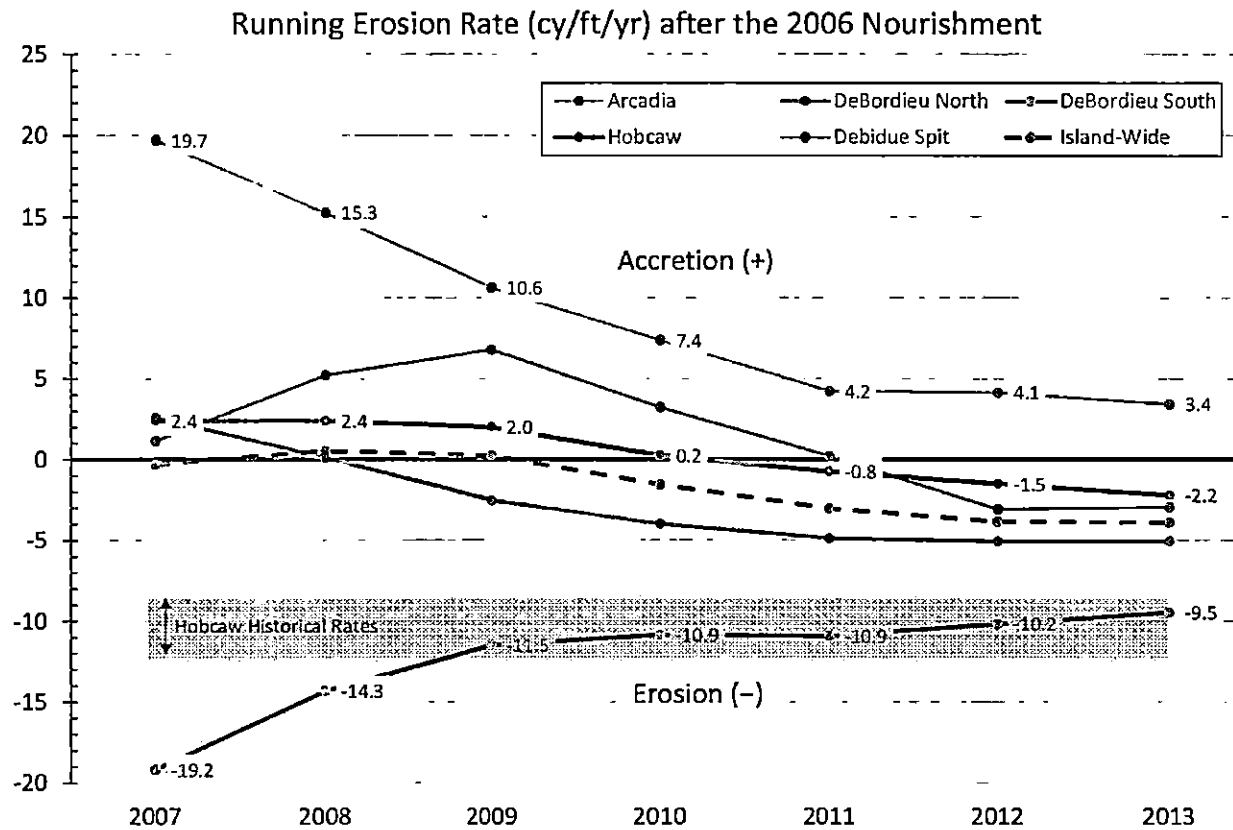


Figure 2.16, Page 34

004016

004017

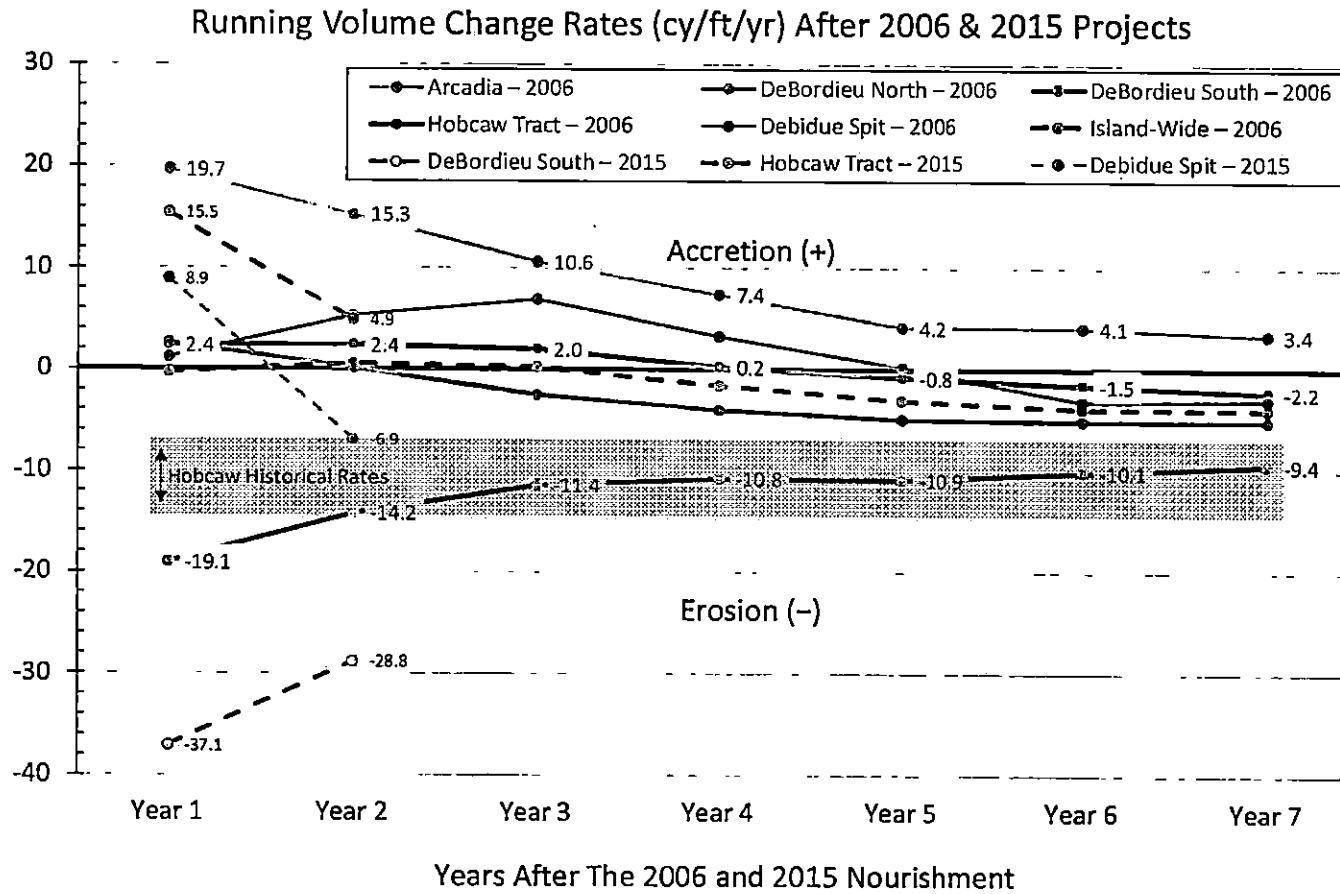


Figure 2.23, Page 43

004017

004018

Reach	Locality	Length (ft)	Long-Term Volumetric Change Rates* (cy/ft/yr)	"7-yr" Post- Nourishment Change Rates** (cy/ft/yr)	Difference (cy/ft/yr)
1	Arcadia	2,130	1.4	3.3	1.9
2	DeBordieu North	4,615	-0.4	2.8	3.2
3	DeBordieu South	3,910	-4.2	1.6	5.8
4	Hobcaw Tract	4,180	-8.1	-1.7	6.4
5	Debidue Spit	4,410	-4.3	-3.3	1.0

Table 2.6, Page 44

004018

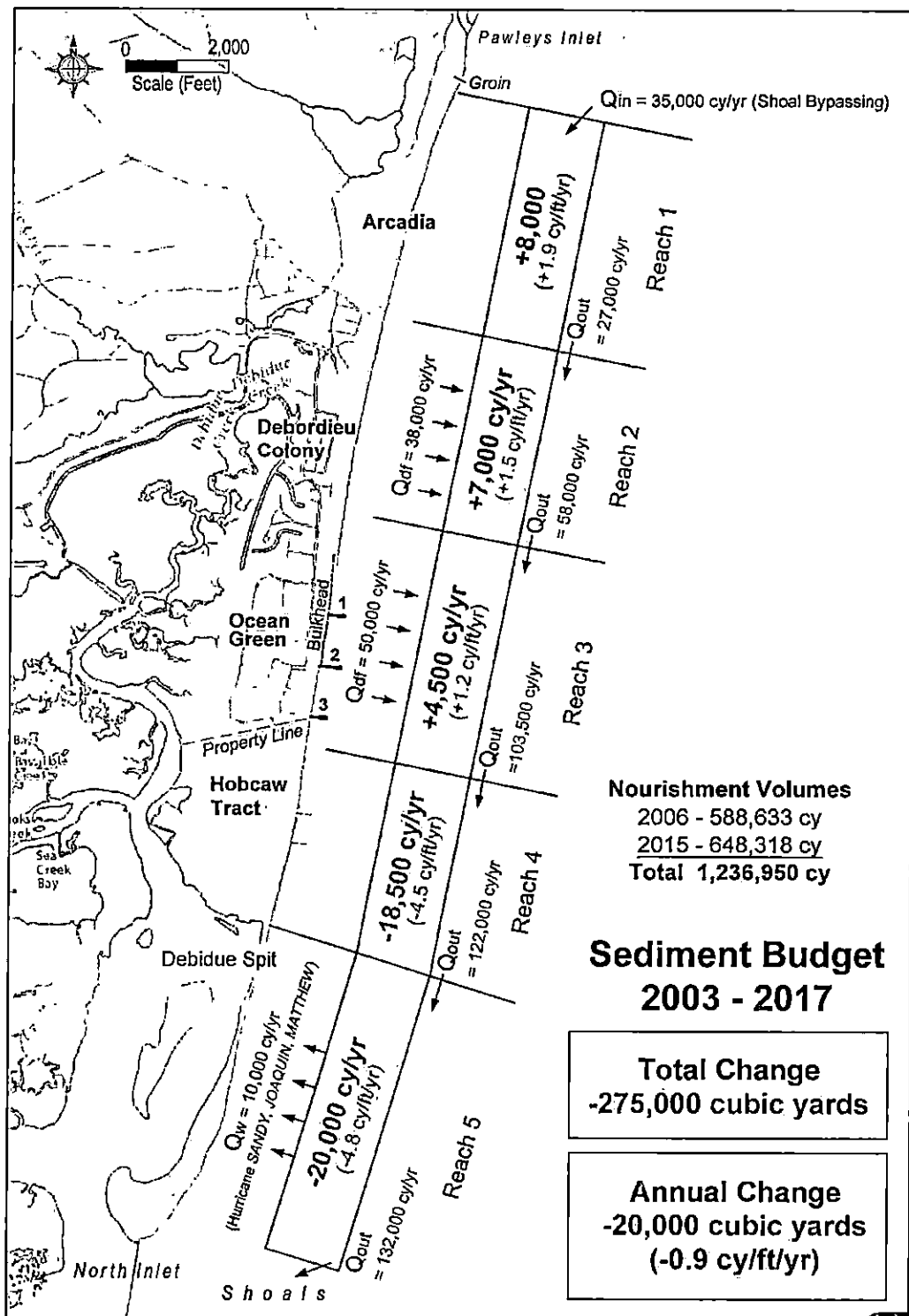


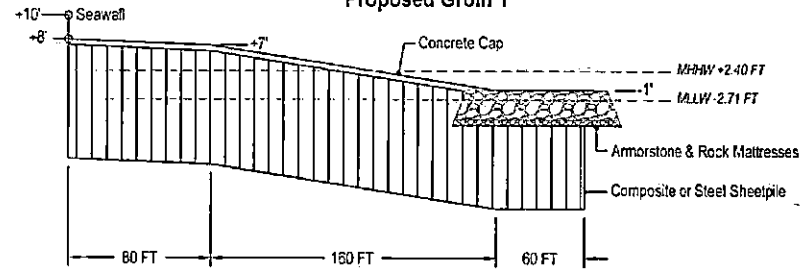
Figure 3.2, page 53



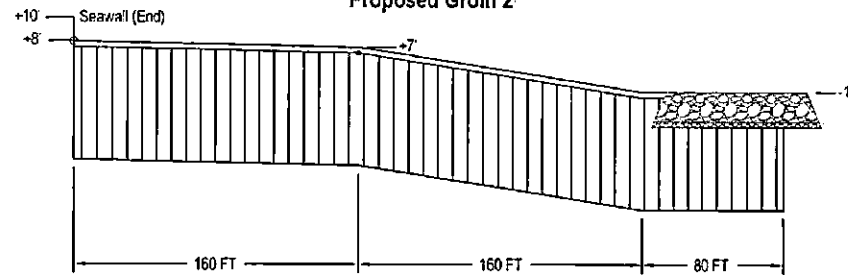
Figure 1.2, Page 4
004020

004021

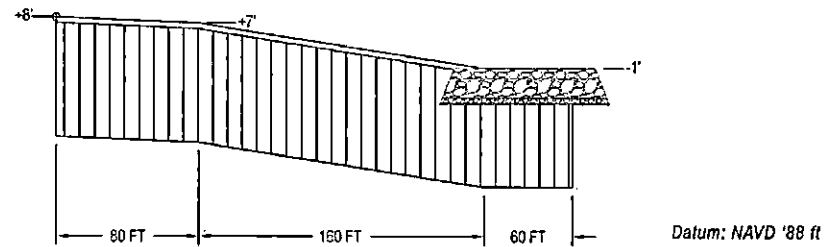
Proposed Groin 1



Proposed Groin 2



Proposed Groin 3



Datum: NAVD '88 ft

Figure 004021 Page 5

004022

Debidue Line 4128 – Groin #2

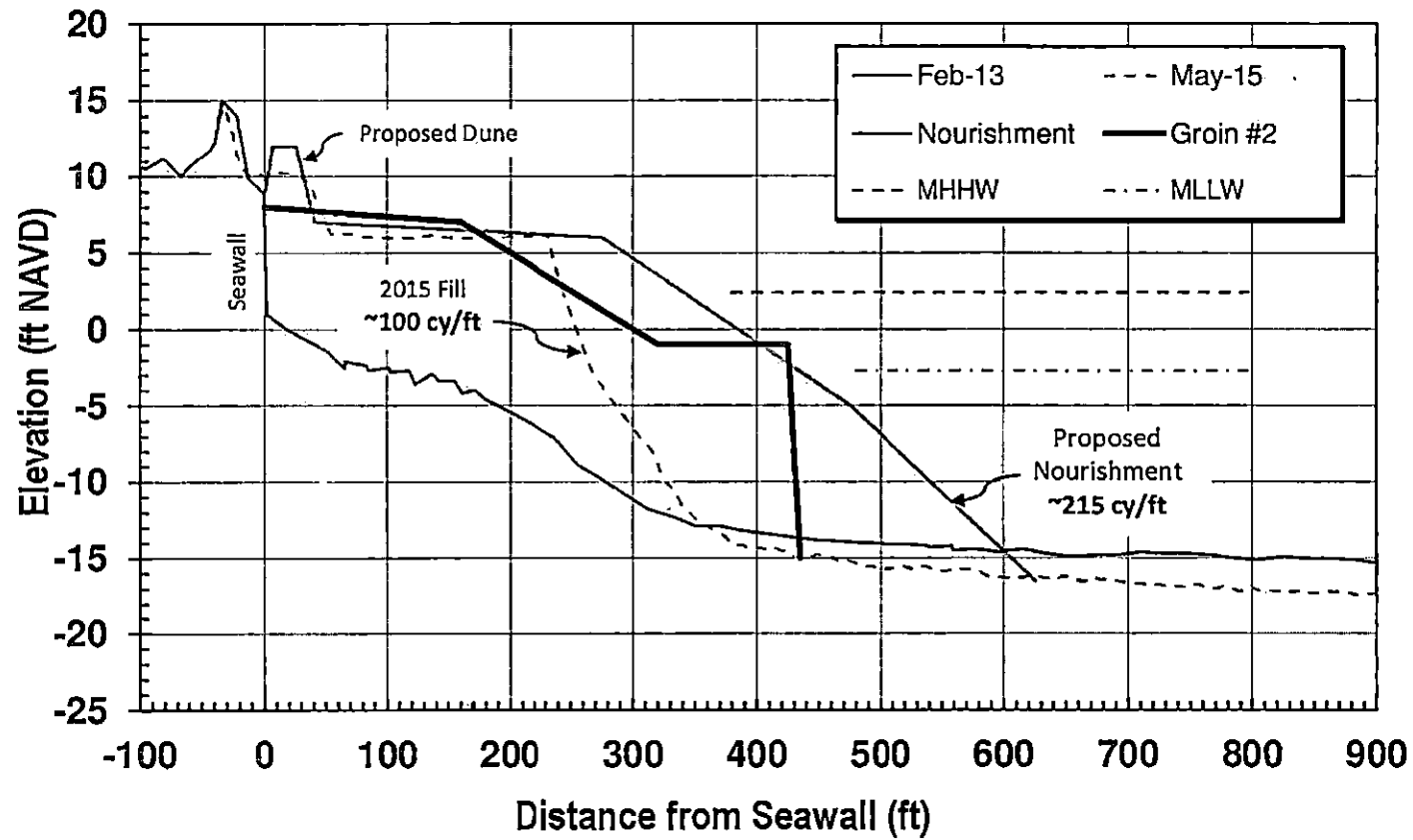


Figure 1.4, Page 6

004022

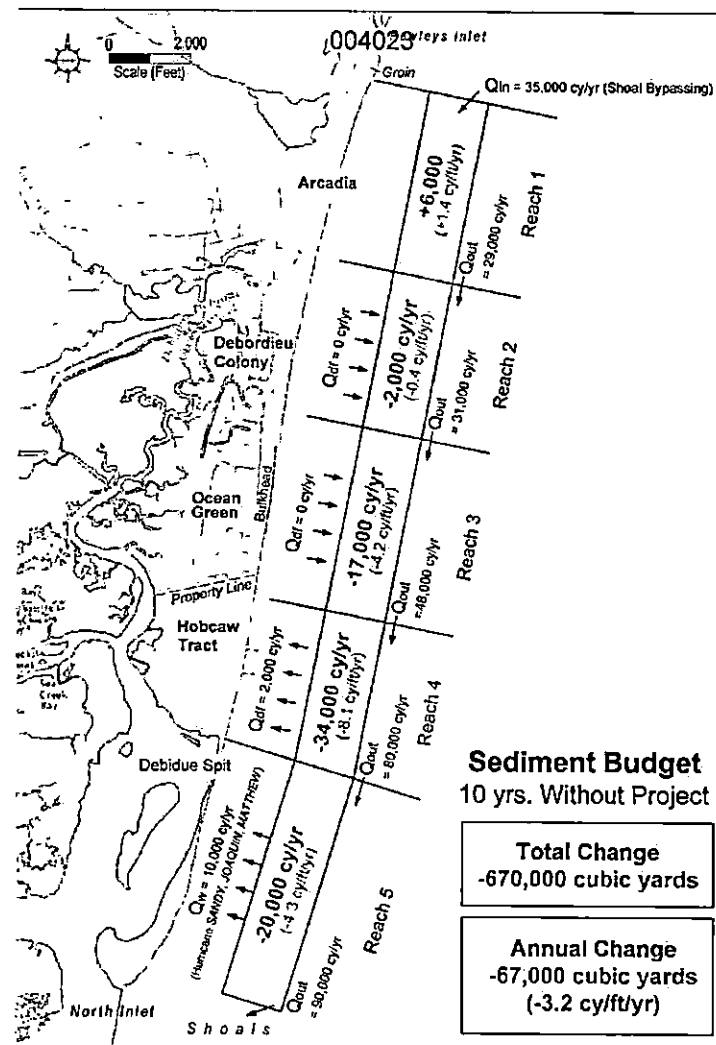


Figure 0.5, Page 98

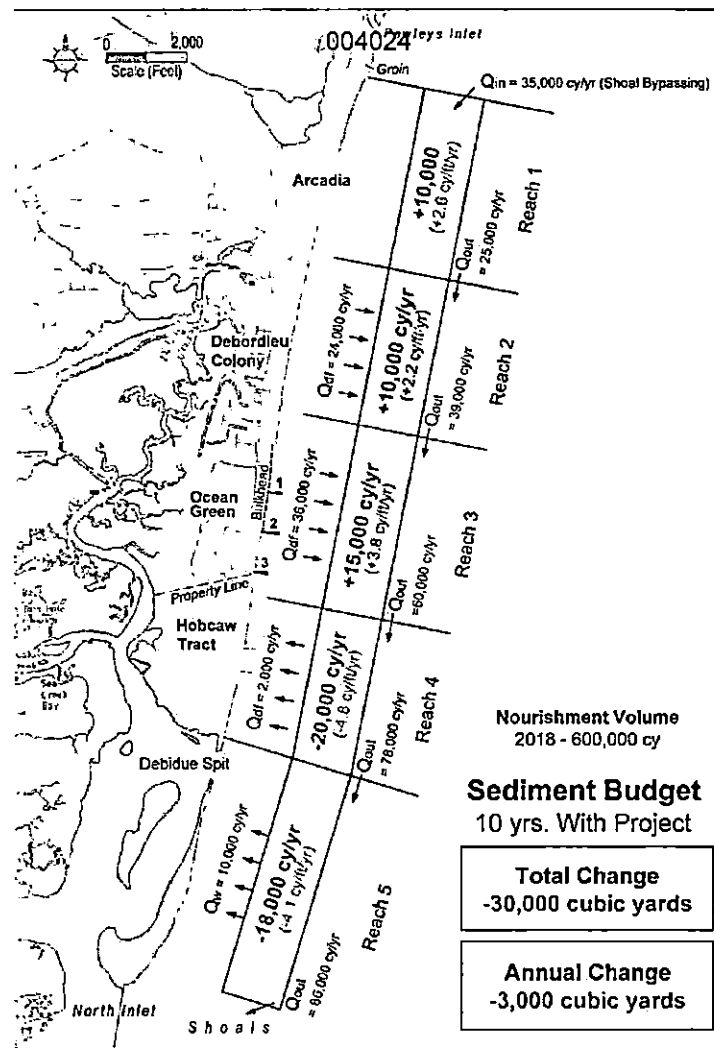


Figure 05462 Page 99



19-ALJ-07-0088-CC
RESPONDENT'S
JOINT EXHIBIT

68



19-ALJ-07-0088-CC
RESPONDENT'S
JOINT EXHIBIT

69



19-ALJ-07-0088-CC
RESPONDENT'S
JOINT EXHIBIT

70



19-AL-07-0088-CC
RESPONDENT'S
JOINT EXHIBIT
71

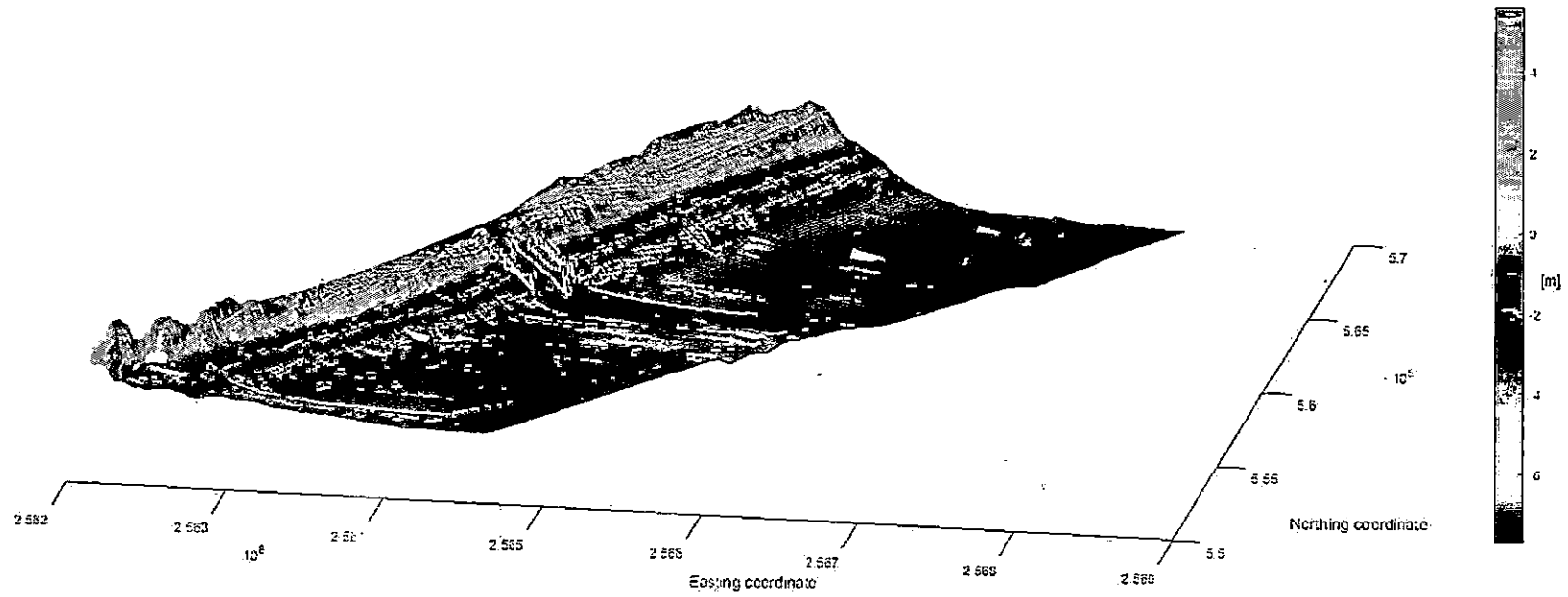


Figure 4.5, Page 61

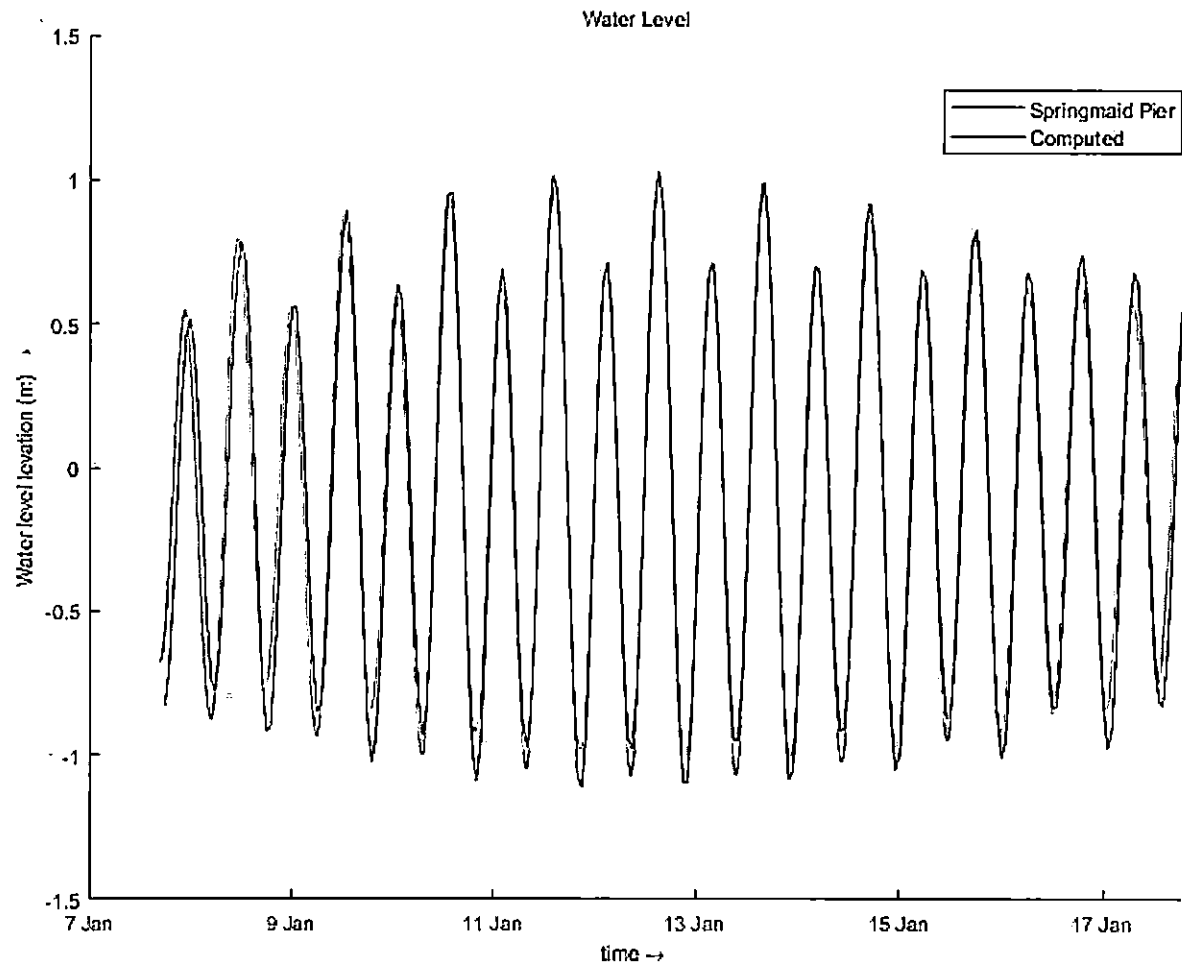
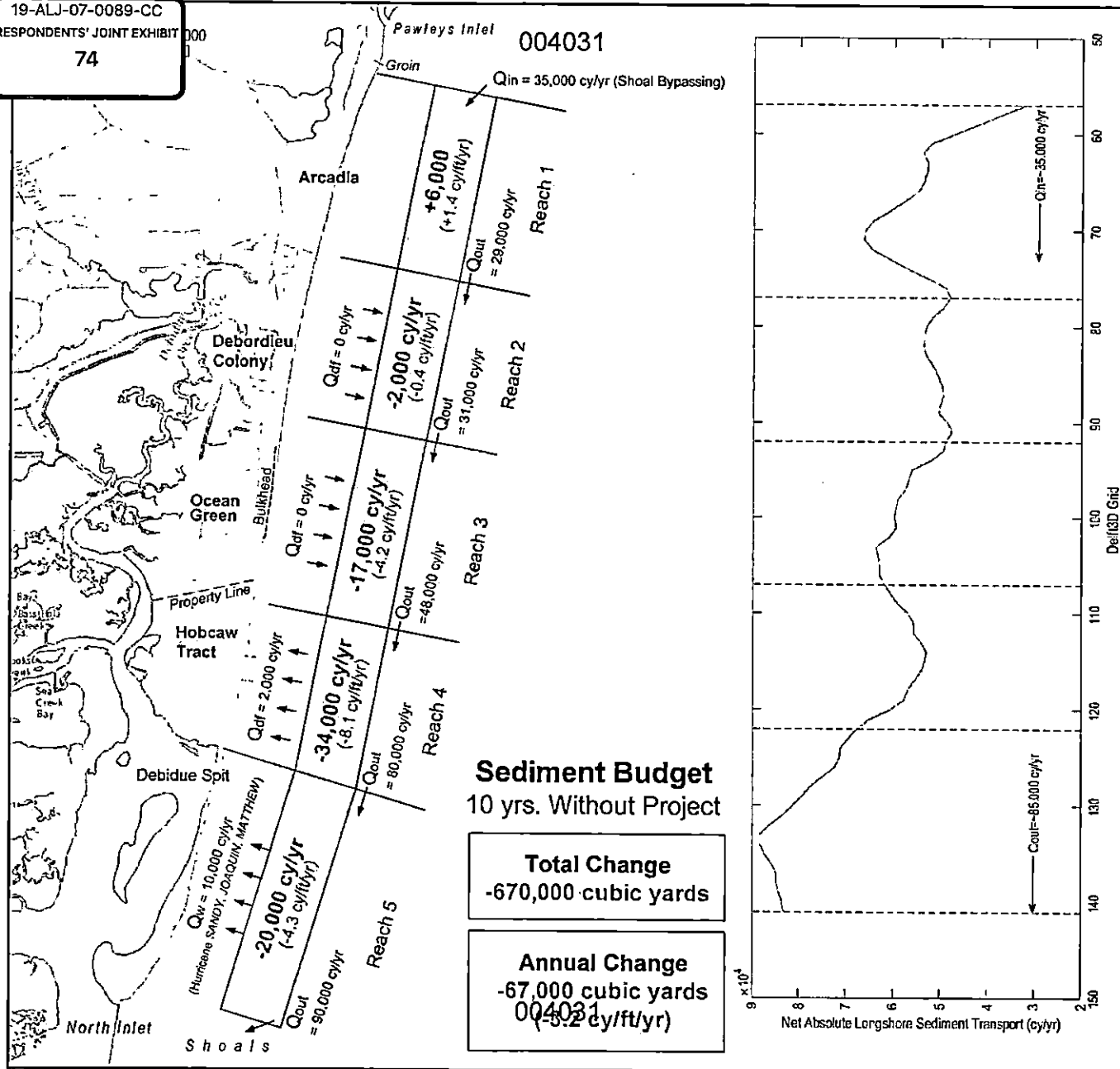


Figure 4.12, Page 73

004031



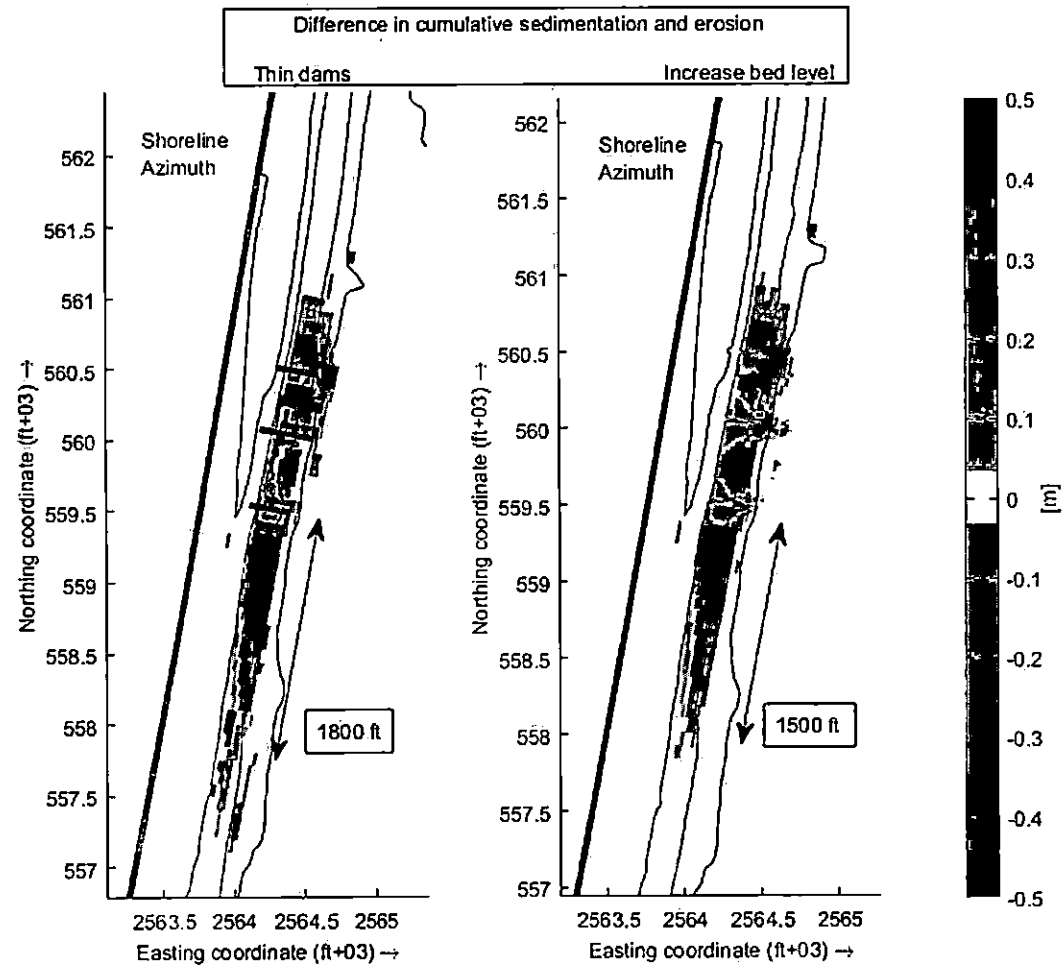


Figure 4.16, Page 80

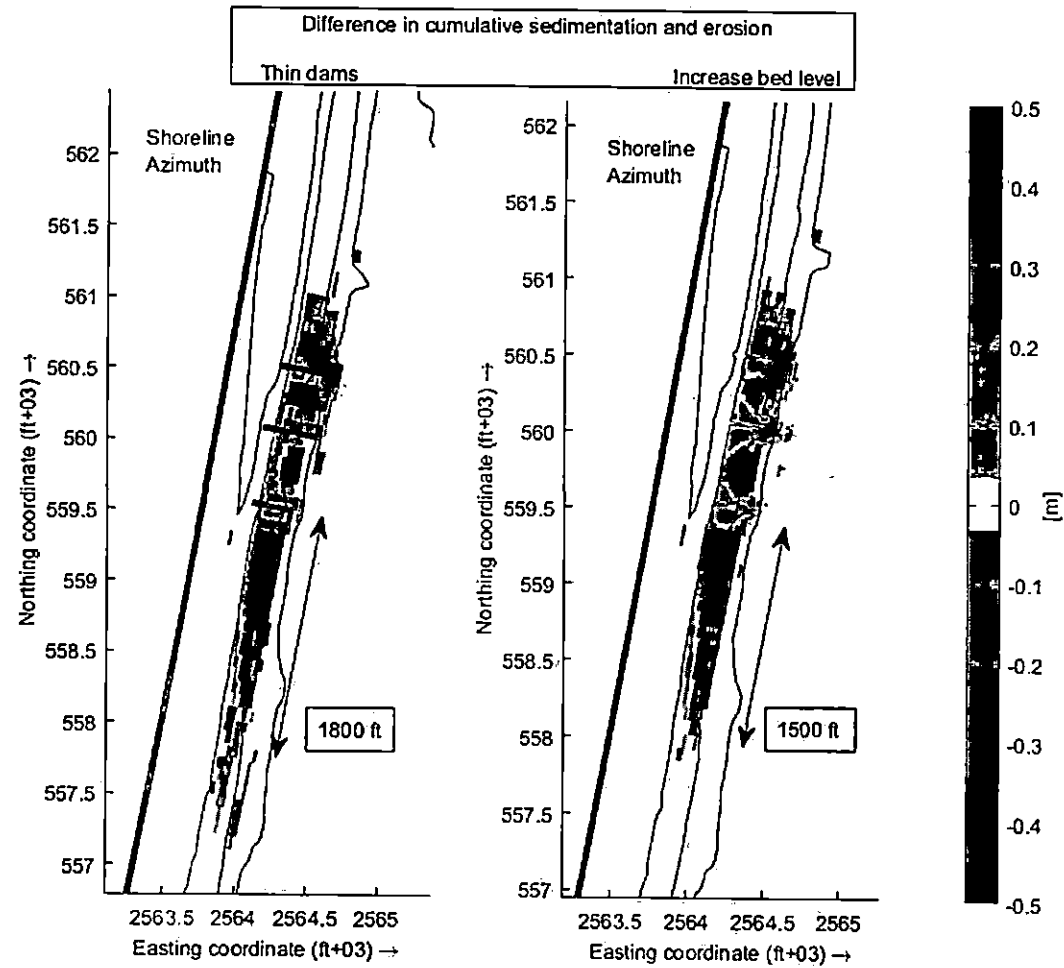


Figure 4.16, Page 80

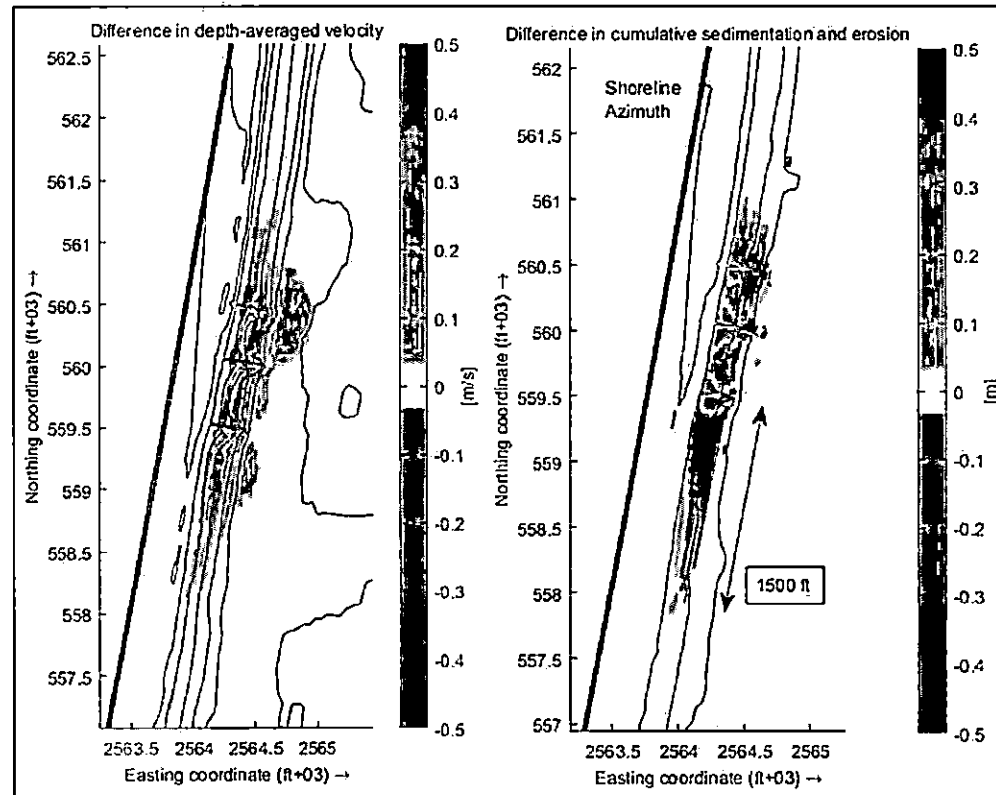


Figure 4.15, Page 79

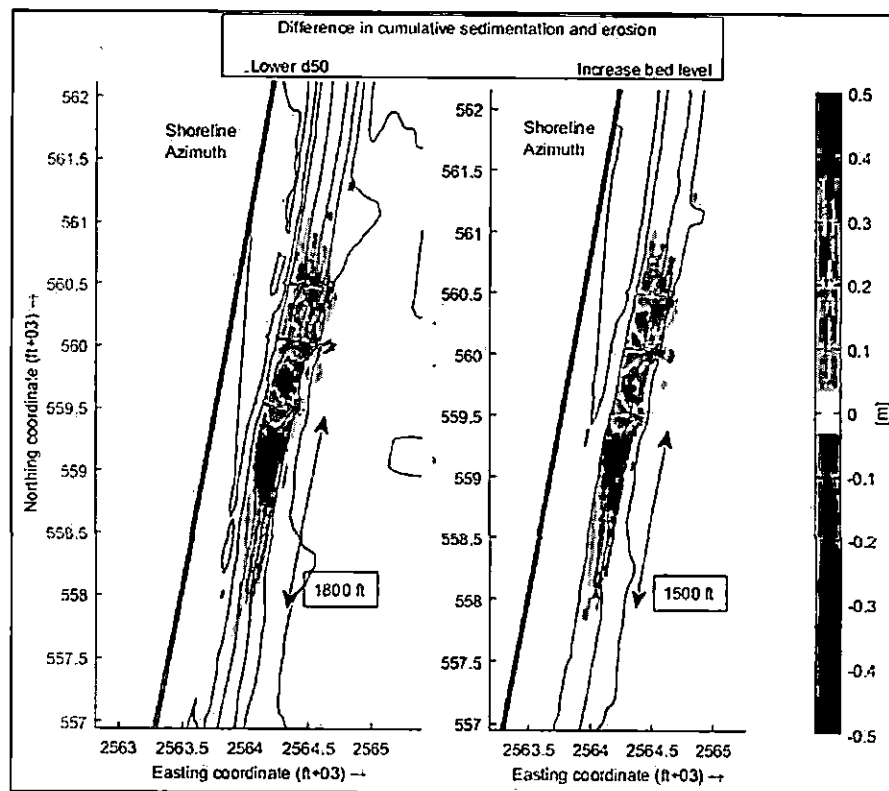


Figure 4.20, Page 85

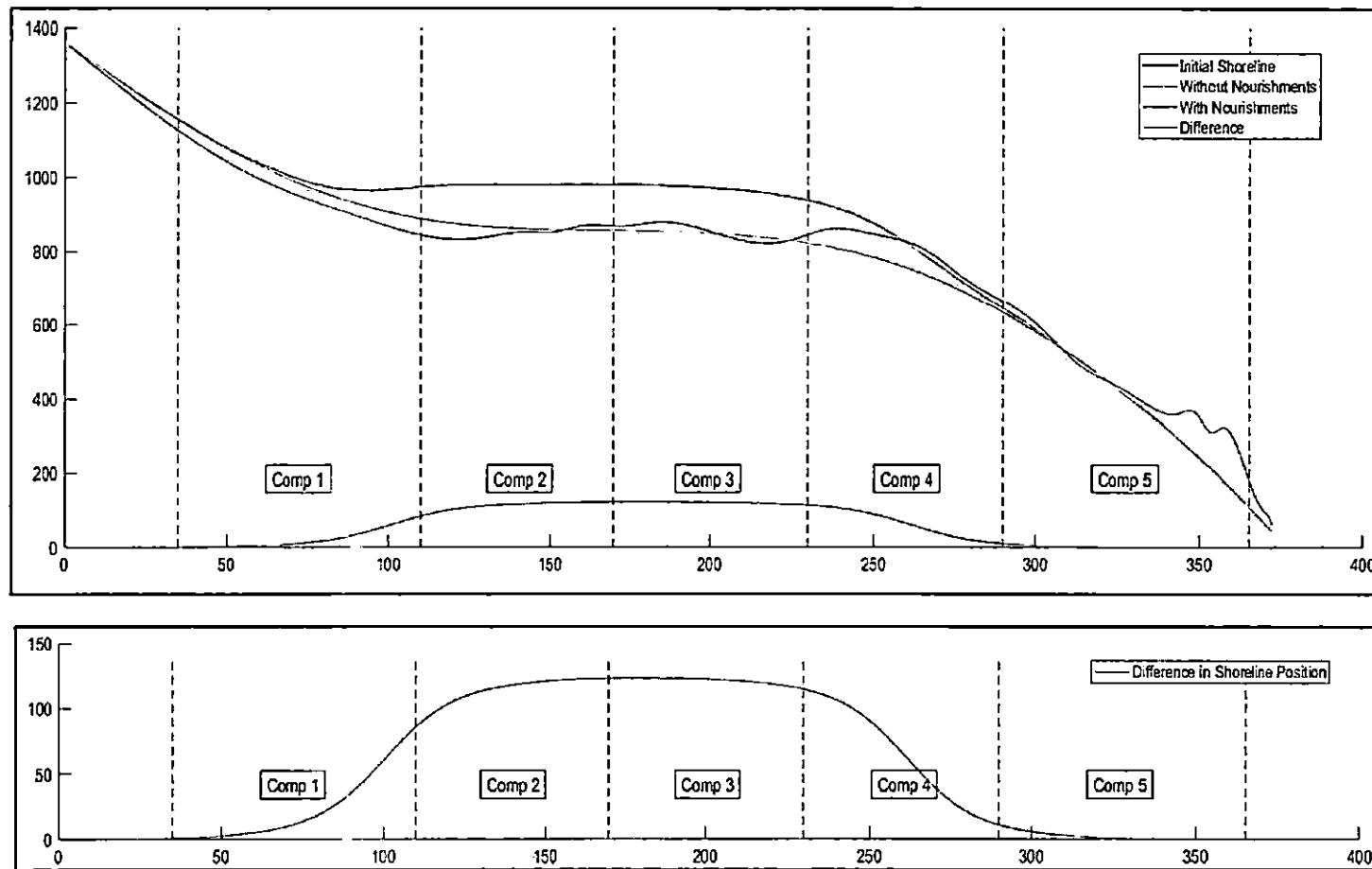


Figure 4.21, Page 89

From State of ⁰⁰⁴⁰³⁷ Beaches Report, 2009

<u>Area</u>	<u>Erosion Rate</u>
Daytonskie Island	0 to -8
Hilton Head	0 to -8
Fripp Island	-1 to -3
Hunting Island	-7 to -20
Harbor Island	0 to -2
Edisto Beach	0 to -6
Seabrook Island	0
Kiawah Island	0 to -2
Folly Beach	-2 to -4
Sullivan's Island	0 to -2
Isle of Palms	0
Dewees Island	0 to -24
Debidue Beach	0 to -12
Pawleys Island	0 to -3
Litchfield Beach	0
H/BSF	0
Garden City	-1.5
Surfside Beach	-1
Myrtle Beach	-0.5
Briardcliffe Acres	-0.5
North Myrtle Beach	-0.5 to -2
Walter's Island	-4 to -10

Renourishment at Debidue - From DHEC's website

CSE 1990 - 192,000 cy

CSE 1998 - 262,000 cy

ATM 2006 - 590,000 cy

ATH 2015 - 650,000 cy

Original project included groins

⁰⁰⁴⁰³⁷ Original project included groins