

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

Honorable Benjamin H. Culbertson
Circuit Court Judge

Appellate Case No. 2011-192812

Court of Appeals' Opinion No. 27237, Filed March 27, 2013

Tommy W. Berry, Sr. and Jo S. Berry, ... *Appellants,*

v.

South Carolina Department of Health and Environmental
Control, Office of Ocean and Coastal Resource
Management, ... *Respondent.*

INDEX OF DOCUMENTS

1. Pyramid Engineering & Surveying Site Plan dated September 25, 2006, Bates Stamped 000324;
2. David R. Simms Site Plan dated January 25, 2007 (155 LF), Bates Stamped 000329;
3. New Bulkhead Section dated January 25, 2007, Bates Stamped 000330;
4. Appeal of the Administrative Order 07M-012S of SCDHEC OCRM, filed May 12, 2010, Bates Stamped 000285-000293;
5. Administrative Order of Revocation P/N# OCRM-07-509 (Permit) and

Administrative Order 07M-012S, dated April 26, 2010, Bates Stamped 000012-000041;

6. Letter to Howell V. Bellamy, III from Lisa Lucas Longshore, Clerk for the S. C. Board of Health and Environmental Control, dated June 14, 2010, Denying Request to Conduct a Final Review Conference, Bates Stamped 000294-000295; and
7. Summons and Complaint Bates Stamped 000042-000221.

Howell V. Bellamy, Jr., SCB # 00642
Howell V. Bellamy, III, SCB # 66575
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578-0357
(843) 448-2400
Attorneys for Appellants

EXHIBIT NO. "1"

Tommy W. Berry, Sr. and Jo S. Berry

vs.

**South Carolina Department of Health and Environmental Control,
Office of Ocean and Coastal Resource Management.**

Appellant Case Number: 2011-192812

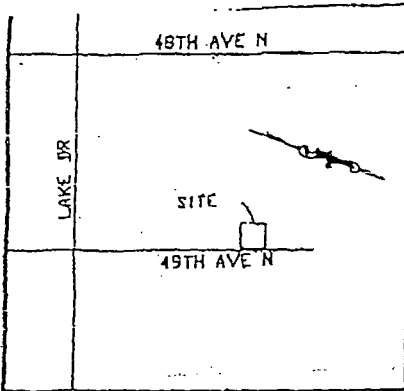
Court of Appeals' Opinion No. 27237, Filed March 27, 2013

SITE PLAN

September 25, 2006

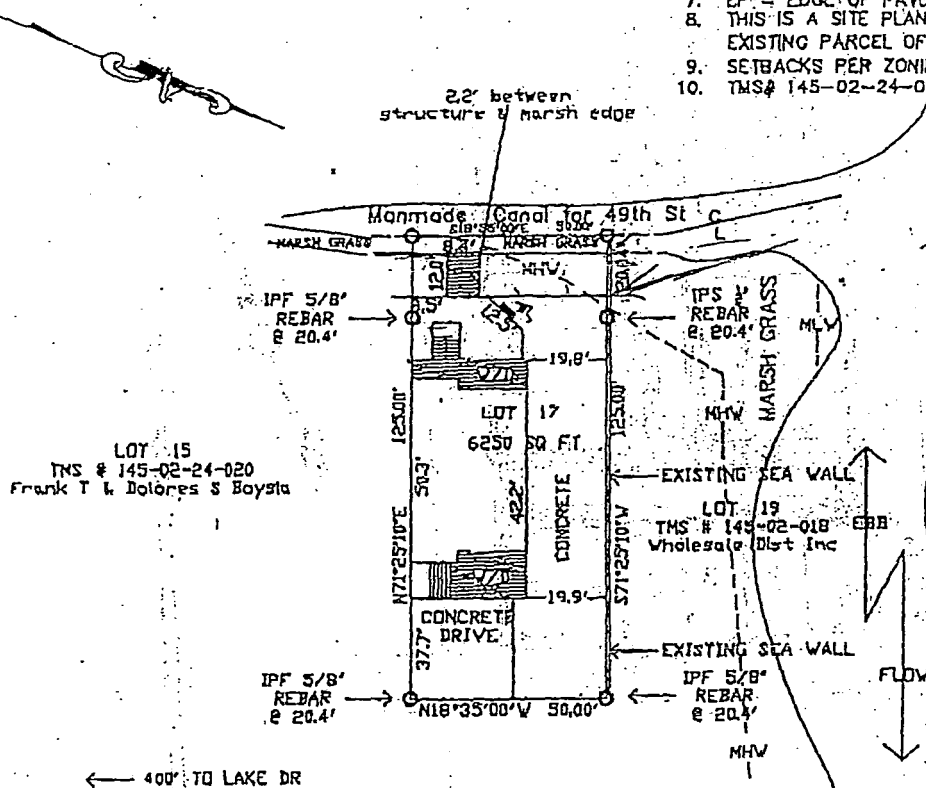
EXHIBIT

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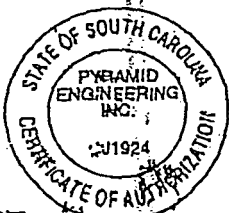
VICINITY MAP
NOT TO SCALE

NOTES:

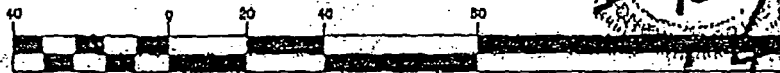
1. THIS IS A PROPOSED SITE PLAN AND SHALL NOT BE CONSTRUED TO PERMIT THE LOCATION, DESCRIPTION, ESTABLISHMENT OR REESTABLISHMENT OF PROPERTY LINES OR DESCRIPTIONS OF LAND BOUNDARIES FOR CONVEYANCE.
2. OWNER/CONTRACTOR TO VERIFY ALL HOUSE DIMENSIONS, ZONING REQUIREMENTS & RESTRICTIONS BEFORE STAKING
3. R/W = RIGHT OF WAY
4. EIR = EXISTING IRON REBAR
5. EIP = EXISTING IRON PIPE
6. NIR = NEW IRON REBAR
7. EP = EDGE OF PAVEMENT
8. THIS IS A SITE PLAN OF AN EXISTING PARCEL OF LAND.
9. SETBACKS PER ZONING
10. TMS# 145-02-24-019



49TH AVENUE NORTH



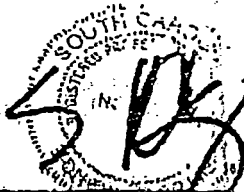
FLOOD NOTE:
THE SUBJECT PROPERTY SHOWN
HEREON DOES LIE IN AN AE 14 ZONE
SPECIAL FLOOD HAZARD AREA
PER F.E.M.A. PANEL# 45051C0603H
DATED 8-23-99



GRAPHIC SCALE

(IN FEET)
1 inch = 40 ft

RECEIVED



09/26/06



SEP 27 2006

PROPOSED SITE PLAN

DHEC-OCRM

OF

MYRTLE BEACH OFFICE 49th Ave N Heron Watch

N.M.B. TWP, HORRY COUNTY, SC

SCALE 1"=40'

THE PROPERTY OF WALTER H & LINDA W KNOX

DEED REFERENCE IN BOOK 1996 PAGE 1272

PERMIT NUMBER: S5533 DATE: 9/25/06

Corporate Center Suite 110
1000 2nd Avenue South
N. Myrtle Beach, S. C. 29582

SEE SPEC
CONDITION

EXHIBIT NO. "2"

Tommy W. Berry, Sr. and Jo S. Berry

vs.

**South Carolina Department of Health and Environmental Control,
Office of Ocean and Coastal Resource Management.**

Appellant Case Number: 2011-192812

Court of Appeals' Opinion No. 27237, Filed March 27, 2013

EXHIBIT

2



EXIST. WOOD BULKHEAD
(REMOVE) AND REPLACE
WITH VINYL BULKHEAD
(155 LF)

CANAL

EXISTING DOCK
REMOVE AND REINSTALL

PROPERTY LINE

LOT 20
BOYSIA

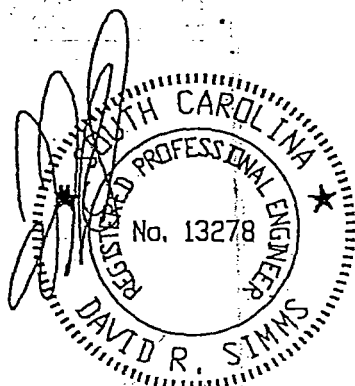
EXISTING
RESIDENCE

LOT 18
WHOLESALE DIST.

LOT 19
TMS 145-02-24-019

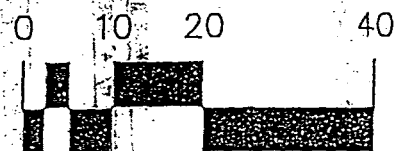
50.00'

49th AVENUE NORTH



FOR PERMITTING ONLY
NOT FOR CONSTRUCTION

SITE PLAN



1"=20'

APPLICANT:
TW Berry

ACTIVITY: Replace Existing
Bulkhead

LOCATION: Cherry Grove
North Myrtle Beach

COUNTY: Horry

DATE: 1/25/2007

RECEIVED

FEB 02 2007

DHEC-OCRM
MYRTLE BEACH OFFICE

SHEET 2 OF 3

P/N#

EXHIBIT NO. "3"

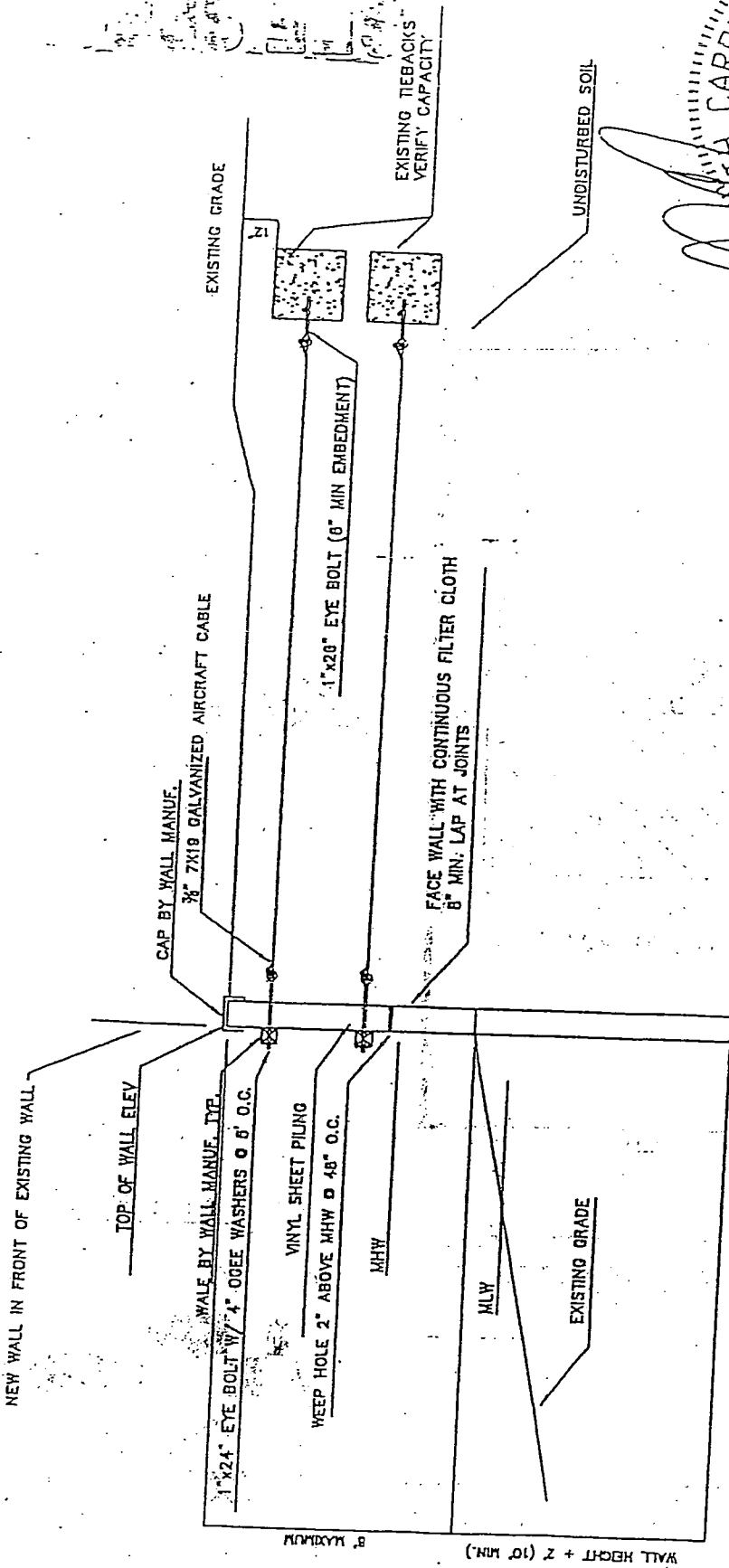
Tommy W. Berry, Sr. and Jo S. Berry

vs.

**South Carolina Department of Health and Environmental Control,
Office of Ocean and Coastal Resource Management.**

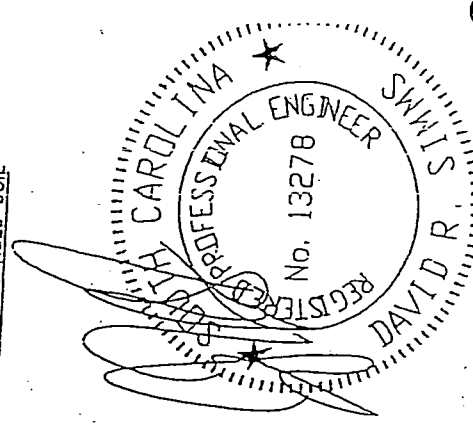
Appellant Case Number: 2011-192812

Court of Appeals' Opinion No. 27237, Filed March 27, 2013



NEW BULKHEAD SECTION

NTS



FOR PERMITTING ONLY
NOT FOR CONSTRUCTION

000330

RECEIVED

FEB 02 2007

DHEC-OCRM
MYRTLE BEACH OFFICE

EXHIBIT

3

LOCATION: Cherry Grove

COUNTY: Horry

DATE: 1/25/2007

APPLICANT: T W Berry

ACTIVITY: Replace Bulkhead

P/N# OCRN-07-509

EXHIBIT NO. "4"

Tommy W. Berry, Sr. and Jo S. Berry

vs.

**South Carolina Department of Health and Environmental Control,
Office of Ocean and Coastal Resource Management.**

Appellant Case Number: 2011-192812

Court of Appeals' Opinion No. 27237, Filed March 27, 2013

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

MAY 12 AM 9:58
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCDHEC BOARD

Tommy W. Berry, Sr., and Jo S. Berry)

Appellants)

South Carolina Department of Health
and Environmental Control, Bureau of
Ocean and Coastal Resource
Management,

Respondent)

SCDHEC OCRM-07-509

APPEAL OF THE ADMINISTRATIVE
ORDER 07M-012S OF SCDHEC OCRM

EXHIBIT

4

Appellants Tommy W. Berry, Sr. and Jo S. Berry ("Berrys") claim and appeal from decision of the Administrative Order 07M-012S ("Order") styled as in re: Tommy W. Berry, Sr., and Jo S. Berry OCRM-07-509 Horry County, dated as having been mailed on April 27, 2010, signed by Carolyn Boltin-Kelly, the Deputy Commissioner of the South Carolina of Health and Environmental Control Office of Ocean and Coastal Resource Management, and executed on April 26, 2010.

The reasons and grounds for this appeal are that the Respondent's decision and findings set forth in its Order are not authorized by law and are not supported by the competent, material, and substantial evidence on the whole record based on the following assignments:

I. APPELLANTS' GROUNDS FOR APPEAL:

1. In incorrectly finding and concluding in Paragraph one (1) of the Order's findings of fact, that the Appellants' property directly abuts the alleged tidelands critical area

located on and adjacent to "K" Canal and Williams Creek at 317 49th Avenue North, North Myrtle Beach, Horry County, South Carolina (TMS # 145-02-24-019, Site).

2. In incorrectly finding and concluding in Paragraph two (2) of the Order's findings of fact, that the alleged impacted critical area vegetation was directly adjacent to the Appellants' home based on unclear and unauthenticated aerial photographs identified as Attachment A in the Order.
3. In incorrectly finding and concluding in Paragraph three (3) of the Order's findings of fact, that the previously existing bulkhead (to be replaced) facing North was located underneath the Appellants' house notwithstanding the Respondent's approval of the certified drawings showing the replacement of Appellants' 155 foot bulkhead with a new vinyl bulkhead extending long the northern property line, and, also, located approximately twenty (20) feet facing north from the back of their home.
4. In incorrectly finding and concluding in Paragraph four (4) of the Order's findings of fact, that Permit Number OCRM-07-509 (Permit) failed to authorize fill dirt at the site notwithstanding the Respondent's approval of the certified design and installation drawings, prepared by David R. Simms, P.E., for the construction of Appellants' new vinyl bulkhead.
5. In incorrectly finding and concluding in Paragraph five (5) of the Order's findings of fact, that the Appellants constructed their vinyl bulkhead twenty (20) feet channelward of the existing bulkhead notwithstanding the Respondent's approval of their critical area permit and attached certified drawings showing the replacement

of their 155 foot bulkhead extending along the northern property line, and, also, located approximately twenty (20) feet facing north from the back of their home.

6. In incorrectly finding and concluding in Paragraph six (6) of the Order's findings of fact, that the alleged critical area line existed between the alleged existing bulkhead and Appellants' newly vinyl constructed bulkhead.
7. In incorrectly finding and concluding in Paragraph seven (7) of the Order's findings of fact, that the backfill associated with the Appellants' bulkhead project destroyed vegetation resulting in a permanent loss of productivity from the estuary notwithstanding that the greater weight of the evidence to the contrary.
8. In incorrectly finding and concluding in Paragraph nine (9) of the Order's findings of fact, that backfill was placed in allegedly in tidelands critical area between the existing bulkhead and the newly constructed vinyl bulkhead.
9. In incorrectly finding and concluding in Paragraph ten (10) of the Order's findings of fact, that the newly constructed vinyl bulkhead allegedly impacted approximately two thousand six hundred and thirty-nine (2,639) square feet of unauthenticated critical area notwithstanding the Respondent's approval of the critical area permit and attached certified drawings showing the replacement of Appellants' 155 foot bulkhead extending along their northern property line, and, also, located approximately twenty (20) feet facing north from the back of their home.
10. In incorrectly finding and concluding that the new vinyl bulkhead built on the Appellants' property line was not constructed in compliance with Permit Number OCRM-07-509 (Permit) notwithstanding Respondent's approval of critical area

permit and attached certified drawing dated March 7, 2003.

11. In incorrectly finding and concluding in Paragraph seventeen (17) of the Order's findings of fact, that the Appellants' vinyl bulkhead and concrete driveway, white fence, and fill material including two (2) piles that support their deck were built in the alleged tidelands critical area without the approved of a critical area permit from the Respondent.
12. In incorrectly finding and concluding in Paragraph one (1) of the Order's conclusions of law, that the Appellants' violated Special Condition No.1, in that the existing bulkhead was not removed, concurrently with the new vinyl bulkhead construction.
13. In incorrectly finding and concluding in Paragraph two (2) of the Order's conclusions of law, that the Appellants' violated Special Condition No.2, in that their proposed new vinyl bulkhead was not placed in the same location as their existing bulkhead.
14. In incorrectly finding and concluding in Paragraph three (3) of the Order's conclusions of law, that the Appellants' construction of their new vinyl bulkhead violates DHEC-OCRM Regulations R.30-1 through 30-11 and, also, R.30-12(c).
15. In incorrectly finding and concluding in Paragraph three (3) of the Order's conclusions of law, that the Appellants' failed to construct their vinyl bulkhead in accordance with their approved drawings under General Condition No. 11 of their critical area Permit.
16. In incorrectly finding and concluding in Order that the Appellants are ordered to pay:
(1) within fifteen (15) days of the effective date of this Administrative Order (Order), pay a civil penalty of fifty-four thousand dollars (\$54,000.00) to DHEC OCRM; and

(2) within fifteen (15) days of the effective date of this Order, submit to DHEC OCRM for review and approval, a restoration plan, including corrective action to return the impacted critical area at the Site to pre-existing conditions including the removal of the bulkhead and associated fill, as well as a planting schedule to replace marsh vegetation.

II. SIGNIFICANT ISSUES OR FACTORS FOR THE BOARD TO CONSIDER IN DECIDING HOW TO HANDLE THIS MATTER:

- A. APPELLANTS ASSERT THE FINDINGS AND CONCLUSIONS IN THE ADMINISTRATIVE ORDER ARE IN ERROR BY: 1) CONCLUDING THAT THE TIDAL MARSHLAND BETWEEN THE APPELLANTS' PROPERTY AND THE ADJOINING CANALS IS CRITICAL AREA; 2) FINDING THAT THE APPELLANTS' ERECTED THE NEW BULKHEAD TOO FAR CHANNELWARD OF THE ALLEGED EXISTING BULKHEAD; 3) ACCEPTING RESPONDENT'S UNAUTHENTICATED PHOTOGRAPHS AND MEASUREMENTS OF APPELLANTS' ALLEGED VIOLATION 4) FINDING THAT THE APPELLANTS' ACTIONS RESULTED IN A PERMANENT LOSS OF PRODUCTIVITY FROM THE ESTUARY; AND, 5) FINDING THAT THE APPELLANTS' IMPROPERLY FILLED APPROXIMATELY TWO THOUSAND SIX HUNDRED AND THIRTY-NINE (2,639) SQUARE FEET OF ALLEGED TIDELANDS CRITICAL AREA; WHEN PETITIONER FAILED TO PROVE THE EXISTENCE AND LOCATION OF A LAWFULLY ESTABLISHED CRITICAL AREA LINE AND PETITIONER'S WITNESSES FAILED TO UNDERSTAND THE PERMIT DRAWINGS.

Respondent's conclusions and findings in the Order are in error because, as a prerequisite to any of its findings or conclusions, the record must reflect that the Respondent proved the existence and location of a lawfully established Critical Area Line. The Respondent did not. Without first establishing a valid Critical Area Line, Respondent cannot demonstrate that it had any regulatory jurisdiction over Appellants' property. Section 48-39-210, Code of Laws of South Carolina, 1976, as amended, mandates the manner in which Critical Area Lines are established. In relevant part the statute provides:

A critical area delineation for coastal waters or tidelands established by the department is valid only if the line is depicted on a survey performed by a professional surveyor, the line is reviewed by department, department validates the location of the boundaries of the coastal waters or tidelands critical area on the survey by affixing a stamp and date to the survey, and the survey contains clearly on its face in bold type the following statement: "The area shown on this plat is a general representation of permit authority on the subject property. Critical areas by their nature are dynamic and subject to change over time. By generally delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not."

The statute further provides that "[a] critical area line established pursuant to subsection (B) that affects subdivided residential lots expire after three years from the department date on the survey described in subsection (B)..." The record is clear that in Respondent's prosecution of this case, it has failed to identify any certified documents lawfully establishing a Critical Area Line behind the Appellants' newly constructed vinyl bulkhead. For example, the Respondent in response to the Appellants' Freedom of Information Act ("FOIA") request received by certified mail on May 18, 2009, failed to produce any certified Critical Area Line documentation on or adjacent to the Site

Respondent's Enforcement Project Manager in Horry County, stated in the Order that vegetation is the primary factor in determining where a critical area line should be located, but he admitted that he had not visited Appellants' property until after Appellants' vinyl bulkhead was completed on July 19, 2007. When he visited the site, the area behind the vinyl bulkhead was backfilled. Further, the Respondent's Order contained no scientific or objective evidence to support its findings or conclusions, such as soil boring reports or excavation results, to establish where the critical area boundary existed. Finally, the Respondent's use of unauthenticated measurements and photographs is an inadequate evidentiary substitute to prove that allegedly two thousand six hundred and thirty-nine (2,639) square feet of critical area had been impacted since no lawful documentation

of a valid critical area line exists at the site.

South Carolina law provides that statutory construction requires tribunals "[t]o effectuate legislative intent." Hitachi Data Systems Corporation v. Leatherman, 309 S.C. 174, 178 (1992). "The cardinal rule of statutory construction is that words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation." Id. (internal citations omitted). Applying the rules of statutory construction in the subject case requires a finding that Respondent did not establish a valid critical area designation. While that failure in and of itself is not dispositive on the issue concerning whether or not Appellants' vinyl bulkhead was constructed in compliance with the Permit, it is directly relevant to whether or not Respondent has jurisdiction over the Appellants' property and specifically whether or not the vinyl bulkhead as constructed lies within a critical area designation. Assuming, in arguendo, that the Respondent has jurisdiction over the Appellants' property, Respondent's failure to establish in the Order a valid critical area designation is dispositive of whether or not Respondent met its burden of proof in establishing that the Appellants' alleged violations. Respondent did not.

Further, to the extent that Appellants' vinyl bulkhead is constructed in conformity with the approved certified drawings, the Respondent will not be able to meet its burden of proof in establishing that the Appellants' violated their Critical Area Permit.

In Addition, the Appellants assert the following affirmative defenses, including, but not limited to, that no valid claim exists under 12(b)(6), SCRCF, lack of jurisdiction, and governmental estoppel based on the acts and omissions of Respondent in prosecuting this matter.

Further, the Appellants' procedural due process rights under the United States and South Carolina Constitutions have been violated in this matter.

“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.” Kurschner v. City of Camden Planning Comm’n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). “Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.” Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). Procedural due process requirements are not technical, and no particular form of procedure is necessary. Sloan v. S.C. Bd. Of Physical Therapy Exam’rs, 370 S.C. 452, 485, 636 S.E.2d 598, 615 (2006). Rather, due process is flexible and calls for such procedural protections as the particular situation demands. *Id.* The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. S.C. Dep’t. of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). To prevail on a claim of denial of due process, there must be a showing of substantial prejudice. Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm’n, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984).

In the present case, the Appellants have been substantially prejudiced by the Respondent’s failure to prove the existence and location of a lawfully established Critical Area Line at the site. But at the same time, the Respondents, also, found and concluded that the Appellants had unlawfully impacted approximately two thousand six hundred and thirty-nine (2,639) square feet of alleged critical area on their property. Accordingly, the Appellants have not been afforded adequate notice and the procedural protections as this particular situation demands to adequately defend themselves in this matter against Respondent’s finding and concluding set forth in its Order dated April 26, 2010.

WHEREFORE, pursuant to the Standard of Review for Appellants' Appeal, the Board may affirm the decision of the Respondent's Administrative Order 07M-012S ("Order") dated April 26, 2010, remand the case for further proceedings; or may reverse or modify the decision. The Appellants assert that their substantive rights have been prejudiced because the Respondent's Order and Decision is "(a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

For the foregoing reasons, Appellants respectfully request that the Board carefully review the record in this case, conduct a hearing, and issue a decision overturning and quashing the Department's Administrative Order 07M-012S dated April 26, 2010.

Respectfully Submitted,

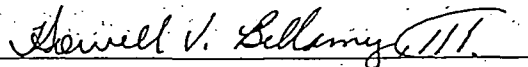
BELLAMY, GUTENBERG, COPELAND, EPIS.,
GRAVELY & BOWERS, P.A.

1000 29th Ave. N.

Myrtle Beach, South Carolina 29577

843-282-5393

Attorney for the Respondent



Howell V. Bellamy, III

Howell V. Bellamy, Jr.

May 10, 2009
Myrtle Beach, SC

EXHIBIT NO. "5"

Tommy W. Berry, Sr. and Jo S. Berry

vs.

**South Carolina Department of Health and Environmental Control,
Office of Ocean and Coastal Resource Management.**

Appellant Case Number: 2011-192812

Court of Appeals' Opinion No. 27237, Filed March 27, 2013



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

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EXHIBIT

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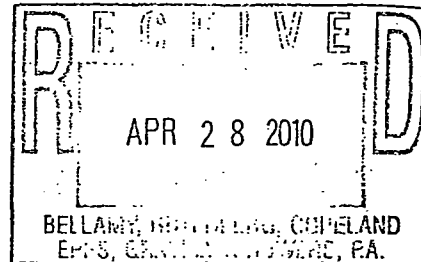
5

April 20, 2010

CERTIFIED MAIL

ARTICLE NO. 7009 2250 0003 6002 1247

Mr. Tommy W. Berry
c/o Mr. Howell V. Bellamy, Jr.
Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A.
P.O. Box 357
Myrtle Beach, SC 29578



RE: **ADMINISTRATIVE ORDER OF REVOCATION**
P/N# OCRM-07-509 (Permit), Tommy W. Berry

Mr. Berry:

This is in reference to the bulkhead constructed in the tidelands critical area on and adjacent to "K" Canal and Williams Creek at 317 49th Avenue N, North Myrtle Beach, Horry County, South Carolina (TMS#145-02-24-019). This letter will serve as an order of revocation of the above-referenced permit by the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (DHEC OCRM). As stated earlier, this permit, for the construction of a bulkhead, was issued in accordance with DHEC OCRM Regulation R.30-12(C), which governs bulkhead projects, and also in accordance with DHEC OCRM Regulations R.30-1 through 30-11, where applicable. This permit is being revoked on the grounds that you failed to construct the bulkhead according to the plans attached to the Permit and pursuant to General Condition # 11 of the Permit.

On August 2, 2007, a Notice of Intent to Revoke was sent to your home based on the above-mentioned facts and you received this notice on August 3, 2007. You were given a period of twenty (20) days from the date of receipt of the notice to respond. Since this time, you have failed to return your structure to compliance with the issued Permit. Pursuant to DHEC OCRM Regulation R.30-8(A) this permit is hereby revoked.

Sincerely,

Blair N. Williams
Wetland Section Manager
Regulatory Division

cc: Tantira S. Marshall, DHEC OCRM Wetland Project Manager
Sean M. Briggs, DHEC OCRM Enforcement Project Manager
Davis Whitfield-Cargile, DHEC OCRM Legal Counsel

CERTIFIED A TRUE COPY
OF DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL RECORDS

smc

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Myrtle Beach Office • 927 Shine Avenue • Myrtle Beach, SC 29577 • Phone: (843) 938-4598 • Fax: (843) 938-4596 • www.scdhecr.com



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G. Earl Hunter, Commissioner

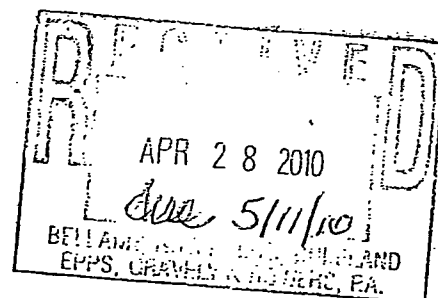
Promoting and protecting the health of the public and the environment

CERTIFIED MAIL

ARTICLE NUMBER 7009 2250 0003 6002 1247

April 27, 2010

Mr. Tommy W. Berry, Sr.
Mrs. Jo. S. Berry
c/o Mr. Howell V. Bellamy, Jr.
Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A.
P.O. Box 357
Myrtle Beach, SC 29578



Re: Administrative Order 07M-012S/Administrative Order of Revocation
Berry, Tommy W. & Jo S.
Horry County

Mr. and Mrs. Berry

Enclosed, you will find a true copy of Administrative Order number 07M-012S (Order) regarding the unauthorized fill and bulkhead installed in the tidelands critical area. This Order was signed by the Deputy Commissioner of the South Carolina Department of Health and Environmental Control Office of Ocean Coastal Resource Management and executed on April 26, 2010.

Please comply with the requirements of the Order as outlined on page six and seven. Should you choose to appeal this Order, you must do so within 15 days of receipt by following the enclosed instructions. This Order shall become final as written if a proper request is not filed within fifteen (15) days of mailing of this Order.

Also enclosed you will find a true copy of an Administrative Order of Revocation for permit number OCRM-07-509.

Thank you for your prompt attention to this matter. If you have any questions you may contact me at (843) 238-4528 x 149.

Respectfully,

Sean M. Briggs
Enforcement Project Manager
Regulatory Division

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Myrtle Beach Office • 927 Shine Avenue • Myrtle Beach, SC 29577 • Phone: (843) 238-4528 • Fax: (843) 238-4526 • www.scdhec.gov

Enclosures (2):

1. Administrative Order of Revocation, P/N-OCRM-07-509
2. Administrative Order 07M-012S (with Attachments)

cc Mr. & Mrs. Berry
 Davis Whitfield-Cargile, Legal Counsel DHEC OCRM
 File # 07M - 012S

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

IN RE: TOMMY W. BERRY SR.
JO S. BERRY
OCRM-07-509
HORRY COUNTY

ADMINISTRATIVE ORDER
07M-012S

Tommy W. Berry, Sr. and Jo S. Berry (Mr. and Mrs. Berry) are responsible for unauthorized fill and a bulkhead placed in the tidelands critical area regulated by the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (DHEC OCRM). The unauthorized activity in the tidelands critical area is a violation of the South Carolina Coastal Zone Management Act. After failing to resolve this matter through a Consent Order, and in accordance with DHEC OCRM regulations and enforcement policy, this Administrative Order is now being issued.

FINDINGS OF FACT

1. Mr. and Mrs. Berry are the owners of certain property abutting the tidelands critical area located on and adjacent to "K" Canal and Williams Creek at 317 49th Avenue N, North Myrtle Beach, Horry County, South Carolina (TMS#145-02-24-019, Site). Mr. and Mrs. Berry, as the property owners, are responsible for the unauthorized activity at the Site.
2. Aerial photographs taken in 2005 by Horry County show the existence of critical area vegetation adjacent to Mr. and Mrs. Berry's house in the now impacted critical area at the Site. (See Attachment A).
3. The previously existing North-facing portion of the bulkhead was located generally underneath the length of the house. The previously existing West-facing portion of the bulkhead extended approximately twenty-two (22) feet beyond the edge of the house. The previously existing bulkhead is clearly shown on Page 1 of Attachment B.

4. On March 7, 2007, DHEC OCRM issued permit number OCRM-07-509 (Permit) to Mr. Berry. The Permit authorized the replacement of an existing bulkhead at the Site. The Permit required Mr. Berry to install the new bulkhead in the same location as the existing one, concurrently with the removal of the existing bulkhead. The Permit did not authorize fill at the Site.
5. On July 17, 2007, DHEC OCRM received a complaint that the bulkhead at the Site was being constructed twenty (20) feet channelward of the existing bulkhead and large amounts of fill were being placed in the tidelands critical area. Photographs of this activity were forwarded to DHEC OCRM and received July 19, 2007 (See Attachment B).
6. On July 19, 2007, Sean M. Briggs (Mr. Briggs), DHEC OCRM Enforcement Project Manager, conducted an inspection at the Site and observed that the bulkhead, consisting of vinyl sheets, was being built approximately twenty (20) feet channelward of the existing bulkhead in the tidelands critical area along the northern property line and approximately ten (10) feet channelward on the western property line. Mr. Briggs also observed large amounts of dirt, used as backfill, in the tidelands critical area between the previous bulkhead and the newly constructed bulkhead. Photographs were taken. (See Attachment C).
7. On July 23, 2007, DHEC OCRM issued a Cease and Desist Directive via certified mail to Mr. Berry for the unauthorized activity described above at the Site. Mr. Berry signed for the directive on July 24, 2007.
8. On July 25, 2007, a Notice of Violation and Admission Letter, including proposed Findings of Fact, were sent via certified mail to Mr. Berry. Delivery of these documents to Mrs. Berry was confirmed received with a certified mail receipt on July 26, 2007. The Admission Letter required a written response from Mr. Berry by August 14, 2009.
9. On July 31, 2007, Mr. Briggs conducted a follow up inspection at the Site following the receipt of both a Cease and Desist Directive and Notice of Violation by the Berrys and observed that the bulkhead was completely installed along both the northern and western

property lines including the whaler, but with the exception of the cap. Backfill had been placed in the tidelands critical area between the previous bulkhead and the newly constructed bulkhead to an elevation one foot below the top of the new bulkhead. Photographs were taken. (See Attachment D).

10. On August 2, 2007, Tanitra S. Marshall (Ms. Marshall), DHEC OCRM Wetland Project Manager, issued a Notice of Intent to Revoke the Permit to Mr. Berry. The notice provided a timeframe to respond. Delivery of this document to Mrs. Berry was confirmed received with a certified mail receipt on August 3, 2007. The Permit was suspended on August 2, 2007 and has been revoked in accordance with the attached order of revocation.
11. On August 13, 2007, Mr. Briggs received a letter from Mr. Howell V. Bellamy, Jr. (Mr. Bellamy), Mr. and Mrs. Berry's legal counsel. Mr. Bellamy indicated in the cover letter that this communication served as the Berrys' response to the various inquiries preponderated to them by DHEC OCRM. The letter contained a chronology of events from Mr. and Mrs. Berry as they perceived them to have happened. Mr. and Mrs. Berry stated that, "to the best of their knowledge and with the assistance of surveys in our possession we replaced the bulkhead." They further stated that, "We have never once thought that what we were doing was not in compliance with what DHEC would approve."
12. From August 2007 to February 2009, an attorney with DHEC OCRM attempted to negotiate a resolution through consent with the Berrys' legal counsel, Mr. Bellamy.
13. Aerial Site photographs taken in 2008 by Horry County show complete destruction of critical area vegetation and the filling of tidelands critical area at the Site. (See Attachment E). Through calculating area by using measurements obtained from satellite imagery, surveys, and field measurements, the disturbed area impacts approximately two thousand six hundred and thirty-nine (2,639) square feet of tidelands critical area.
14. On February 25, 2009, an enforcement conference was held at the Myrtle Beach office of DHEC OCRM. Mr. Briggs explained the critical area violations in detail to Mr. and Mrs. Berry as well as to Mr. Bellamy. Mr. and Mrs. Berry stated that they built the bulkhead according to the plans included in the Permit. They also stated that a bulkhead previously existed at the location where the bulkhead is currently placed. Mr. Bellamy stated that Mr. and Mrs. Berry have neighbors that could attest to the fact that the existing bulkhead was

previously in a location approximate to the current placement of the new bulkhead. No explanation was given for the fill that was placed in the tidelands critical area.

15. On April 7, 2009, Mr. Briggs received, from Mr. Bellamy, four (4) letters from Mr. and Mrs. Berry's neighbors stating that they, "[are] familiar with the [Site]. Prior to March 7, 2007, there was evidence of a bulkhead on the North West property line and on the property line facing Williams Creek." Mr. Bellamy stated in his letter that there were 30 more individuals that could make a similar statement and that he was in the process of gathering their statements. As of January 21, 2010, no further statements have been received by DHEC OCRM.
16. On April 28, 2009, Mr. Briggs responded to Mr. Bellamy confirming receipt of his letter and the four (4) statements from Mr. and Mrs. Berry's neighbors. Mr. Briggs explained that the statements did not mitigate or disprove the violations set forth in the Notice of Violation and Admission Letter and discussed at the February 25, 2009, enforcement conference. Mr. Briggs re-stated the fact that the bulkhead built at the Site was constructed out of compliance with the Permit and that the associated backfill, impacting approximately two thousand six hundred and thirty-nine (2,639) square feet of tidelands critical area, was placed without authorization from DHEC OCRM. Mr. Briggs also indicated that in the absence of an agreement in the form of a Consent Order, an Administrative Order would likely be issued.
17. On January 12, 2010, Mr. Briggs inspected the Site after reviewing 2009 aerial photographs from Horry County (See Attachment F) and seeing the addition of landscaping, fencing, and a concrete pad used as a driveway placed on top of the fill in the tidelands critical area. Consent was granted for the purpose of this inspection by Mrs. Berry through Mr. Bellamy. The concrete pad measured thirty-seven feet four inches by nineteen feet eight inches (37' 5" x 19' 8"). The fence measured twenty-four (24) feet on the eastern facing side of the property, eighty-four (84) feet on the northern facing side of the property, and forty-eight (48) feet on the western facing side of the property. The tidelands critical area that had been filled was landscaped with sod and ornamental trees. Additionally two (2) piles had been placed through the fill in the tidelands critical area to support a second story deck on the rear of the house. Photographs were taken. (See Attachment G)

18. DHEC OCRM finds that the Berrys filled in approximately two thousand six hundred and thirty-nine (2,639) square feet of tidelands critical area and constructed a bulkhead in the tidelands critical area without a permit from DHEC OCRM. The bulkhead is constructed out of compliance with the Permit. Additionally, the concrete driveway, sod, pilings and other alterations to the tidelands critical area were made by the Berrys without a permit from DHEC OCRM.

CONCLUSIONS OF LAW

The filling of the tidelands critical area and installation of a bulkhead in an unauthorized location in the tidelands critical area adjacent to Mr. and Mrs. Berry's property was performed without authorization from DHEC OCRM, in violation of the law. Based on the above findings, Mr. and Mrs. Berry have violated the following:

1. **The South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-130 (A) and 23A S.C. Code Ann. Regs. 30-2(B), as amended,** which require that any utilization or alteration of the critical area must be permitted or otherwise legally authorized by DHEC OCRM. Specifically, Mr. & Mrs. Berry constructed a bulkhead and concrete driveway, installed a fence, and placed fill material and two (2) piles that support a deck in the tidelands critical area without a permit from DHEC OCRM.
2. **Critical Area Permit and Coastal Zone Consistency Certification OCRM-07-509:**
 - a) **Special Condition # 1**, in that the existing bulkhead was not removed concurrently with the new bulkhead construction, and
 - b) **Special Condition # 2**, in that the proposed bulkhead was not placed in the same location as the existing bulkhead.

Furthermore, Critical Area Permitting Regulations, 23A S.C. Code Ann. Reg. 30, *as amended*: R.30-12(G)(2)(a), states that the creation of commercial and residential lots strictly for private gain is not a legitimate justification for the filling of wetlands. Additionally, Critical Area Permit and Coastal Zone Consistency Certification OCRM-07-509, General Condition # 12 provides that when

the Permittee is notified that DHEC OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.

The South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-170 provides that any person determined to be in violation shall be liable for, and may be assessed a civil penalty of not less than one hundred dollars nor more than one thousand dollars per day of violation. It also provides that whenever DHEC OCRM finds that a person is in violation of any permit, regulation, standard, or requirement under this chapter, DHEC OCRM may issue an order requiring the person to comply with the permit, regulation, standard, or requirement, including an order requiring restoration when deemed environmentally appropriate by DHEC OCRM. In addition, §48-39-170 provides that DHEC OCRM may bring a civil enforcement action under this section as well as seeking appropriate injunctive relief under §48-39-160.

NOW, IT IS THEREFORE ORDERED THAT Mr. and Mrs. Berry shall:

1. Within fifteen (15) days of the effective date of this Administrative Order (Order), pay a civil penalty of fifty-four thousand dollars (\$54,000.00) to DHEC OCRM. The penalty shall be in the form of a check made payable to SCDHEC and reference Order number 07M-012S.
2. Within fifteen (15) days of the effective date of this Order, submit to DHEC OCRM for review and approval, a restoration plan, including corrective action to return the impacted critical area at the Site to pre-existing conditions including the removal of the bulkhead and associated fill, as well as a planting schedule to replace marsh vegetation. This restoration plan shall also include but not be limited to the following:
 - a) A time period for completion with a schedule of remedial measures to be taken from implementation through completion,
 - b) A monitoring plan for 2 years from the date of completion, including identification of a reference site for use in determining success of the restoration plan,
 - c) A current survey including all existing structures at the Site,
 - d) Procedures for reporting the progress of the restoration and contact information
 - e) Steps for reimplementation of the restoration plan should the original planting fail.

3. Within fifteen (15) days of receipt of any comment from DHEC OCRM, adequately revise and resubmit the restoration plan.
4. Upon receipt of written approval by DHEC OCRM of the restoration plan, begin the restoration plan within thirty (30) days and complete the restoration in accordance with the timeframe set forth therein. Once approved by DHEC OCRM, the restoration plan shall become a fully enforceable part of this Order.
5. Notify DHEC OCRM, in writing, of the completion of the corrective action within seven (7) days of completion. Following this notification, DHEC OCRM will perform an inspection of the Site to ensure compliance with the Act, terms of this Order, and the approved restoration plan.
6. All communication regarding this Order should be directed to:

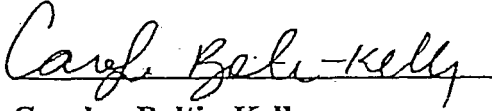
Attn: Sean M. Briggs
Enforcement Project Manager
Office of Ocean and Coastal Resource Management
927 Shine Avenue
Myrtle Beach, SC 29577

IT IS FURTHER ORDERED THAT failure to comply with any provision of this Order within the time specified above shall be grounds for additional daily monetary sanctions and / or the institution of a court action.

AND IT IS SO ORDERED.

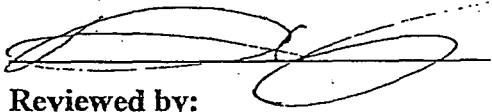
[Signatures on following page]

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT



Carolyn Boltin-Kelly
Deputy Commissioner

Date: 4/26/10



Reviewed by:
DHEC OCRM Legal Counsel

Date: 4/26/10



Rheta Geddings DiNovo
DHEC OCRM Enforcement Program

Date: April 22, 2010

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393.

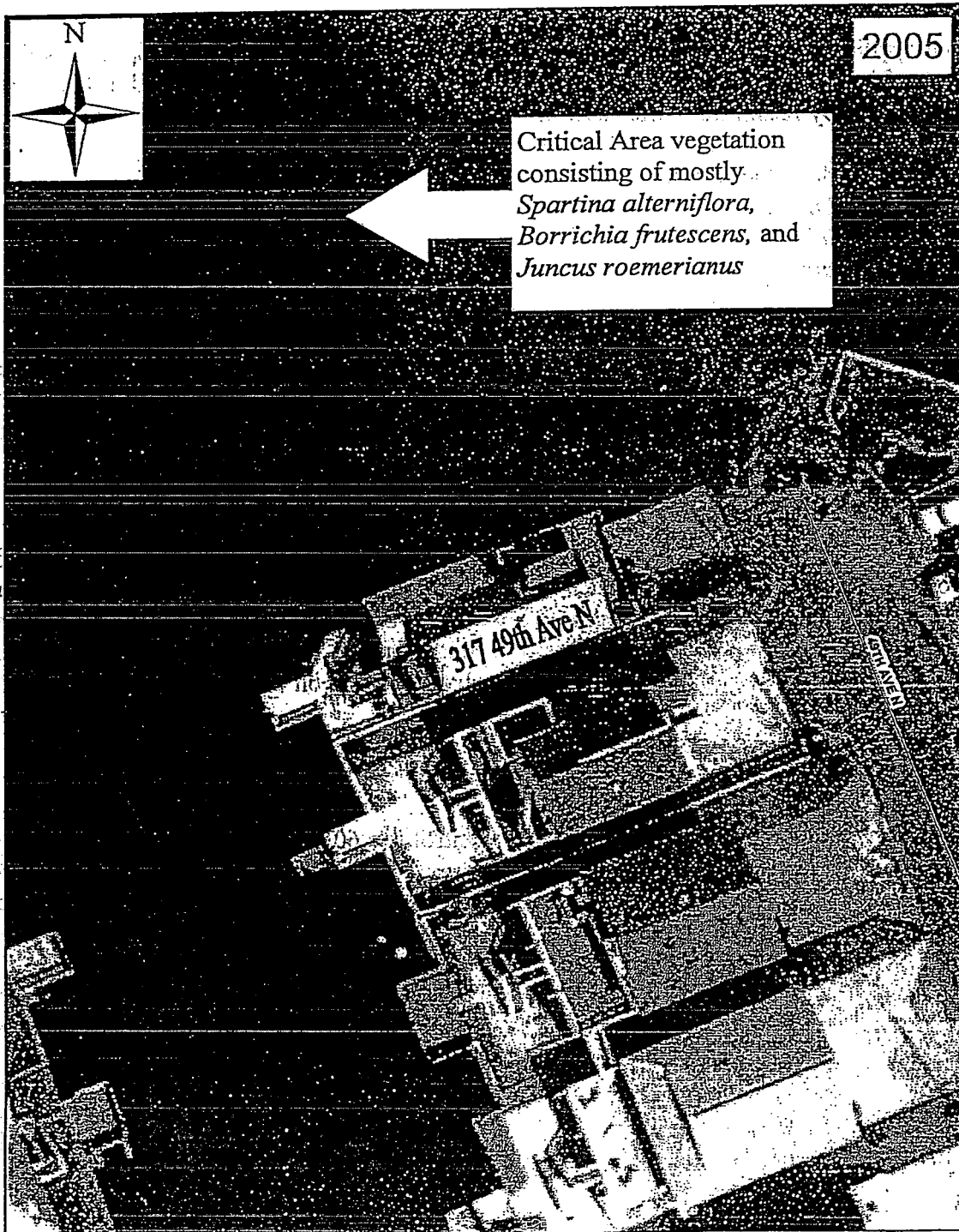
Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201
3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

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

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT A

Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2005 Digital Orthophoto by Horry County

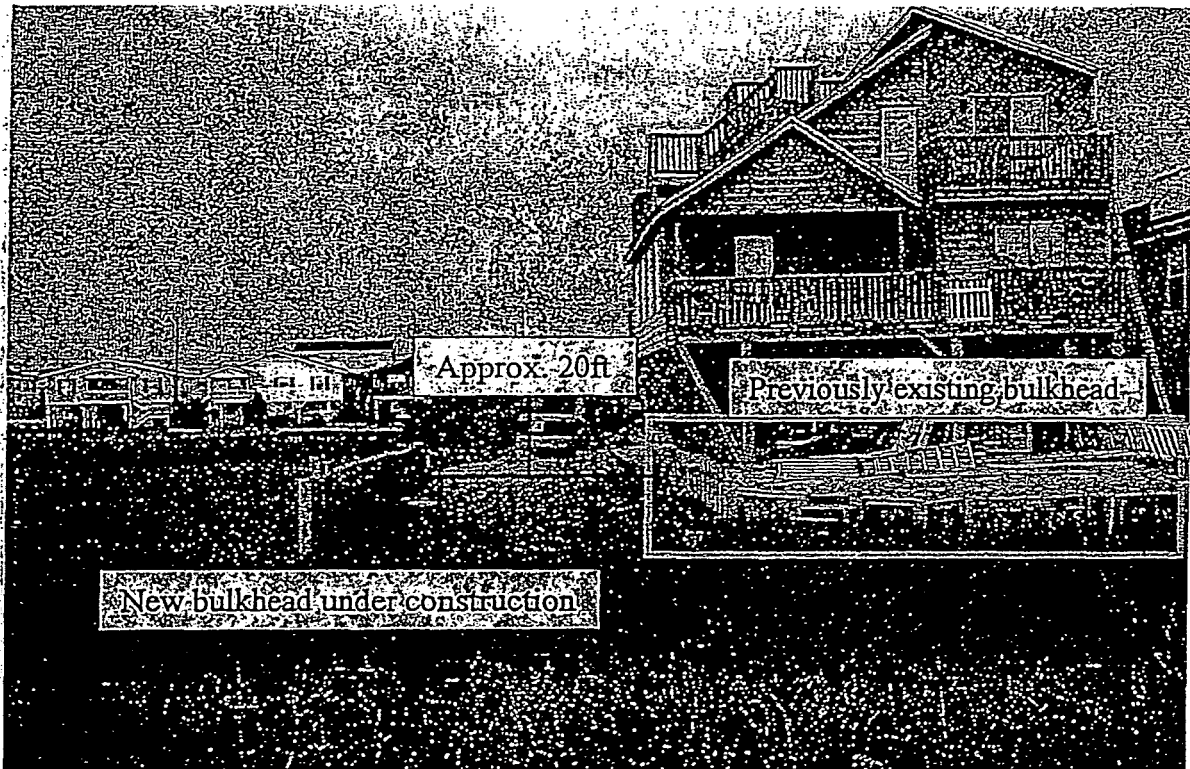


South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT B

Photos of 317 49th Ave North, North Myrtle Beach, Horry County, SC submitted by the complainant and received by DHEC OCRM on 7/19/07

Berry, Tommy W., Sr. and Jo S.



This photograph shows the placement of the new wall on the northern side of the lot approximately 20 feet channelward. The existing wall can be seen, still intact, underneath the cantilevered portion of the house. Also visible is the fill material placed on top of saltwater wetland vegetation in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT B

Photos of 317 49th Ave North, North Myrtle Beach, Horry County, SC submitted by the complainant and received by DHEC OCRM on 7/19/07

Berry, Tommy W., Sr. and Jo S.



This photograph shows the placement of the new wall on the western side of the lot approximately 20 feet channelward. This photograph was taken after the previous photograph. Again, the fill material being placed in the tidelands critical area can be seen just behind the front facing wall.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT B

Photos of 317 49th Ave North, North Myrtle Beach, Horry County, SC submitted by
the complainant and received by DHEC OCRM on 7/19/07

Berry, Tommy W., Sr. and Jo S.



This picture is taken facing the southeast and shows the northern side of the property. Note the large amounts of fill placed between the new bulkhead and existing bulkhead in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT C

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

DATE: 10/15/2009
FILE: Berry, Tommy W., Sr. and Jo S. 07M-012S
AUTHOR: Sean M. Briggs
RE: Inspection Photographs from 7/19/07
Camera: HP Photosmart M425
Media: Digital

On 7/19/07, the author inspected the Site and documented the bulkhead under construction with the vinyl sheets installed as well as a large amount of dirt used as backfill in the tidelands critical area between the previous bulkhead and the new bulkhead. The purpose of this inspection was to document the reported bulkhead being constructed out of compliance with the permit and the unauthorized fill being placed in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT C

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the southwestern corner of the new bulkhead and fill in the tidelands critical area.

000030

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT C

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the northwestern corner of the new bulkhead and fill-in the tidelands critical area.

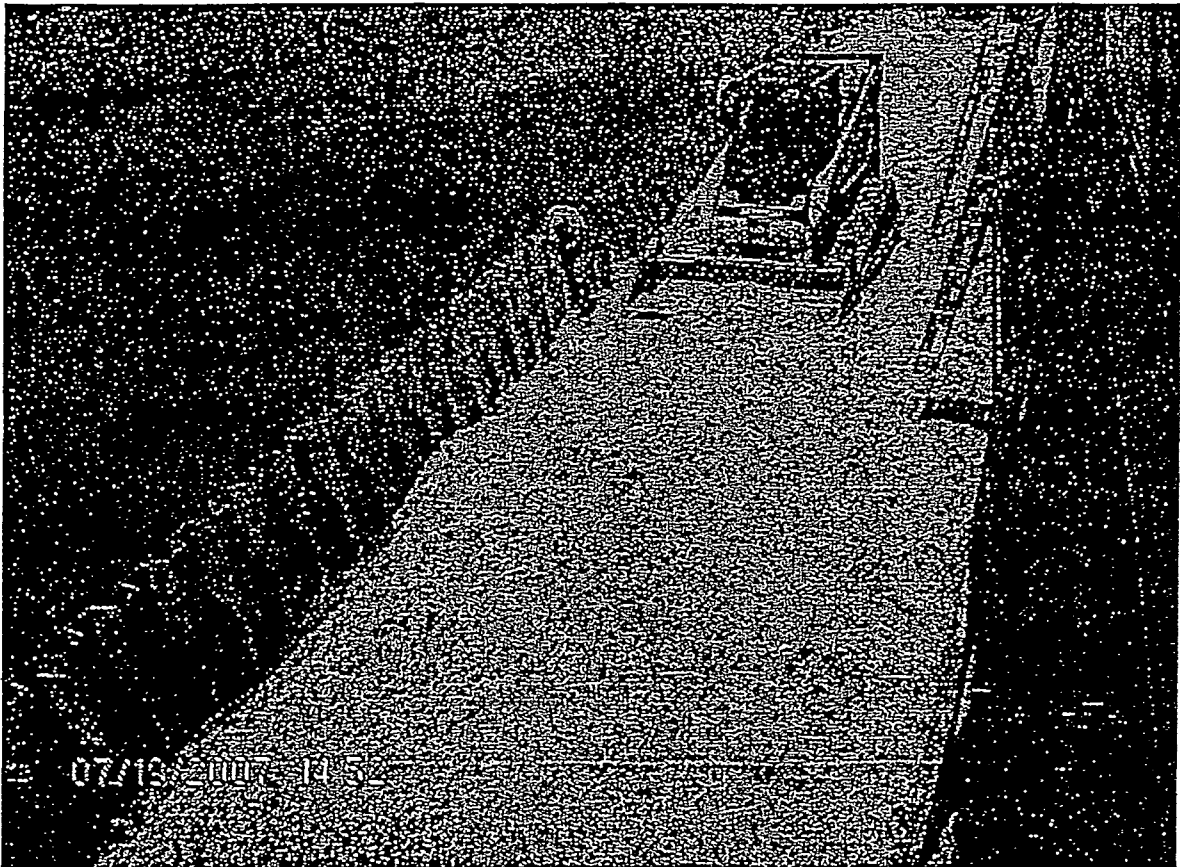
000031

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT C

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the northern side of the lot with new bulkhead and fill in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT D

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

DATE: 10/15/2009

FILE: Berry, Tommy W., Sr. and Jo S. 07M-012S

AUTHOR: Sean M. Briggs

RE: Inspection Photographs from 7/31/07

Camera: HP Photosmart M425

Media: Digital

On 7/31/07, the author inspected the Site and documented the bulkhead completely installed with the exception of the cap. This inspection occurred following the issuance of both a Cease and Desist Directive and a Notice of Violation to the Berrys.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT D

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.

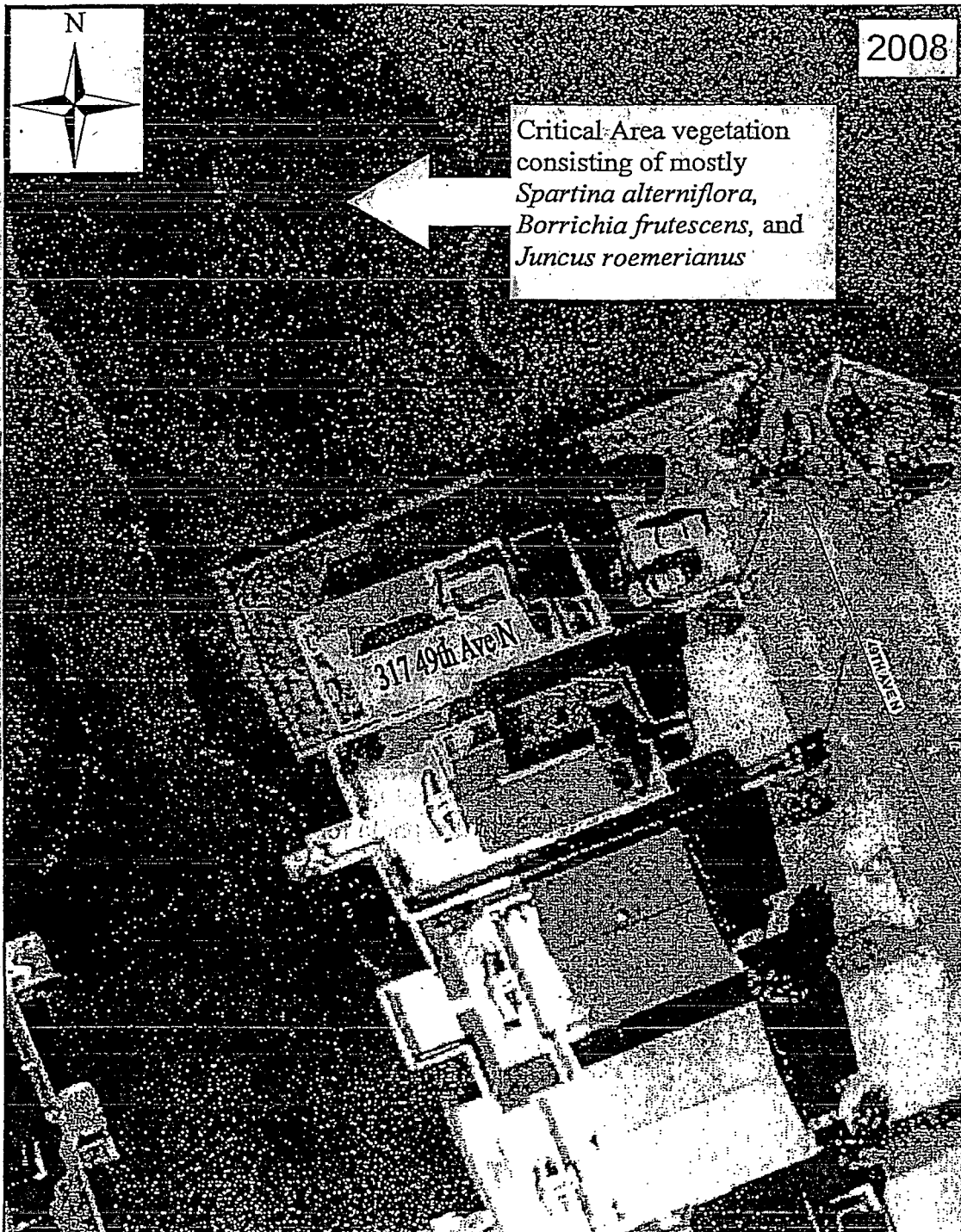


This photograph shows the western facing portion of the bulkhead with the whaler installed. The whaler has been highlighted in this photo for illustrative purposes.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT E

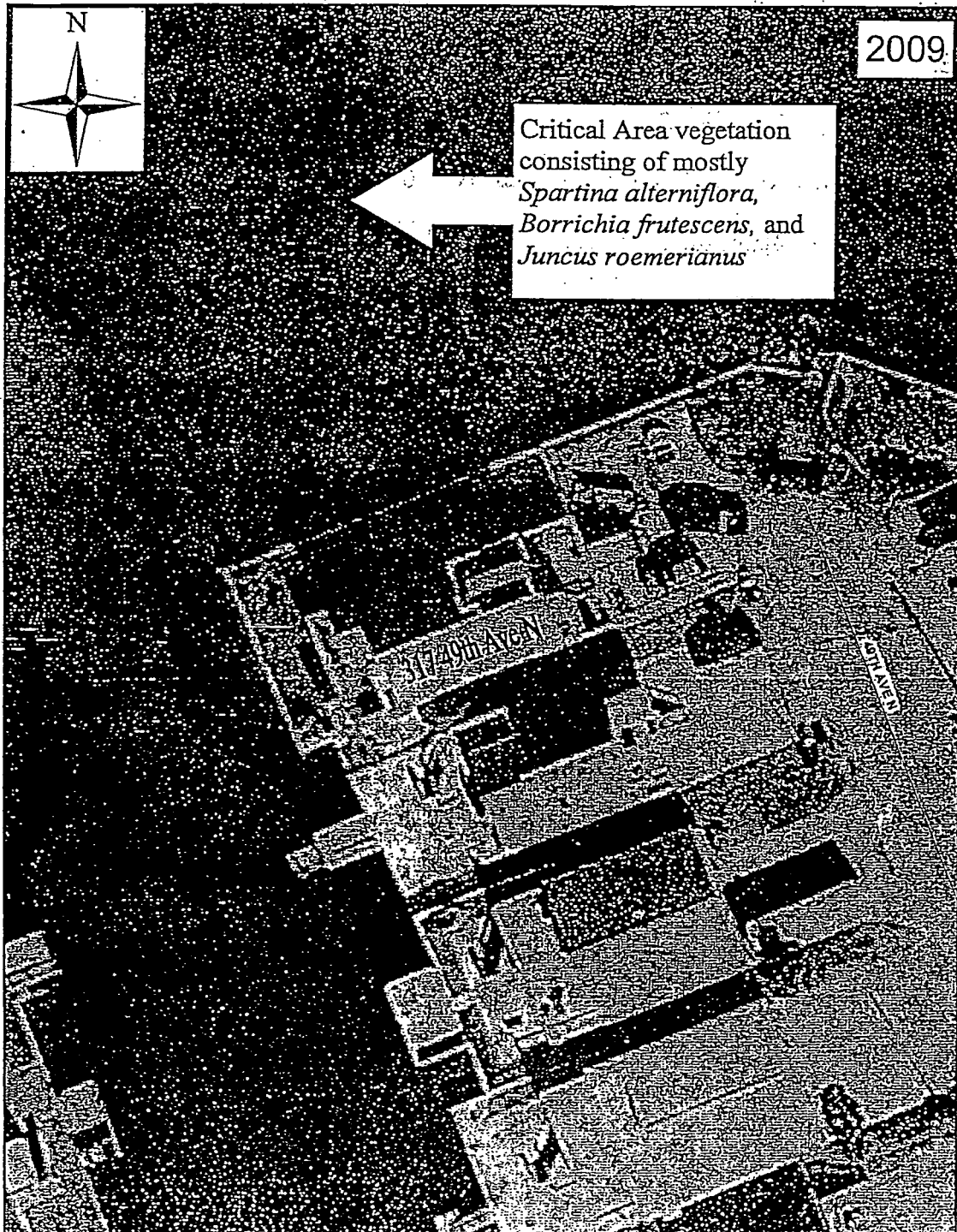
Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2008 Digital Orthophoto by Horry County



South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT F

Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2009 Digital Orthophoto by Horry County



South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

DATE: 1/14/2010

FILE: Berry, Tommy W., Sr. and Jo S. 07M-012S

AUTHOR: Sean M. Briggs

RE: Inspection Photographs from 1/12/10

Camera: HP Photosmart M425

Media: Digital

On 1/12/10, the author inspected the Site and documented additional improvements to the Site. The purpose of this inspection was to document these improvements which included a concrete pad, fencing, and landscaping.

000037

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the concrete pad used as a part of the driveway that was installed on top of the fill placed in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the length of the north facing portion of the bulkhead. A new fence is visible as well as landscaping and a portion of the concrete pad in the foreground.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the northern side of the lot that has been landscaped including the placement of sod. Two piles for a new deck can be seen in the right had side of the picture.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the northwestern corner of the lot with the landscaping and the fence in that area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the southwestern corner of the lot with landscaping and the fence in that area.

EXHIBIT NO. "6"

Tommy W. Berry, Sr. and Jo S. Berry

vs.

**South Carolina Department of Health and Environmental Control,
Office of Ocean and Coastal Resource Management.**

Appellant Case Number: 2011-192812

Court of Appeals' Opinion No. 27237, Filed March 27, 2013

BOARD:

Paul C. Aughtry, III
Chairman

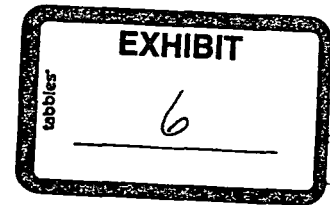
Edwin H. Cooper, III
Vice Chairman

Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment



BOARD:

C. Scott

ndell, MD

L. McCall

Coleman F. Buckhouse, MD

S.C. Board of Health and Environmental Control; Telephone (803) 898-3309 Fax: (803) 898-3393

June 14, 2010

U.S. Mail - CERTIFIED - Return Receipt

91 7108 2133 3437 2126 9645

Howell V. Bellamy, III, Esq.
Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, PA
PO Box 357
Myrtle Beach, SC 29578

Via Interagency Mail Delivery

Bradley Churdar, Esq.
Davis Whitfield-Cargile, Esq.
SCDHEC - Office of General Counsel
1362 McMillan Ave., Suite 400
Charleston, SC 29405

RE: *Docket No. 10-RFR-49 - Decision dated April 27, 2010, to issue Administrative Order 07M-012S/Administrative Order of Revocation regarding the unauthorized fill and bulkhead installed in the tidelands critical area.*

The S.C. Board of Health and Environmental Control decided on June 10, 2010, not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60(F), provides, "If a final review conference is not conducted within sixty days, the department 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, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference."

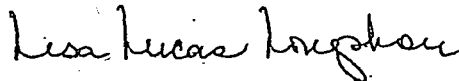
A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

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,



Lisa Lucas Longshore
Clerk

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.

OCG # 21087

I:\Share\LEGAL\ALL\MATTERS\21087 RFR OCRM Tommy W. Berry\rcd.doc

EXHIBIT NO. "7"

Tommy W. Berry, Sr. and Jo S. Berry

vs.

**South Carolina Department of Health and Environmental Control,
Office of Ocean and Coastal Resource Management.**

Appellant Case Number: 2011-192812

Court of Appeals' Opinion No. 27237, Filed March 27, 2013

COUNTY OF HORRY

Tommy W. Berry, Sr., and Jo S. Berry,

Respondents

CIVIL ACTION COVER SHEET

EXHIBIT

7

vs.

South Carolina Department of Health and
Environmental Control, Bureau of Ocean and Coastal
Resource Management,

Petitioner

(Please Print)

Submitted By: Howell V. Bellamy, IIIAddress: Bellamy Law FirmP.O. Box 357Myrtle Beach, SC 29578SC Bar #: 66575Telephone #: (843) 448-2400Fax #: (843) 448-3022Other: (843) 282-5383

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)***If Action is Judgment/Settlement do not complete**

- ☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
- ☐ This case is subject to **ARBITRATION** pursuant to the Court Alternative Dispute Resolution Rules
- ☒ This case is subject to **MEDIATION** pursuant to the Court Alternative Dispute Resolution Rules
- ☐ This case is exempt from ADR (Proof of ADR/Exemption Attached).

NATURE OF ACTION (Check One Box Below)**Contracts**

- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case #
20____-CP-____
- ☐ Notice / File Med Mal (230)
- ☐ Other (299)

Torts - Personal Injury

- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal-Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property

- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions

- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements

- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Penden (750)
- ☐ Transfer of Structured Settlement
Payment Rights Application
- ☐ Other (799)

Administrative Law/Relief

- ☐ Reinstate Driver's License
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

Appeals

- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission
- ☐ Employment Security Comm
- ☒ Other (999)
- Administrative Order**

Special/Complex/Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out of State Deposition (650)
- ☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature:

Howell V. Bellamy III

Date:

7-8-2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF HORRY)

FIFTEENTH JUDICIAL CIRCUIT)

CIVIL ACTION NO. 2010-CP-26-_____

Tommy W. Berry, Sr., and Jo S. Berry,)

Respondents,)

vs.)

SUMMONS

South Carolina Department of Health
and Environmental Control, Bureau of
Ocean and Coastal Resource Management,)

Petitioner.)

TO THE PETITIONER ABOVE NAMED:

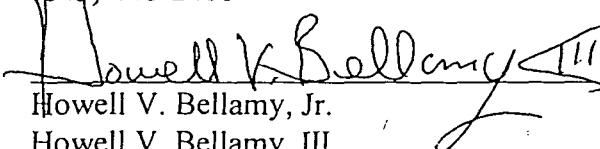
YOU ARE HEREBY SUMMONED and required to answer the Complaint/Petition for Judicial Review in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint/Petition for Judicial Review on the subscribers at their office at 1000 29th Avenue North, P.O. Box 357, Myrtle Beach, South Carolina 29578, and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint/Petition for Judicial Review within the time aforesaid, the Respondents in this action will apply to the Court for judgment by default for the relief demanded in the Complaint/Petition for Judicial Review and a judgment will be rendered against you.

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

P.O. Box 357

Myrtle Beach, SC 29577

(843) 448-2400


 Howell V. Bellamy, Jr.

Howell V. Bellamy, III

Counsel for Respondents

Myrtle Beach, South Carolina
July 8, 2010.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2010-CP-26- 6091

Tommy W. Berry, Sr., and Jo S. Berry,)

Respondents,)

vs.)

COMPLAINT/PETITION FOR
JUDICIAL REVIEWSouth Carolina Department of Health
and Environmental Control, Bureau of
Ocean and Coastal Resource
Management,)

Petitioner.)

TO THE PETITIONER ABOVE NAMED:

I. NATURE OF THE PROCEEDING

1. This is an action seeking judicial review of a Final Administrative Order and Decision ("Order") styled as In re: Tommy W. Berry, Sr., and Jo S. Berry OCRM-07-509 Horry County, dated as having been mailed on April 27, 2010, signed by Carolyn Boltin-Kelly, the Deputy Commissioner of the South Carolina of Health and Environmental Control, Office of Ocean and Coastal Resource Management, and executed on April 26, 2010. The reasons and grounds for this judicial review are that the Petitioner's decision and findings set forth in its Order, attached hereto and marked as Exhibit "A," are not authorized by law and are not supported by the competent, material, and substantial evidence on the whole record.

II. JURISDICTION AND VENUE

2. Respondents, Tommy W. Berry, Sr. and Jo S. Berry (the "Berrys"), are citizens and residents of Horry County, South Carolina and are the fee simple owners of real property situated in Horry County, South Carolina, known and described as Lot 17, Block "M-1," at 49th Avenue North, North Myrtle Beach.

3. Petitioner, the South Carolina Department of Health and Environmental Control, Bureau of Ocean and Coastal Resource Management ("DHEC-OCRM" or "Department") is an administrative agency of the State of South Carolina which maintains an office in Horry County, South Carolina, and is an administrative agency as defined under S.C. Code Ann. §1-23-310(1) (1976).

4. That at all relevant times herein, DHEC-OCRM acted by and through its agents, employees, or representatives.

5. The affected property which is the subject of this matter is located in Horry County, South Carolina as described above.

6. Venue is proper in Horry County, South Carolina.

7. S.C. Code Ann. § 48-39-180 (1976) provides: "[a]ny applicant whose permit application has been finally denied, revoked, suspended or approved subject to conditions of the department ... may obtain judicial review as provided in Chapter 23 of Title 1, or may file a petition in the circuit court having jurisdiction over the affected land for a final review of the department's action "de novo." Based upon the foregoing, this Court has

subject matter and personal jurisdiction over the above-named parties and affected property hereto.

III. FACTUAL STATEMENT

8. On February 2, 2007, DHEC-OCRM received an application for a permit from Mr. Berry for the alteration of a critical area pursuant to Coastal Zone Management Act of the 1977 South Carolina General Assembly. Mr. Berry's application, in brief, provided as follows:

APPLICANT: T. W. Berry
c/o Dr. H. Wayne Beam
P. O. Box 11863
Columbia, SC 29211-1863

LOCATION: On and adjacent to man-made canal off of Williams Creek at 317 49th Avenue North, North Myrtle Beach, Horry County, South Carolina.

WORK: The work, as proposed and shown on the attached plans, consists of constructing a replacement bulkhead. A 155' long wooden bulkhead will be removed and replaced with a vinyl bulkhead to built in the same location. The existing dock will be removed and reattached upon completion of construction. The purpose of the proposed activity is for erosion control.

9. Mr. Berry's permit application included the following documents: a location map of their residence and the affected property, registered drawings for plan and side views, and an as-built survey for the new vinyl bulkhead, which were all stamped, sealed, and prepared by David R. Simms, P.E., and are attached hereto and included in Exhibit "B."

10. On March 7, 2007, DHEC-OCRM issued permit number OCRM-07-509 (the "Permit") to Mr. Berry. The Permit authorized the replacement of an existing bulkhead at the Site. The Permit required Mr. Berry to install the new vinyl bulkhead in the same location as the existing one, concurrently with the removal of the existing bulkhead.

11. On July 17, 2007, DHEC-OCRM received a complaint that the bulkhead at the Site was being constructed twenty (20) feet channelward of the alleged existing bulkhead, and, also, large amounts of fill were allegedly being placed in the tidelands critical area.

12. On July 19, 2007, Sean M. Briggs (Mr. Briggs), DHEC-OCRM Enforcement Project Manager, conducted an inspection at the Site and concluded incorrectly that the new bulkhead, consisting of vinyl sheets, was being built approximately twenty (20) feet channelward of the alleged existing bulkhead in the tidelands critical area along the northern property line and approximately ten (10) feet channelward on the western property line.

13. On July 23, 2007, DHEC-OCRM issued a Cease and Desist Directive via certified mail to Mr. Berry for the alleged activity described above at the Site.

14. On August 2, 2007, Tanitra S. Marshall (Ms. Marshall), DHEC-OCRM Wetland Project Manager, issued a Notice of Intent to Revoke the Permit to Mr. Berry.

15. On August 13, 2007, Mr. Briggs received a letter from Mr. Howell V. Bellamy, Jr. (Mr. Bellamy), the Berrys' legal counsel. Mr. Bellamy indicated in his cover letter that this communication served as the response to the various inquiries preponderated to the Berrys by DHEC-OCRM. The letter contained a chronology of events from the Berrys as they perceived them to have happened. The Berrys indicated to the best of their

knowledge and with the assistance of surveys in their possession that they had replaced the bulkhead as required by their critical area permit and the attached documents.

16. On February 25, 2009, an enforcement conference was held at the Myrtle Beach office of DHEC-OCRM. However, during the meeting, Mr. Briggs failed to identify the location of the alleged critical area line on or adjacent to their property by either a survey, plat, photographs, and/or field measurements established by OCRM or another party to the Berrys and their attorney Mr. Bellamy. The Berrys, also, pointed out that their new vinyl bulkhead had been constructed according to the approved plans, drawings, and specifications attached to their Critical Area Permit. The Berrys, further, explained that old bulkhead had previously existed at the same location where the new vinyl bulkhead is currently placed. Finally, Mr. Bellamy argued to Mr. Briggs that the Berrys' neighbors could attest to the fact that their previous bulkhead had existed at the same location where the new vinyl bulkhead is approximately situated on their affected property.

17. On April 7, 2009, Mr. Briggs received from Mr. Bellamy four (4) letters from the Berry's neighbors stating that they, "[are] familiar with the [Site]. Prior to March 7, 2007, there was evidence of a bulkhead on the North West property line and on the property line facing Williams Creek." However, Mr. Briggs failed to assign any weight to the four (4) letters received from the Berrys' neighbors that documented the previously existing location of the old bulkhead on the Berrys' northern property line, and, also, on their western property line facing Williams Creek. Further, none of the four (4) letters evidenced that the

previously existing bulkhead was located underneath the Berry's house as indicated by Mr. Briggs.

18. On May 12, 2009, the Berrys made a written request for information and/or documentation regarding the location of the critical area line on or adjacent to their affected property in the custody and control of DHEC-OCRM pursuant to S.C. Code Ann. §§ 30-4-10 *et seq.*, the Freedom of Information Act ("FOIA"). This section provides that "[a]ny person has a right to inspect or copy any public record of a public body ... in accordance with reasonable rules concerning time and place of access." S.C. Code Ann. § 30-4-30(a) (1991). A copy of the Berrys' written request is attached as Exhibit "C," for information and documentation, including, but not limited to, the following:

- a. The designation of the critical area line on and adjacent to Williams Creek and Mr. and Mrs. Berry's property located at 311 49th Avenue North, City of North Myrtle Beach, South Carolina 29582, established pursuant to subsection (B) of § 48-39-210¹, 1976, as amended;

¹ § 48-39-210. Department only State agency authorized to permit or deny alterations or utilizations within critical areas.

(A) The department is the only state agency with authority to permit or deny any alteration or utilization within the critical area except for the exemptions granted under Section 48-39-130(D) and the application for a permit must be acted upon within the time prescribed by this chapter.

(B) A critical area delineation for coastal waters or tidelands established by the department is valid only if the line is depicted on a survey performed by a professional surveyor, the line is reviewed by the department, the department validates the location of the boundaries of the coastal waters or tidelands critical area on the survey by affixing a stamp and date to the survey, and the survey contains clearly on its face in bold type the following statement: "The area shown on this plat is a representation of department permit authority on the subject property. Critical areas by their nature are dynamic and subject to change over time..."

(continued...)

- b. All delineations and/or certifications of the critical area line in relation to the proposed replacement of the existing wooden bulkhead, and Mr. and Mrs. Berry's property located at 311 49th Avenue North, City of North Myrtle Beach, South Carolina 29582, prepared by professional surveyor on Registered Drawings for Plan Review and Side view with affixed stamp and date in accordance with subsection (B) of S.C. Code Ann. § 48-39-210 (1976), as amended;
- c. All delineations and/or certifications of the critical area line in relation to the proposed replacement of the existing wooden bulkhead, and Mr. and Mrs. Berry's property located at 311 49th Avenue North, City of North Myrtle Beach, South Carolina 29582, prepared by OCRM on Registered Drawings for Plan Review and Side view with affixed stamp and date in accordance with subsection (B) of § S.C. Code Ann. § 48-39-210 (1976), as amended;
- d. All notices and correspondence from DHEC-OCRM to Tommy W. Berry regarding Permit number OCRM-07-509 to Replace Existing Bulkhead;
- e. Any and all documents and/or information, including, but not limited to, Permit Application, Permit Approval, Affidavit of Ownership or Control, Newspaper Public Notice, Photographs, Notices, Correspondence, Location Map, Registered Drawings for Plan view and Side view (showing the critical line in relation to the proposed replacement of the existing bulkhead, and, also, adjacent existing structures), Certified Plats or Surveys of past improvements, Complaints from adjoining property owners, and a site map prepared or submitted to DHEC-OCRM under Permit No. 55533 dated September 25, 2006;
- f. Any and all documents and/or information, including, but not limited to, Permit Application, Permit Approval, Affidavit of Ownership or Control, Newspaper Public Notice, Photographs, Notices, Correspondence, Location Map, Registered Drawings for Plan view and Side view (showing the critical line in relation to the proposed

¹(...continued)

(C) Notwithstanding any other provision of this chapter, a critical area line established pursuant to subsection (B) expires after five years from the department date on the survey described in subsection (B).

replacement of the existing bulkhead, and, also, adjacent existing structures), Certified Plats or Surveys of past improvements, Complaints from adjoining property owners, and a site map submitted to or in possession of DHEC-OCRM pertaining to Tommy W. Berry's Permit numbered OCRM-07-509, to Replace Existing Bulkhead; and

~~g. Identify all special and general conditions allegedly violated by Tommy W. Berry as the permittee under Permit No. OCRM-07-509.~~

19. On May 26, 2009, DHEC-OCRM answered the Berrys FOIA Request (S.C. Code Ann. §§ 30-4-10, *et seq.*) by providing documentation and information date-stamped Berry 1-100, which is attached as **Exhibit "B."** However, DHEC-OCRM failed to respond to information and/or documents requested under Paragraphs a, b, and c. Further, DHEC-OCRM furnished only parts of the information and/or documents requested under Paragraphs f, g, h, and i.

20. The Berrys attempted in good faith to resolve the above production of document issues with DHEC-OCRM, but no agreement could be reached in this matter between the parties.

21. On June 1, 2009, the Berrys filed Civil Action No. 2009-CP-26-5436, asserting that DHEC-OCRM violated S.C. Code Ann. § 30-4-30(c), because it failed to provide any documentation, regarding the location of the alleged critical area line on or adjacent to the Berrys' affected property by either survey, plat, photographs, and/or field measurements established by OCRM or another party, in accordance with their written FOIA request for such information and documents. Also, the Berrys filed an Amended Complaint on May 14, 2010.

22. Berrys' Amended Complaint, further, requested both declaratory and/or injunctive relief, including attorney fees, pursuant to S.C. Code Ann. § 30-4-100. This section provides that, "Any citizen of the State may apply to the circuit court for either or ~~both a declaratory judgment and injunctive relief to enforce [FOIA]....~~ If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation."

23. On April 26, 2010, DHEC-OCRM issued Administrative Order 07M-012S ("Order"), a copy of which is attached as **Exhibit "A,"** against the Berrys. The Order incorrectly found and concluded that the Berrys failed to construct their new vinyl bulkhead in compliance with Permit Number OCRM-07-509. Further, the Order incorrectly required the Berrys to pay: (1) within fifteen (15) days of the effective date of this Administrative Order, a civil penalty in the amount of Fifty-Four Thousand and No/100 (\$54,000.00) Dollars to DHEC-OCRM; and, (2) within fifteen (15) days of the effective date of this Order, to submit to DHEC-OCRM for review and approval, a restoration plan, including corrective action to return the alleged impacted critical area at the Site to pre-existing conditions including the removal of their new vinyl bulkhead and associated fill, as well as a planting schedule to replace marsh vegetation. Accordingly, the Berrys have been and will continue to be unduly prejudiced by the failure of DHEC-OCRM to provide the above requested information regarding the location of the alleged Critical Area Line on or adjacent to their affected property by either survey, plat, photographs, and/or field measurements established by OCRM, or another party.

24. On May 11, 2010, the Berrys filed an Appeal of DHEC-OCRM's Administrative Order 07M-012S dated April 26, 2010.

25. On June 14, 2010, the Berrys were notified by DHEC-OCRM that the South Carolina Board of Health and Environmental Control had decided not to conduct a Final Review Conference regarding their appeal of DHEC-OCRM's Administrative Order 07M-012S. Accordingly, DHEC-OCRM's Administrative Order 07M-012S became the final agency decision in this case pursuant to S.C. Code Ann. § 44-1-60(F). This section provides, "[I]f a final review conference is not conducted within sixty days, the department's decision becomes the final agency decision"

IV. GROUND FOR JUDICIAL REVIEW

26. The allegations contained in Paragraphs one (1) through twenty-five (25) above are re-alleged and incorporated herein.

27. The Berrys object to DHEC-OCRM's decision and findings set forth in its Administrative Order 07M-012S based on the following:

- a. in incorrectly finding and concluding in Paragraph one (1) of the Final Order's findings of fact that the Berrys' property directly abuts the alleged tidelands critical area located on and adjacent to "K" Canal and Williams Creek at 49th Avenue North, North Myrtle Beach, Horry County, South Carolina (TMS # 145-02-24-019, Site);
- b. in incorrectly finding and concluding in Paragraph two (2) of the Order's findings of fact that the alleged impacted critical area vegetation was directly adjacent to the Berrys' home based on Petitioner's unclear and unauthenticated aerial photographs identified as Attachment A in its Order;

- c. in incorrectly finding and concluding in Paragraph three (3) of the Order's findings of fact that the previously existing bulkhead (to be replaced) faced North and was located underneath the Berrys' house notwithstanding the approval of the Berrys' certified drawings showing the replacement of their previously existing 155 foot bulkhead with a new vinyl bulkhead extending along the same northern property line, and, also, located approximately twenty (20) feet facing north from their home's rear elevation line.
- d. in incorrectly finding and concluding in Paragraph four (4) of the Order's findings of fact that Permit Number OCRM-07-509 failed to authorize fill dirt at the site, notwithstanding DHEC-OCRM's approval of the certified design and installation drawings prepared by David R. Simms, P.E., and submitted to OCRM for the construction of the Berrys' new vinyl bulkhead;
- e. in incorrectly finding and concluding in Paragraph five (5) of the Order's findings of fact that the Berrys had constructed their vinyl bulkhead twenty (20) feet channelward of their alleged existing bulkhead notwithstanding DHEC-OCRM's approval of their critical area permit and attached certified drawings showing the replacement of their previously existing bulkhead with a new vinyl bulkhead extending 155 feet along the same northern and western property lines, and, also, located approximately twenty (20) feet north from their home's rear elevation line;
- f. in incorrectly finding and concluding in Paragraph six (6) of the Order's findings of fact that the alleged critical area line existed between the alleged existing bulkhead located underneath the Berrys' house and their newly constructed vinyl bulkhead;
- g. in incorrectly finding and concluding in Paragraph seven (7) of the Order's findings of fact that the backfill associated with the Berrys' newly constructed vinyl bulkhead had destroyed vegetation resulting in a permanent loss of productivity from the alleged estuary on or adjacent to their property notwithstanding that the greater weight of the evidence to the contrary;
- h. in incorrectly finding and concluding in Paragraph nine (9) of the Order's findings of fact that backfill was placed, allegedly, in the tidelands critical area between the alleged existing bulkhead located

underneath the Berrys' house, and their newly constructed vinyl bulkhead;

- i. in incorrectly finding and concluding in Paragraph ten (10) of the Order's findings of fact that the Berrys' newly constructed vinyl bulkhead had allegedly impacted approximately two thousand six hundred and thirty-nine (2,639) square feet of unauthenticated damage to the critical area, notwithstanding the Petitioner's approval of the Berrys' critical area permit and attached certified drawings showing the replacement of their previously existing bulkhead with a new vinyl bulkhead extending 155 feet along the same northern and western property lines, and, also, located approximately twenty (20) feet north from their home's rear elevation line;
- j. in incorrectly finding and concluding that the Berrys' new vinyl bulkhead, which was built along the same northern and western property lines as their previously existing bulkhead, was constructed out of compliance with Permit Number OCRM-07-509, (Permit) notwithstanding DHEC-OCRM's approval of the Berrys' critical area permit and attached certified drawing dated March 7, 2003;
- k. in incorrectly finding and concluding in Paragraph seventeen (17) of the Order's findings of fact that the Berrys' new vinyl bulkhead and concrete driveway, white fence, and two (2) piles used to support their deck, were constructed in the alleged tidelands critical area out of compliance with Permit Number OCRM-07-509 from DHEC-OCRM;
- l. in incorrectly finding and concluding in Paragraph one (1) of the Order's conclusions of law, that the Berrys violated Special Condition No. 1 in that their previously existing bulkhead was not removed, concurrently with the construction of their new vinyl bulkhead;
- m. in incorrectly finding and concluding in Paragraph two (2) of the Order's conclusions of law that the Berrys violated Special Condition No. 2 in that their proposed new vinyl bulkhead was not placed in the same location as their previously existing bulkhead;
- n. in incorrectly finding and concluding in Paragraph three (3) of the Order's conclusions of law that the Berry's construction of their new vinyl bulkhead violates DHEC-OCRM Regulations R.30-1 through 30-11 and, also, Regulation R.30-12(c);

- o. in incorrectly finding and concluding in Paragraph three (3) of the Order's conclusions of law that the Berrys failed to construct their new vinyl bulkhead in accordance with their approved drawings under General Condition No. 11 of their critical area Permit;
- p. in incorrectly finding and concluding that the Berrys are ordered to pay:
~~(1) within fifteen (15) days of the effective date of this Administrative Order, a civil penalty of Fifty-Four Thousand and No/100 (\$54,000.00) Dollars to DHEC-OCRM; and, (2) within fifteen (15) days of the effective date of this Order, to submit to DHEC-OCRM for review and approval, a restoration plan, including corrective action to return the alleged impacted critical area at the Site to pre-existing conditions including the removal of the bulkhead and associated fill, as well as a planting schedule to replace marsh vegetation;~~
- q. The Berrys assert that the findings of fact and conclusions of law set forth in DHEC-OCRM's Administrative Order 07M-012S are in error by: (1) concluding that the tidal marshland between the Berrys' property and the adjoining canal is critical area; (2) finding that the Berrys erected their new vinyl bulkhead too far channelward of their alleged previously existing bulkhead underneath their house; (3) accepting DHEC-OCRM's unauthenticated photographs and measurements of the Berrys' alleged violations as sufficient proof; (4) finding that the Berrys' actions resulted in an alleged permanent loss of productivity from the estuary; and, (5) finding that the Berrys' improperly filled approximately two thousand six hundred and thirty-nine (2,639) square feet of alleged tidelands critical area, notwithstanding DHEC-OCRM's failure to prove the existence and location of a lawfully established critical area line on or adjacent to the Berrys' affected property and that its agents failed to understand the Berrys' approved permitted drawings;
- r. DHEC-OCRM's findings and conclusions in the Order are in error because, as a prerequisite to any of its findings or conclusions, the record must reflect that DHEC-OCRM proved the existence and location of a lawfully established Critical Area Line. DHEC-OCRM did not do this. Without first establishing the location of a valid Critical Area Line, DHEC-OCRM cannot demonstrate that it had any regulatory jurisdiction over the Berrys' property. S.C. Code Ann. § 48-39-210 (1976) mandates the manner in which Critical Area Lines are established. In relevant part the statute provides:

A critical area delineation for coastal water or tidelands established by the department is valid only if the line is depicted on a survey performed by a professional surveyor, the line is reviewed by department, department validates the location of the boundaries of the ~~coastal waters or tidelands critical area on the~~ survey by affixing a stamp and date to the survey, and the survey contains clearly on its face in bold type the following statement: "The area shown on this plat is a general representation of permit authority on the subject property. Critical areas by their nature are dynamic and subject to change over time. By generally delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not."

The statute further provides that "[a] critical area line established pursuant to subsection (B) that affects subdivided residential lots expire after three years from the department date on the survey described in subsection (B)..." The record is clear that in DHEC-OCRM's prosecution of this case, it has failed to identify any certified documents lawfully establishing a critical area line behind the Berrys' newly constructed vinyl bulkhead situated on their northern and western lines. For example, DHEC-OCRM in response to the Berrys' Freedom of Information Act request received by certified mail on May 18, 2009, failed to produce any certified critical area line documentation on or adjacent to the Site and/or their affected property. Mr. Briggs, DHEC-OCRM's Enforcement Project Manager in Horry County, stated in the Order that vegetation is the primary factor in determining where a critical area line should be located, but he admitted that he had not visited the Berrys' property until after the Berrys' vinyl bulkhead was completed on July 19, 2007. When he visited the site, the area behind the vinyl bulkhead was backfilled. Further, DHEC-OCRM's Order contained no scientific or objective evidence to support its findings or conclusions, such as soil boring reports or excavation results, to establish where the critical area boundary existed. Finally, DHEC-OCRM's use of unauthenticated measurements and

photographs is an inadequate evidentiary substitute to prove that allegedly two thousand six hundred and thirty-nine (2,639) square feet of critical area had been allegedly impacted since no lawful documentation of a valid critical area line exists at the site. South Carolina law provides that statutory construction requires tribunals "[t]o effectuate legislative intent." Hitachi Data Systems Corporation v. Letterman, 309 S.C. 174, 178 (1992). "The cardinal rule of statutory construction is that words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation." Id. (internal citations omitted). Applying the rules of statutory construction in the subject case requires a finding that DHEC-OCRM did not establish a valid critical area designation. While that failure in and of itself is not dispositive on the issue concerning whether or not the Berrys' vinyl bulkhead was constructed in compliance with the Permit, it is directly relevant to whether or not DHEC-OCRM has jurisdiction over the Berrys' property and specifically whether or not the vinyl bulkhead as constructed lies within a critical area designation. Assuming, in arguendo, that DHEC-OCRM has jurisdiction over the Berrys' property, DHEC-OCRM's failure to establish in the Order a valid critical area designation is dispositive of whether or not DHEC-OCRM met its burden of proof in establishing the Berrys' alleged violations. DHEC-OCRM did not. Accordingly, to the extent that the Berrys' new vinyl bulkhead is constructed in conformity with the approved certified drawings, DHEC-OCRM will not be able to meet its burden of proof in establishing that the Berrys violated their Critical Area Permit;

- s. Further, the Berrys assert the following affirmative defenses, including, but not limited to, that no valid claim exists against them under Rule 12(b)(6), SCRAP, that DHEC-OCRM failed to meet its burden of proof, that DHEC-OCRM lacked jurisdiction to prosecute this case, and that Governmental Estoppel applies against DHEC-OCRM in prosecuting this case based on the acts and omissions of its agents, employees, and representatives in permitting the Berrys' new vinyl bulkhead; and
- t. The Berrys' procedural and substantive due process rights under the United States and South Carolina Constitutions have been violated in this matter due to DHEC-OCRM's failure to establish in its Order a valid critical area line designation in proximity to the Berrys' property. "Procedural due process imposes constraints on governmental decisions

which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.” Kurschner v. City of Camden Planning Comm’n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). “Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) ~~the right to confront and cross-examine witnesses.~~” Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). Procedural due process requirements are not technical, and no particular form of procedure is necessary. Sloan v. S.C. Bd. of Physical Therapy Exam’s, 370 S.C. 452, 485, 636 S.E.2d 598, 615 (2006). Rather, due process is flexible and calls for such procedural protections as the particular situation demands. *Id.* The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. S.C. Dep’t of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). To prevail on a claim of denial of due process, there must be a showing of substantial prejudice. Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm’n, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984).

In the present case, the Berrys have been substantially prejudiced by DHEC-OCRM’s failure to prove the existence and location of a lawfully established Critical Area Line at the site. Notwithstanding at the same time, DHEC-OCRM, also, found and concluded that the Berrys had unlawfully impacted approximately two thousand six hundred and thirty-nine (2,639) square feet of alleged critical area on their property. Accordingly, the Berrys have not been afforded adequate notice and the procedural protections and safeguards by DHEC-OCRM as this particular situation demands to adequately defend themselves in this matter against the findings and conclusions set forth in its Administrative Order 07M-012S dated April 26, 2010.

V. RELIEF REQUESTED

WHEREFORE, the Respondents respectfully pray that this Honorable Court:

- a. carefully review the record in this case, conduct a final review of the department’s action “de novo,” and issue a Final Order overturning the Petitioner’s Administrative Order 07M-012S and Decision dated April 26, 2010, with prejudice;

- b. order the Petitioner to pay the Berrys' costs and attorney fees incurred by them in this action; and
- c. grant the Berrys such other and further relief as the Court may deem equitable, just, and proper.

Respectfully submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

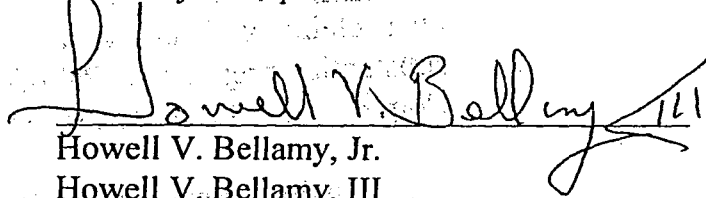
1000 29th Avenue North

P.O. Box 357, N.

Myrtle Beach, South Carolina 29578

(843) 448-2400

Counsel for Respondents

 121

Howell V. Bellamy, Jr.

Howell V. Bellamy, III

Myrtle Beach, South Carolina

July 8, 2010.

EXHIBIT A



000062

C. Earl Hunter, Commissioner

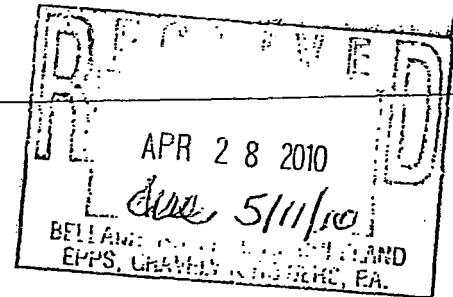
Promoting and protecting the health of the public and the environment

CERTIFIED MAIL

ARTICLE NUMBER 7009 2250 0003 6002 1247

April 27, 2010

Mr. Tommy W. Berry, Sr.
Mrs. Jo. S. Berry
c/o Mr. Howell V. Bellamy, Jr.
Bellamy, Rutenberg, Copeland, Epps,
Gravelly & Bowers, P.A.
P.O. Box 357
Myrtle Beach, SC 29578



Re: Administrative Order 07M-012S/Administrative Order of Revocation
Berry, Tommy W. & Jo S.
Horry County

Mr. and Mrs. Berry

Enclosed, you will find a true copy of Administrative Order number 07M-012S (Order) regarding the unauthorized fill and bulkhead installed in the tidelands critical area. This Order was signed by the Deputy Commissioner of the South Carolina Department of Health and Environmental Control Office of Ocean Coastal Resource Management and executed on April 26, 2010.

Please comply with the requirements of the Order as outlined on page six and seven. Should you choose to appeal this Order, you must do so within 15 days of receipt by following the enclosed instructions. This Order shall become final as written if a proper request is not filed within fifteen (15) days of mailing of this Order.

Also enclosed you will find a true copy of an Administrative Order of Revocation for permit number OCRM-07-509.

Thank you for your prompt attention to this matter. If you have any questions you may contact me at (843) 238-4528 x 149.

Respectfully,

Sean M. Briggs
Enforcement Project Manager
Regulatory Division

Enclosures (2):

1. Administrative Order of Revocation, P/N OCRM-07-509
 2. Administrative Order 07M-012S (with Attachments)
-

cc Mr. & Mrs. Berry
Davis Whitfield-Cargile, Legal Counsel DHEC OCRM
File # 07M - 012S



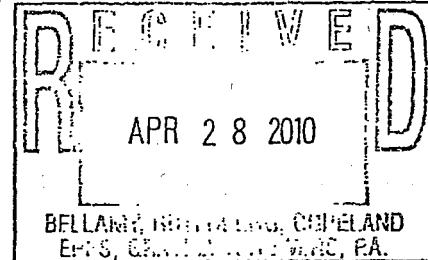
C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

April 20, 2010

CERTIFIED MAIL**ARTICLE NO. 7009 2250 0003 6002 1247**

Mr. Tommy W. Berry
 c/o Mr. Howell V. Bellamy, Jr.
 Bellamy, Rutenberg, Copeland, Epps,
 Gravely & Bowers, P.A.
 P.O. Box 357
 Myrtle Beach, SC 29578



RE: ADMINISTRATIVE ORDER OF REVOCATION
P/N# OCRM-07-509 (Permit), Tommy W. Berry

Mr. Berry:

This is in reference to the bulkhead constructed in the tidelands critical area on and adjacent to "K" Canal and Williams Creek at 317 49th Avenue N, North Myrtle Beach, Horry County, South Carolina (TMS#145-02-24-019). This letter will serve as an order of revocation of the above-referenced permit by the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (DHEC OCRM). As stated earlier, this permit, for the construction of a bulkhead, was issued in accordance with DHEC OCRM Regulation R.30-12(C), which governs bulkhead projects, and also in accordance with DHEC OCRM Regulations R.30-1 through 30-11, where applicable. This permit is being revoked on the grounds that you failed to construct the bulkhead according to the plans attached to the Permit and pursuant to General Condition # 11 of the Permit.

On August 2, 2007, a Notice of Intent to Revoke was sent to your home based on the above-mentioned facts and you received this notice on August 3, 2007. You were given a period of twenty (20) days from the date of receipt of the notice to respond. Since this time, you have failed to return your structure to compliance with the issued Permit. Pursuant to DHEC OCRM Regulation R.30-8(A) this permit is hereby revoked.

Sincerely,

Blair N. Williams
 Wetland Section Manager
 Regulatory Division

cc: Tantira S. Marshall, DHEC OCRM Wetland Project Manager
 Sean M. Briggs, DHEC OCRM Enforcement Project Manager
 Davis Whitfield-Cargile, DHEC OCRM Legal Counsel

CERTIFIED A TRUE COPY
 OF DEPARTMENT OF HEALTH AND
 ENVIRONMENTAL CONTROL RECORDS
 JMB

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

IN RE: TOMMY W. BERRY SR.
JO S. BERRY
OCRM-07-509
HORRY COUNTY

ADMINISTRATIVE ORDER
07M-012S

Tommy W. Berry, Sr. and Jo S. Berry (Mr. and Mrs. Berry) are responsible for unauthorized fill and a bulkhead placed in the tidelands critical area regulated by the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (DHEC OCRM). The unauthorized activity in the tidelands critical area is a violation of the South Carolina Coastal Zone Management Act. After failing to resolve this matter through a Consent Order, and in accordance with DHEC OCRM regulations and enforcement policy, this Administrative Order is now being issued.

FINDINGS OF FACT

1. Mr. and Mrs. Berry are the owners of certain property abutting the tidelands critical area located on and adjacent to "K" Canal and Williams Creek at 317 49th Avenue N, North Myrtle Beach, Horry County, South Carolina (TMS#145-02-24-019, Site). Mr. and Mrs. Berry, as the property owners, are responsible for the unauthorized activity at the Site.
2. Aerial photographs taken in 2005 by Horry County show the existence of critical area vegetation adjacent to Mr. and Mrs. Berry's house in the now impacted critical area at the Site. (See Attachment A).
3. The previously existing North-facing portion of the bulkhead was located generally underneath the length of the house. The previously existing West-facing portion of the bulkhead extended approximately twenty-two (22) feet beyond the edge of the house. The previously existing bulkhead is clearly shown on Page 1 of Attachment B.

4. On March 7, 2007, DHEC OCRM issued permit number OCRM-07-509 (Permit) to Mr. Berry. The Permit authorized the replacement of an existing bulkhead at the Site. The Permit required Mr. Berry to install the new bulkhead in the same location as the existing one, concurrently with the removal of the existing bulkhead. The Permit did not authorize fill at the Site.
5. On July 17, 2007, DHEC OCRM received a complaint that the bulkhead at the Site was being constructed twenty (20) feet channelward of the existing bulkhead and large amounts of fill were being placed in the tidelands critical area. Photographs of this activity were forwarded to DHEC OCRM and received July 19, 2007 (See Attachment B).
6. On July 19, 2007, Sean M. Briggs (Mr. Briggs), DHEC OCRM Enforcement Project Manager, conducted an inspection at the Site and observed that the bulkhead, consisting of vinyl sheets, was being built approximately twenty (20) feet channelward of the existing bulkhead in the tidelands critical area along the northern property line and approximately ten (10) feet channelward on the western property line. Mr. Briggs also observed large amounts of dirt, used as backfill, in the tidelands critical area between the previous bulkhead and the newly constructed bulkhead. Photographs were taken. (See Attachment C).
7. On July 23, 2007, DHEC OCRM issued a Cease and Desist Directive via certified mail to Mr. Berry for the unauthorized activity described above at the Site. Mr. Berry signed for the directive on July 24, 2007.
8. On July 25, 2007, a Notice of Violation and Admission Letter, including proposed Findings of Fact, were sent via certified mail to Mr. Berry. Delivery of these documents to Mrs. Berry was confirmed received with a certified mail receipt on July 26, 2007. The Admission Letter required a written response from Mr. Berry by August 14, 2009.
9. On July 31, 2007, Mr. Briggs conducted a follow up inspection at the Site following the receipt of both a Cease and Desist Directive and Notice of Violation by the Berrys and observed that the bulkhead was completely installed along both the northern and western

property lines including the whaler, but with the exception of the cap. Backfill had been placed in the tidelands critical area between the previous bulkhead and the newly constructed bulkhead to an elevation one foot below the top of the new bulkhead. Photographs were taken. (See Attachment D).

10. On August 2, 2007, Tanitra S. Marshall (Ms. Marshall), DHEC OCRM Wetland Project Manager, issued a Notice of Intent to Revoke the Permit to Mr. Berry. The notice provided a timeframe to respond. Delivery of this document to Mrs. Berry was confirmed received with a certified mail receipt on August 3, 2007. The Permit was suspended on August 2, 2007 and has been revoked in accordance with the attached order of revocation.
11. On August 13, 2007, Mr. Briggs received a letter from Mr. Howell V. Bellamy, Jr. (Mr. Bellamy), Mr. and Mrs. Berry's legal counsel. Mr. Bellamy indicated in the cover letter that this communication served as the Berrys' response to the various inquiries preponderated to them by DHEC OCRM. The letter contained a chronology of events from Mr. and Mrs. Berry as they perceived them to have happened. Mr. and Mrs. Berry stated that, "to the best of their knowledge and with the assistance of surveys in our possession we replaced the bulkhead." They further stated that, "We have never once thought that what we were doing was not in compliance with what DHEC would approve."
12. From August 2007 to February 2009, an attorney with DHEC OCRM attempted to negotiate a resolution through consent with the Berrys' legal counsel, Mr. Bellamy.
13. Aerial Site photographs taken in 2008 by Horry County show complete destruction of critical area vegetation and the filling of tidelands critical area at the Site. (See Attachment E). Through calculating area by using measurements obtained from satellite imagery, surveys, and field measurements, the disturbed area impacts approximately two thousand six hundred and thirty-nine (2,639) square feet of tidelands critical area.
14. On February 25, 2009, an enforcement conference was held at the Myrtle Beach office of DHEC OCRM. Mr. Briggs explained the critical area violations in detail to Mr. and Mrs. Berry as well as to Mr. Bellamy. Mr. and Mrs. Berry stated that they built the bulkhead according to the plans included in the Permit. They also stated that a bulkhead previously existed at the location where the bulkhead is currently placed. Mr. Bellamy stated that Mr. and Mrs. Berry have neighbors that could attest to the fact that the existing bulkhead was

previously in a location approximate to the current placement of the new bulkhead. No explanation was given for the fill that was placed in the tidelands critical area.

15. On April 7, 2009, Mr. Briggs received, from Mr. Bellamy, four (4) letters from Mr. and Mrs. Berry's neighbors stating that they, "[are] familiar with the [Site]. Prior to March 7, 2007, there was evidence of a bulkhead on the North West property line and on the property line facing Williams Creek." Mr. Bellamy stated in his letter that there were 30 more individuals that could make a similar statement and that he was in the process of gathering their statements. As of January 21, 2010, no further statements have been received by DHEC OCRM.
16. On April 28, 2009, Mr. Briggs responded to Mr. Bellamy confirming receipt of his letter and the four (4) statements from Mr. and Mrs. Berry's neighbors. Mr. Briggs explained that the statements did not mitigate or disprove the violations set forth in the Notice of Violation and Admission Letter and discussed at the February 25, 2009, enforcement conference. Mr. Briggs re-stated the fact that the bulkhead built at the Site was constructed out of compliance with the Permit and that the associated backfill, impacting approximately two thousand six hundred and thirty-nine (2,639) square feet of tidelands critical area, was placed without authorization from DHEC OCRM. Mr. Briggs also indicated that in the absence of an agreement in the form of a Consent Order, an Administrative Order would likely be issued.
17. On January 12, 2010, Mr. Briggs inspected the Site after reviewing 2009 aerial photographs from Horry County (See Attachment F) and seeing the addition of landscaping, fencing, and a concrete pad used as a driveway placed on top of the fill in the tidelands critical area. Consent was granted for the purpose of this inspection by Mrs. Berry through Mr. Bellamy. The concrete pad measured thirty-seven feet four inches by nineteen feet eight inches (37' 5" x 19' 8"). The fence measured twenty-four (24) feet on the eastern facing side of the property, eighty-four (84) feet on the northern facing side of the property, and forty-eight (48) feet on the western facing side of the property. The tidelands critical area that had been filled was landscaped with sod and ornamental trees. Additionally two (2) piles had been placed through the fill in the tidelands critical area to support a second story deck on the rear of the house. Photographs were taken. (See Attachment G)

18. DHEC OCRM finds that the Berrys filled in approximately two thousand six hundred and thirty-nine (2,639) square feet of tidelands critical area and constructed a bulkhead in the tidelands critical area without a permit from DHEC OCRM. The bulkhead is constructed out of compliance with the Permit. Additionally, the concrete driveway, sod, pilings and other alterations to the tidelands critical area were made by the Berrys without a permit from DHEC OCRM.

CONCLUSIONS OF LAW

The filling of the tidelands critical area and installation of a bulkhead in an unauthorized location in the tidelands critical area adjacent to Mr. and Mrs. Berry's property was performed without authorization from DHEC OCRM, in violation of the law. Based on the above findings, Mr. and Mrs. Berry have violated the following:

1. **The South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-130 (A) and 23A S.C. Code Ann. Regs. 30-2(B), as amended**, which require that any utilization or alteration of the critical area must be permitted or otherwise legally authorized by DHEC OCRM. Specifically, Mr. & Mrs. Berry constructed a bulkhead and concrete driveway, installed a fence, and placed fill material and two (2) piles that support a deck in the tidelands critical area without a permit from DHEC OCRM.
2. **Critical Area Permit and Coastal Zone Consistency Certification OCRM-07-509:**
 - a) **Special Condition # 1**, in that the existing bulkhead was not removed concurrently with the new bulkhead construction, and
 - b) **Special Condition # 2**, in that the proposed bulkhead was not placed in the same location as the existing bulkhead.

Furthermore, Critical Area Permitting Regulations, 23A S.C. Code Ann. Reg. 30, *as amended*: R.30-12(G)(2)(a), states that the creation of commercial and residential lots strictly for private gain is not a legitimate justification for the filling of wetlands. Additionally, Critical Area Permit and Coastal Zone Consistency Certification OCRM-07-509, General Condition # 12 provides that when

the Permittee is notified that DHEC OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.

The South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-170 provides that any person determined to be in violation shall be liable for, and may be assessed a civil penalty of not less than one hundred dollars nor more than one thousand dollars per day of violation. It also provides that whenever DHEC OCRM finds that a person is in violation of any permit, regulation, standard, or requirement under this chapter, DHEC OCRM may issue an order requiring the person to comply with the permit, regulation, standard, or requirement, including an order requiring restoration when deemed environmentally appropriate by DHEC OCRM. In addition, §48-39-170 provides that DHEC OCRM may bring a civil enforcement action under this section as well as seeking appropriate injunctive relief under §48-39-160.

NOW, IT IS THEREFORE ORDERED THAT Mr. and Mrs. Berry shall:

1. Within fifteen (15) days of the effective date of this Administrative Order (Order), pay a civil penalty of fifty-four thousand dollars (\$54,000.00) to DHEC OCRM. The penalty shall be in the form of a check made payable to SCDHEC and reference Order number 07M-012S.
2. Within fifteen (15) days of the effective date of this Order, submit to DHEC OCRM for review and approval, a restoration plan, including corrective action to return the impacted critical area at the Site to pre-existing conditions including the removal of the bulkhead and associated fill, as well as a planting schedule to replace marsh vegetation. This restoration plan shall also include but not be limited to the following:
 - a) A time period for completion with a schedule of remedial measures to be taken from implementation through completion,
 - b) A monitoring plan for 2 years from the date of completion, including identification of a reference site for use in determining success of the restoration plan,
 - c) A current survey including all existing structures at the Site,
 - d) Procedures for reporting the progress of the restoration and contact information,
 - e) Steps for reimplementation of the restoration plan should the original planting fail.

3. Within fifteen (15) days of receipt of any comment from DHEC OCRM, adequately revise and resubmit the restoration plan.
4. Upon receipt of written approval by DHEC OCRM of the restoration plan, begin the restoration plan within thirty (30) days and complete the restoration in accordance with the ~~timeframe set forth therein.~~ Once approved by DHEC OCRM, the restoration plan shall become a fully enforceable part of this Order.
5. Notify DHEC OCRM, in writing, of the completion of the corrective action within seven (7) days of completion. Following this notification, DHEC OCRM will perform an inspection of the Site to ensure compliance with the Act, terms of this Order, and the approved restoration plan.
6. All communication regarding this Order should be directed to:

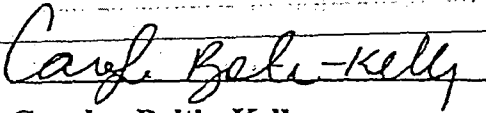
Attn: Sean M. Briggs
Enforcement Project Manager
Office of Ocean and Coastal Resource Management
927 Shine Avenue
Myrtle Beach, SC 29577

IT IS FURTHER ORDERED THAT failure to comply with any provision of this Order within the time specified above shall be grounds for additional daily monetary sanctions and / or the institution of a court action.

AND IT IS SO ORDERED.

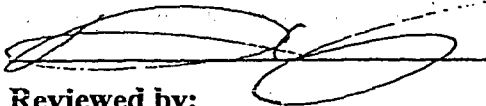
[Signatures on following page]

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT



Carolyn Boltin-Kelly
Deputy Commissioner

Date: 4/26/10



Reviewed by:
DHEC OCRM Legal Counsel

Date: 4/26/10



Rheta Geddings DiNovo
DHEC OCRM Enforcement Program

Date: April 22, 2010

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the decision has been mailed to the applicant or respondent, ~~unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.~~
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393.

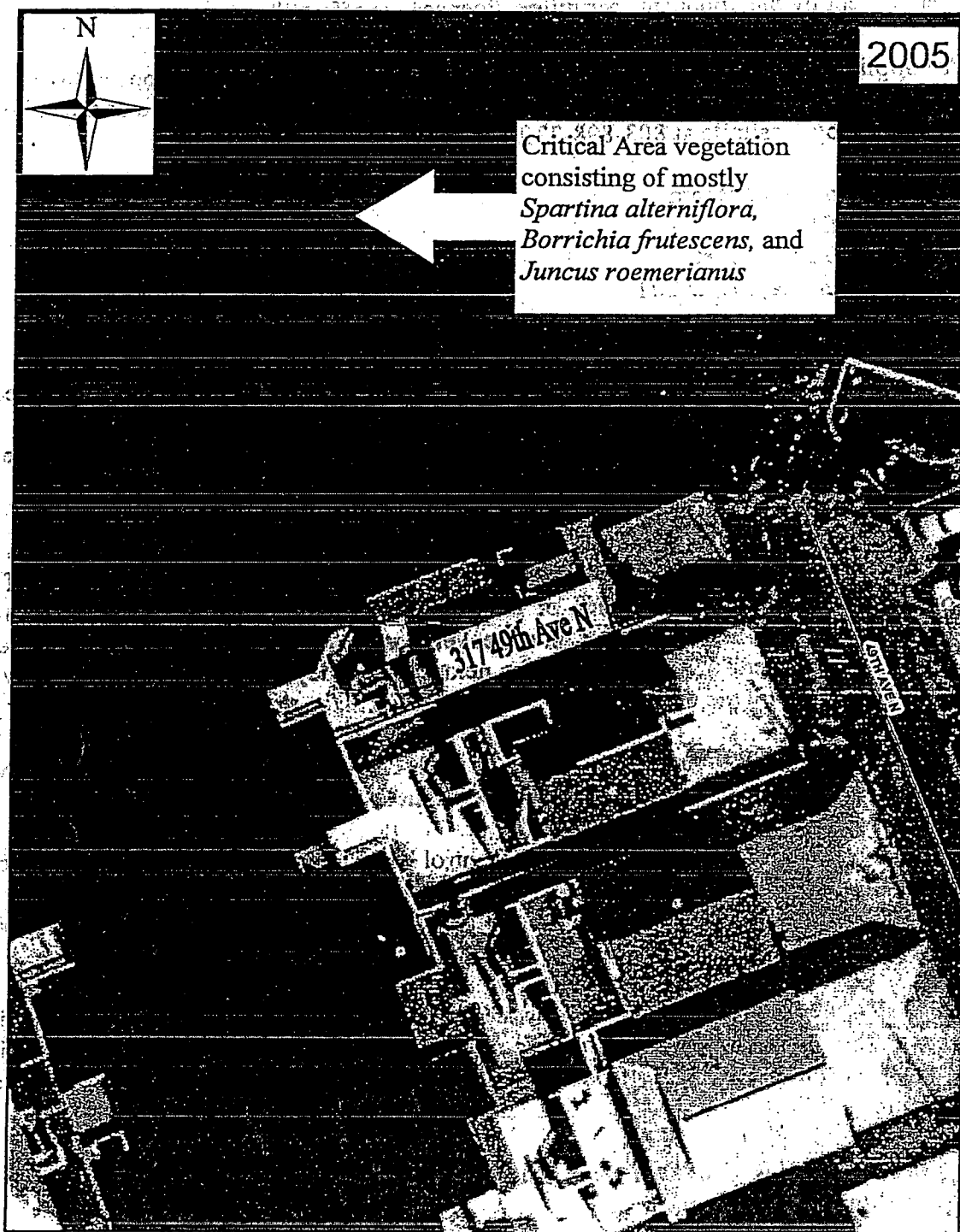
Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201
3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

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

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT A

Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2005 Digital Orthophoto by Horry County



South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT B

Photos of 317 49th Ave North, North Myrtle Beach, Horry County, SC submitted by the complainant and received by DHEC OCRM on 7/19/07

Berry, Tommy W., Sr. and Jo S.



This photograph shows the placement of the new wall on the northern side of the lot approximately 20 feet channelward. The existing wall can be seen, still intact, underneath the cantilevered portion of the house. Also visible is the fill material placed on top of saltwater wetland vegetation in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT B

Photos of 317 49th Ave North, North Myrtle Beach, Horry County, SC submitted by
the complainant and received by DHEC OCRM on 7/19/07

Berry, Tommy W., Sr. and Jo S.



This photograph shows the placement of the new wall on the western side of the lot, and approximately 20 feet channelward. This photograph was taken after the previous photograph. Again, the fill material being placed in the tidelands critical area can be seen just behind the front facing wall.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT B

Photos of 317 49th Ave North, North Myrtle Beach, Horry County, SC submitted by
the complainant and received by DHEC OCRM on 7/19/07

Berry, Tommy W., Sr. and Jo S.



This picture is taken facing the southeast and shows the northern side of the property.
Note the large amounts of fill placed between the new bulkhead and existing bulkhead in
the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT C

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

DATE: 10/15/2009
FILE: Berry, Tommy W., Sr. and Jo S. 07M-012S
AUTHOR: Sean M. Briggs
RE: Inspection Photographs from 7/19/07
Camera: HP Photosmart M425
Media: Digital

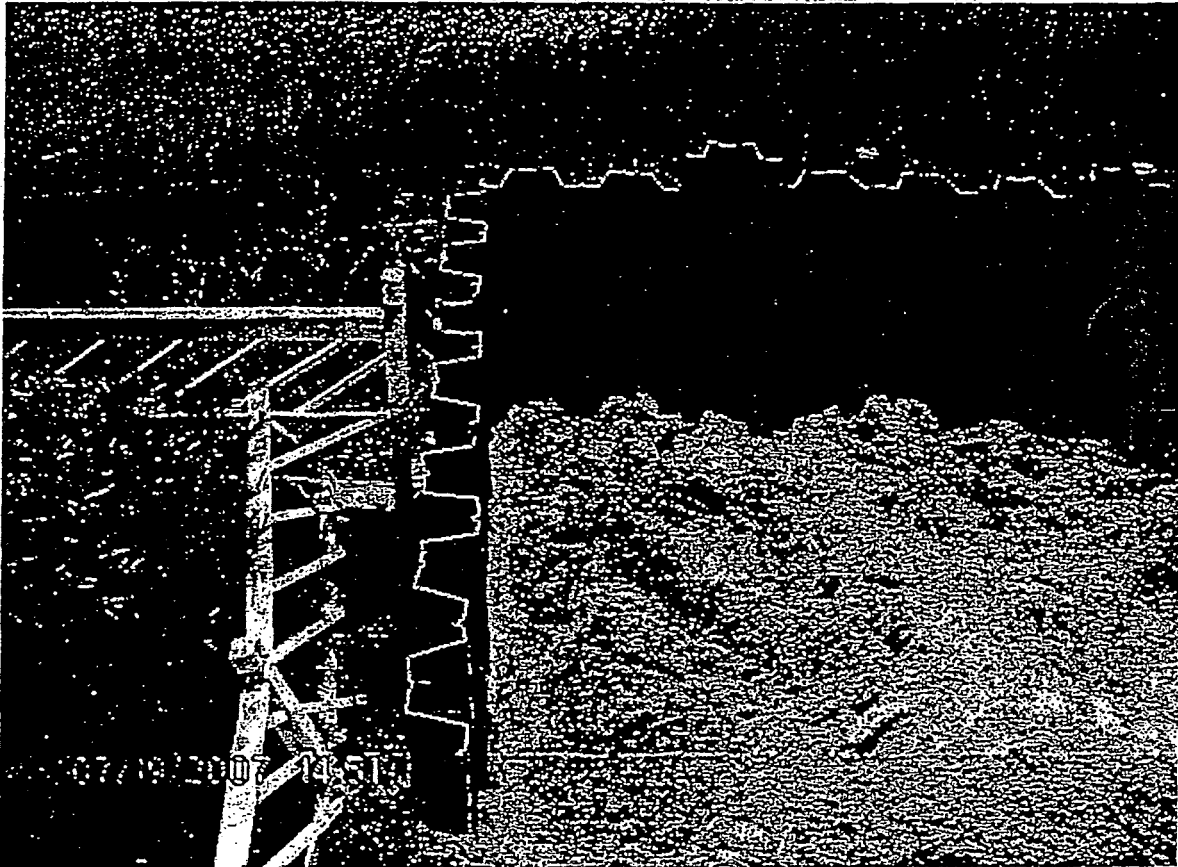
On 7/19/07, the author inspected the Site and documented the bulkhead under construction with the vinyl sheets installed as well as a large amount of dirt used as backfill in the tidelands critical area between the previous bulkhead and the new bulkhead. The purpose of this inspection was to document the reported bulkhead being constructed out of compliance with the permit and the unauthorized fill being placed in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT C

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the southwestern corner of the new bulkhead and fill in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT C

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the northwestern corner of the new bulkhead and fill in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT C

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the northern side of the lot with new bulkhead and fill in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT D

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

DATE: 10/15/2009
FILE: Berry, Tommy W., Sr. and Jo S. 07M-012S
AUTHOR: Sean M. Briggs
RE: Inspection Photographs from 7/31/07
Camera: HP Photosmart M425
Media: Digital

On 7/31/07, the author inspected the Site and documented the bulkhead completely installed with the exception of the cap. This inspection occurred following the issuance of both a Cease and Desist Directive and a Notice of Violation to the Berrys.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT D

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.

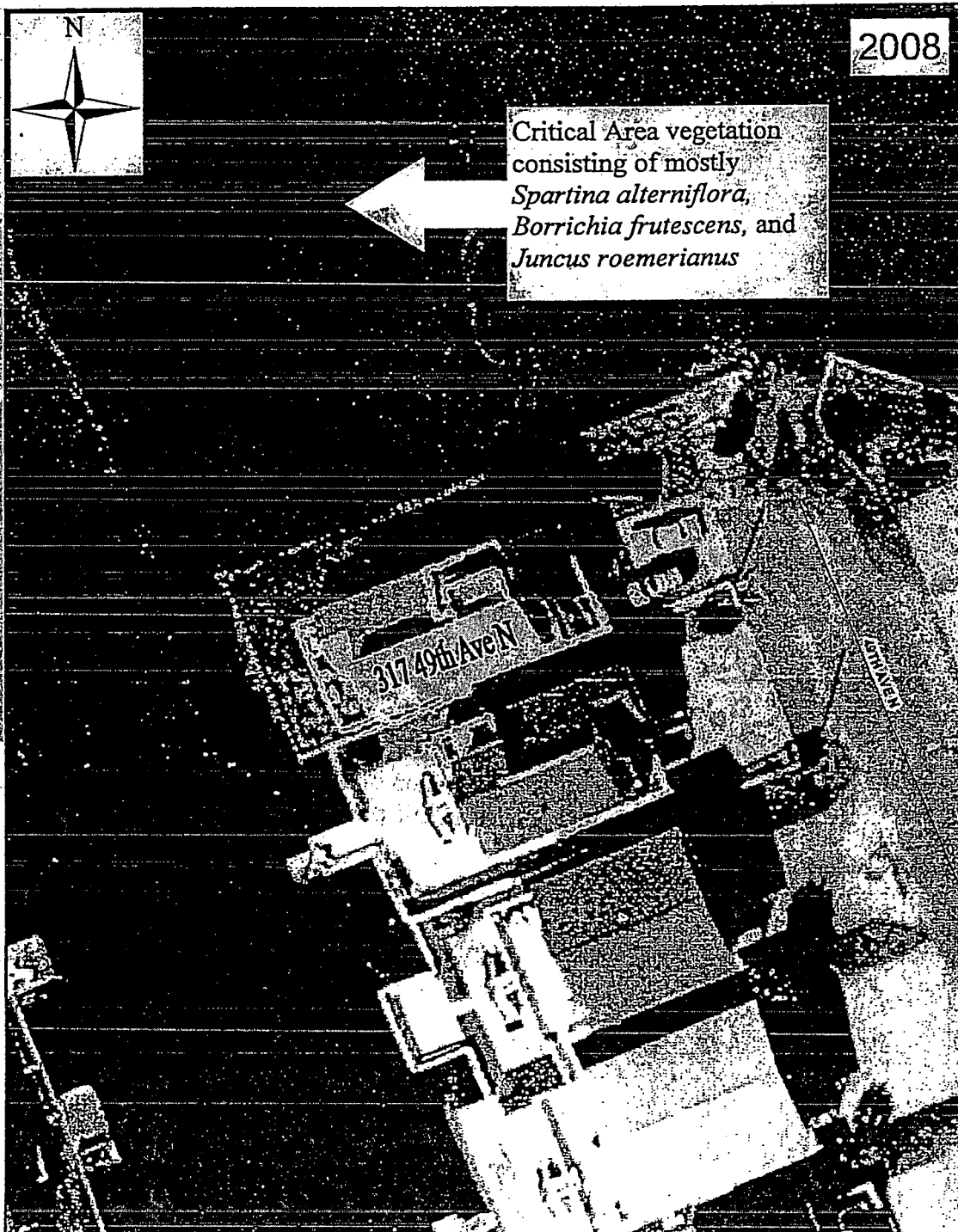


This photograph shows the western facing portion of the bulkhead with the whaler installed. The whaler has been highlighted in this photo for illustrative purposes.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT E

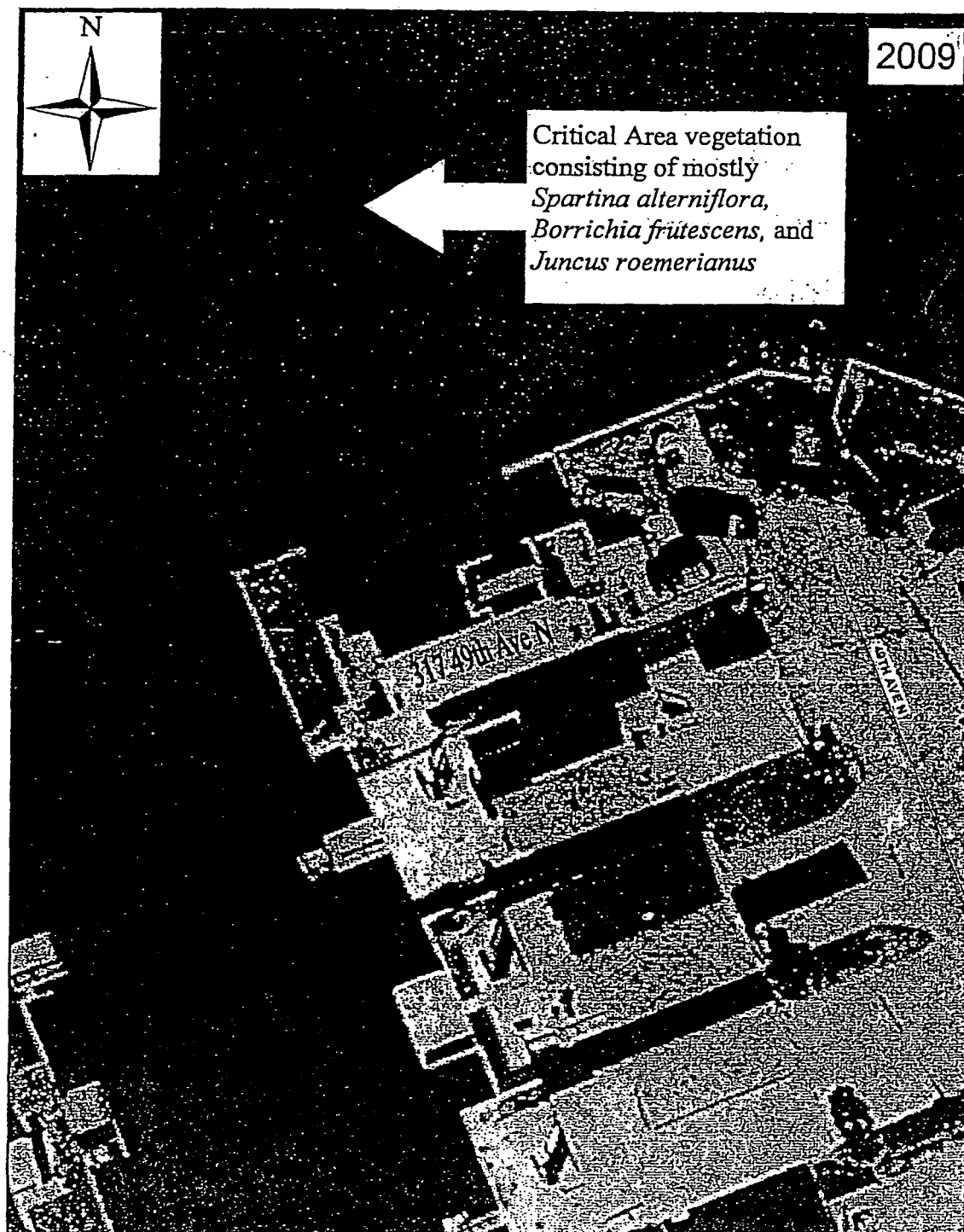
Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2008 Digital Orthophoto by Horry County



South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT F

Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2009 Digital Orthophoto by Horry County



South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

DATE: 1/14/2010
FILE: Berry, Tommy W., Sr. and Jo S. 07M-012S
AUTHOR: Sean M. Briggs
RE: Inspection Photographs from 1/12/10
Camera: HP Photosmart M425
Media: Digital

On 1/12/10, the author inspected the Site and documented additional improvements to the Site. The purpose of this inspection was to document these improvements which included a concrete pad, fencing, and landscaping.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the concrete pad used as a part of the driveway that was installed on top of the fill placed in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the length of the north facing portion of the bulkhead. A new fence is visible as well as landscaping and a portion of the concrete pad in the foreground.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



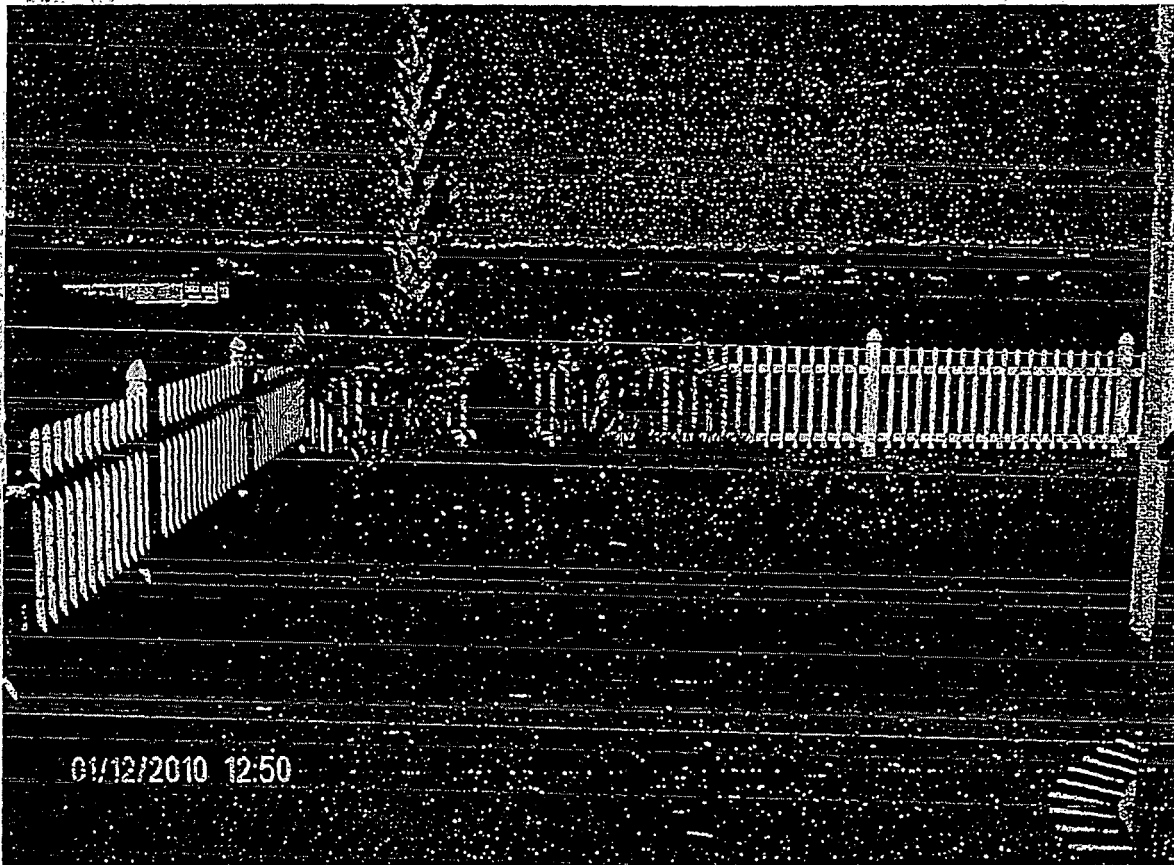
This photograph shows the northern side of the lot that has been landscaped, including the placement of sod. Two piles for a new deck can be seen in the right had side of the picture.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the northwestern corner of the lot with the landscaping and the fence in that area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the southwestern corner of the lot with landscaping and the fence in that area.

EXHIBIT B

BOARD:
Paul C. Aughtry, III
Chairman

Edwin H. Cooper, III
Vice Chairman

Steven G. Kisner
Secretary



000093

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

MR. HOWELL V. BELLAMY, III
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. BOX 357
MYRTLE BEACH, SC 29578-

05/22/2009

Request Number : 0905116

RE: TOMMY W. BERRY- PERMITTEE
311 49TH AVENUE N.
N. MYRTLE BEACH, SC
PERMIT #OCRM-07-509

Invoice Number : Q023058
Invoice Date : 05/22/2009
Invoice Amount : 22.50

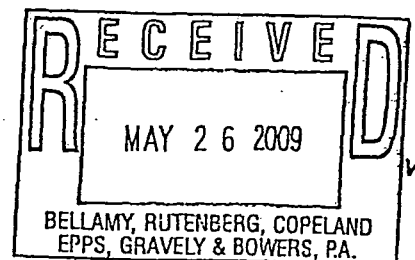
DEAR MR. BELLAMY,

PLEASE FIND ENCLOSED THE INFORMATION YOU REQUESTED AS PROVIDED BY
THE FREEDOM OF INFORMATION ACT.

PLEASE NOTE THE ABOVE MENTIONED INVOICE AND MAKE REFERENCE TO
THE INVOICE NUMBER WHEN PAYMENT IS SUBMITTED.

IF YOU HAVE ANY QUESTIONS, PLEASE FEEL FREE TO CONTACT THE
FREEDOM OF INFORMATION CENTER AT (803) 898-3882.

THANK YOU.



SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

TOMMY W. BERRY PETITIONER EXHIBIT "B"

BOARD:
Paul C. Aughtry, III
Chairman
Edwin H. Cooper, III
Vice Chairman
Steven G. Kisner
Secretary



000094

BOARD:
Henry C. Scott

M. David Mitchell, MD

Glenn A. McCall

Coleman F. Buckhouse, MD

SC DEPARTMENT OF HEALTH & ENVIRONMENTAL CONTROL

PROMOTE PROTECT PROSPER
FREEDOM OF INFORMATION
Promoting and protecting the health of the public and the environment

Bill To :

Invoice Date : 05/22/2009

Invoice Number: QO23058-1

Attn : HOWELL BELLAMY,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

P.O. BOX 357

MYRTLE BEACH, SC 29578-

Request#: 0905116

RE: TOMMY W. BERRY- PERMITTEE
311 49TH AVENUE N.
N. MYRTLE BEACH, SC
PERMIT #OCRM-07-509

Research Cost -> @Hours :	0.00 x \$ 0.00	= \$	0.00
Clerical Cost -> @Hours :	0.00 x \$ 0.00	= \$	0.00
Pg Copy Cost -> @Pages :	90 x \$ 0.25 x 1	= \$	22.50
Fixed Cost -> :			0.00
TOTAL --->		\$	22.50

(Please Retain This Upper Portion For Your Records)

I N V O I C E

FOR

SC DEPARTMENT OF HEALTH & ENVIRONMENTAL CONTROL
FREEDOM OF INFORMATION

TO INSURE PROPER CREDIT, Please RETURN this INVOICE with your payment. Please INCLUDE the REQUEST# and INVOICE NUMBER on your remittance. PAYMENT is DUE UPON RECEIPT, LATE after 30 Days. INTERNET Payments can now be made on-line at WWW.DHEC.SC.GOV

REQUEST #
0905116

INVOICE NUMBER
QO23058-1

TOTAL INV
\$ 22.50

PLEASE INDICATE AMOUNT PAID \$ _____

RETURN this INVOICE with PAYMENT to: Bureau of Finance
SC DHEC
PO Box 100103
Columbia, SC 29202-3103

>>>> PAYABLE UPON RECEIPT .. LATE AFTER 30 DAYS <<<<

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

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

TOMMY W. BERRY PETITIONER EXHIBIT "B"

Regulatory Programs Division Decision Document
Impact Assessment for BULKHEADS
Office of Ocean and Coastal Resource Management - SCDHEC

ADMINISTRATIVE SUMMARY OF REVIEW

Commenting Agencies

SCDNR: 2/21/07 MC Poy
 SPA: 2/23/07 x
 SCDAH: _____
 SCDA: _____
 Others: _____

Adjoining Property Owners

Wholesale Distributing, Inc
 Frank T. Boysia

Agent or Contact

H. Wayne Beam
 Business Ph: (843) 814-7145
 Fax Number: (803) 256-8062

*NOTE: See list of Interested Persons on Reverse

APO's Notified? Please Initial & Date: 2/16/07 Poy

Local Government Notified? Please Initial & Date: 2/16/07 Poy

APPLICATION REQUIREMENTS

Please Circle When Complete YES.

	<u>Date Received:</u>	<u>Letters to Applicant:</u>
Administrative Fee received	<u>2/5/07</u>	1. _____
Aff. Of Ownership received	<u>2/5/07</u>	2. _____
Certified Deed, plat or lease	<u>2/5/07</u>	3. _____
State Newspaper ad received	_____	4. _____
Date Published	_____	5. _____
Which Paper	_____	6. _____
County News ad received	<u>02/21/07</u>	7. _____
Date Published	<u>02/08/07</u>	8. _____
Which Paper	<u>MB Herald</u>	9. _____

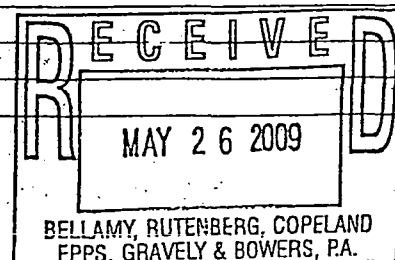
LETTER OF OBJECTIONS SUMMARY

Objector(s) name and address that must be notified by certified mail and copy of the decision.
 (has to specifically request a copy of the decision in the letter)

NA

Objector(s) name and addresses that must be notified by issue memo with no copy of the decision
 (does not specifically request a copy of the decision in the letter)

NA



TECHNICAL SUMMARY OF REVIEW

Permit Name: Berry, T.W.

Decision:

Permit:

Permit with Conditions:

Deny:

I. Background Information:

Database ID# 57456

Permit Number: OCRM-07-509

P/N Date: February 16, 2007

Date Received: February 2, 2007

Permit Type: Critical

Other

Agency Permits:

County: Horry

Water Body: Williams Creek

Location

Description: 317 49th Ave N, Cherry Grove Section, N Myrtle Beach

II. Project Description and Stated Purpose:

Description: Replace a 155' wooden bulkhead with vinyl

Purpose: Erosion control

III. Summary of Public and Agency Comments (List by name, date & comment summary; if none, so indicate):

Federal Agencies: NA

State Agencies: SCDNR 02/21/07 No comment
SPA 02/21/07 No Comment

Local Agencies: NA

Public Comment (Include all names from Public Hearing): NA

Adjoining Property Owners (Include all names of those who commented): NA

IV. Environmental Assessment:

A. Describe the coastal resources (i.e., vegetation, habitat, etc.), which will be impacted:

marsh vegetation

1. Describe erosional aspects of the property: previous erosional history

B. Watershed and vicinity information (include watershed name & size, classification; any impaired waters listed within impaired parameter; and shellfish status):

- 1) Vicinity information (include information on developments within watershed within 3 mile radius):

residential development

- 2) Existing system stressors (i.e. shellfish closures, 303d):

shellfish classification

- C. GAPC Review (List any GAPC's present on or adjacent to project site; include agency comments; attach GIS printout, and outline treatment methods):

See GIS Review

- D. Name and approximate width of water body: Canal off Williams Creek

@ 50'

V. Policy Assessment:

A. Regulatory History:

- 1) Previous OCRM authorizations (Critical Area Permits, land disturbance, Federal cert.):

OCRM-06-550

- 2) Previous Enforcements (is project in compliance w/all previous permits, etc.): no enforcements

B. Applicable Regulations and Policies:

- 1) General Guidelines: 30-11B

- 2) Further Guidelines: 30-11C

- 3) Specific Project Standards: 30-12C

- 4) CZM Policies: IV C

- C. Does the project contravene any coastal zone regulations?

(If No, skip to section VII; if Yes, complete Section VI.)

☐ YES

☒ NO

VI. Modifications for bringing the project into compliance with regulations:

- A. Modifications required to minimize impacts (list avoidance & minimization measures; buffers; size and/or use restrictions; additional treatment measures; deed restrictions; and agency agreements):

- C. If Permit is denied, explain contraventions of regulations and/or Coastal Zone Management Program.

VII. Field assessment by:

T. Marshall

(Name)

10/20/06

(Date)

VIII: Reviewed By:

1. Project Manager:

Marshall

03/07/07

(Signature)

(Date)

IX. Notes:

Same as water know 06-550. There are shellfish class
in the area.

X. Attachments Required:

GIS Review (See Section IV.C. above) and site photographs

CERTIFICATE OF MAILING

RE:

PERMITTEE: Mr. Tommy Berry

I, Peggy D. Funk, as an employee of DHEC-OCRM certify that I have, this day mailed the following Revocation Letter affixed thereto, to the following.

NAME: Mr. Tommy W. Berry
311 49th Ave N.
North Myrtle Beach, SC 29582

Certified Mail

NAME:

August 2, 2007

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 2.41
Certified Fee	2.65
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.21

Sent To: Mr. Tommy W. Berry
 Street, Apt. No., or PO Box No.: 311 49th Ave N
 City, State, ZIP+4: N. Myrtle Beach SC 29582

PS Form 3811, February 2004 See Reverse for Instructions

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name) *JSB* Date of Delivery *8/13*

D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

7006 0100 0006 1343 0586

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

CERTIFICATE OF MAILING

RE: OCRM-07-509

PERMITTEE: T. W. Berry

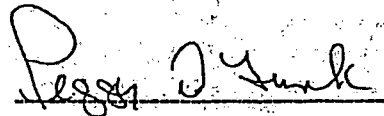
I, Peggy D. Funk, as an employee of DHEC-OCRM certify that I have, this day mailed the following Placard affixed thereto, to the following.

NAME: Tom Berry
317 49th Ave N
N Myrtle Beach, SC 29582

Regular Mail

NAME:

June 25, 2007



Peggy D. Funk
DHEC-OCRM Employee
Myrtle Beach, South Carolina

CW:certmail:1

000101

CERTIFICATE OF MAILING

RE: OCRM-07-509

PERMITTEE: T W Berry

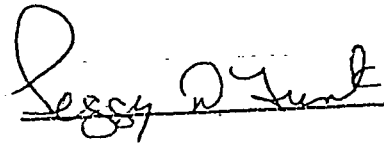
I, Peggy D. Funk, as an employee of DHEC-OCRM certify that I have, this day mailed the following permit for signature affixed thereto, to the following.

NAME: Dr. H. Wayne Beam
PO Box 11863
Columbia, SC 29211-1863

Certified Mail

NAME:

March 7, 2007



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
U.S. Postal Service CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)		Signature _____	
For delivery information visit our website at www.usps.com		☐ Agent ☐ Addressee	
OFFICIAL USE		Delivered by (Printed Name) _____ C. Date of Delivery _____	
Postage	\$ 1.11	Delivery address different from item 1? ☐ Yes	
Certified Fee	2.40	S, enter delivery address below: ☐ No	
Return Receipt Fee (Endorsement Required)	1.85	MAR 13 2007	
Restricted Delivery Fee (Endorsement Required)		Item Type Certified Mail ☐ Express Mail	
Total Postage & Fees	\$ 5.36	Registered ☒ Return Receipt for Merchandise	
Sent To Dr. H. Wayne Beam		Insured Mail ☐ C.O.D.	
Street, Apt. No., or PO Box No.		Restricted Delivery? (Extra Fee) ☐ Yes	
City, State, ZIP+4		106 1343 0029	
PS Form 3800, June 2002		102595-02-M-1540	

TOMMY W. BERRY PETITIONER EXHIBIT "B"

CERTIFICATE OF MAILING

RE: OCRM-07-509

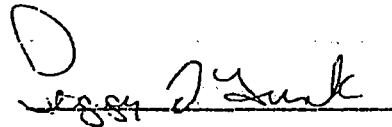
PERMITTEE: T. W. Berry

I, Peggy D. Funk, as an employee of DHEC-OCRM certify that I have, this day mailed the following Public Notice affixed thereto, to the following.

NAME: See attached list Regular Mail

NAME:

February 16, 2007



Peggy D. Funk
DHEC-OCRM Employee
Myrtle Beach, South Carolina

311 49th Ave N.
North Myrtle Beach, SC 29582

PO Box 11863
Columbia, SC 29211-1863

000103

Frank T. Boysia
4517 Blitsgel
Florence, SC 29501-9013

Wholesale Distributors, Inc.
PO Box 37
Tabor City, NC 29463-0037

City of North Myrtle Beach
1015 Second Avenue South
North Myrtle Beach, SC 29582

Paul A. Dominick
Nexsen, Pruet, Adams & Kleemeier, L
PO Box 486
Charleston, SC 29402



000104

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

August 2, 2007

NOTICE OF INTENT TO REVOKE

P/N OCRM-07-509

Tommy W. Berry

Mr. Tommy W. Berry
311 49th Ave N.
N. Myrtle Beach, SC 29582

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Dear Mr. Berry:

In accordance with OCRM Regulations R. 30-8, the Department hereby gives you notice of its intent to revoke the above referenced permit. This permit, for construction of a bulkhead, was issued in accordance with OCRM Regulation R. 30-12(C), which governs bulkheads and revetments.

OCRMs grounds for the revocation of this permit are as follows. On July 23, 2007, this office issued a Cease and Desist Directive to stop the building of the bulkhead and the alteration of the critical area. After a site visit we determined that you continue to place fill material in the critical area and complete the construction of the bulkhead. Your actions constitute a clear violation of the terms and conditions of the permit.

You have the right to respond, in writing, to the grounds set forth in this letter. Your response is due within 20 days of your receipt of this Notice of Intent to Revoke. Failure to timely respond shall result in a Default Order being issued by the Department.

**PLEASE BE ADVISED THAT YOUR PERMIT HAS BEEN SUSPENDED
PENDING THE RESOLUTION OF THE REVOCATION ACTION.**

If you have any questions, please do not hesitate to contact me at 843-238-4528.

Sincerely,

Tanitra S. Marshall
Project Manager
SCDHEC - OCRM

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Charleston Office • 1362 McMillan Avenue • Suite 400 • Charleston, SC 29405

Phone: 843-953-0200 • Fax: 843-953-0201 • www.scdhec.gov

cc: Elizabeth Dicck
Curtis Joyner
Barbara Neale

SC Department of Health
and

Environmental Control
Office of Ocean and Coastal
Resource Management

CONSTRUCTION AUTHORIZATION

Expiration Date: December 22, 2007

Permit Number: OCRM-OCRM-07-509

Date Issued: June 22, 2007

Location: 317 49th Ave N, Cherry Grove

Permittee: T W Berry

Address of Permittee: 317 49th Ave N
N. Myrtle Beach

Contractor's Name: Tom Berry

Contractor's License # N/A

Waterway: Williams Creek

City: N Myrtle Beach

County: Horry (26)

Authorized Work: A wooden bulkhead will be removed and replaced with a vinyl bulkhead. The existing dock will be removed and reattached upon the completion of the bulkhead construction.

Michael

Tanita S. Marshall, Project Manager

Date: June 22, 2007

> This Notice Must Be Conspicuously Displayed at the Work Site <

PERMITTEE/PROPERTY OWNER: _____

PERMIT NUMBER: _____ OCRM-06-
27-509

Please indicate below the date on which you will begin actual work on your project as authorized by the enclosed permit. Then simply drop this card in the mail to our office. You will receive a construction placard, good for six months, that must be posted at the work site. If the work is not finished by that time, please contact our office to obtain an additional placard. However, do not request a placard if you are not ready to begin construction.

Thanks for your cooperation.

DATE OF INITIATION OF CONSTRUCTION: 7-2-07

PERMIT HOLDER/PROPERTY OWNER OR AGENT SIGNATURE: Owner

CONTRACTOR: Tom W. Berry LICENSE NUMBER: N/A *

**If a licensed contractor is not listed in the blank space above, then the Permittee/Property Owner is required to list himself/herself as contractor with no license number. In any event, unlicensed contractors serving as Agent for the Permittee/Property Owner will not receive the construction placard since this would be in violation of the S. C. Contractor's Licensing Act of 1999. The S. C. Contractors Licensing Act of 1999 requires that all construction with a total cost of \$5000 or more must be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes.*

MAILING ADDRESS TO SEND PLACARD:

317 49th Ave. N.
N. Myrtle Beach, SC 29582



000108

APR 14 2007

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

DHEC-OCRM
BEACH OFFICE

March 07, 2007

Dr. H. Wayne Beam
PO Box 11863
Columbia, SC 29211-1863Re: OCRM-07-509
T W Berry

Dear Dr. Beam:

The SCDHEC Office of Ocean and Coastal Resource Management has reviewed your application to construct a replacement bulkhead at 317 49th Ave N, N Myrtle Beach, Horry County, South Carolina and has issued a permit for this work. You should carefully read the description of the authorized project and any special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and return it to this Department. Keep the photocopy for your records.

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, OR appealed within 15 days as described on the enclosed "Notice of Appeal Procedure", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Notice of Appeal Procedure" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required.

Sincerely,

Tanitra S. Marshall
Critical Area Permitting
Enclosure**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

Ocean and Coastal Resource Management

Myrtle Beach Office • 927 Shine Avenue • Myrtle Beach, SC 29577

Phone: 843-238-4528 • Fax: 843-238-4526 • www.scdhec.gov

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s): T W Berry

Permit Number(s): OCRM-07-509

Date of Issuance: March 07, 2007

Expiration Date: March 07, 2012

Location: On and adjacent to Williams Creek at 317 49th Ave N, N Myrtle Beach, Horry County, South Carolina

This permit is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of \$5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The plans submitted by you, attached hereto, show the work consists of the following: The work, as proposed and shown on the attached plans, consists of constructing a replacement bulkhead. A wooden bulkhead will be removed and replaced with a vinyl bulkhead to be built in the same location. The existing dock will be removed and reattached upon completion of construction. The purpose of the proposed activity is for erosion control.

SPECIAL CONDITIONS

1. Provided the existing bulkhead is removed concurrently with the new bulkhead construction.
2. Provided the proposed bulkhead is placed in the same location as the existing bulkhead.
3. Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the South Carolina Institute of Archaeology and Anthropology (Mr. James Spirek at 803-777-8170) pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title 54,

P. 1 of 5

Code of Laws South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

Permit Number: OCRM-07-509

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

T W Berry
(PERMITTEE(S))
T W Berry

3/13/07
(DATE)

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

Marshall for

03/07/07

(MANAGER, CRITICAL AREA PERMITTING) (DATE)

Curtis M. Joyner

Or his Designee

Other Authorized State Official

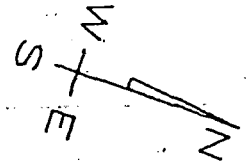
P 2 of 5

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
- ✓ 11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.

EXIST. WOOD BULKHEAD
(REMOVE) AND REPLACE
WITH VINYL BULKHEAD
(155 LF)

CANAL



EXISTING DOCK
REMOVE AND REINSTALL

PROPERTY LINE

LOT 15
BOYSIA

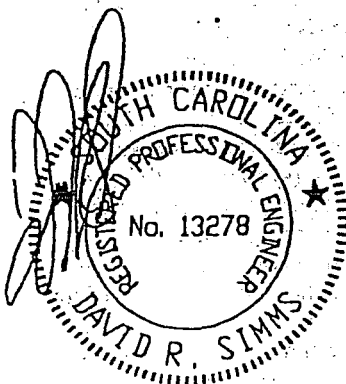
EXISTING
RESIDENCE

LOT 18
WHOLESALE DIST.

LOT 17

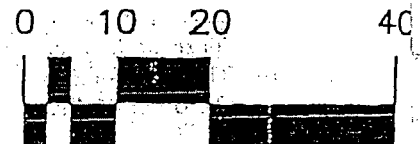
TMS 145-02-24-019

SEE SPEC
SECTION



SITE PLAN

49th AVENUE NORTH



1"=20'

FOR PERMITTING ONLY
NOT FOR CONSTRUCTION

p. 4 of 5

APPLICANT:
TW Berry

ACTIVITY: Replace Existing
Bulkhead

LOCATION: Cherry Grove
North Myrtle Beach

COUNTY: Horry

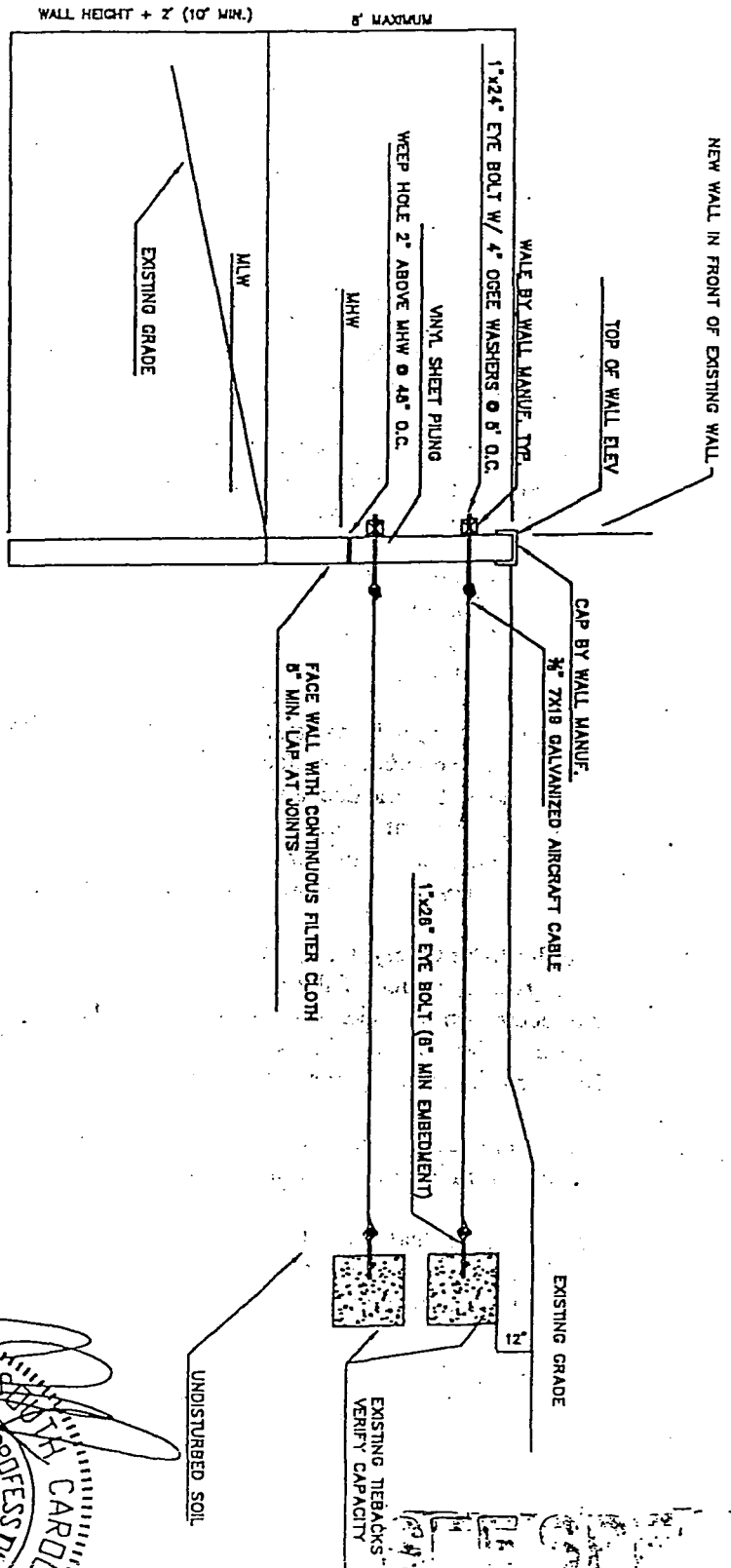
RECEIVED

FEB 02 2007

DHEC-OCRM
MYRTLE BEACH OFFICE

P/N# DCRU-07-509

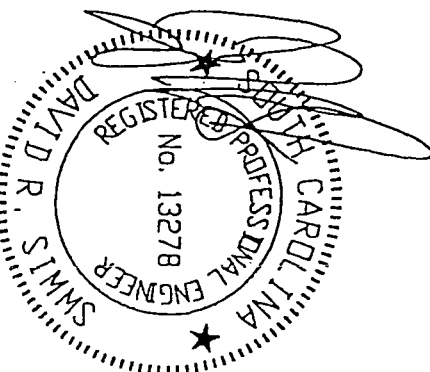
TOMMY W. BERRY, PETITIONER, EXHIBIT "R"



NEW BULKHEAD SECTION

NTS

FOR PERMITTING ONLY
NOT FOR CONSTRUCTION



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FEB 02 2007

DHEC-OCRM
MYRTLE BEACH OFFICE

APPLICANT: T W Berry

ACTIVITY: Replace Bulkhead

P/N# OCRM-07-509

LOCATION: Cherry Grove

COUNTY: Horry

DATE: 1/25/2007



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

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

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Ocean and Coastal Resource Management

Charleston Office • 1362 McMillan Avenue, Suite 400 • Charleston, SC 29405

Phone: 843-953-0200 • Fax: 843-953-0201 • www.dhec.sc.gov

RECEIVED BY: PETITIONER EXHIBIT "B" 22

**SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
PERMIT APPLICATION PUBLIC NOTICE**

February 16, 2007

Permit Number: OCRM-07-509
Permit ID: 57456

The SCDHEC Office of Ocean and Coastal Resource Management has received an application for a permit for the alteration of a critical area. This application was submitted pursuant to the Coastal Zone Management Act (Act 123) of the 1977 South Carolina General Assembly. The application, in brief, is described as follows:

APPLICANT: T. W. Berry
c/o Dr. H. Wayne Beam
PO/Box 11863
Columbia, SC 29211-1863

LOCATION: On and adjacent to man-made canal off of Williams Creek at 317 49th Ave N, N Myrtle Beach, Horry County, South Carolina.
TMS#: 145-02-24-019.

WORK: The work, as proposed and shown on the attached plans, consists of constructing a replacement bulkhead. A 155' long wooden bulkhead will be removed and replaced with a vinyl bulkhead to be built in the same location. The existing dock will be removed and reattached upon completion of construction. The purpose of the proposed activity is for erosion control.

This public notice is being distributed to all known interested persons and agencies to assist in developing facts on which a decision by OCRM can be based. Comments concerning the proposed work should be submitted in writing, setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

The decision to issue or deny a permit will be based on the individual merits of the application, the policies specified in the South Carolina Coastal Zone Management Act, and the considerations outlined in the State of South Carolina Coastal Zone Management Program. Interested parties who wish to be notified of final permit action must notify OCRM in writing of this request.

To assure review by OCRM, comments regarding this application must be received by OCRM on or before March 3, 2007. For further information please contact the project manager for this activity, Tanitra S. Marshall at 843-238-4528.

PLEASE REPLY TO:

SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
927 Shine Avenue
Myrtle Beach, South Carolina 29577

Please refer to P/N# OCRM-07-509



Tanitra S. Marshall, Project Manager

EXIST. WOOD BULKHEAD
(REMOVE) AND REPLACE
WITH VINYL BULKHEAD
(155 LF)

EXISTING DOCK
REMOVE AND REINSTALL

PROPERTY LINE

LOT 15
BOYSIA

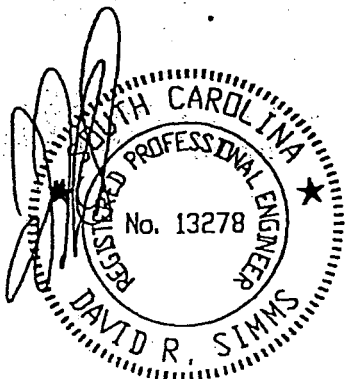
CANAL

EXISTING
RESIDENCE

LOT 17
TMS 145-02-24-019

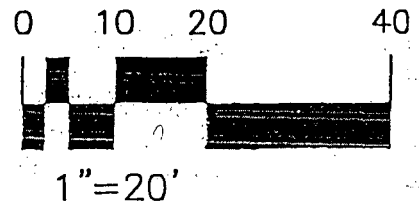
LOT 18
WHOLESALE DIST.

49th AVENUE NORTH



FOR PERMITTING ONLY
NOT FOR CONSTRUCTION

SITE PLAN



APPLICANT:
TW Berry
ACTIVITY: Replace Existing
Bulkhead

P/N# OCRN-07-509

LOCATION: Cherry Grove
North Myrtle Beach

COUNTY: Horry

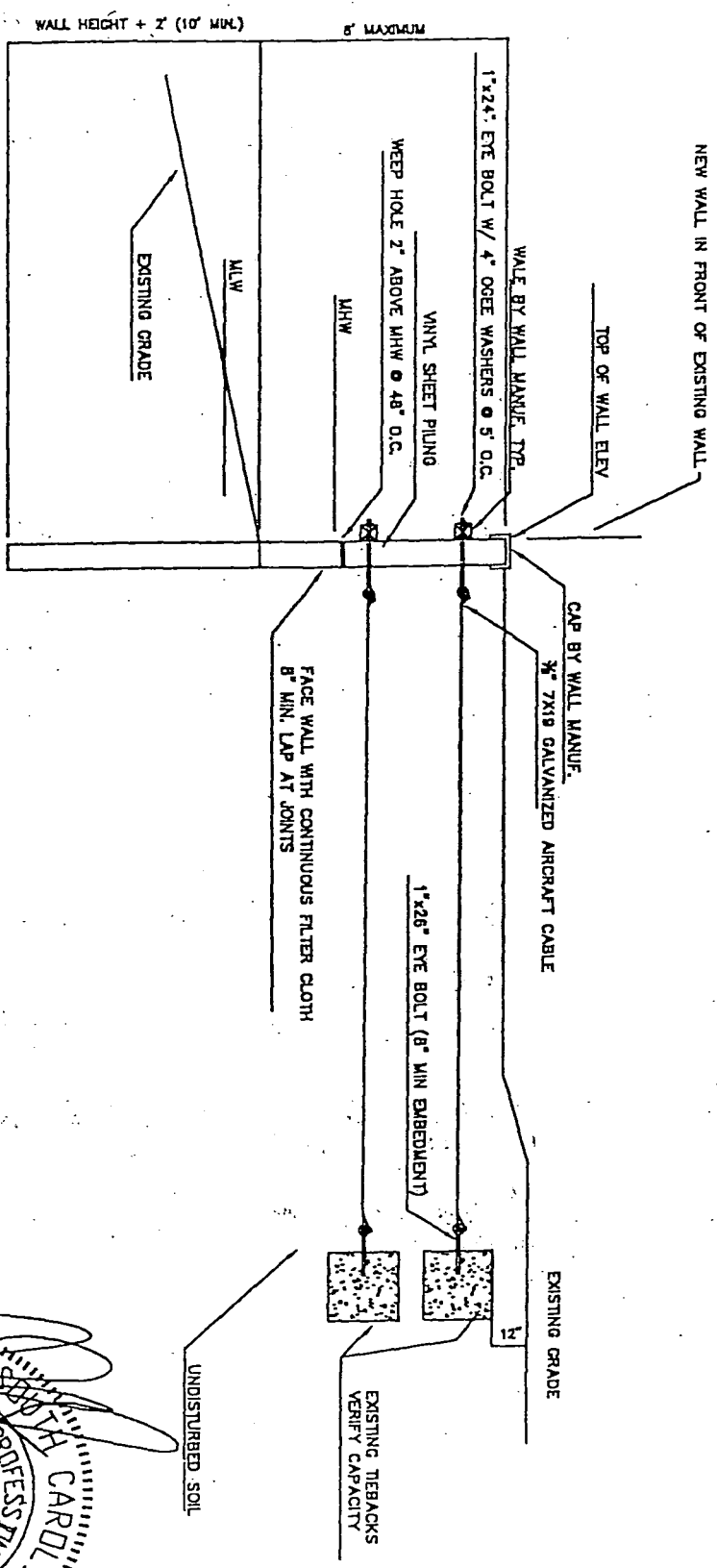
DATE: 1/25/2007

RECEIVED

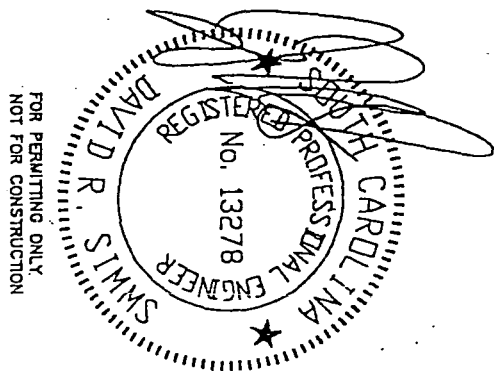
FEB 02 2007

DHEC-OCRM
MYRTLE BEACH OFFICE

SHEET 2 OF



NEW BULKHEAD SECTION
NTS



FOR PERMITTING ONLY
NOT FOR CONSTRUCTION

APPLICANT: T W Berry
ACTIVITY: Replace Bulkhead
P/N# OCRM-07-509
LOCATION: Cherry Grove
COUNTY: Horry
DATE: 1/25/2007

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FEB 02 2007

DHEC-OCRM
MYRTLE BEACH OFFICE

MYRTLE BEACH Herald

PUBLIC NOTICE
T.W. Berry has applied to the
Department of Health and
Environmental Control Office
Ocean and Coastal Resource
Management for a permit
to place a sign on the
premises of 1135 West
19th Street, Myrtle Beach,
South Carolina 29577 until the
end of 2007.
The sign is located on the
premises of 1135 West
19th Street, Myrtle Beach,
South Carolina 29577 until the
end of 2007.
ITC 2/8

T-W-BERRY OCRM-07-509

AFFIDAVIT OF PUBLICATION CERTIFICATE

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Jacquelyn Box, of the Myrtle Beach Herald, County of Horry, State of South Carolina states that:

1. Affiant is an employee of the Myrtle Beach Herald a newspaper of general circulation, printed, published, and circulated in the County of Horry, and State of South Carolina.
2. The original or renewal of the Public Notice a true copy of which is attached hereto, was published in said newspaper on the following dates:

PUBLISHED DATES:

February 8, 2007

And the publication was made in the newspaper proper and not in a supplement

Dated:

February 8, 2007

Signed:

Jacquelyn Box
Jacquelyn Box

On February 8, 2007, Jacquelyn Box personally appeared before me and executed her signature on this instrument.

Sharon Harms

Sharon Harms
Notary Public

RECEIVED

FEB 21 2007

DHEC-OCRM
MYRTLE BEACH OFFICE

P.O. Box 2309, Myrtle Beach, South Carolina 29578
843.626.3131 • Fax: 843.448.4860 • www.myrtlebeachherald.com

TOMMY W. BERRY PETITIONER EXHIBIT "B"

RECEIVED PAID

D H E C FEB 02 2007 **PERMITS** 022007
APPLICATION 250.00
DHEC-OCRM POST
PROMOTE PROTECT PRO MYRTLE BEACH OFFICE

S. C. Department of Health and Environmental Control
 Office of Ocean and Coastal Resource Management
 Charleston Beaufort Myrtle Beach
 744-5838 846-9400 626-7217
 744-5847(fax) 846-9810(fax) 626-2381(fax)

NAME AND MAILING ADDRESS OF APPLICANT:

T. W. BERRY
 311 49th Ave N.
 N. Myrtle Beach
 SC 29582

PHONE #: (Bus.) (704) 996-9532
 (Home) —
 (Fax) —

NAME AND MAILING ADDRESS OF AUTHORIZED AGENT:

(If an agent is listed, all correspondence will be sent to the agent.)

H. Wayne Beam
 PO Box 11863
 Columbia, SC
 29211-1863

PHONE #: (Bus.) (843) 814-7145
 (Home) (803) 749-5510
 (Fax) (803) 256-8062

DESCRIBE THE DIMENSIONS, GENERAL SPECIFICATIONS, AND PURPOSE OF THE PROJECT:

Project involves the replacement of an existing bulkhead with a new vinyl bulkhead. Existing Dock will be removed and reattached to the new bulkhead upon completion of its construction.

NAMES AND COMPLETE MAILING ADDRESSES OF ADJOINING PROPERTY OWNERS: (If the applicant owns adjoining property, give name and address for nearest property not owned by applicant.)

Wholesale Dist., Inc.	Frank T. Boysia
PO Box 37	4517 BLITZSEL Dr.
Tabor City, NC	Florence, SC
28463-0037	29501-9013

(Attach additional sheet of paper if necessary.)

LOCATION OF THE PROJECT (Address and directions to the site):

Take Sea Mt. Hwy toward the Ocean. Turn left onto Ocean Blvd. Proceed to 49th Ave N. Turn left and proceed to end of street. Site is 1st house on the left.

COUNTY: Horry

TAX MAP NUMBER (Required on all applications): 145-02-24-019

LOCAL GOVERNING BODY WITH JURISDICTION OVER SITE: City of N. Myrtle Beach

NAME OF WATERWAY: CANAL off Williams Creek



PERMIT APPLICATION

S. C. Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management
Charleston Beaufort Myrtle Beach
744-5838 846-9400 626-7217
744-5847(fax) 846-9810(fax) 626-2381(fax)

IS ANY PORTION OF ACTIVITY FOR WHICH AUTHORIZATION IS SOUGHT NOW COMPLETE?

YES ☐

NO ☒

IF "YES", GIVE REASONS, INCLUDING THE MONTH AND YEAR ACTIVITY WAS COMPLETED.
INDICATE EXISTING WORK ON DRAWINGS.

ADDITIONAL REMARKS:

APPLICATION IS HEREBY MADE FOR A PERMIT OR PERMITS TO AUTHORIZE THE ACTIVITIES DESCRIBED HEREIN. I CERTIFY THAT I AM FAMILIAR WITH THE INFORMATION CONTAINED IN THIS APPLICATION, AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF SUCH INFORMATION IS TRUE, COMPLETE, AND ACCURATE. I FURTHER CERTIFY THAT I POSSESS THE AUTHORITY TO UNDERTAKE THE PROPOSED ACTIVITIES OR I AM ACTING AS THE DULY AUTHORIZED AGENT OF THE APPLICANT.

Tom Berry
Signature of Applicant

1/3/07
Date

[Signature]
Signature of Agent (if agent has been listed)

1-27-07
Date

IMPORTANT!! THE APPLICATION MUST BE SIGNED BY THE APPLICANT AND THE AUTHORIZED AGENT (IF AN AGENT HAS BEEN LISTED ON PAGE ONE OF THIS APPLICATION).

The applicant shall permit the SCDHEC Office of Ocean and Coastal Resource Management, the District Engineer, the State Law Enforcement Division, South Carolina Department of Natural Resources, and other State permit inspection agencies, or their representative(s) to make periodic inspection at any time deemed necessary in order to assure that the activity being performed is in accordance with the terms and conditions prescribed herein.



AFFIDAVIT OF OWNERSHIP OR CONTROL

S. C. Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

<u>Charleston</u>	<u>Beaufort</u>	<u>Myrtle Beach</u>
744-5838	846-9400	626-7217
744-5847(fax)	846-9810(fax)	626-2381(fax)

I hereby certify that I am the (check one):

- ☐ Record Owner
- ☐ Lessee
- ☐ Record Easement Holder
- ☐ Applicant To Record Owner For Easement
- ☒ Contract To Purchase Property

of the below described property situated in Horry County, South Carolina; and that said property is all of that said property that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted. Furthermore, I certify that as record owner, lessee, or record easement holder, I have, or will have prior to undertaking the work, necessary approvals or permission from all other persons with a legal interest in said property to conduct the work proposed in the permit application.

WRITE LEGAL DESCRIPTION OF HIGHLAND (as described in deed, lease, etc.) BELOW OR OR WRITE "SEE ATTACHED" (in large bold letters) AND ATTACH A COPY OF THE DEED, LEASE, EASEMENT, OR MOST RECENT CERTIFIED PLAT OF THE PROPERTY. IF YOU ARE NOT THE RECORD OWNER, LESSEE OR EASEMENT HOLDER, YOU MUST ALSO SUBMIT WRITTEN PERMISSION FROM THE OWNER OF THE PROPERTY TO CARRY OUT THE PROPOSED ACTIVITY.

SEE ATTACHED

I also certify that the project as proposed does not cross any wetlands or areas below mean high water which is in the ownership of other private persons or public or private entities and that there is no disputed claim to the wetlands or areas below mean high water by private person or other entities due to a Kings Grant, State Grant, easement or conveyance or other legal document evidencing ownership of these areas.

Tom R. Long
Signature of Record Holder or Lessee

Sworn to and subscribed before me at North Myrtle Beach SC. Horry County,
South Carolina, this 31st day of January, 2007.

Melissa Beckamy
Notary Public

My commission expires: My Commission Expires April 15, 2016

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FEB 02 2007

DLFC OCRM

EXIST. WOOD BULKHEAD
(REMOVE) AND REPLACE
WITH VINYL BULKHEAD
(155 LF)

EXISTING DOCK
REMOVE AND REINSTALL

PROPERTY LINE

LOT 20
BOYSIA

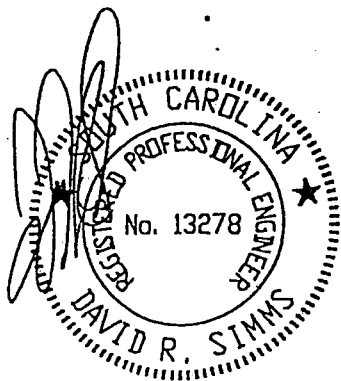
CANAL

EXISTING
RESIDENCE

LOT 18
WHOLESALE DIST.

LOT 19
TMS 145-02-24-019

49th AVENUE NORTH



FOR PERMITTING ONLY
NOT FOR CONSTRUCTION

SITE PLAN

0 10 20 40



1"=20'

APPLICANT:
TW Berry
ACTIVITY: Replace Existing
Bulkhead

P/N#

LOCATION: Cherry Grove
North Myrtle Beach

COUNTY: Horry

DATE: 1/25/2007

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FEB 02 2007

DHEC-OCRM
MYRTLE BEACH OFFICE

SHEET 2 OF 3

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FEB 02 2007

CONTRACT OF SALEDHEC-OCRM
MYRTLE BEACH OFFICE

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

AGREEMENT made this 20th day of December, 2006
by and between Tommy W Berry, Sr And L S Berry
PURCHASER, whose address is 311 49th Ave. N, NMB, SC 29582
and Walter H. Knox III I Linda W. Knox,
SELLER, whose address is 117 Oak Meadow Drive
Bridgewater VA 22812.

Purchaser agrees to buy and Seller agrees to sell, all
that lot or parcel of land, with the buildings and
improvements thereon, if any, situate in Horry County, State
of South Carolina, and being Lot 17 Block A1-1
Section Cherry Grove Beach Dev Subdivision
TMS NUMBER _____ and being
known as and by the street address of: 317 49th Ave. North,
North Myrtle Beach, South Carolina

Subject to all covenants of record (provided they do
not make the title unmarketable) and all government
statutes, ordinances, rules and regulations.

The purchase price is Five Hundred and Fifty
Thousand DOLLARS--(\$540,000.00) to be paid as
follows:

\$ 1000.⁰⁰ herewith which shall be held in trust by
Walter H. Knox III, Agent, and
the balance as follows:

\$ _____ financing by a lending institution;

\$ 539,000.⁰⁰ balance of purchase price due at closing.

Taxes, water, electric, and rents (as and when
collected) shall be adjusted as of the date of the delivery
of the deed. Insurance premiums shall be prorated or the
insurance shall be cancelled, as Purchaser's option.
Assessment payments not in default shall be assumed by the
purchaser.

If the property to be sold has been previously occupied, the SELLER shall obtain and disclose a current Wood Infestation Report (CL-100) from a licensed pest control operator on the residential dwellings(s) only. The Seller makes no other warranties for any other improvements, unless specifically stated in this agreement. Seller shall remedy said deficiencies and shall furnish Purchaser with a copy of said report certifying that the property is free from infestation or damage, or that any infestation or damage has been treated or repaired on or before day of closing or possession, whichever occurs first. If Seller fails to remedy deficiencies by the closing date, or authorize the Purchaser to remedy same less the cost from the purchase price, the Purchaser may terminate this contract with written notice. In such case, the Seller shall pay actual costs incurred.

Seller agrees to convey by marketable title and deliver a proper statutory warranty deed with dower duly renounced and free of encumbrances except as herein stated, with all stamps affixed thereto. The deed shall be delivered at the office of George T. Samaha, III, Attorney, 291-C Highway 90 East, Little River, SC on or before January 31, 2007, or earlier if mutually agreeable.

In case the property herein referred to is destroyed wholly or partially by fire or other casualty, Purchaser shall have the option for ten (10) days thereafter of proceeding hereunder, with an agreed adjustment in the purchaser price, or of terminating this agreement and being repaid all amounts paid hereunder.

The sale is conditioned upon _____

Upon default by the Purchaser, the Seller may retain the amount this day paid, in addition to all other remedies available to him. Upon default by the Seller, if the Purchaser elects to rescind this agreement, he shall be repaid all sums paid hereunder and in addition shall be reimbursed by the Seller for his reasonable expenses of title examination.

The sale includes all personal property (furniture, fixtures, and equipment) therein, except red chair, green chest, curio cabinet and misc. pictures, and "fishing" lamp.

This agreement constitutes the entire contract and can only be changed by written agreement between the parties.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties.

WITNESS the parties hereby by their hands and seals the day and year first above written.

IN THE PRESENCE OF:

Mary A. Moya
WITNESS AS TO PURCHASER

[Signature]
WITNESS AS TO PURCHASER

[Signature]
WITNESS AS TO SELLER

[Signature]
WITNESS AS TO SELLER

WITNESS AS TO AGENT

Tom W. Bering
PURCHASER

[Signature]
PURCHASER

Walter H. Knott
SELLER

Linda M. Knott
SELLER

AGENT

RECEIVED

FEB 02 2007

DHEC-OCRM
MYRTLE BEACH OFFICE

STATE OF SOUTH CAROLINA RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article I requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.
2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.
 - a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.
 - c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.
 - d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.
4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

initials WHL Seller WHL Date 1-1-07 Buyer JB Date 1-1-07

Rev 1-03

Page 1 of 4

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

- | | Yes* | No | Representation |
|---|-------------------------------------|-------------------------------------|--------------------------|
| 1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications?
a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___
b. Approximate age of structure <u>22 yr</u> | ☒ | ☐ | ☐ |
| concrete slab has crack in front and rear of property. | | | |
| 2. Roof (leakage or other problem)?
a. Approximate age of roof covering <u>3 yr</u> | ☐ | ☒ | ☐ |
| 3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure? | ☐ | ☒ | ☐ |
| 4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)? | ☐ | ☒ | ☐ |
| 5. Plumbing system (pipes, fixtures, water heater, etc.)? | ☐ | ☒ | ☐ |
| 6. Heating and/or air conditioning?
a. Heat source: furnace ___ heat pump ☒ baseboard ___
b. Cooling source: central ☒ wall/window unit(s) ___
c. Fuel source: electricity ☒ natural gas ___ propane ___ oil ___
d. Approximate age of heating unit <u>12</u> /cooling unit <u>12</u> | ☐ | ☒ | ☐ |
| 7. Water supply (including water quality, quantity and water pressure)?
a. water supply is: city/county ☒ community system ___ private well ___
b. water pipes are: copper ☒ galvanized ___ PVC/CPVC ☒ polybutylene ___ | ☐ | ☒ | ☐ |
| 8. Septic system?
a. Type system: septic tank ___ community system ☒
connected to city/county system ☒ city/county system available ___
b. Does the system require a pump? Yes ___ No ☒
c. Has the septic system been serviced/pumped during your ownership? | ☐ | ☒ | ☐ |
| 9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)? | ☐ | ☒ | ☐ |
| 10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms?
a. Is there a transferable termite bond? Yes ___ No ☒ | ☐ | ☒ | ☐ |
| 11. Drainage, grading or stability of soil or retaining structure? | ☐ | ☒ | ☐ |
| 12. Other built-in systems and fixtures?
central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ___
exhaust fan ___ ceiling fan ___ sump pump ___ irrigation system ___
cable tv wiring or satellite dish ☒ security system ___ or other systems ___ | ☐ | ☒ | ☐ |

Initials WLB Seller 12/16 Date 1-1-07 Buyer [Signature] Date 1-1-07
Rev. 1/03

Page 2 of 4

REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

- | | Yes* | No | No Representation |
|--|--------------------------|-------------------------------------|--------------------------|
| 13. Room additions or other structural changes? | ☐ | ☒ | ☐ |
| 14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination? | ☐ | ☒ | ☐ |
| 15. Nuisances (noise, odor, smoke, etc.) affecting the property? | ☐ | ☒ | ☐ |
| 16. Previous damage caused by fire? | ☐ | ☒ | ☐ |
| 17. Violations or variances of building codes or zoning ordinances? | ☐ | ☒ | ☐ |
| 18. Restrictions to property use? (covenants or deed) | ☐ | ☒ | ☐ |
| 19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property? | ☐ | ☒ | ☐ |
| 20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property? | ☐ | ☒ | ☐ |
| 21. Owners' association fees or "common area" expenses or assessments? | ☐ | ☒ | ☐ |
| 22. Flood hazards or that the property is in a federally-designated flood plain? <i>Flood insurance was required by mortgage holder.</i> | ☐ | ☒ | ☐ |
| 23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing? | ☐ | ☒ | ☐ |
| 24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property? | ☐ | ☒ | ☐ |

*IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.

RECEIVED

FEB 02 2007

DHEC-OCRM
 MOUNTAIN BEACH OFFICE

Initials: WJL Seller 12/20/06 Date

SB/B Date 1-1-07

Page 3 of 4

Rev 1/03

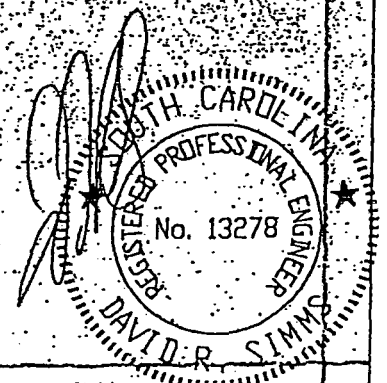
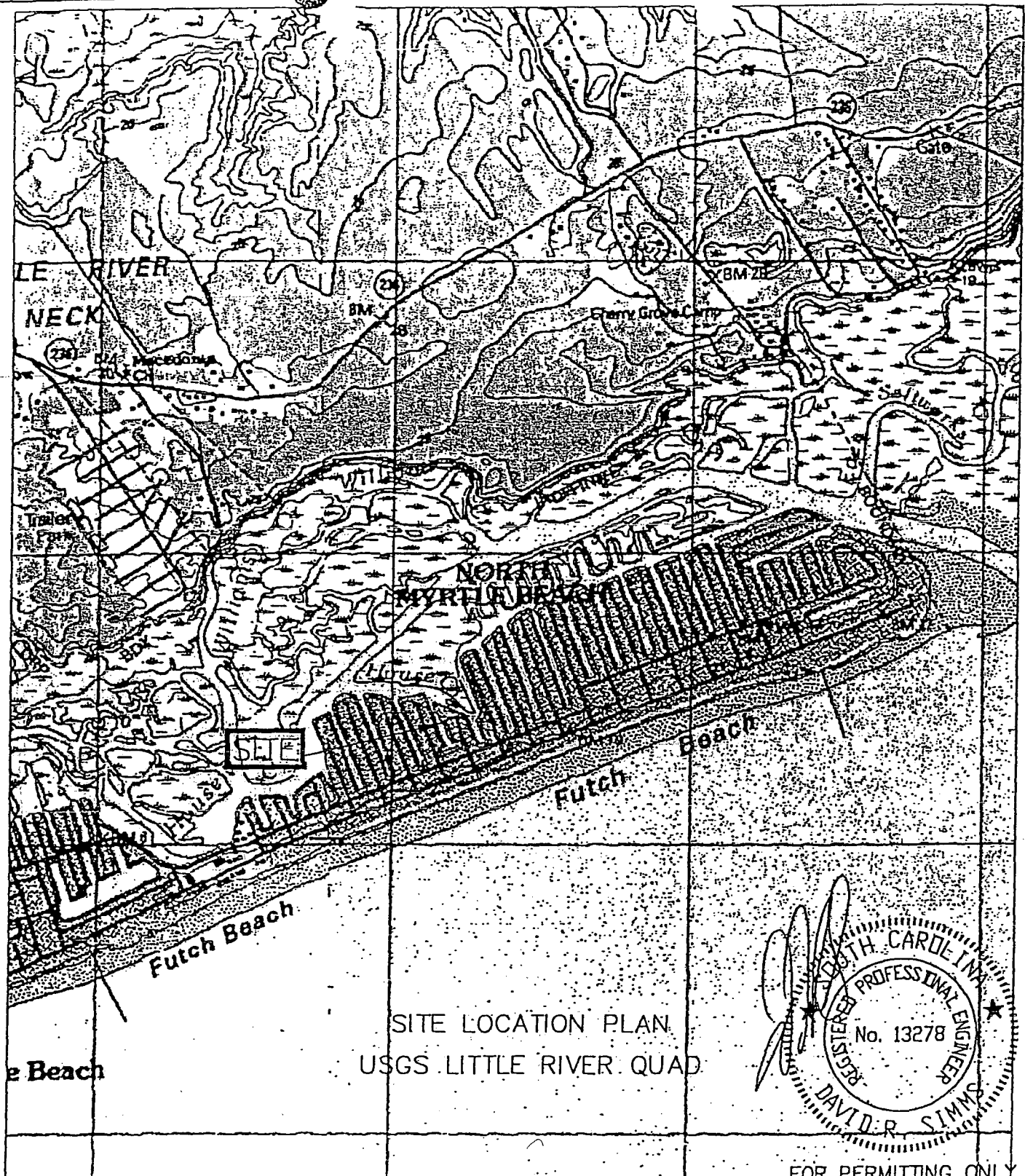
"Yes" explanations continued.

Owner(s) Acknowledgement	
Property Address:	317 49th Ave. North, North Myrtle Beach, SC
The property is currently:	owner-occupied ☒ leased ☐ in an estate ☐ in foreclosure ☐
	vacant ☐ (If vacant, how long?) _____
Owner's Name(s):	Walter H. Knox III & Linda W. Knox
Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.	
Owner Signature:	Walter H. Knox III Date: 12/20/6
Owner Signature:	Linda W. Knox Date: 12/20/6

Purchaser(s) Acknowledgement	
Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.	
Purchaser Signature:	Tom W. Berry Date: 1-6-07
Purchaser Signature:	[Signature] Date: 1-1-07

(This form is approved by the South Carolina Real Estate Commission.)

RECEIVED



FOR PERMITTING ONLY
NOT FOR CONSTRUCTION

RECEIVED

APPLICANT:

T W Berry

ACTIVITY: Replace Existing
Bulkhead

LOCATION: Cherry Grove

North Myrtle Beach

COUNTY: Horry

DATE: 1/25/2007

FEB 02 2007

DHEC-OCRM
MYRTLE BEACH OFFICE

D / M / Y

TOMMY W BERRY PETITIONER EXHIBIT "R"



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

TOMMY W BERRY
311 49TH AVE N
N MYRTLE BEACH SC 29582

Invoice Date:	02/07/2007
Invoice Number:	YB00923-3
Invoice Amount:	\$250.00
Program ID:	57456

Department Name: OCRM - MYRTLE BEACH
Department Contact: PEGGY D FUNK
Department Phone: 843-238-4528

Qty	Description	Unit	Extended
1.00	Application fee for critical area permit - minor activity	250.00	250.00

TOMMY W. BERRY
 JO S BERRY
 311 49TH AVE N
 NORTH MYRTLE BEACH, SC 29582

Date 1-31-07

66-112/531
 55015

PRSCD1+ecloern

\$ 250.00

Two hundred Fifty & 100/100 Dollars

BB&T
 BRANCH BANKING AND TRUST COMPANY
 CRAWFORD, NORTH CAROLINA



Memo App Fee

Signature [Signature]

105310112115196668559102398

\$250.00

South Carolina Department of Health and Environmental Control

Facility Name: TOMMY W BERRY
Program ID: 57456
Invoice Number: YB00923-3

Amount Remitted:
\$

To ensure proper credit, please return this portion of the invoice with your payment. Please include the invoice number on your remittance. **PAYMENT DUE UPON RECEIPT. PAST DUE 30 DAYS FROM INVOICE DATE.**

SC DHEC
Attn: Bureau of Budgets & Finance
PO Box 100103
Columbia, SC 29202-3103

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Columbia Office • 2600 Ruff St Columbia SC 29201

TOMMY W. BERRY PETITIONER EXHIBIT "R"

EFIS - Environmental Facility Information System

File Edit Data Entry Tasks Permits Documents Reports Tools Admin Exit All Help Window

Permit Entry/Update for BERRY, T W

Permit Owner: BERRY, T W D Created: FEB 07, 2007 By: JUNE, JEFFREY D

Permit Type: OCRM-Direct Critical Area Permit D Updated: FEB 07, 2007 By: JUNE, PERRY D

Sub-Type: Minor D

Program Area: OCRM - Permitting D

Permit ID: 57456 D

Local Facility: D

Operator: D

Permit Status: Processing Application D

Permit Description: replacement of existing bulkhead E

Proj Name / ID: D

Est. Firm: D

Status Date: FEB 07, 2007 Inactive

Application Type: PERMIT APPLICATION

Received By: MARSHALL, TANITRA S D

Received Date: FEB 02, 2007

App Track No: 753146

App Date: JAN 31, 2007

App Disposition: In Review

Disp Date: FEB 07, 2007

App Signed By: D

Decision: D

Decision Date: D

Issued By: D

Issued Date: D

Effective Date: D

Expires Date: D

Permit Number: CORE # - ?

Accepted Date: D

App Description: E

Reviews: Propagate App Info

LEP: Public Notice

Details Site Info Other ID's Relations Tasks History Notes Documents Other Owners Invoices Date Events

Referrals Violations Enf. Actions Incidents Legal Print Screen Revisions Final Inv Mon. Rpts Reset Perm ID Name Util.

Enter an application type

Record 1/1 List of Values <OSC> <DBG>

Microsoft Excel - Reg...

11:23 AM

Date Received: 02/02/07P.N# CRN-07-509EFIS # 57456

PROJECT ASSIGNMENT SHEET

Applicant: T.W. BerryLocation of project: 317 49th Ave NWaterbody: Canal off Williams CreekProject (IE dock, riprap, bulkhead, etc): bulkheadAssigned to: TanitraRequirements:

Correct Fee included? Check appropriate box:

- ☐ \$150 for a dock with a walkway less than 100'
- ☒ \$250 for a minor project (erosion control, private & joint docks)
- ☐ \$250 dock additions regardless of walkway length (addition of boatlifts, etc)
- ☐ \$1000 major activities commercial or community structures (check w/ Charleston office)
- ☐ \$100 for amendments
- ☐ No fee was included with the application. The fee should be \$ _____, send fee letter

Affidavit of Ownership included? Contract of SaleProfessional drawings required? YES

- ☒ Are the drawings stamped?
- ☒ Are the drawings signed?
- ☒ Are the drawings computer generated?
- ☒ Are the drawings complete? Correct title block information included?
- ☐ Drawings need work. Letter requesting correct drawings sent on ___/___/___

Should this application be forwarded to the Army Corps of Engineers (ACOE)?

- ☒ No
- ☐ Yes, made copy and sent package to the ACOE on ___/___/___

Do I need to get any other information in order to get this to project to public notice? no

Regulatory Programs Division Decision Document
Impact Assessment for PRIVATE DOCKS
Office of Ocean and Coastal Resource Management - SCDHEC

ADMINISTRATIVE SUMMARY OF REVIEW

Commenting Agencies

Adjoining Property Owners

Agent or Contact

SCDNR: 10/16/06 No Comment: Frank + Deloris Boysig

Hoy + Sanders

SPA: _____

Dr. Frank Boysig

SCDAH: _____

Business Ph: _____

SCDAA: _____

Fax Number: _____

Others: _____

*NOTE: See list of Interested Persons on Reverse

APO's Notified? Please Initial & Date: AS 10-13-06

Local Government Notified? Please Initial & Date: 10-13-06

APPLICATION REQUIREMENTS

Please Circle When Complete YES

	<u>Date Received</u>	<u>Letters to Applicant</u>
Administrative Fee received	<u>09/27/06</u>	1. _____
Aff. Of Ownership received	<u>09/25/06</u>	2. _____
Certified Deed, plat or lease	<u>09/25/06</u>	3. _____
Date Published	<u>11/06/06</u>	4. _____
Which Paper	<u>The Sun News</u>	5. _____
County/State News ad recd	<u>10/31/06</u>	6. _____
Date Published	<u>10/31/06</u>	7. _____
Which Paper	<u>The Sun News</u>	8. _____

TECHNICAL SUMMARY OF REVIEW

Permit Name: Walter Knox III

Decision: _____

Permit: _____

Permit with Conditions: ✓

Deny: _____

I. Background Information:

Database ID# 55533

Permit Number: OCRM-06-550

P/N Date: October 6, 2006 10/13/06 Date Received: August 31, 2006

Permit Type: Direct / Critical

Other

Agency Permits: _____

County: Horry

Location

Description: 317 49th Ave North, Cherry Grove Section, North Myrtle Beach, SC

II. Project Description and Stated Purpose:

Description: remove and replace existing 8.3' X 12.2' dock

Purpose: for the applicants private, recreational use

III. Summary of Public and Agency Comments (List by name, date & comment summary; if none, so indicate):

Federal or other State Agencies: SCDNR - No comment

Local Agencies: NA

Public Comment (Include all names from Public Hearing): NA

Adjoining Property Owners (Include all names of those who commented): NA

IV. Environmental Assessment:

A. Describe the coastal resources (i.e., vegetation, habitat, etc.); which will be impacted:

Marsh vegetation

B. Watershed and vicinity information (include watershed name & size, classification; any impaired waters listed within impaired parameter; and shellfish status):

1) Vicinity information (include information on developments within watershed within 3 mile radius):

residential area

2) Existing system conditions (i.e. shellfish closures, 303d, and shellfish lease name and #): none

3) Name and width of waterbody: M Canal @ 68'

4) Any small tributary issue, width, change in grade: none

5) List total square footage requested and allowed: 101.26' req / 160ft² allowed

6) Any geographic circumstances to consider or boat storage sq. ft considerations: no

7) Any corridor or extended property line issues; is there a harm allowing a crossing of lines: no

8) If roof requested, any roofs in the area: NA

9) 50' / 50'

10) Property width and width of spacing at edge of creek/river:

C. GAPC Review (List any GAPC's present on or adjacent to project site; include agency comments; attach GIS printout; and outline treatment methods):

See GIS Review

V. Policy Assessment:

A. Regulatory History:

- 1) Previous OCRM authorizations (Critical Area Permits, land disturbance, Federal cert.): None
- 2) Previous Enforcements (is project in compliance w/all previous permits, etc.): None
- 3) Dock Master Plan and was it required to be recorded: None
- 4) Shellfish lease area number: None
- 5) Marsh ownership claim: Perrone

B. Applicable Regulations and

- 1) CZMA:
- 2) Regulations (General Guidelines)
- 3) CZ Policies (Management)

C. Does the project contravene any

(If No, skip to section VII; if

YES

☒ NO

VI. Modifications for bringing the

A. Modifications required to minimize impacts; additional treatment

buffers; size and/or use

B. If Permit is denied, explain contravention

Management Program.

VII. Field assessment by:

Tanitra10/20/06

(Name)

(Date)

VIII: Reviewed By: Tanitra Marshall

1. Project Manager:

Marshall11/07/06

(Signature)

(Date)

IX. Notes:

Exact replacement of existing dock. Called agent, he plans to use new pilings so we will request that the new dock be centered in the lot making it 21ft from each property line. 11/20/06 - Agent changed his mind & will use existing pilings discussed with Bill E. & as long as it's an exact replacement it's okay

X. Attachments Required:

GIS Review (See Section IV.C. above)
Site Photographs

CERTIFICATE OF MAILING

RE: OCRM-06-550

PERMITTEE: Walter Knox III

I, Peggy D. Funk, as an employee of DHEC-OCRM certify that I have, this day mailed the following Permit for Signature affixed thereto, to the following.

NAME: Mr. Hoyt Sanderson
2450 Red Bluff Rd
Loris, SC 29569

NAME:

November 29, 2006

TELE 24ET 9000 0070 9002

SENDER: COMPLETE THIS SECTION	
U.S. Postal Service TM	
CERTIFIED MAILTM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 1.11
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.36
Postmark Here	
11-29-06	
Sent To Hoyt Sanderson	
Street, Apt. No., or PO Box No. 2450 Red Bluff Rd	
City, State, ZIP+4 Loris, SC 29569	
PS Form 3800, June 2002, PSN 7530-02-000-9000 See Reverse for Instructions	

COMPLETE THIS SECTION ON DELIVERY

A. Signature	☒ Agent
<i>Hoyt Sanderson</i>	☐ Addressee
B. Received by (Printed Name)	C. Date of Delivery
<i>Amarda S. S. S.</i>	12-1
D. Is delivery address different from item 1? ☐ Yes	☐ No
If YES, enter delivery address below:	
3. Service Type	
☒ Certified Mail	☐ Express Mail
☐ Registered	☒ Return Receipt for Merchandise
☐ Insured Mail	☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes	

0100 0006 1342 9931

Return Receipt

102595-02-M-1540

CERTIFICATE OF MAILING

RE: OCRM-06-550

PERMITTEE: Walter Knox III

I, Peggy D. Funk, as an employee of DHEC-OCRM certify that I have, this day mailed the following Permit affixed thereto, to the following.

NAME: Hoyt Sanderson Certified Mail
 2450 Red Bluff Rd
 Loris, SC 29569

NAME:

SENDER - COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided) For delivery information visit our website at www.usps.com		Signature: <i>Hoyt Sanderson</i> ☐ Agent ☒ Addressee Received by (Printed Name): _____ Date of Delivery: <i>11/17</i>	
OFFICIAL USE		☐ Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
Postage	\$ 1.11	VEID 11-16-06	
Certified Fee	2.40		
Return Receipt Fee (Endorsement Required)	1.85		
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees	\$5.36	Service Type: ☒ Certified Mail ☐ Registered Mail ☐ Insured Mail ☐ Express Mail ☒ Return Receipt for Merchandise ☐ C.O.D.	
Sent To: Hoyt Sanderson Street, Apt. No., or PO Box No.: 2450 Red Bluff Rd City, State, ZIP+4: Loris, SC 29569		Restricted Delivery? (Extra Fee) ☐ Yes	
PS Form 3800, June 2002 See Reverse for Instructions		10 0006 1342 9948 Receipt 102595-02-M-1540	

yee
 Carolina



000139

CERTIFICATE OF MAILING

RE: Public Notice

PERMITTEE: Walter Knox III
OCRM-06-550

I, Barbara Stein, as an employee of DHEC-OCRM certify that I have, this day mailed the following ^{Public}~~Notice~~ affixed thereto, to the following.

NAME: C/o Hoyt Sanderson
2450 Red Bluff Road
Loris, SC 29569 1

NAME: Walter Knox III
117 Oak Meadow Drive
Bridgewater, VA 22812

NAME: Frank & Deloris Boysig
315 49th Avenue North
North Myrtle Beach, SC 29582

NAME: Dr. Frank Boysia
309 Nest Pine Street
Florence, SC 29501

NAME: Nexsen Pruet Adams Kleemeier LLC
PO Box 486
Charleston, SC 29402

NAME: City of N. Myrtle Beach
1015 Second Avenue South
N. Myrtle Beach, SC 29582

October 13, 2006

Barbara Stein

Barbara Stein
DHEC-OCRM Employee
Myrtle Beach, South Carolina

CERTIFICATE OF MAILING

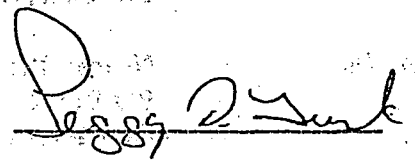
RE: OCRM-06-550
PERMITTEE: Walter H. Knox III

I, Peggy D. Funk, as an employee of DHEC-OCRM certify that I have, this day mailed the following Fee Letter affixed thereto, to the following.

NAME: Walter H. Knox III Regular Mail
117 Oak Meadow Dr.
Bridgewater, VA 22812-3530

NAME: Hoyt Sanderson Regular Mail
2450 Red Bluff Road
Loris, SC 29569

October 6, 2006


Peggy D. Funk
DHEC-OCRM Employee
Myrtle Beach, South Carolina



000141

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

October 06, 2006

Walter H. Knox III
Linda W. Knox
117 Oak Meadow Dr
Bridgewater, VA 22812-3530

PN# OCRM-06-550
Walter Knox III

Dear Mr. Knox:

The SCDHEC Office of Ocean and Coastal Resource Management has established an administrative fee schedule for all applications. The fees are as follows:

A.	Dock General Permit	\$ 100.00
B.	Docks 100 feet or less in length	\$ 150.00
C.	Minor activities	\$ 250.00
D.	Major activities which may include the following: commercial activities, real estate development, community docks, and marinas	\$1,000.00
E.	Local and Federal agencies	\$ 250.00
F.	Minor amendments requiring public notice	\$ 100.00
G.	Major amendments	\$1,000.00
H.	Major permit transfers and extensions	\$ 100.00
I.	Minor permit transfers and extensions	\$ 25.00

Your application falls under *B* above. Your check #5866 dated June 25, 2006 was returned to us from our finance department as it is over 90 days old and can not be processed. Please remit a new check for \$150.00. Payment should be made by check or money order. (ALL CHECKS SHOULD BE MADE PAYABLE TO THE SCDHEC-OCRM.) Your permit application is already on public notice so prompt action on this matter will be appreciated. This fee is a non-refundable administrative fee that has no bearing whatsoever on the outcome of the application.

If payment is not received within 15 days of the date of this letter, this application will be canceled and the application forms returned to you.

This fee schedule is subject to change by the SCDHEC Office of Ocean and Coastal Resource Management.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Charleston Office • 1362 McMillan Avenue, Suite 400 • Charleston, SC 29405

Phone: 843-744-5838 • Fax: 843-744-5847 • www.scdhec.gov

000142

WALTER KNOX III
117 OAK MEADOW DRIVE
BRIDGEWATER, VA 22812

HOYT SANDERSON
2450 RED BLUFF ROAD
LORIS, SC 29569

FRANK & DELORIS BOYSIG
315 49TH AVENUE NORTH
NORTH MYRTLE BEACH, SC 29582

DR. FRANK BOYSIA
309 NEST PINE STREET
FLORENCE, SC 29501

NEXSEN PRUET ADAMS KLEEMEIER
LLC
PO BOX 486
CHARLESTON, SC 29402

CITY OF NORTH MYRTLE BEACH
1015 SECOND AVENUE SOUTH
NORTH MYRTLE BEACH, SC 29582

PJX

9-28-06

SC Department of Health and Environmental Control Office of Ocean and Coastal Resource Management

CONSTRUCTION AUTHORIZATION

Expiration Date: May 29, 2007

Permit Number: OCRM-06-550

Date Issued: December 4, 2006
Location: 317 49th Ave N. Cherry Grove section, North Myrtle Beach, SC

Authorized Work: 8.3' X 12.2' fixed pier head

Address of Permittee: 117 Oak Meadow Dr.,
Bridgewater, VA 22812

Contractor's Name: Hoyt Sanderson

Contractor's License #: G107880

Waterway: Man Made Canal

City: North Myrtle Beach

County: Horry (26)

Project Manager: *Marshall*
Tanitra S. Marshall, Project Manager

Date December 4, 2006

> This Notice Must Be Conspicuously Displayed at the Work Site <

REQUEST FOR OCRM CONSTRUCTION PLACARD

PERMITTEE/PROPERTY OWNER: Walter Knox IIPERMIT NUMBER: OCRM-06-550

Please indicate below the date on which you will begin actual work on your project as authorized by the enclosed permit. Then simply drop this card in the mail to our office. You will receive a construction placard, good for six months, that must be posted at the work site. If the work is not finished by that time, please contact our office to obtain an additional placard. However, do not request a placard if you are not ready to begin construction.

Thanks for your cooperation.

DATE OF INITIATION OF

CONSTRUCTION: 12-12-06PERMIT HOLDER/PROPERTY OWNER OR AGENTSIGNATURE: Hoyt SandersCONTRACTOR: Sanders LICENSE NUMBER: G 107880 *

*If a licensed contractor is not listed in the blank space above, then the Permittee/Property Owner is required to list himself/herself as contractor with no license number. In any event, unlicensed contractors serving as Agent for the Permittee/Property Owner will not receive the construction placard since this would be in violation of the S. C. Contractor's Licensing Act of 1999. The S. C. Contractors Licensing Act of 1999 requires that all construction with a total cost of \$5000 or more must be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes.

MAILING ADDRESS TO SEND PLACARD:

Hoyt Sanders
2450 Red Bluff Rd.
Louis SC 29569

**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT**

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s): Walter Knox III

Permit Number(s): OCRM-06-550

Date of Issuance: November 29, 2006

Expiration Date: November 29, 2011

Location: On and adjacent to Man-Made Canal at 317 49th Ave N, Cherry Grove, Horry County, South Carolina

**SEE SPECIAL
CONDITIONS**

This permit is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of \$5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The plans submitted by you, attached hereto, show the work consists of the following: The work as proposed and shown on the attached plans consists of constructing a private dock to replace the existing structure. Specifically the work will consist of an 8.3' x 12.2' fixed pier head. The work as described is for the applicant's private, recreational use.

SPECIAL CONDITIONS

1. Provided the new dock is constructed on the existing pilings, if possible and extends no further in the creek than the current dock.
2. Provided that an as-built survey of the dock must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the dock, and must list the starting and ending coordinates of the dock walkway in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

3. Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the South Carolina Institute of Archaeology and Anthropology (Mr. James Spirek at 803-777-8170) pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title 54, Code of Laws of South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

Permit Number: OCRM-06-550

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Walter Knox III

(PERMITTEE(S))

Walter Knox III

(DATE)

12-2-06

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

Marshall for

11/29/06

(MANAGER, CRITICAL AREA PERMITTING) (DATE)

Curtis M. Joyner

Or his Designee

Other Authorized State Official

SEE
CONDITIONS

GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

**SEE SPECIAL
CONDITIONS**

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393.

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

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

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Charleston Office • 1362 McMillan Avenue, Suite 400 • Charleston, SC 29405

Phone: 843-744-5838 • Fax: 843-744-5847 • www.scdhec.gov

TOMMY W BERRY PETITIONER EXHIBIT "R"

Proposed Deck
replacement

1. THIS IS A PROPOSED DETAIL PLAN AND SHALL NOT BE CONSTRUED TO PERMIT THE LOCATION, DESCRIPTION, ESTABLISHMENT OR REESTABLISHMENT OF PROPERTY LINES OR DESCRIPTIONS OF LAND BOUNDARIES FOR CONVEYANCE.
2. OWNER/ CONTRACTOR TO VERIFY ALL HOUSE DIMENSIONS, ZONING REQUIREMENTS & RESTRICTIONS BEFORE STAKING
3. R/W = RIGHT OF WAY
4. SETBACKS PER ZONING

MARSH
GRASS

CANAL

MARSH GRASS

NOTE: PRESENT DOCK IS FALLING DOWN & DANGEROUS. NEW DOCK WILL BE AN EXACT REPLACEMENT OF THE EXISTING STRUCTURE.

RECEIVED

SEP 27 2006

DHEC-OCRM
MYRTLE BEACH OFFICE



Seal of the State of South Carolina, Pyramid Engineering Inc. C01924

PYRAMID 
ENGINEERING & SURVEYING, INC.

1000 2ND AVENUE SOUTH, SUITE 110
NORTH MYRTLE BEACH, SC 29582

(B43) 280 - 3766

Proposed Details
OF

317 49th Ave N

Heron Watch

SCALE 1/4" = 1'

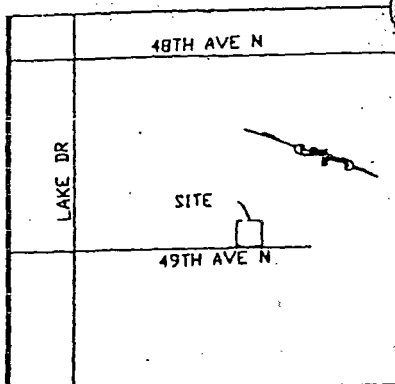
N.M.B. TWP, Horry County, SC

THE PROPERTY OF Walter H & Linda W Knox

DEED REFERENCE IN BOOK 1996 PAGE 1292

PERMIT NUMBER: 55533 DATE: 9/25/06

SEE SPECIAL
CONDITION



VICINITY MAP

NOT TO SCALE

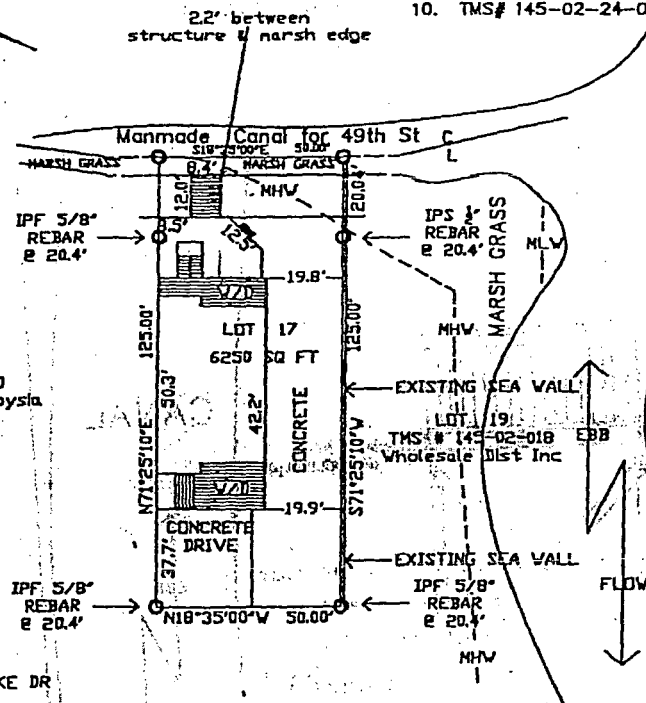
SITE PLAN

September 25, 2006

NOTES:

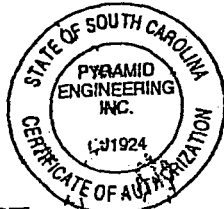
1. THIS IS A PROPOSED SITE PLAN AND SHALL NOT BE CONSTRUED TO PERMIT THE LOCATION, DESCRIPTION, ESTABLISHMENT OR REESTABLISHMENT OF PROPERTY LINES OR DESCRIPTIONS OF LAND BOUNDARIES FOR CONVEYANCE.
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5. EIP = EXISTING IRON PIPE
6. NIR = NEW IRON REBAR
7. EP = EDGE OF PAVEMENT
8. THIS IS A SITE PLAN OF AN EXISTING PARCEL OF LAND.
9. SETBACKS PER ZONING
10. TMS# 145-02-24-019

LOT 15
TMS # 145-02-24-020
Frank T & Dolores S Boyda



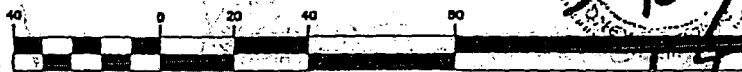
← 400' TO LAKE DR

49TH AVENUE NORTH



FLOOD NOTE:
THE SUBJECT PROPERTY SHOWN
HEREON DOES LIE IN AN AE 14 ZONE
SPECIAL FLOOD HAZARD AREA
PER F.E.M.A. PANEL# 45051C0603H
DATED 8-23-99

GRAPHIC SCALE

(IN FEET)
inch = 40 ft

RECEIVED



SEP 27 2006

PROPOSED SITE PLAN

DHEC-OCRM
MYRTLE BEACH OFFICE

OF

317 49th Ave N Heron Watch

N.M.B. TWP. HORRY COUNTY, SC

Corporate Center Suite 110
1000 2nd Avenue South
N. Myrtle Beach, S. C. 29582

SCALE 1"=40'

THE PROPERTY OF WALTER H & LINDA W KNOX

DEED REFERENCE IN BOOK 1996 PAGE 1272

PERMIT NUMBER: 55533 DATE: 9/25/06

SEE SPEC
CONDITION

TOMMY W BERRY PETITIONER EXHIBIT "R"



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

November 29, 2006

Mr. Hoyt Sanderson
2450 Red Bluff Rd.
Loris, SC 29569

SEE ORIGINAL
CONDITIONS

Re: OCRM-06-550
Walter Knox III

Dear Mr. Hoyt Sanderson:

The SCDHEC Office of Ocean and Coastal Resource Management has reviewed your application to build a private dock at 317 49th Ave N, Cherry Grove, Horry County, South Carolina and has issued a permit for this work. You should carefully read the description of the authorized project and any special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and return it to this Department. Keep the photocopy for your records.

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, **OR** appealed within 15 days as described on the enclosed "Notice of Appeal Procedure", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Notice of Appeal Procedure" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required.

Sincerely,

Tanitra S. Marshall
Project Manager
Enclosure

**SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
PERMIT APPLICATION PUBLIC NOTICE**

October 13, 2006

Permit Number: OCRM-06-550
Permit ID: 55533

The SCDHEC Office of Ocean and Coastal Resource Management has received an application for a permit for the alteration of a critical area. This application was submitted pursuant to the Coastal Zone Management Act (Act 123) of the 1977 South Carolina General Assembly. The application, in brief, is described as follows:

APPLICANT: Walter Knox III
Hoyt Sanderson
2450 Red Bluff Rd.
Loris, SC 29569

LOCATION: On and adjacent to Man-Made Canal at 317 49th Ave N, Cherry Grove, Horry County, South Carolina
TMS#: 145-02-24-019.

WORK: The work, as proposed and shown on the attached plans, consists of constructing a private dock to replace the existing structure. Specifically the work will consist of an 8.3' x 12.2' fixed pier head. The work as described is for the applicant's private, recreational use.

This public notice is being distributed to all known interested persons and agencies to assist in developing facts on which a decision by OCRM can be based. Comments concerning the proposed work should be submitted in writing, setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

The decision to issue or deny a permit will be based on the individual merits of the application, the policies specified in the South Carolina Coastal Zone Management Act, and the considerations outlined in the State of South Carolina Coastal Zone Management Program. Interested parties who wish to be notified of final permit action must notify OCRM in writing of this request.

To assure review by OCRM, comments regarding this application must be received by OCRM on or before October 28, 2006. For further information please contact the project manager for this activity, Tanitra S. Marshall at 843-238-4528.

PLEASE REPLY TO:

SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
927 Shine Avenue
Myrtle Beach, South Carolina 29577

Please refer to P/N# OCRM-06-550

Marshall

Tanitra S. Marshall, Program Manager

m

PAID

OCRM-06-0006

550

AUG 31 2006

5150.00



PERMIT APPLICATION

S. C. Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

<u>Charleston</u>	<u>Beaufort</u>	<u>Myrtle Beach</u>
744-5838	846-9400	238-4528
744-5847(fax)	846-9810(fax)	238-4526(fax)

NAME & MAILING ADDRESS OF APPLICANT
(and email address if applicable)

Walter H. Knox III
117 Oak Meadow Drive
Bridgewater VA 22812
Tigerwally@aol.com

PHONE #: (Bus.)

(Home) 540 828 1984

(Fax)

NAME AND MAILING ADDRESS OF AUTHORIZED AGENT:
(If an agent is listed, all correspondence will be sent to the agent.)

Walt Dandrea
2450 Red Bluff Rd.
Louis SC 29569

PHONE #:

(Bus.)

843-333-3917

(Home)

843-756-6894

(Fax)

DESCRIBE THE DIMENSIONS, GENERAL SPECIFICATIONS, AND PURPOSE OF THE PROJECT:

Present dock is falling down; dangerous to walk on.
This new dock will be an exact replacement for
the existing structure. The dock will be 8.3 ft
by 12.2 ft

NAMES AND COMPLETE MAILING ADDRESSES OF ADJOINING PROPERTY OWNERS: (If the applicant owns adjoining property, give name and address for nearest property not owned by applicant.)

Frank A. Deloris Boysig Dr. Frank Boysig
315 49th Ave. N 309 East Pine St
North Myrtle Beach, SC. Florence SC 29501

RECEIVED

AUG 31 2006

(Attach additional sheet of paper if necessary.)

LOCATION OF THE PROJECT (address & directions to the site):

317 49th Ave. North
North Myrtle Beach, SC
N. on Hwy 17 to Sea Mtn. Hwy to Blvd. Take left at light.
Go to 49th Ave N. House is #315 COUNTY: Horry

TAX MAP NUMBER (Required on all applications):

145-02-24-019

LOCAL GOVERNING BODY WITH JURISDICTION OVER SITE:

Hog Island

NAME OF WATERWAY:

"M" Canal

SEP 05 2006



AFFIDAVIT OF OWNERSHIP OR CONTROL

S. C. Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management
Charleston Beaufort Myrtle Beach
744-5838 846-9400 238-4528
744-5847(fax) 846-9810(fax) 238-4526(fax)

I hereby certify that I am the (check one):

- ☒ Record Owner
☐ Lessee
☐ Record Easement Holder
☐ Applicant To Record Owner For Easement
☐ Contract To Purchase Property

of the below described property situated in Horry County, South Carolina; and that said property is all of that said property that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted. Furthermore, I certify that as record owner, lessee, or record easement holder, I have, or will have prior to undertaking the work, necessary approvals or permission from all other persons with a legal interest in said property to conduct the work proposed in the permit application.

WRITE LEGAL DESCRIPTION OF HIGHLAND (as described in deed, lease, etc.) BELOW OR WRITE "SEE ATTACHED" (in large bold letters) AND ATTACH A COPY OF THE DEED, LEASE, EASEMENT, OR MOST RECENT CERTIFIED PLAT OF THE PROPERTY. IF YOU ARE NOT THE RECORD OWNER, LESSEE OR EASEMENT HOLDER, YOU MUST ALSO SUBMIT WRITTEN PERMISSION FROM THE OWNER OF THE PROPERTY TO CARRY OUT THE PROPOSED ACTIVITY.

SEE ATTACHED

I also certify that the project as proposed does not cross any wetlands or areas below mean high water which is in the ownership of other private persons or public or private entities and that there is no disputed claim to the wetlands or areas below mean high water by private person or other entities due to a King's Grant, State Grant, easement or conveyance or other legal document evidencing ownership of these areas.

Walter H. Kumpf
Signature of Record Holder or Lessee

Sworn to and subscribed before me at S.C., Horry County, South Carolina, this 30th day of August, 2006.

Spencer H. Thibodeau
Notary Public

My commission expires: 12-08-2007

RECEIVED **RECEIVED**

SEP 05 2006



PERMIT APPLICATION

S. C. Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management
Charleston Beaufort Myrtle Beach
 744-5838 846-9400 238-4528
 744-5847(fax) 846-9810(fax) 238-4526(fax)

IS ANY PORTION OF ACTIVITY FOR WHICH AUTHORIZATION IS SOUGHT NOW COMPLETE?

YES ☐

NO ☒

IF "YES", GIVE REASONS, INCLUDING THE MONTH AND YEAR ACTIVITY WAS COMPLETED. INDICATE EXISTING WORK ON DRAWINGS.

ADDITIONAL REMARKS:

APPLICATION IS HEREBY MADE FOR A PERMIT OR PERMITS TO AUTHORIZE THE ACTIVITIES DESCRIBED HEREIN. I CERTIFY THAT I AM FAMILIAR WITH THE INFORMATION CONTAINED IN THIS APPLICATION, AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF SUCH INFORMATION IS TRUE, COMPLETE, AND ACCURATE. I FURTHER CERTIFY THAT I POSSESS THE AUTHORITY TO UNDERTAKE THE PROPOSED ACTIVITIES OR I AM ACTING AS THE DULY AUTHORIZED AGENT OF THE APPLICANT.

Walter H. Knox III
Signature of Applicant

6/25/06
Date

Walt Sanders
Signature of Agent (if agent has been listed)

6-28-06
Date

IMPORTANT!! THE APPLICATION MUST BE SIGNED BY THE APPLICANT AND THE AUTHORIZED AGENT (IF AN AGENT HAS BEEN LISTED ON PAGE ONE OF THIS APPLICATION).

The applicant shall permit the SCDHEC Office of Ocean and Coastal Resource Management, the District Engineer, the State Law Enforcement Division, South Carolina Department of Natural Resources, and other State permit inspection agencies, or their representative(s) to make periodic inspection at any time deemed necessary in order to assure that the activity being performed is in accordance with the terms and conditions prescribed herein.

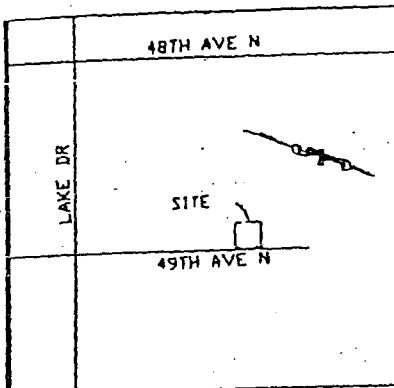
RECEIVED

RECEIVED

Page 8 SEP 05 2006

DHEC-OCRM
OFFICE

DHEC-OCRM
MYRTLE BEACH OFFICE



VICINITY MAP
NOT TO SCALE

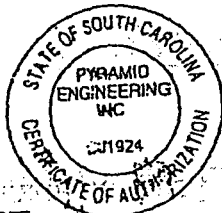
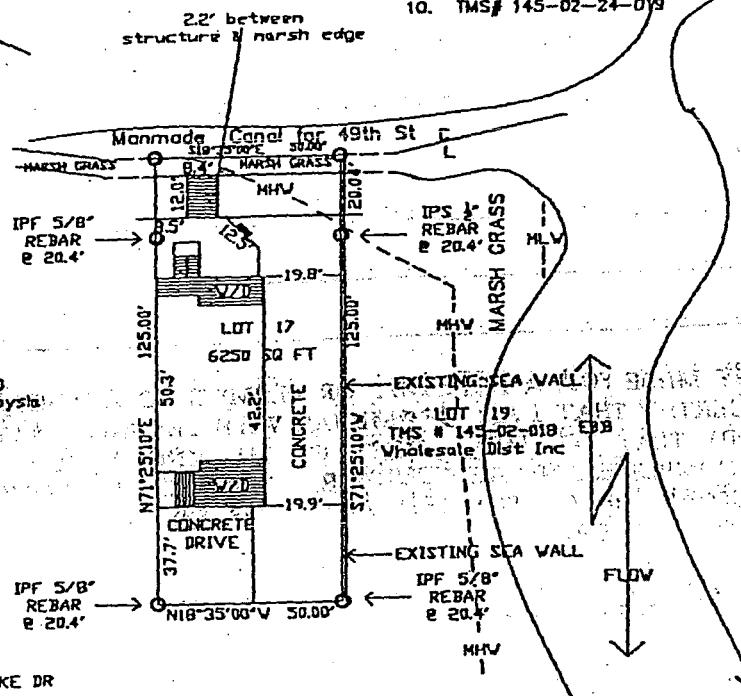
SITE PLAN

September 25, 2006

NOTES:

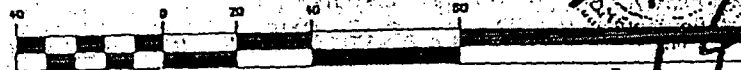
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6. NIR = NEW IRON REBAR
7. EP = EDGE OF PAVEMENT
8. THIS IS A SITE PLAN OF AN EXISTING PARCEL OF LAND.
9. SETBACKS PER ZONING
10. TMS# 145-02-24-019

OCRM-06-550



49TH AVENUE NORTH

GRAPHIC SCALE



(IN FEET)
inch = 40 ft

FLOOD NOTE:
THE SUBJECT PROPERTY SHOWN
HEREON DOES NOT LIE IN AN AE 14 ZONE
SPECIAL FLOOD HAZARD AREA
PER F.E.M.A. PANEL# 45051C0603H
DATED 8-23-99

RECEIVED



SEP 27 2006

DHEC-OCRM
MYRTLE BEACH OFFICE

PROPOSED SITE PLAN

OF

49th Ave N Heron Watch

N.M.B. TWP, HORRY COUNTY, SC

SCALE 1"=40'

THE PROPERTY OF WALTER H & LINDA W KNOX

DEED REFERENCE IN BOOK 1996 PAGE 1272

PERMIT NUMBER: 55533 DATE: 9/25/06

Corporate Center Suite 110
1000 2nd Avenue South
N. Myrtle Beach, S.C. 29582

TOMMY W. BERRY, PETITIONED, EXHIBIT "D"

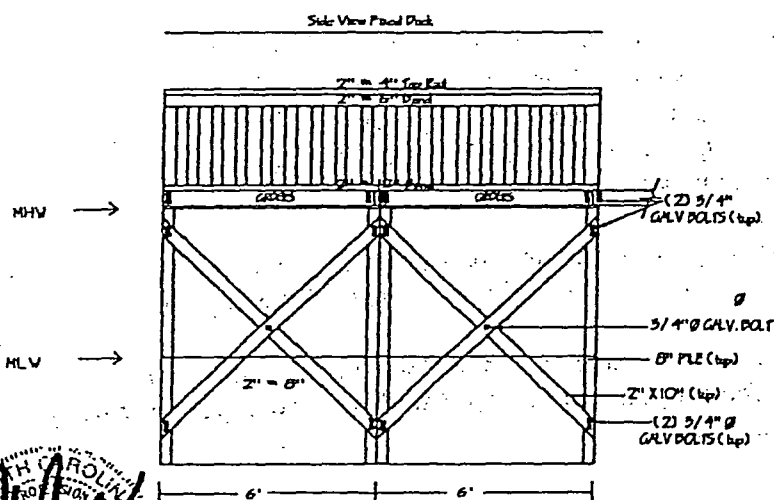
Proposed Details
NOT FOR SALES, CONVEYANCES OR RECORDATION.
September 25, 2006

Proposed Deck replacement

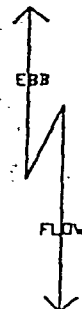
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MARSH
GRASS



CANAL

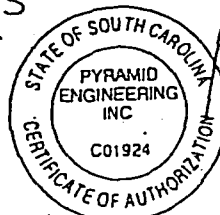


MARSH GRASS

RECEIVED

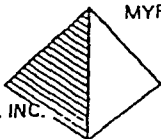
SEP 27 2006

DHEC-OCRM
MYRTLE BEACH OFFICE



NOTE:
PRESENT DOCK IS FALLING DOWN &
DANGEROUS. NEW DOCK WILL BE AN
EXACT REPLACEMENT OF THE
EXISTING STRUCTURE.

PYRAMID
ENGINEERING & SURVEYING, INC.



1000 2ND AVENUE SOUTH, SUITE 110
NORTH MYRTLE BEACH, SC 29592

433 280 - 3756

Proposed Details
OF

317 49th Ave N

Heron Watch

SCALE 1/4" = 1'

N.M.B. TWP, HORRY COUNTY, SC

THE PROPERTY OF

Walter H & Linda W Knox

DEED REFERENCE IN BOOK 1996 PAGE 1292

PERMIT NUMBER: 55533

DATE: 9/25/06

OCRM-06-550



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

September 13, 2006

Walter H. Knox III
117 Oak Meadow Drive
Bridgewater, VA 22812

RE: OCRM-06-550

Dear Mr. Knox:

OCRM has received your application to build a new dock. However, the submittal is not complete and additional information is needed before we can continue to process this application. Please supply the following:

- Complete Drawings of the Plan View. Please see enclosed checklist.
- Detailed drawings of the Side View. Please see enclosed checklist.
- Affidavit of Ownership or Control (Include a legal description of the highland as described in the deed, lease, etc or an attachment of the deed, lease, easement or most recent certified plat of the property.

Please note that you have 15 days to submit complete information for these permits. After 15 days, OCRM will have no other alternative but to cancel the request.

Thank you for your time and attention to the matter. Please call if you have any questions, (843)-238-4528. Should you wish to expedite this process, you may fax your revised drawings to (843)-238-4526.

Sincerely,

Tanitra S. Marshall
Critical Area Program Manager



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

WALTER H KNOX III OR LINDA W KNOX
117 OAK MEADOW DR
BRIDGEWATER VA 29569

Invoice Date: 09/28/2006
Invoice Number: YB00888-8
Invoice Amount: \$150.00
Program ID: OCRM-06-550

Department Name: OCRM - MYRTLE BEACH
Department Contact: BARBARA A STEIN
Department Phone: 843-238-4528

Qty	Description	Unit	Extended
1	Application fee for critical area permit - dock 100 feet or less/ck#5866	150.00	150.00

WALTER H KNOX III OR
LINDA W KNOX
117 OAK MEADOW DR
BRIDGEWATER, VA 22812-3530
(540) 828-1984

5866

June 25, 2006

68-2/510

Pay to the
order of

SC DHEC - OCRM \$ 150.00

One Hundred and Fifty Dollars

\$150.00

SUNTRUST

ACH RT 061000104

for Walter H Knox III

Control

Facility Name: WALTER H KNOX III
Program ID: OCRM-06-550
Invoice Number: YB00888-8

Amount Remitted:

\$

To ensure proper credit, please return this portion of the invoice with your payment. Please include the invoice number on your remittance. **PAYMENT DUE UPON RECEIPT. PAST DUE 30 DAYS FROM INVOICE DATE.**

SC DHEC
Attn: Bureau of Budgets & Finance
PO Box 100103
Columbia, SC 29202-3103

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Columbia Office - 2600 Bull St. Columbia, SC 29201

Phone: 803 898 2015 Fax: 803 898 2013

TOMMY W HERRY PETITIONER EXHIBIT "R"

Sun Publishing Company, Inc.
P.O. Box 406
Myrtle Beach, SC 29578-0406



October 31, 2006

Hoyt Sanderson
2450 Red Bluff Road
Loris, SC 29569

NEWSPAPER
The Sun News

DATES
October 31, 2006

AFFIDAVIT OF PUBLICATION: State of South Carolina
County of Horry

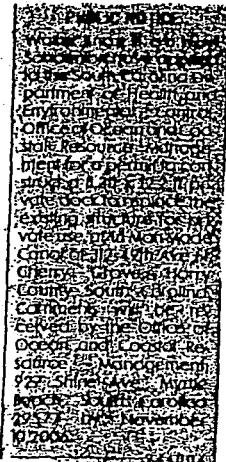
Before me, a Notary Public, personally appeared — Gary Wortel, who, after being duly sworn, deposes and says: That he is publisher of the Sun Publishing Company, Inc., at Myrtle Beach, South Carolina. In the county and state aforesaid: that the above ad(s) was (were) printed and published in said newspaper, on said date(s).

Gary Wortel

Sworn to and subscribed before me this 31st day of October 2006.

Notary Public

My Commission Expires July 24, 2016



RECEIVED

NOV 6 2006

DHEC-OCRM
MYRTLE BEACH OFFICE

RECEIVED

SEP 25 2006

DHEC-OCRM
MYRTLE BEACH OFFICE

GTS/vcp/knox/973582

Prepared by and Return to:
Louis M. Cook
Attorney at Law
800 Sea Mtn. Hwy
North Myrtle Beach, SC 29582HORRY COUNTY, S.C.
FILED
97 DEC -5 PM 3:02STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that A. William Moss and Faye L. Moss, hereinafter called Grantors, in the State aforesaid for and in consideration of the sum of TWO HUNDRED FORTY TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (U.S. \$242,500.00,) to us paid by WALTER H. KNOX, III AND LINDA W. KNOX, hereinafter called Grantees, receipt whereof is hereby acknowledged have granted, bargained, sold and released; and by these presents does grant, bargain, sell and release unto the said Grantees, for and during the term of their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversions the following described property:

ALL AND SINGULAR, all those certain pieces, parcels, or lot of land, lying, situate and being in the Cherry Grove Beach Section, town of North Myrtle Beach, Little River Township, Horry County, South Carolina, being designated as Lot 17, Block "M-1," of the Cherry Grove Beach Development, as shown upon a map of said property by C. B. Berry, R.L.S., dated May 24, 1984, and recorded in the office of the Clerk of Court for HORRY County in Plat Book 57 on Page 74, reference to which is made as forming a part of these presence.

This conveyance is subject to restrictions and covenants of the Cherry Grove Beach Development appearing of record.

This being the identical property conveyed to Grantors herein by deed from Lloyd D. Bryant and Doris S. Bryant on January 31, 1986, and recorded in the Horry County Records in Deed Book 1026 at Page 449, Conway, South Carolina 29526.

FE 630.50 COUNTY 266.75

VPT YES

(NO)

SSOR

1272
BOOK 1996 PAGE 1272

TOMMY W. BERRY PETITIONER EXHIBIT "B"

GRANTEES'S ADDRESS: 317 49th Avenue North
North Myrtle Beach, South Carolina 29582

HORRY COUNTY ASSESSOR
Tax Map #145-02-24-019

Map Blk Parcel 12-8-97-13
TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, for and during the term of their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

AND we do hereby bind ourselves and our Heirs and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantees, for and during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever, in fee simple, together with every contingent remainder and right of reversion, against us and our Heirs and Assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS the execution hereof by Grantors this 5TH day of DECEMBER, in the year of our Lord one thousand nine hundred and ninety-seven and in the two hundred twenty-first year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

Jugene C. Puzin
1st Witness

Melinda R. Johnson
Notary

A. William Moss
A. William Moss

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
ACKNOWLEDGMENT
(under S.C. Code Sect. 30-5-30©

I, Melinda R. Johnson, a notary public for South Carolina, do hereby certify that A. William Moss personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Melinda R. Johnson
Notary Public for South Carolina
My Commission Expires: 02-04-2004

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Signed, Sealed and Delivered
in the presence of:

Jerry Sealey
1st Witness

James F. Williams
Notary

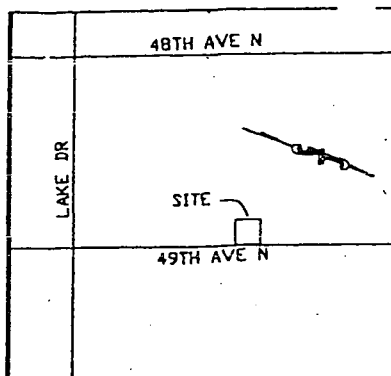
Faye L. Moss
Faye L. Moss

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
ACKNOWLEDGMENT
(UNDER S.C. Code Sect. 30-5-30©

I, James F. Williams, a Notary Public for South Carolina, do hereby certify that Faye L. Moss personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 5th day of December, 1997.

James F. Williams
Notary Public for South Carolina
My Commission Expires: 11-12-06



SITE PLAN

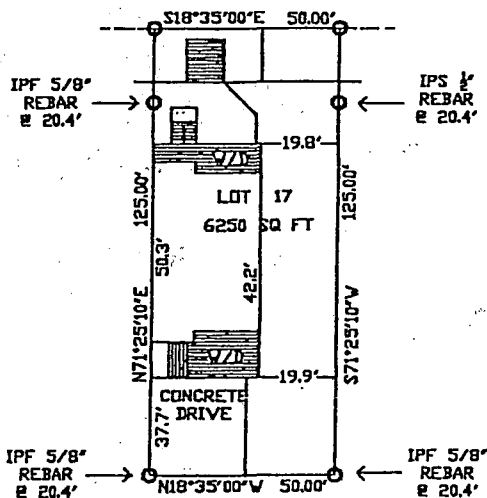
August 24, 2006

NOTES:

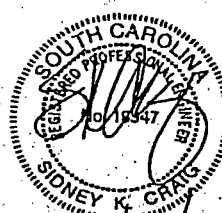
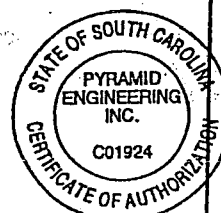
1. THIS IS A PROPOSED SITE PLAN AND SHALL NOT BE CONSTRUED TO PERMIT THE LOCATION, DESCRIPTION, ESTABLISHMENT OR REESTABLISHMENT OF PROPERTY LINES OR DESCRIPTIONS OF LAND BOUNDARIES FOR CONVEYANCE.
2. OWNER/ CONTRACTOR TO VERIFY ALL HOUSE DIMENSIONS, ZONING REQUIREMENTS & RESTRICTIONS BEFORE STAKING
3. R/W = RIGHT OF WAY
4. EIR = EXISTING IRON REBAR
5. EIP = EXISTING IRON PIPE
6. NIR = NEW IRON REBAR
7. EP = EDGE OF PAVEMENT
8. THIS IS A SITE PLAN OF AN EXISTING PARCEL OF LAND.
9. SETBACKS PER ZONING
10. TMS# 145-02-24-019

"M" CANAL

LOT 15
TMS # 145-02-24-020



LOT 19
TMS # 145-02-018



RECEIVED

AUG 31 2006

DHEC-OCRM
MYRTLE BEACH OFFICE

49TH AVENUE NORTH

RECEIVED

SEP 05 2006

GRAPHIC SCALE



(IN FEET)

1 inch = 40 ft

FLOOD NOTE:
THE SUBJECT PROPERTY SHOWN
HEREON DOES LIE IN AN AE-14 ZONE
SPECIAL FLOOD HAZARD AREA
PER F.E.M.A. PANEL# 45051C0603H
DATED 8-23-99



Corporate Center Suite 110
1000 2nd Avenue South
N. Myrtle Beach, S. C. 29582

PROPOSED SITE PLAN

OF

Lot 17 Block M-1 49th Ave N

N.M.B. TWP, HORRY COUNTY, SC

SCALE 1"=40'

THE PROPERTY OF WALTER H & LINDA W KNOX

DEED REFERENCE IN BOOK 1996 PAGE 1272

Proposed Details

NOT FOR SALES, CONVEYANCES OR RECORDATION.

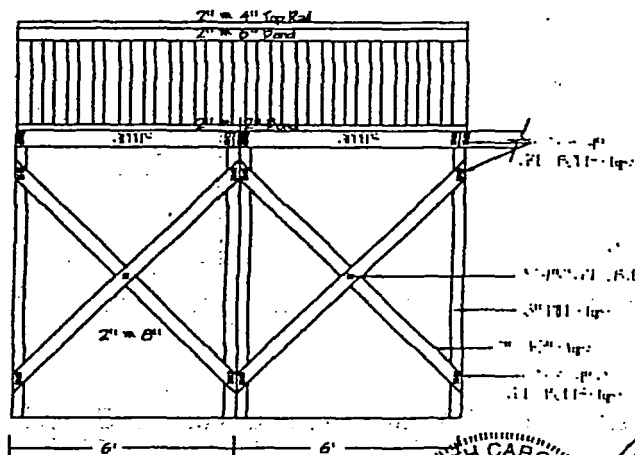
August 24, 2006

Proposed Deck
replacement

NOTES:

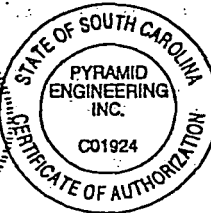
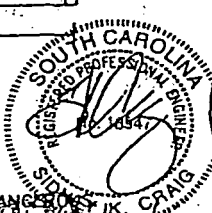
1. THIS IS A PROPOSED DETAIL PLAN AND SHALL NOT BE CONSTRUED TO PERMIT THE LOCATION, DESCRIPTION, ESTABLISHMENT OR REESTABLISHMENT OF PROPERTY LINES OR DESCRIPTIONS OF LAND BOUNDARIES FOR CONVEYANCE.
2. OWNER/ CONTRACTOR TO VERIFY ALL HOUSE DIMENSIONS, ZONING REQUIREMENTS & RESTRICTIONS BEFORE STAKING
3. R/W = RIGHT OF WAY
4. SETBACKS PER ZONING

Side View Fixed Dock



NOTE:

PRESENT DOCK IS FALLING DOWN & DANGEROUS.
NEW DOCK WILL BE AN EXACT REPLACEMENT
OF THE EXISTING STRUCTURE.



SEP 05 2006

DHEC-OCRM
CHARLESTON OFFICE

AUG 1 2006

DHEC-OCRM
MYRTLE BEACH OFFICE

OF

Lot 17 Block M-1 49th Ave N

SCALE 1/4" = 1'

N.M.B. TWP, HORRY COUNTY, SC

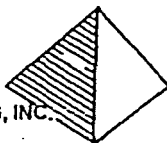
THE PROPERTY OF

WALTER H & LINDA W KNOX

DEED REFERENCE IN BOOK 1996 PAGE 1272

PYRAMID

ENGINEERING & SURVEYING, INC.



1000 2ND AVENUE SOUTH, SUITE 110
NORTH MYRTLE BEACH, SOUTH CAROLINA
29582

(843) 280-3766



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

Void
Because of
date (over 90d)

WALTER H KNOX III OR LINDA W KNOX
117 OAK MEADOW DR
BRIDGEWATER VA 29569

Invoice Date: 09/28/2006
Invoice Number: YB00888-8
Invoice Amount: \$150.00
Program ID: OCRM-06-550

Department Name: OCRM - MYRTLE BEACH
Department Contact: BARBARA A STEIN
Department Phone: 843-238-4528

Qty	Description	Unit	Extended
1	Application fee for critical area permit - dock 100 feet or less/ck#5866	150.00	150.00
Total			\$150.00

South Carolina Department of Health and Environmental Control

Facility Name: WALTER H KNOX III OR LINDA W KN
Program ID: OCRM-06-550
Invoice Number: YB00888-8

Amount Remitted:
\$

To ensure proper credit, please return this portion of the invoice with your payment. Please include the invoice number on your remittance. **PAYMENT DUE UPON RECEIPT. PAST DUE 30 DAYS FROM INVOICE DATE.**

SC DHEC
Attn: Bureau of Budgets & Finance
PO Box 100103
Columbia, SC 29202-3103

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management
Columbia Office - 2600 Bull St. Columbia, SC 29201

TOMMY W. BERRY PETITIONER EXHIBIT "R"



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

HOYT SANDERSON
SANDERSON CONSTRUCTION
2450 RED BLUFF RD
LORIS SC 29569

Invoice Date: 10/10/2006
Invoice Number: YB00894-6
Invoice Amount: \$150.00
Program ID: OCRM-06-550

Department Name: OCRM - MYRTLE BEACH
Department Contact: PEGGY D FUNK
Department Phone: 843-238-4528

Qty	Description	Unit	Extended
1.00	Application fee for critical area permit - dock 100 feet or less	150.00	150.00
Total			\$150.00

South Carolina Department of Health and Environmental Control

Facility Name: SANDERSON CONSTRUCTION
Program ID: OCRM-06-550
Invoice Number: YB00894-6

Amount Remitted:
\$

To ensure proper credit, please return this portion of the invoice with your payment. Please include the invoice number on your remittance. **PAYMENT DUE UPON RECEIPT. PAST DUE 30 DAYS FROM INVOICE DATE.**

SC DHEC
Attn: Bureau of Budgets & Finance
PO Box 100103
Columbia, SC 29202-3103

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management
Columbia Office • 2600 Bull St. Columbia, SC 29201

TOMMY W BERRY PETITIONER EXHIBIT "B" 78

000170



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

WALTER H KNOX III OR LINDA W KNOX
117 OAK MEADOW DR
BRIDGEWATER VA 29569

Invoice Date: 09/28/2006
Invoice Number: YB00888-8
Invoice Amount: \$150.00
Program ID: OCRM-06-550

Department Name: OCRM - MYRTLE BEACH
Department Contact: BARBARA A STEIN
Department Phone: 843-238-4528

Qty	Description	Unit	Extended
1	Application fee for critical area permit - dock 100 feet or less/ck#5866	150.00	150.00
Total			\$150.00

SANDERSON CONSTRUCTION
2450 RED BLUFF RD. 843-756-6894
LORIS, SC 29569-6082

1939

DATE 10-9-06

67-66/532

PAY
TO THE
ORDER OF

S.C. DHEC-OCRM

\$ 150.00

One Hundred and fifty

DOLLARS

NBSC

THE NATIONAL BANK OF SOUTH CAROLINA
LORIS, SOUTH CAROLINA
A Provider of Innovative Financial Services

FOR

Walter Knox permit

Yost Sanderson

⑈001939⑈ ⑆053200666⑆ 110602497801⑈

PO Box 100103
Columbia, SC 29202-3103

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Columbia Office • 2600 Bull St. Columbia, SC 29201

TOMMY W BERRY PETITIONER EXHIBIT "B"

79

The Office of Ocean and Coastal Resource Management looks forward to assisting you in the processing of your permit application. One of the goals of the OCRM and its staff is to make this process as simple and expedient as possible.

The procedure that is followed and the criteria by which permit applications is evaluated are detailed in the SCDHEC OCRM's "Rules and Regulations for Permitting in Critical Areas of the Coastal Zone" which is available upon request.

Should you have any questions regarding your permit application, please do not hesitate to call Tanitra S Marshall, your project manager at 843-238-4528.

Sincerely,

Peggy D. Funk
Administrative Specialist

enclosures

cc: Hoyt Sanderson
Tanitra S Marshall, Project Manager
Barbara Neale
File

RECEIVED

OCT 09 2006

DHEC-OCRM
MYRTLE BEACH OFFICE

WALTER H KNOX III OR
LINDA W KNOX
117 OAK MEADOW DR
BRIDGEWATER, VA 22812-3530
(540) 828-1984

5866

68-2/510

Pay to the
order of

SCDHEC-OCRM

\$ 150.00

One Hundred and Fifty

Dollars



SUNTRUST

ACH RT 061000104

For

Walter H Knox III

⑆05⑆000020⑆ 034711309⑈

5866

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Charleston Office • 1362 McMillan Avenue, Suite 400 • Charleston, SC 29405

TOMMY W BERRY PETITIONER FYHIRT "R"

RD



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

October 06, 2006

Walter H. Knox III
 Linda W. Knox
 117 Oak Meadow Dr
 Bridgewater, VA 22812-3530

PN# OCRM-06-550
 Walter Knox III

Dear Mr. Knox:

The SCDHEC Office of Ocean and Coastal Resource Management has established an administrative fee schedule for all applications. The fees are as follows:

A.	Dock General Permit	\$ 100.00
B.	Docks 100 feet or less in length	\$ 150.00
C.	Minor activities	\$ 250.00
D.	Major activities which may include the following: commercial activities, real estate development, community docks, and marinas	\$1,000.00
E.	Local and Federal agencies	\$ 250.00
F.	Minor amendments requiring public notice	\$ 100.00
G.	Major amendments	\$1,000.00
H.	Major permit transfers and extensions	\$ 100.00
I.	Minor permit transfers and extensions	\$ 25.00

Your application falls under *B* above. Your check #5866 dated June 25, 2006 was returned to us from our finance department as it is over 90 days old and can not be processed. Please remit a new check for \$150.00. Payment should be made by check or money order. (ALL CHECKS SHOULD BE MADE PAYABLE TO THE SCDHEC-OCRM.) Your permit application is already on public notice so prompt action on this matter will be appreciated. This fee is a non-refundable administrative fee that has no bearing whatsoever on the outcome of the application.

If payment is not received within 15 days of the date of this letter, this application will be canceled and the application forms returned to you.

This fee schedule is subject to change by the SCDHEC Office of Ocean and Coastal Resource Management.

Permit Entry/Update for KNOX III, WALTER

Permit Owner	KNOX III, WALTER	D	Created	SEP 07, 2006	By	RODGERS, MARY T
Permit Type	OCRM-Direct Critical Area Permit		Updated	OCT 09, 2006	By	MARSHALL, TANITRA S
Sub-Type	Minor		☐ Secure?			
Program Area	OCRM - Permitting		Permit Description	is for the applicant's private, recreational use.		
Permit ID	55533		Proj Name / ID			D
Local Facility		D	Eng Firm			D
Operator		D	Status Date	SEP 28, 2006	Inactive	
Permit Status	Processing Application					

Application Type 		Received By	MARSHALL, TANITRA S 	Received Date	SEP 07, 2006
PERMIT APPLICATION		App. Track No.	731595	App. Date	SEP 07, 2006
		App. Disposition	Public Notice 	Disp. Date	OCT 13, 2006
		App. Signed By			
		Decision		Decision Date	
		Issued By		Issued Date	
		Effective Date		Expires Date	
Reviews	Propagate App Info	Permit Number	OCRM-06-550	Accepted Date	
LEP	Public Notice	App. Description			

Details	Site Info	Other ID's	Relations	Tasks	History	Notes	Documents	Other Owners	Invoices	Date Events
Referrals	Violations	Enf. Actions	Incidents	Legal	Print Screen	Revisions	Emiss. Inv.	Mon. Rpts	Reset Perm. ID	Name Util.

Enter a permit owner's name (last name, first if person).

Record 1/1

KOSQ **KDBG**

PROJECT ASSIGNMENT SHEET

Date Received: 8-31-06P/N# OCRM-06-550EFIS # 55533

Applicant: Walter Knox III
 Location of project: 317 49th Ave N
 Waterbody: "M" Canal
 Project (IE dock, riprap, bulkhead, etc): dock

Assigned to: Tanitra

RECEIVED

SEP 11 2006

DHEC-OCRM
MYRTLE BEACH OFFICE

Correct Fee included? Check appropriate box:

- ☒ \$150 for a dock with a walkway less than 100'
☐ \$250 for a minor project (erosion control, private & joint docks)
☐ \$250 dock additions regardless of walkway length (addition of boatlifts, etc)
☐ \$1000 major activities commercial or community structures (check w/ Charleston office)
☐ \$100 for amendments
☐ No fee was included with the application. The fee should be \$ _____, send fee letter

Affidavit of Ownership included?

No - is needed

Deed received 09/25/06

Professional drawings required? YES

- ☒ Are the drawings stamped?
☒ Are the drawings signed?
☒ Are the drawings computer generated?
☐ Are the drawings complete? Correct title block information included?
☐ Drawings need work. Letter requesting correct drawings sent on 09/13/06

need spec.

Should this application be forwarded to the Army Corps of Engineers (ACOE)?

- ☒ No
☐ Yes, made copy and sent package to the ACOE on ___/___/___

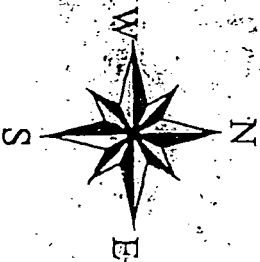
Do I need to get any other information in order to get this to project to public notice? more info for dwgs

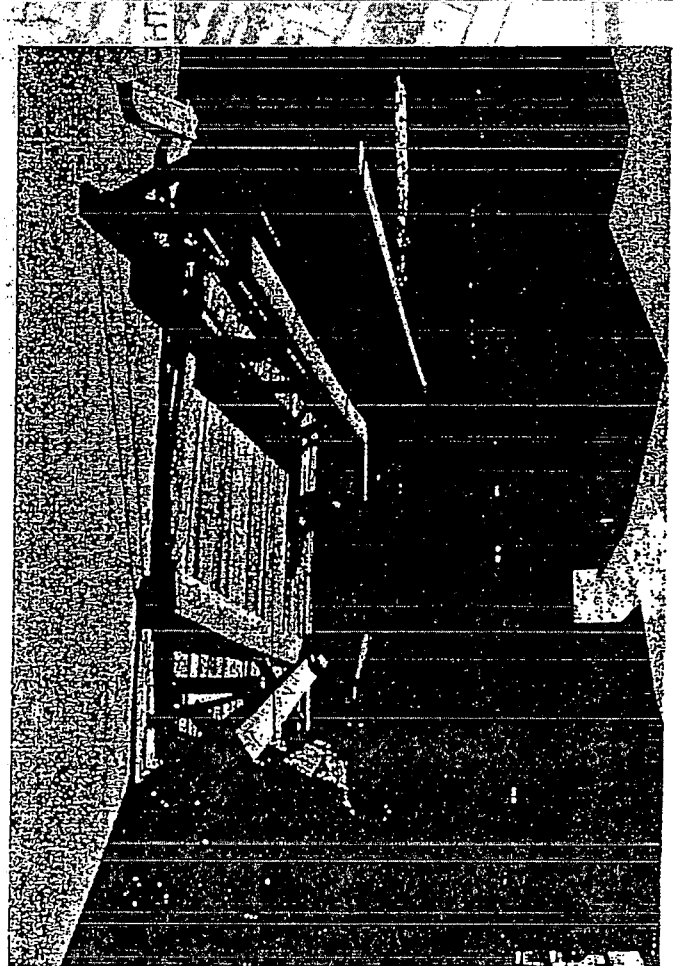
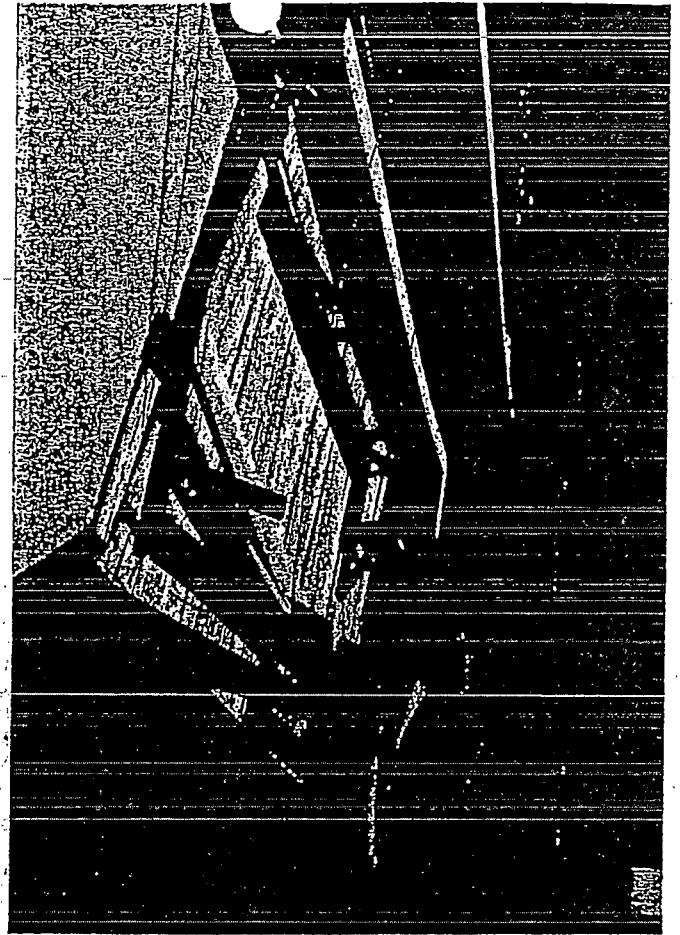
OCRM 06-550

Walter Knox III



- Critical Area Permits 06
- Critical Area Permits 04-05
- ▲ Critical Area Permits 01-03
- ⊙ Enforcement
- ⊙ Wetland Cents 06
- ⊙ Archaeological Survey Areas
- ⊙ Horry County Historic Survey
- ⊙ Endangered Species 2005
- ⊙ Shellfish Permits
- ⊙ Dock Master Plans
- ⊙ Aerial Photo Index (use lightning bolt to notify)
- ⊙ Horry Parcels 2005





Walter Knox III 65533
inmate 712-



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

October 27, 2006

Hoyt Sanderson
2450 Red Bluff Rd.
Loris SC 29569

Re: P/N# OCRM-06-550
Walter Knox III

Dear Hoyt Sanderson:

The SCDHEC-Office of Ocean and Coastal Resource Management looks forward to assisting you in the processing of your permit application. One of the goals of OCRM and its staff is to make this process as simple and expeditious as possible.

The procedures that are followed and the criteria by which permit applications are evaluated are detailed in the Office of Ocean and Coastal Resource Management's "Rules and Regulations for Permitting in Critical Areas of the Coastal Zone" which is available upon request.

The OCRM staff has placed your application on public notice for evaluation and review by all interested parties as required by the South Carolina Coastal Zone Management Act of 1977. We would like to call your attention to the following requirements(s) that must be met before the staff can act on your application:

- Please provide OCRM with proof of publication in a local newspaper as shown on the OCRM permit application page 4.

If we have not received this information within 10 days from the date of this letter, your application will be canceled. Should you have any questions regarding your permit application, please do not hesitate to contact me at 843-238-4528.

Sincerely,

Marshall

Tanita S. Marshall
Enclosure
cc: Walter Knox III
file



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

October 19, 2006

Walter Knox, III
C/o Hoyt Sanderson
2450 Red Bluff Rd.
Loris, SC 29569

RE: P/N# 55533
Walter Knox

Dear Mr. Sanderson:

OCRM has received your application to build a private dock. However, the submittal is not complete and additional information is needed before we can continue to process this application. Due to the June 25, 2006 date on the check, we were unable to process it and we have voided it. Please send another check in the amount of \$150.00 so that we may complete the permit application.

Please note that you have 15 days to submit complete information for these permits. After 15 days, OCRM will have no other alternative but to cancel the request.

Thank you for your time and attention to the matter. Please call if you have any questions, (843)-238-4528.

Sincerely,

Tanitra S. Marshall
Critical Area Project Manager

From: Denise Crawford
To: Stein, Barbara
Date: 10/3/2006 10:07:45 AM
Subject: Knox - OCRM-06-550 (Invoice # YB00888-8)

I am returning the above invoice and check to you via interoffice mail today. The check is dated 6/25/2006, which is over the 90 day limit. We will need a new check.

If you have any questions, please let me know.

Thanks,

Denise

M. Denise Crawford
Grants/Contracts Coordinator
SCDHEC-OCRM
1362 McMillan Avenue
Suite 400
Charleston, SC 29405
843-747-4323, ext. 103
FAX: 843-744-5847
crawfomd@dhec.sc.gov



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

WALTER H KNOX III OR LINDA W KNOX
117 OAK MEADOW DR
BRIDGEWATER VA 29569

Invoice Date: 09/28/2006
Invoice Number: YB00888-8
Invoice Amount: \$150.00
Program ID: OCRM-06-550

Department Name: OCRM - MYRTLE BEACH
Department Contact: BARBARA A STEIN
Department Phone: 843-238-4528

Qty	Description	Unit	Extended
1	Application fee for critical area permit - dock 100 feet or less/ck#5866	150.00	150.00
Total			\$150.00

South Carolina Department of Health and Environmental Control

Facility Name: WALTER H KNOX III OR LINDA W KNOX
Program ID: OCRM-06-550
Invoice Number: YB00888-8

Amount Remitted:
\$

To ensure proper credit, please return this portion of the invoice with your payment. Please include the invoice number on your remittance. **PAYMENT DUE UPON RECEIPT. PAST DUE 30 DAYS FROM INVOICE DATE.**

RECEIVED

OCT 2 2006

DHEC-OCRM
CHARLESTON OFFICE

SC DHEC
Attn: Bureau of Budgets & Finance /
PO Box 100103
Columbia, SC 29202-3103

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Columbia Office • 2600 Bull St. Columbia, SC 29201

Phone: 803-898-3915 • Fax: 803-898-3913 • www.scdhec.gov

000181



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

WALTER H KNOX III OR LINDA W KNOX
117 OAK MEADOW DR
BRIDGEWATER VA 29569

Invoice Date: 09/28/2006
Invoice Number: YB00888-8
Invoice Amount: \$150.00
Program ID: OCRM-06-550

Department Name: OCRM - MYRTLE BEACH
Department Contact: BARBARA A STEIN
Department Phone: 843-238-4528

Qty	Description	Unit	Extended
1	Application fee for critical area permit - dock 100 feet or less/ck#5866	150.00	150.00

WALTER H KNOX III OR
LINDA W KNOX
117 OAK MEADOW DR
BRIDGEWATER, VA 22812-3530
(540) 828-1984

5866

68-2/510

Pay to the order of

SC DHEC - OCRM

\$ 150.00

One Hundred and Fifty

Dollars

\$150.00

SUNTRUST

ACH RT 061000104

Walter H Knox III

5866

Control

Facility Name:
Program ID: OCRM-06-550
Invoice Number: YB00888-8

Amount Remitted:

\$

To ensure proper credit, please return this portion of the invoice with your payment. Please include the invoice number on your remittance. **PAYMENT DUE UPON RECEIPT. PAST DUE 30 DAYS FROM INVOICE DATE.**

RECEIVED

OCT 2 2006

DHEC-OCRM
CHARLESTON OFFICE

SC DHEC
Attn: Bureau of Budgets & Finance
PO Box 100103
Columbia, SC 29202-3103

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management
Columbia Office • 2600 Bull St. Columbia, SC 29201

South Carolina Department of Natural Resources

October 16, 2006

Mr. Curtis Joyner
SCDHEC/OCRM
1362 McMillan Ave., Suite 400
Charleston, SC 29405

REF: OCRM-06-291-R, John L. Jordan, Sr.
OCRM-06-295-M, Jesse Qualls
OCRM-06-957, Daufuskie Island Prop., LLC
OCRM-06-958, Craig Conant
OCRM-06-959, Jeri Arledge
OCRM-06-232-M, Anita Marciniak
OCRM-06-261-R, Judy Southern
OCRM-06-289-M, J.K. Bradham
OCRM-06-313-F, Keith McRoy
OCRM-06-324-R, Marie Bourdon
OCRM-06-326-M, Daniel Rumph
OCRM-06-332-M, Herbert Wilcox
OCRM-06-550, Walter Knox, III
OCRM-06-552, Richard Coulter
OCRM-06-556, Eugene Weston, Jr.
OCRM-06-557, Mary Lever
OCRM-06-558, John Davis
OCRM-06-960, Denise & Don Smith
OCRM-06-961, Ashley & Shelby Bishop
OCRM-06-962, Donald Callaway
OCRM-06-963, Martin Youmans

Dear Mr. Joyner:

The South Carolina Department of Natural Resources has received the above referenced public notices of permit applications to conduct various activities that are subject to the jurisdiction of your agency. Due to staffing limitations and associated workload priorities, our department has elected to not conduct an investigation of the proposed projects nor provide any comments on the proposed activities.

Page 2

Sincerely,

Ed Duncan

Robert E. Duncan
Environmental Programs Director

FLORENCE DERMATOLOGY CLINIC, P.A.

Skin Diseases, Skin Cancers, Skin Surgery
309 W. Pine Street
Florence, South Carolina 29501

VERNE E. CUTLER, M.D.

Fellow: American Academy of Dermatology
Fellow: American Society for Dermatologic Surgery

Telephone 843-662-4524

FRANK T. BOYSIA, Ph. D., M.D.

Fellow: American Academy of Dermatology
Fellow: American Society for Dermatologic Surgery

October 10, 2006

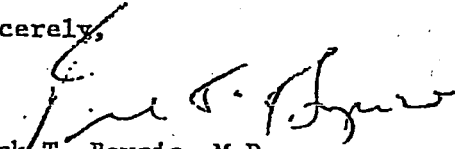
Tanita S. Marshall, Project Manager
C/O SCDHEC
Office of Ocean and Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

RE: P/N# OCRM-06-550

Dear Ms. Marshall:

I have no objection to Walter Cox, III, building a dock at his
home site on 317 49th Avenue N.

Sincerely,


Frank T. Boysia, M.D.

FTB/bch

RECEIVED

OCT 12 2006

DHEC
CHARLESTON OFFICE

orig: file
cc: HVE ✓
GWR
a. ent



G. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

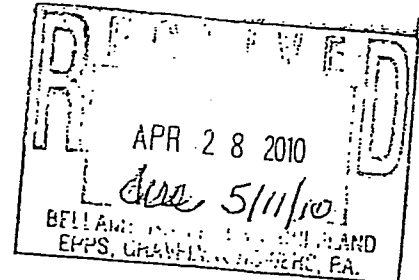
COPY

CERTIFIED MAIL

ARTICLE NUMBER 7009 2250 0003 6002 1247

April 27, 2010

Mr. Tommy W. Berry, Sr.
Mrs. Jo. S. Berry
c/o Mr. Howell V. Bellamy, Jr.
Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A.
P.O. Box 357
Myrtle Beach, SC 29578



Re: Administrative Order 07M-012S/Administrative Order of Revocation
Berry, Tommy W. & Jo S.
Horry County

Mr. and Mrs. Berry

Enclosed, you will find a true copy of Administrative Order number 07M-012S (Order) regarding the unauthorized fill and bulkhead installed in the tidelands critical area. This Order was signed by the Deputy Commissioner of the South Carolina Department of Health and Environmental Control Office of Ocean Coastal Resource Management and executed on April 26, 2010.

Please comply with the requirements of the Order as outlined on page six and seven. Should you choose to appeal this Order, you must do so within 15 days of receipt by following the enclosed instructions. This Order shall become final as written if a proper request is not filed within fifteen (15) days of mailing of this Order.

Also enclosed you will find a true copy of an Administrative Order of Revocation for permit number OCRM-07-509.

Thank you for your prompt attention to this matter. If you have any questions you may contact me at (843) 238-4528 x 149.

Respectfully,

Sean M. Briggs
Enforcement Project Manager
Regulatory Division

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Myrtle Beach Office • 927 Shine Avenue • Myrtle Beach, SC 29577 • Phone: (843) 938-4598 • Fax: (843) 938-4596 • www.scdhec.gov

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT C

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

DATE: 10/15/2009
FILE: Berry, Tommy W., Sr. and Jo S. 07M-012S
AUTHOR: Sean M. Briggs
RE: Inspection Photographs from 7/19/07
Camera: HP Photosmart M425
Media: Digital

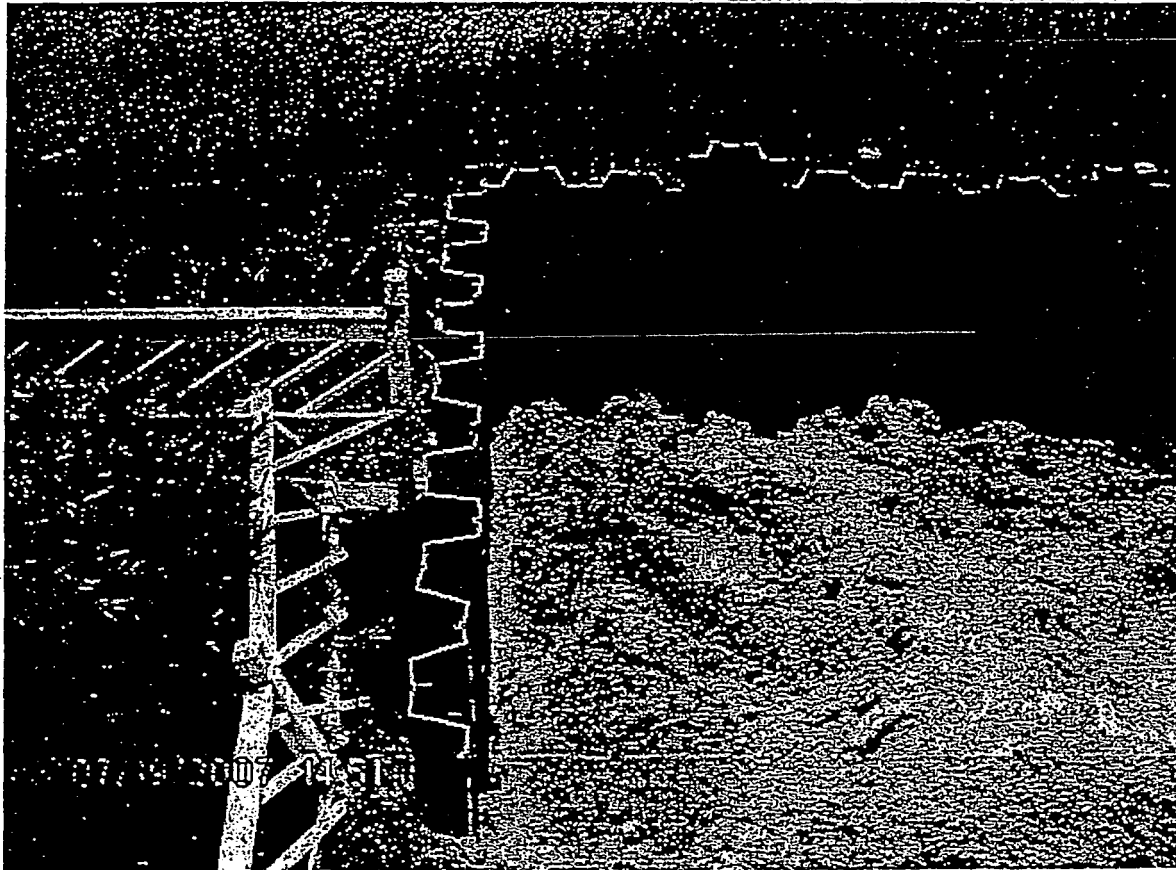
On 7/19/07, the author inspected the Site and documented the bulkhead under construction with the vinyl sheets installed as well as a large amount of dirt used as backfill in the tidelands critical area between the previous bulkhead and the new bulkhead. The purpose of this inspection was to document the reported bulkhead being constructed out of compliance with the permit and the unauthorized fill being placed in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT C

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



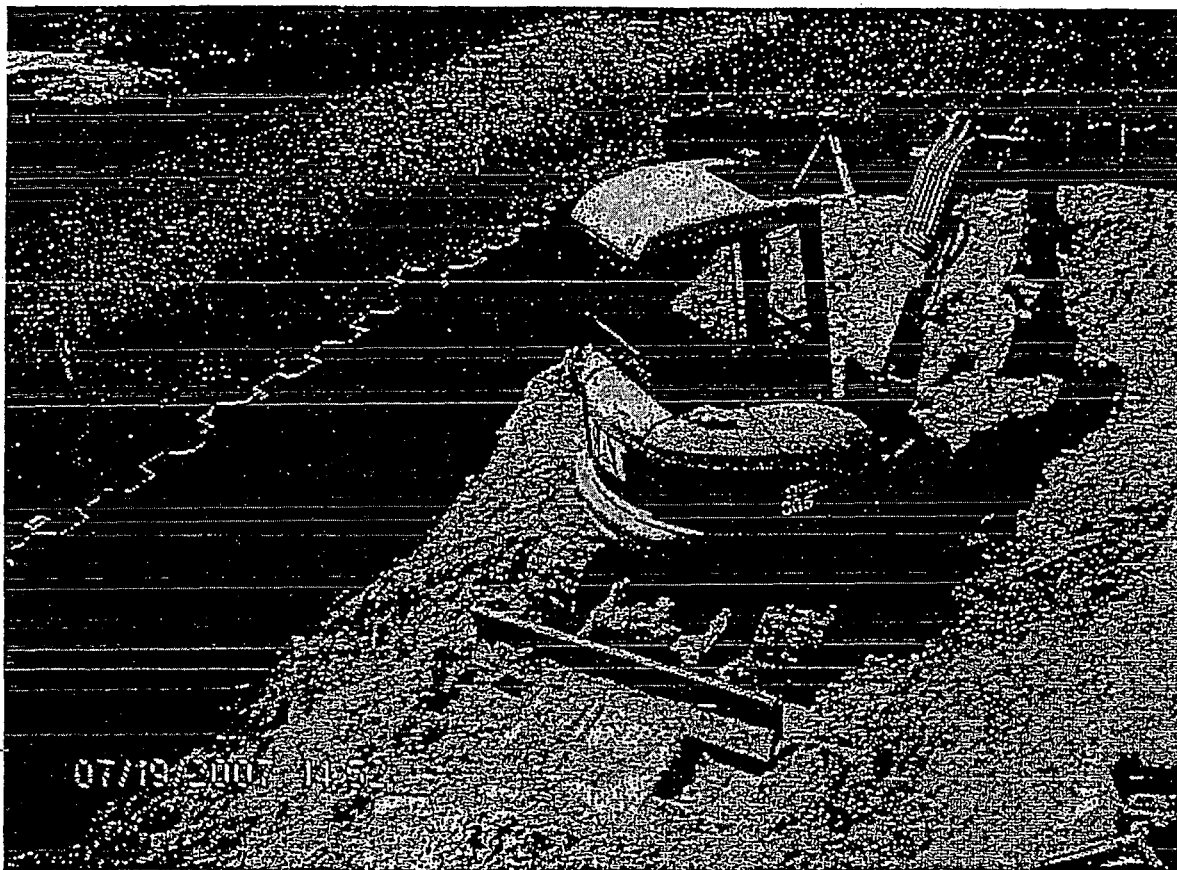
This photograph shows the southwestern corner of the new bulkhead and fill in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT C

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



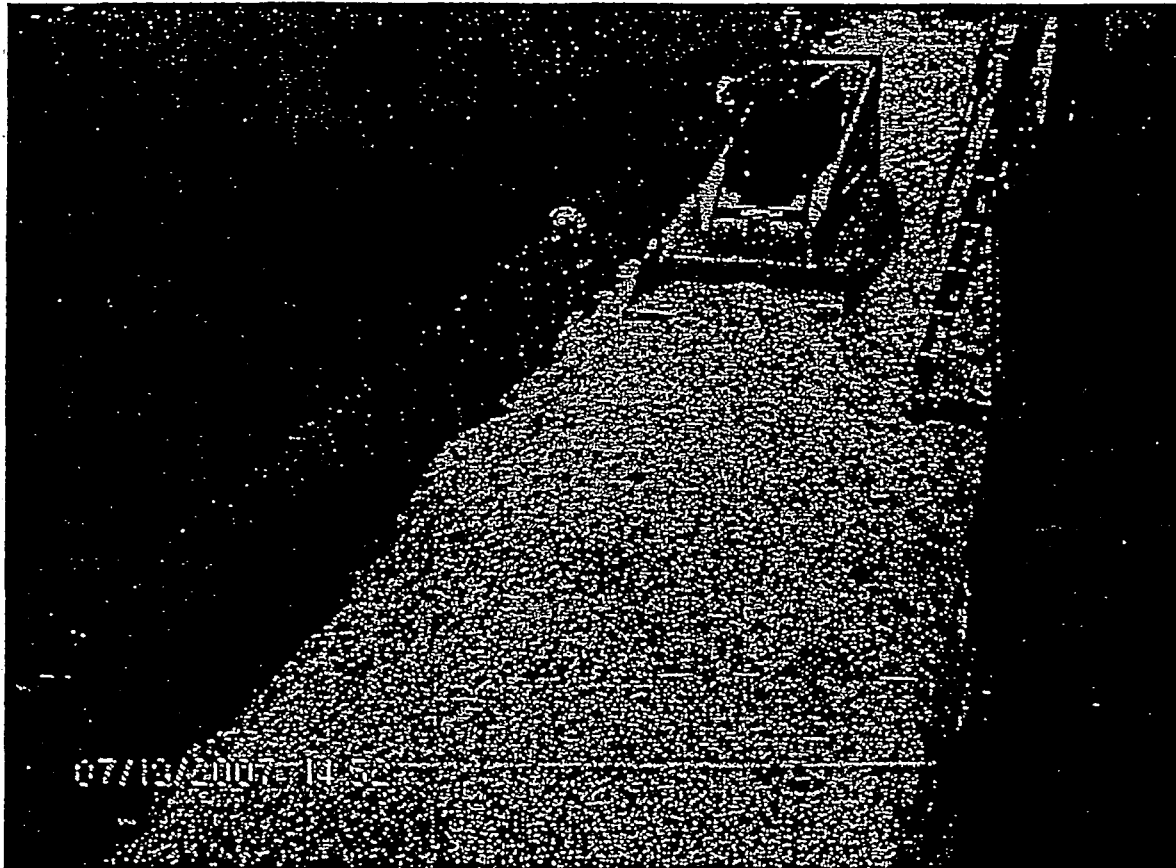
This photograph shows the northwestern corner of the new bulkhead and fill in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT C

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the northern side of the lot with new bulkhead and fill in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT B

Photos of 317 49th Ave North, North Myrtle Beach, Horry County, SC submitted by the complainant and received by DHEC OCRM on 7/19/07

Berry, Tommy W., Sr. and Jo S.



This photograph shows the placement of the new wall on the northern side of the lot approximately 20 feet channelward. The existing wall can be seen, still intact, underneath the cantilevered portion of the house. Also visible is the fill material placed on top of saltwater wetland vegetation in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT B

Photos of 317 49th Ave North, North Myrtle Beach, Horry County, SC submitted by the complainant and received by DHEC OCRM on 7/19/07

Berry, Tommy W., Sr. and Jo S.



This photograph shows the placement of the new wall on the western side of the lot approximately 20 feet channelward. This photograph was taken after the previous photograph. Again, the fill material being placed in the tidelands critical area can be seen just behind the front facing wall.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT B

Photos of 317 49th Ave North, North Myrtle Beach, Horry County, SC submitted by
the complainant and received by DHEC OCRM on 7/19/07

Berry, Tommy W., Sr. and Jo S.



This picture is taken facing the southeast and shows the northern side of the property.
Note the large amounts of fill placed between the new bulkhead and existing bulkhead in
the tidelands critical area.

Enclosures (2):

1. Administrative Order of Revocation, P/N OCRM-07-509
2. Administrative Order 07M-012S (with Attachments)

cc Mr. & Mrs. Berry
Davis Whitfield-Cargile, Legal Counsel DHEC OCRM
File # 07M - 012S



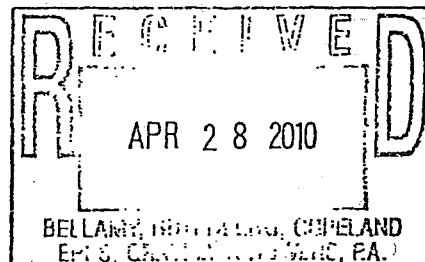
C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

April 20, 2010

CERTIFIED MAIL**ARTICLE NO. 7009 2250 0003 6002 1247**

Mr. Tommy W. Berry
 c/o Mr. Howell V. Bellamy, Jr.
 Bellamy, Rutenberg, Copeland, Epps,
 Gravely & Bowers, P.A.
 P.O. Box 357
 Myrtle Beach, SC 29578



RE: **ADMINISTRATIVE ORDER OF REVOCATION**
 P/N# OCRM-07-509 (Permit), Tommy W. Berry

Mr. Berry:

This is in reference to the bulkhead constructed in the tidelands critical area on and adjacent to "K" Canal and Williams Creek at 317 49th Avenue N, North Myrtle Beach, Horry County, South Carolina (TMS#145-02-24-019). This letter will serve as an order of revocation of the above-referenced permit by the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (DHEC OCRM). As stated earlier, this permit, for the construction of a bulkhead, was issued in accordance with DHEC OCRM Regulation R.30-12(C), which governs bulkhead projects, and also in accordance with DHEC OCRM Regulations R.30-1 through 30-11, where applicable. This permit is being revoked on the grounds that you failed to construct the bulkhead according to the plans attached to the Permit and pursuant to General Condition # 11 of the Permit.

On August 2, 2007, a Notice of Intent to Revoke was sent to your home based on the above-mentioned facts and you received this notice on August 3, 2007. You were given a period of twenty (20) days from the date of receipt of the notice to respond. Since this time, you have failed to return your structure to compliance with the issued Permit. Pursuant to DHEC OCRM Regulation R.30-8(A) this permit is hereby revoked.

Sincerely,

Blair N. Williams
 Wetland Section Manager
 Regulatory Division

cc: Tantira S. Marshall, DHEC OCRM Wetland Project Manager
 Sean M. Briggs, DHEC OCRM Enforcement Project Manager
 Davis Whitfield-Cargile, DHEC OCRM Legal Counsel

CERTIFIED A TRUE COPY
 OF DEPARTMENT OF HEALTH AND
 ENVIRONMENTAL CONTROL RECORDS
 JMB

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

IN RE: TOMMY W. BERRY SR.
JO S. BERRY
OCRM-07-509
HORRY COUNTY

ADMINISTRATIVE ORDER
07M-012S

Tommy W. Berry, Sr. and Jo S. Berry (Mr. and Mrs. Berry) are responsible for unauthorized fill and a bulkhead placed in the tidelands critical area regulated by the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (DHEC OCRM). The unauthorized activity in the tidelands critical area is a violation of the South Carolina Coastal Zone Management Act. After failing to resolve this matter through a Consent Order, and in accordance with DHEC OCRM regulations and enforcement policy, this Administrative Order is now being issued.

FINDINGS OF FACT

1. Mr. and Mrs. Berry are the owners of certain property abutting the tidelands critical area located on and adjacent to "K" Canal and Williams Creek at 317 49th Avenue N, North Myrtle Beach, Horry County, South Carolina (TMS#145-02-24-019, Site). Mr. and Mrs. Berry, as the property owners, are responsible for the unauthorized activity at the Site.
2. Aerial photographs taken in 2005 by Horry County show the existence of critical area vegetation adjacent to Mr. and Mrs. Berry's house in the now impacted critical area at the Site. (See Attachment A).
3. The previously existing North-facing portion of the bulkhead was located generally underneath the length of the house. The previously existing West-facing portion of the bulkhead extended approximately twenty-two (22) feet beyond the edge of the house. The previously existing bulkhead is clearly shown on Page 1 of Attachment B.

4. On March 7, 2007, DHEC OCRM issued permit number OCRM-07-509 (Permit) to Mr. Berry. The Permit authorized the replacement of an existing bulkhead at the Site. The Permit required Mr. Berry to install the new bulkhead in the same location as the existing one, concurrently with the removal of the existing bulkhead. The Permit did not authorize fill at the Site.
5. On July 17, 2007, DHEC OCRM received a complaint that the bulkhead at the Site was being constructed twenty (20) feet channelward of the existing bulkhead and large amounts of fill were being placed in the tidelands critical area. Photographs of this activity were forwarded to DHEC OCRM and received July 19, 2007 (See Attachment B).
6. On July 19, 2007, Sean M. Briggs (Mr. Briggs), DHEC OCRM Enforcement Project Manager, conducted an inspection at the Site and observed that the bulkhead, consisting of vinyl sheets, was being built approximately twenty (20) feet channelward of the existing bulkhead in the tidelands critical area along the northern property line and approximately ten (10) feet channelward on the western property line. Mr. Briggs also observed large amounts of dirt, used as backfill, in the tidelands critical area between the previous bulkhead and the newly constructed bulkhead. Photographs were taken. (See Attachment C).
7. On July 23, 2007, DHEC OCRM issued a Cease and Desist Directive via certified mail to Mr. Berry for the unauthorized activity described above at the Site. Mr. Berry signed for the directive on July 24, 2007.
8. On July 25, 2007, a Notice of Violation and Admission Letter, including proposed Findings of Fact, were sent via certified mail to Mr. Berry. Delivery of these documents to Mrs. Berry was confirmed received with a certified mail receipt on July 26, 2007. The Admission Letter required a written response from Mr. Berry by August 14, 2009.
9. On July 31, 2007, Mr. Briggs conducted a follow up inspection at the Site following the receipt of both a Cease and Desist Directive and Notice of Violation by the Berrys and observed that the bulkhead was completely installed along both the northern and western

property lines including the whaler, but with the exception of the cap. Backfill had been placed in the tidelands critical area between the previous bulkhead and the newly constructed bulkhead to an elevation one foot below the top of the new bulkhead. Photographs were taken. (See Attachment D).

10. On August 2, 2007, Tanitra S. Marshall (Ms. Marshall), DHEC OCRM Wetland Project Manager, issued a Notice of Intent to Revoke the Permit to Mr. Berry. The notice provided a timeframe to respond. Delivery of this document to Mrs. Berry was confirmed received with a certified mail receipt on August 3, 2007. The Permit was suspended on August 2, 2007 and has been revoked in accordance with the attached order of revocation.
11. On August 13, 2007, Mr. Briggs received a letter from Mr. Howell V. Bellamy, Jr. (Mr. Bellamy), Mr. and Mrs. Berry's legal counsel. Mr. Bellamy indicated in the cover letter that this communication served as the Berrys' response to the various inquiries preponderated to them by DHEC OCRM. The letter contained a chronology of events from Mr. and Mrs. Berry as they perceived them to have happened. Mr. and Mrs. Berry stated that, "to the best of their knowledge and with the assistance of surveys in our possession we replaced the bulkhead." They further stated that, "We have never once thought that what we were doing was not in compliance with what DHEC would approve."
12. From August 2007 to February 2009, an attorney with DHEC OCRM attempted to negotiate a resolution through consent with the Berrys' legal counsel, Mr. Bellamy.
13. Aerial Site photographs taken in 2008 by Horry County show complete destruction of critical area vegetation and the filling of tidelands critical area at the Site. (See Attachment E). Through calculating area by using measurements obtained from satellite imagery, surveys, and field measurements, the disturbed area impacts approximately two thousand six hundred and thirty-nine (2,639) square feet of tidelands critical area.
14. On February 25, 2009, an enforcement conference was held at the Myrtle Beach office of DHEC OCRM. Mr. Briggs explained the critical area violations in detail to Mr. and Mrs. Berry as well as to Mr. Bellamy. Mr. and Mrs. Berry stated that they built the bulkhead according to the plans included in the Permit. They also stated that a bulkhead previously existed at the location where the bulkhead is currently placed. Mr. Bellamy stated that Mr. and Mrs. Berry have neighbors that could attest to the fact that the existing bulkhead was

previously in a location approximate to the current placement of the new bulkhead. No explanation was given for the fill that was placed in the tidelands critical area.

15. On April 7, 2009, Mr. Briggs received, from Mr. Bellamy, four (4) letters from Mr. and Mrs. Berry's neighbors stating that they, "[are] familiar with the [Site]. Prior to March 7, 2007, there was evidence of a bulkhead on the North West property line and on the property line facing Williams Creek." Mr. Bellamy stated in his letter that there were 30 more individuals that could make a similar statement and that he was in the process of gathering their statements. As of January 21, 2010, no further statements have been received by DHEC OCRM.
16. On April 28, 2009, Mr. Briggs responded to Mr. Bellamy confirming receipt of his letter and the four (4) statements from Mr. and Mrs. Berry's neighbors. Mr. Briggs explained that the statements did not mitigate or disprove the violations set forth in the Notice of Violation and Admission Letter and discussed at the February 25, 2009, enforcement conference. Mr. Briggs re-stated the fact that the bulkhead built at the Site was constructed out of compliance with the Permit and that the associated backfill, impacting approximately two thousand six hundred and thirty-nine (2,639) square feet of tidelands critical area, was placed without authorization from DHEC OCRM. Mr. Briggs also indicated that in the absence of an agreement in the form of a Consent Order, an Administrative Order would likely be issued.
17. On January 12, 2010, Mr. Briggs inspected the Site after reviewing 2009 aerial photographs from Horry County (See Attachment F) and seeing the addition of landscaping, fencing, and a concrete pad used as a driveway placed on top of the fill in the tidelands critical area. Consent was granted for the purpose of this inspection by Mrs. Berry through Mr. Bellamy. The concrete pad measured thirty-seven feet four inches by nineteen feet eight inches (37' 5" x 19' 8"). The fence measured twenty-four (24) feet on the eastern facing side of the property, eighty-four (84) feet on the northern facing side of the property, and forty-eight (48) feet on the western facing side of the property. The tidelands critical area that had been filled was landscaped with sod and ornamental trees. Additionally two (2) piles had been placed through the fill in the tidelands critical area to support a second story deck on the rear of the house. Photographs were taken. (See Attachment G)

18. DHEC OCRM finds that the Berrys filled in approximately two thousand six hundred and thirty-nine (2,639) square feet of tidelands critical area and constructed a bulkhead in the tidelands critical area without a permit from DHEC OCRM. The bulkhead is constructed out of compliance with the Permit. Additionally, the concrete driveway, sod, pilings and other alterations to the tidelands critical area were made by the Berrys without a permit from DHEC OCRM.

CONCLUSIONS OF LAW

The filling of the tidelands critical area and installation of a bulkhead in an unauthorized location in the tidelands critical area adjacent to Mr. and Mrs. Berry's property was performed without authorization from DHEC OCRM, in violation of the law. Based on the above findings, Mr. and Mrs. Berry have violated the following:

1. **The South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-130 (A) and 23A S.C. Code Ann. Regs. 30-2(B), as amended**, which require that any utilization or alteration of the critical area must be permitted or otherwise legally authorized by DHEC OCRM. Specifically, Mr. & Mrs. Berry constructed a bulkhead and concrete driveway, installed a fence, and placed fill material and two (2) piles that support a deck in the tidelands critical area without a permit from DHEC OCRM.
2. **Critical Area Permit and Coastal Zone Consistency Certification OCRM-07-509:**
 - a) **Special Condition # 1**, in that the existing bulkhead was not removed concurrently with the new bulkhead construction, and
 - b) **Special Condition # 2**, in that the proposed bulkhead was not placed in the same location as the existing bulkhead.

Furthermore, **Critical Area Permitting Regulations, 23A S.C. Code Ann. Reg. 30, as amended: R.30-12(G)(2)(a)**, states that the creation of commercial and residential lots strictly for private gain is not a legitimate justification for the filling of wetlands. Additionally, **Critical Area Permit and Coastal Zone Consistency Certification OCRM-07-509, General Condition # 12** provides that when

the Permittee is notified that DHEC OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.

The South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-170 provides that any person determined to be in violation shall be liable for, and may be assessed a civil penalty of not less than one hundred dollars nor more than one thousand dollars per day of violation. It also provides that whenever DHEC OCRM finds that a person is in violation of any permit, regulation, standard, or requirement under this chapter, DHEC OCRM may issue an order requiring the person to comply with the permit; regulation, standard, or requirement, including an order requiring restoration when deemed environmentally appropriate by DHEC OCRM. In addition, §48-39-170 provides that DHEC OCRM may bring a civil enforcement action under this section as well as seeking appropriate injunctive relief under §48-39-160.

NOW, IT IS THEREFORE ORDERED THAT Mr. and Mrs. Berry shall:

1. Within fifteen (15) days of the effective date of this Administrative Order (Order), pay a civil penalty of fifty-four thousand dollars (\$54,000.00) to DHEC OCRM. The penalty shall be in the form of a check made payable to SCDHEC and reference Order number 07M-012S.
2. Within fifteen (15) days of the effective date of this Order, submit to DHEC OCRM for review and approval, a restoration plan, including corrective action to return the impacted critical area at the Site to pre-existing conditions including the removal of the bulkhead and associated fill, as well as a planting schedule to replace marsh vegetation. This restoration plan shall also include but not be limited to the following:
 - a) A time period for completion with a schedule of remedial measures to be taken from implementation through completion,
 - b) A monitoring plan for 2 years from the date of completion, including identification of a reference site for use in determining success of the restoration plan,
 - c) A current survey including all existing structures at the Site,
 - d) Procedures for reporting the progress of the restoration and contact information,
 - e) Steps for reimplementing of the restoration plan should the original planting fail.

3. Within fifteen (15) days of receipt of any comment from DHEC OCRM, adequately revise and resubmit the restoration plan.
4. Upon receipt of written approval by DHEC OCRM of the restoration plan, begin the restoration plan within thirty (30) days and complete the restoration in accordance with the timeframe set forth therein. Once approved by DHEC OCRM, the restoration plan shall become a fully enforceable part of this Order.
5. Notify DHEC OCRM, in writing, of the completion of the corrective action within seven (7) days of completion. Following this notification, DHEC OCRM will perform an inspection of the Site to ensure compliance with the Act, terms of this Order, and the approved restoration plan.
6. All communication regarding this Order should be directed to:

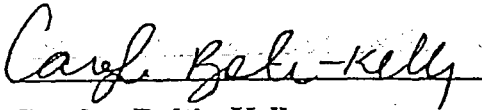
Attn: Sean M. Briggs
Enforcement Project Manager
Office of Ocean and Coastal Resource Management
927 Shine Avenue
Myrtle Beach, SC 29577

IT IS FURTHER ORDERED THAT failure to comply with any provision of this Order within the time specified above shall be grounds for additional daily monetary sanctions and / or the institution of a court action.

AND IT IS SO ORDERED.

[Signatures on following page]

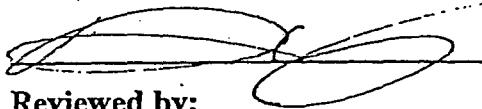
STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT



Carolyn Boltin-Kelly
Deputy Commissioner

Date:

4/26/10



Reviewed by:
DHEC OCRM Legal Counsel

Date:

4/26/10



Rheta Geddings DiNovo
DHEC OCRM Enforcement Program

Date:

April 22, 2010

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393.

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

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

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT D

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

DATE: 10/15/2009
FILE: Berry, Tommy W., Sr. and Jo S. 07M-012S
AUTHOR: Sean M. Briggs
RE: Inspection Photographs from 7/31/07
Camera: HP Photosmart M425
Media: Digital

On 7/31/07, the author inspected the Site and documented the bulkhead completely installed with the exception of the cap. This inspection occurred following the issuance of both a Cease and Desist Directive and a Notice of Violation to the Berrys.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT D

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.

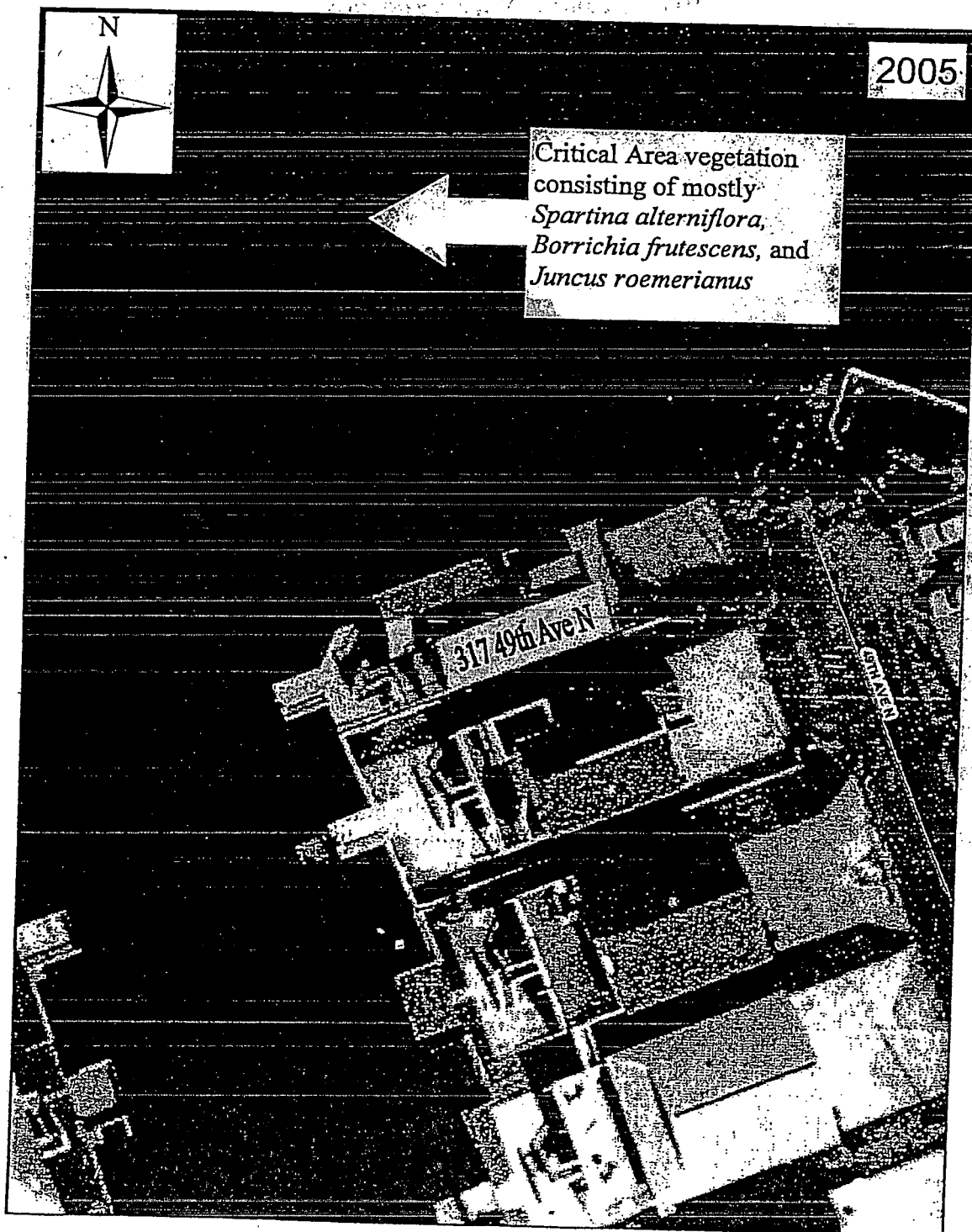


This photograph shows the western facing portion of the bulkhead with the whaler installed. The whaler has been highlighted in this photo for illustrative purposes.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT A

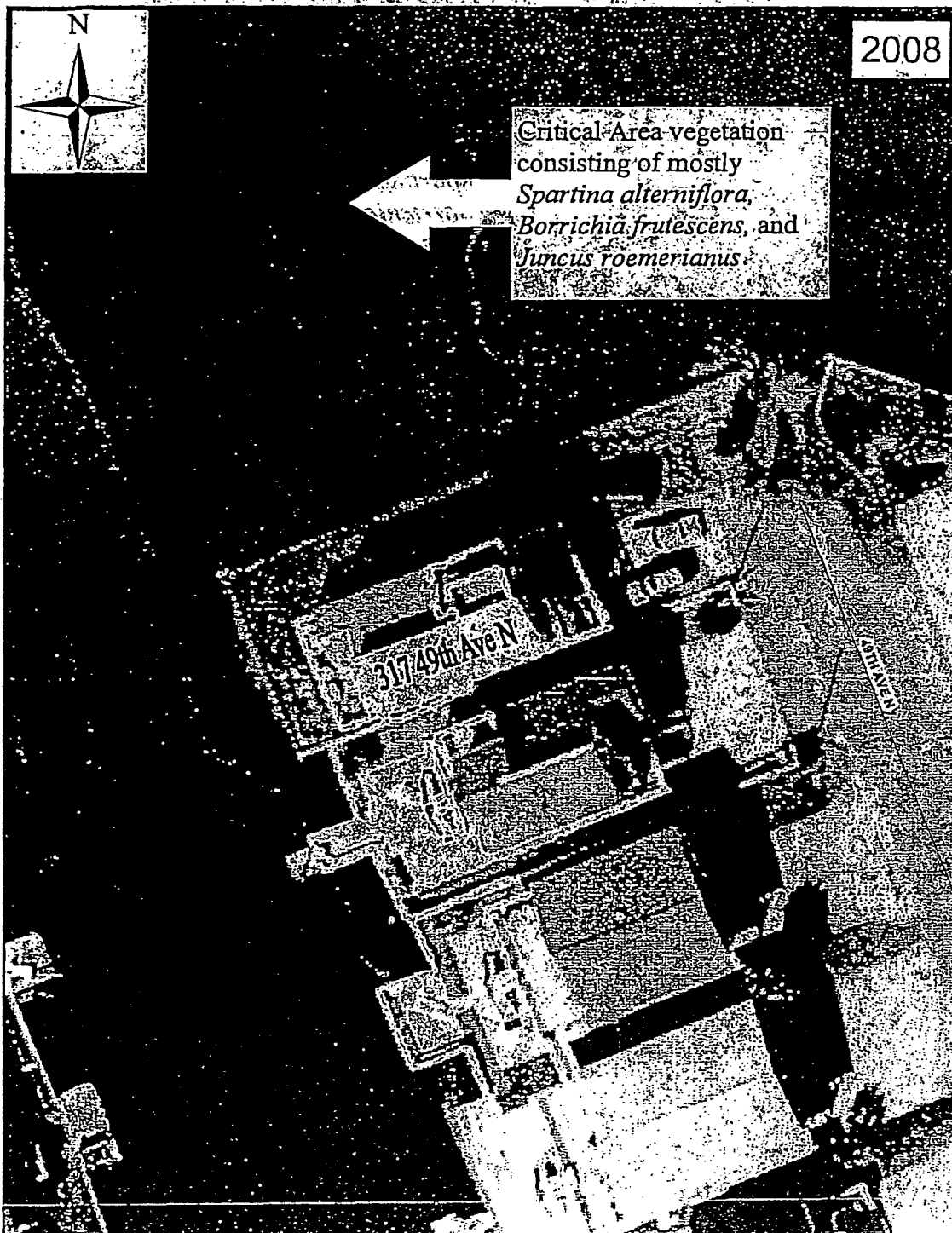
Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2005 Digital Orthophoto by Horry County



South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT E

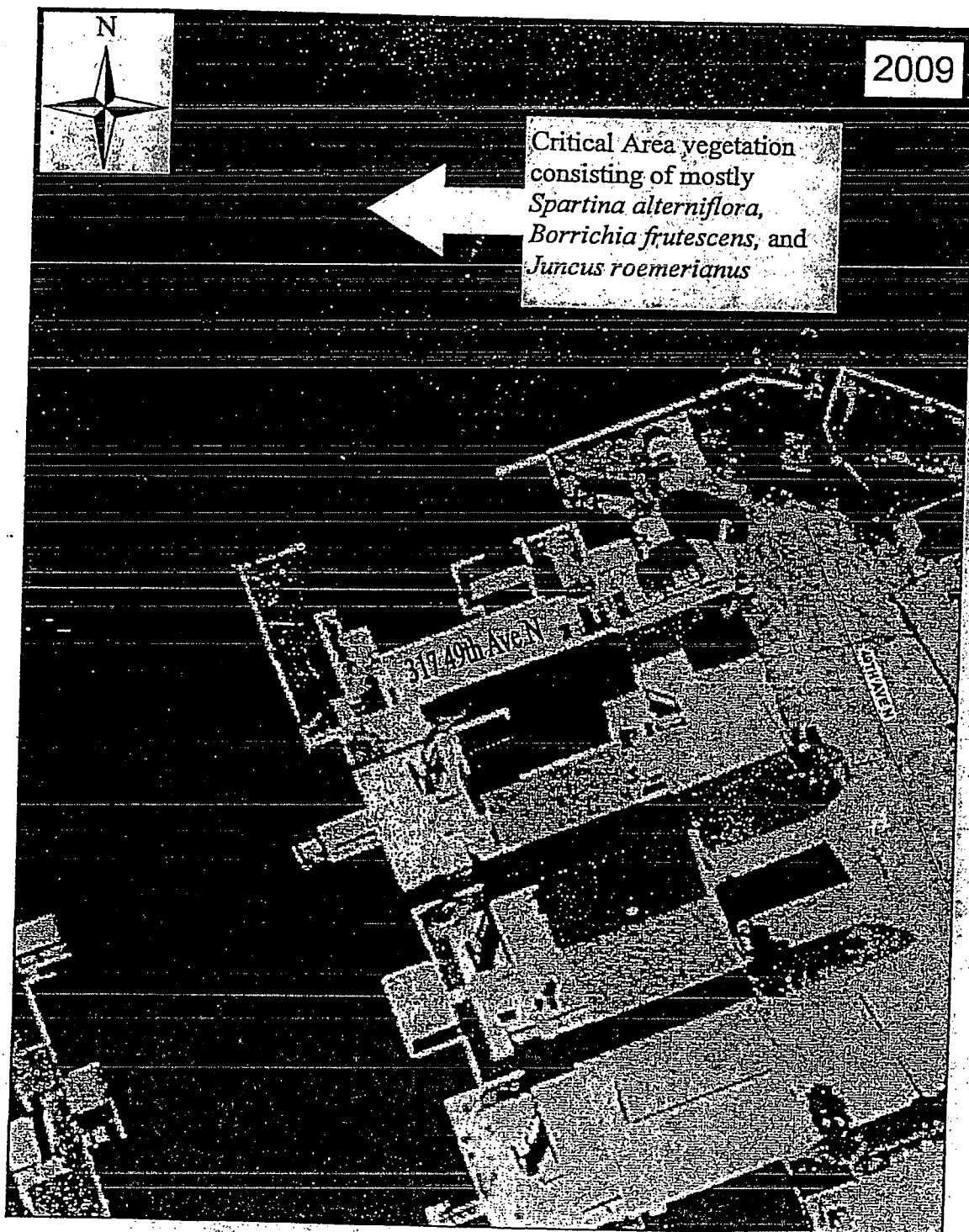
Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2008 Digital Orthophoto by Horry County



South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT F

Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2009 Digital Orthophoto by Horry County



South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

DATE: 1/14/2010
FILE: Berry, Tommy W., Sr. and Jo S. 07M-012S
AUTHOR: Sean M. Briggs
RE: Inspection Photographs from 1/12/10
Camera: HP Photosmart M425
Media: Digital

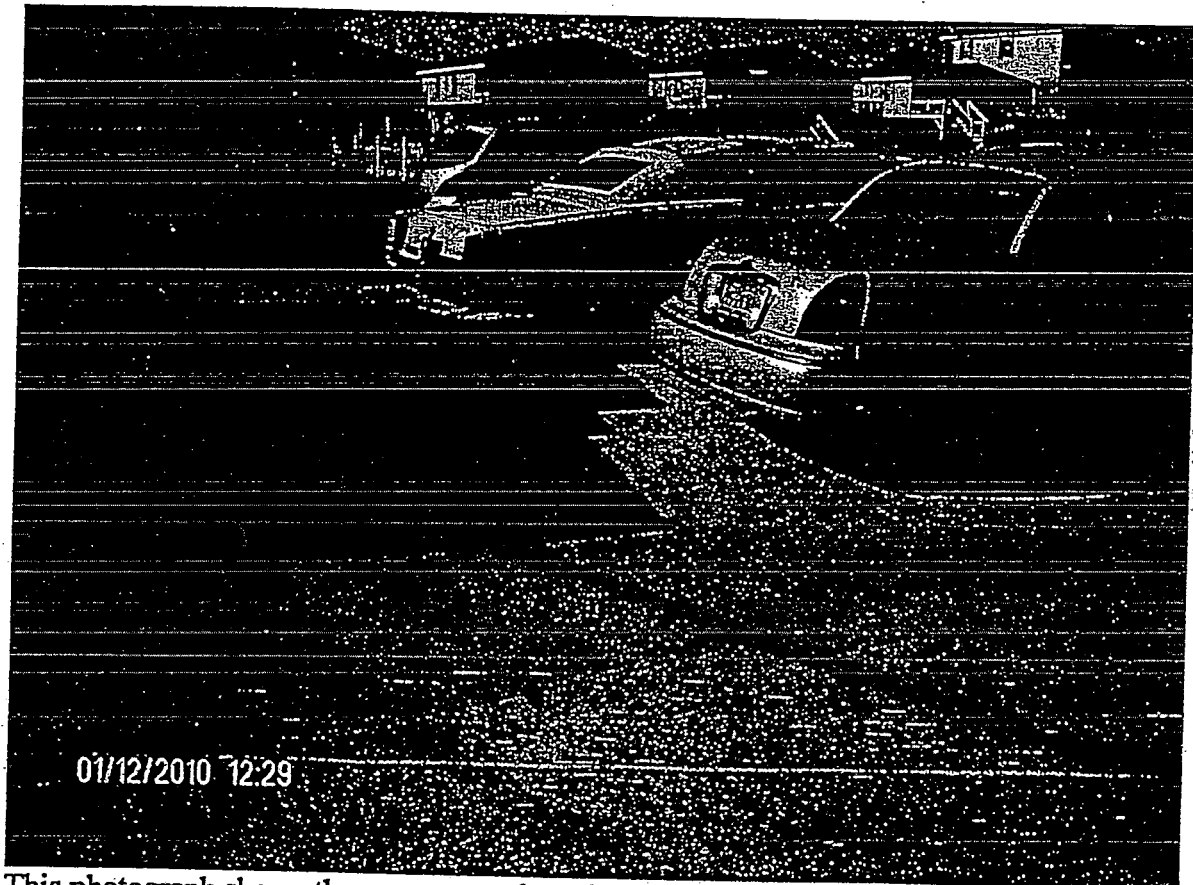
On 1/12/10, the author inspected the Site and documented additional improvements to the Site. The purpose of this inspection was to document these improvements which included a concrete pad, fencing, and landscaping.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



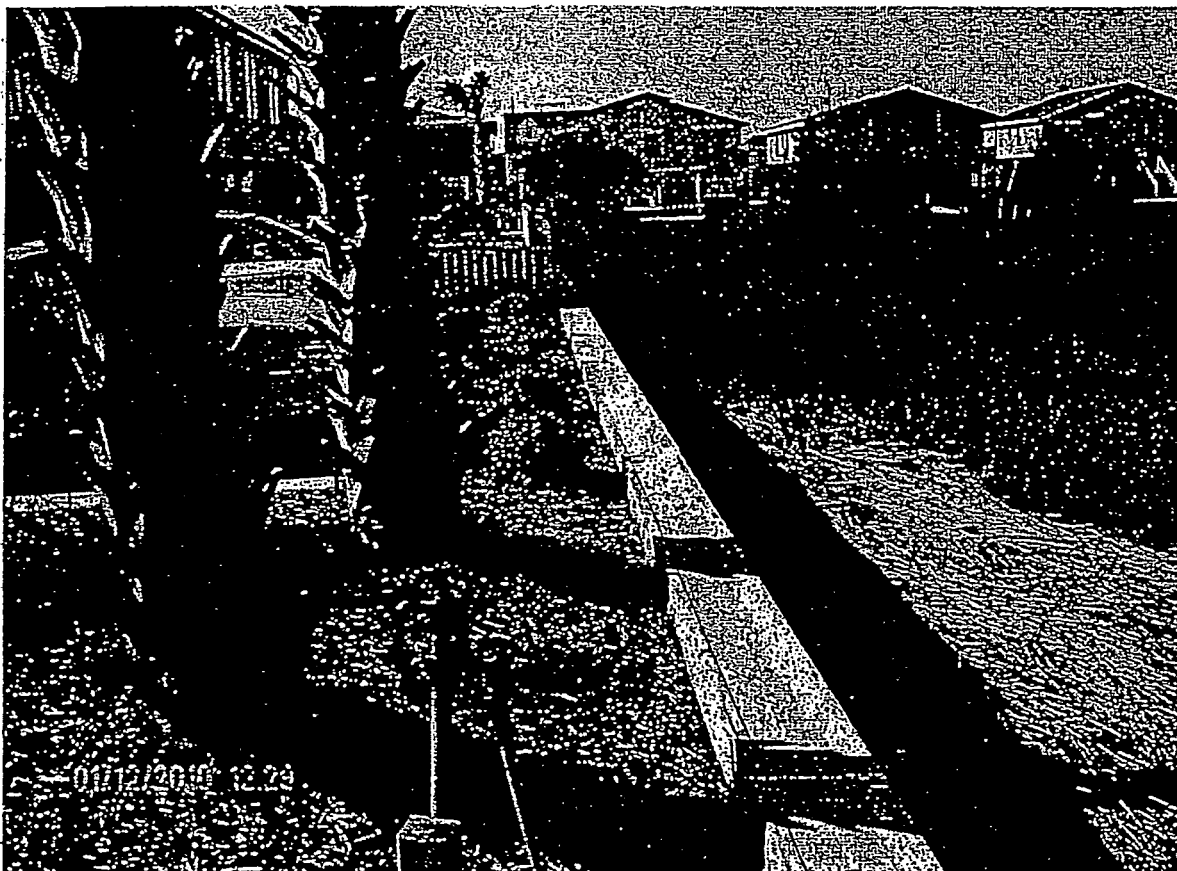
This photograph shows the concrete pad used as a part of the driveway that was installed on top of the fill placed in the tidelands critical area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the length of the north facing portion of the bulkhead. A new fence is visible as well as landscaping and a portion of the concrete pad in the foreground.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



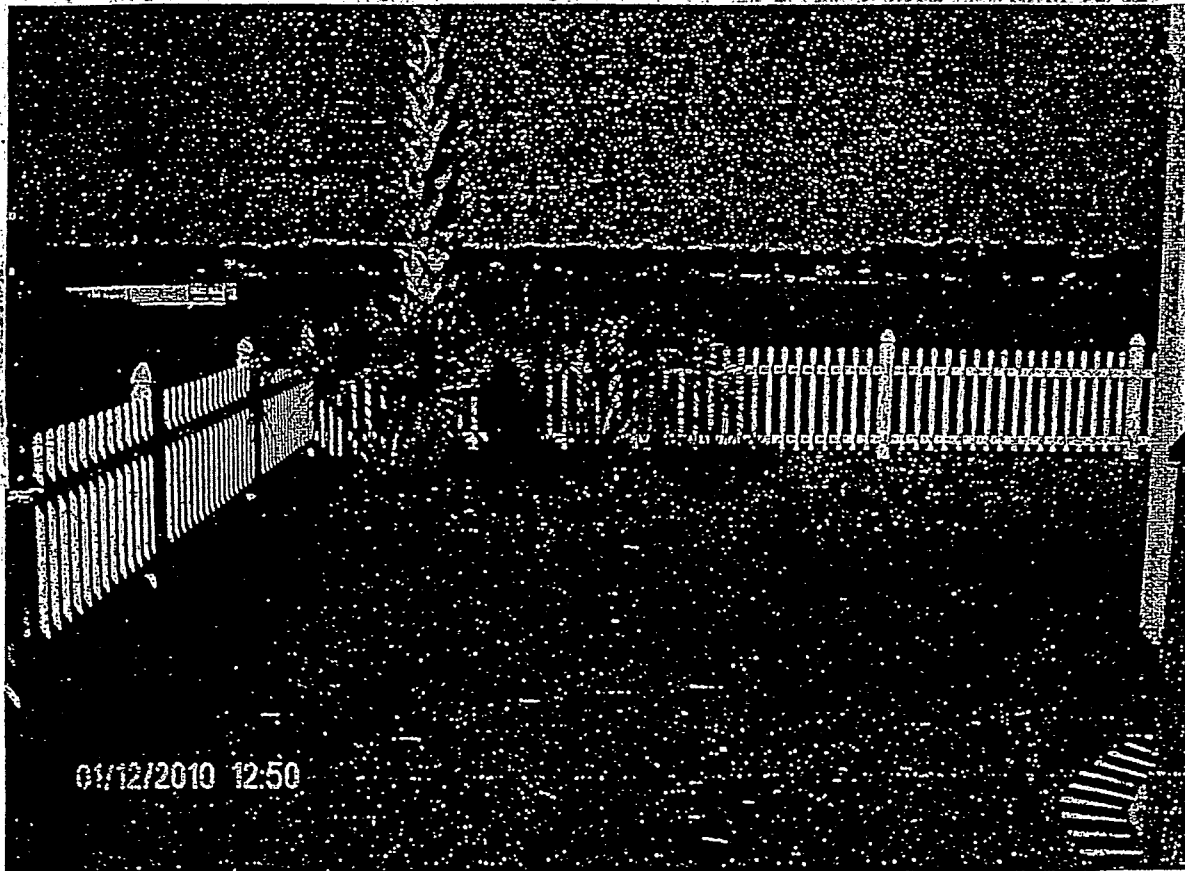
This photograph shows the northern side of the lot that has been landscaped including the placement of sod. Two piles for a new deck can be seen in the right had side of the picture.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



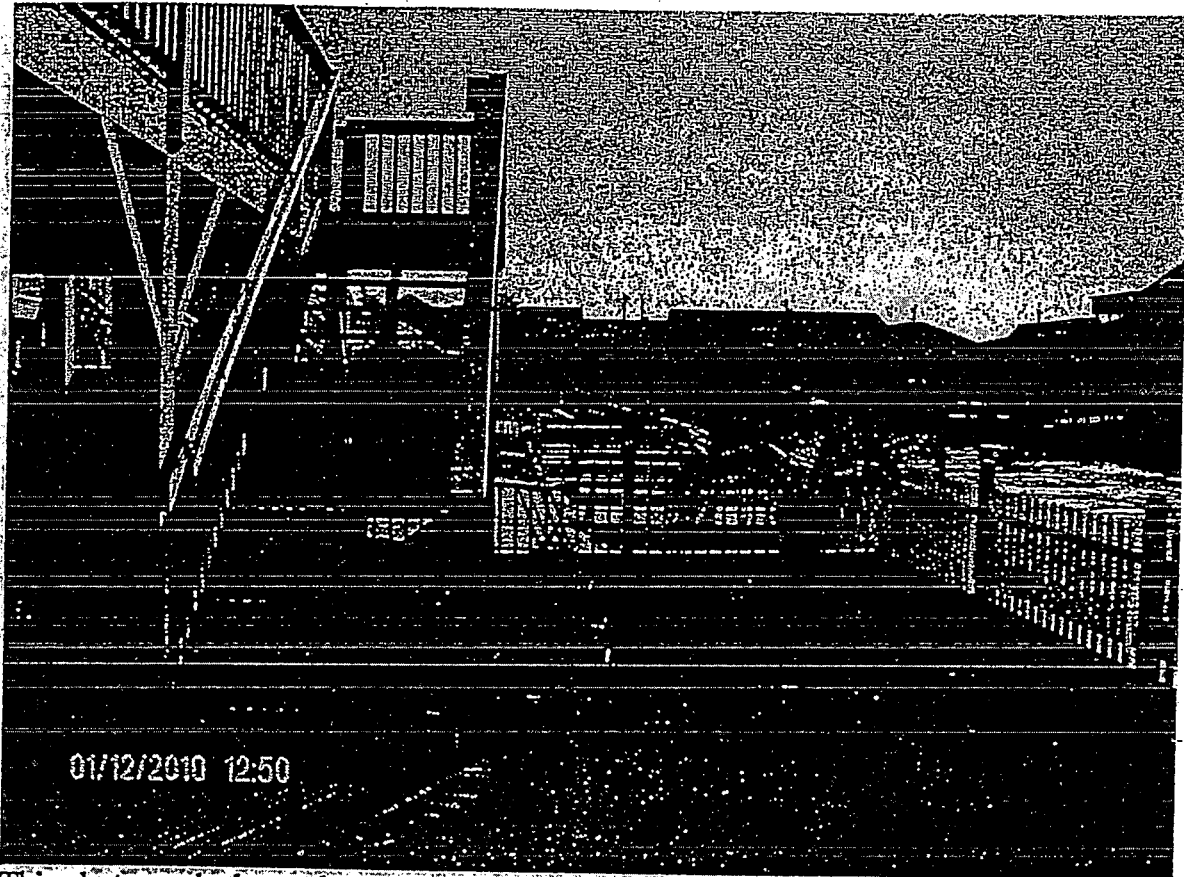
This photograph shows the northwestern corner of the lot with the landscaping and the fence in that area.

South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

ATTACHMENT G

Photo Log for 317 49th Ave North, North Myrtle Beach, Horry County, SC

Berry, Tommy W., Sr. and Jo S.



This photograph shows the southwestern corner of the lot with landscaping and the fence in that area.

EXHIBIT C

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

ATTORNEYS AT LAW
1000 29TH AVENUE NORTH
P.O. Box 357

MYRTLE BEACH, SOUTH CAROLINA 29578

TELEPHONE (843) 448-2400

TELECOPIER (843) 448-3022

Writer's Direct Line: 843-282-5393

E-Mail: Lhearl@BellamyLaw.com

HOWELL V. BELLAMY, JR.
JOHN K. RUTENBERG
JOHN E. COPELAND
CLAUDE H. EPPS, JR.
DAVID R. GRAVELY**
EDWARD B. BOWERS, JR.*
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BENJAMIN A. BAROODY

* CERTIFIED SPECIALIST IN TAXATION LAW
** FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
*** ALSO MEMBER OF NORTH CAROLINA BAR
**** CERTIFIED MEDIATOR

May 12, 2009

Information Officer
S. C. Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, S. C. 29016

Re: Tommy W. Berry- Permittee
311 49th Ave. N.
N. Myrtle Beach, S. C. 29582
Permit No. OCRM-07-509 to Replace Existing Bulkhead
Notice to of intent to Revoke to Permit No. OCRM-07-509

Dear Sir:

I am requesting the following records pursuant to the South Carolina Freedom of Information Act (S.C. Code Ann. §§ 30-4-10 through 30-4-165).

Please notify me as to when and where I may inspect and photocopy any pertinent materials you have, or please send me the information at the above address. I look forward to hearing from you within ten (10) working days.

RECORDS REQUESTED:

- a. The designation of the critical area line on and adjacent to Williams Creek and the Berry's property located at 311 49th Avenue North, City of North Myrtle Beach, South Carolina 29582, established pursuant to subsection (B) of § 48-39-210, 1976, as amended;
- b. All delineations and/or certifications of the critical area line in relation to the proposed replacement of the existing wooden bulkhead, and the Berry's property located at 311 49th Avenue North, City of North Myrtle Beach, South Carolina 29582, prepared by professional surveyor on Registered Drawings for Plain Review and Side view with affixed stamp and date in

May 12, 2009

Page 2

accordance with subsection (B) of § 48-39-210, 1976, as amended;

- c. All delineations and/or certifications of the critical area line in relation to the proposed replacement of the existing wooden bulkhead, and the Berry's property located at 311 49th Avenue North, City of North Myrtle Beach, South Carolina 29582, prepared by OCRM on Registered Drawings for Plain Review and Side view with affixed stamp and date in accordance with subsection (B) of § 48-39-210, 1976, as amended;
- d. Tommy W. Berry's Permit application numbered OCRM-07-509, to Replace Existing Bulkhead, including the Registered Drawings for Plain Review and Side view with affixed stamp and date;
- e. Tommy W. Berry's Permit Approval numbered: OCRM-07-509, to Replace Existing Bulkhead;
- f. All notices and correspondance from SCDHEC- OCRM to Tommy W. Berry regarding Permit numbered: OCRM-07-509 to Replace Existing Bulkhead;
- g. Any and all documents and/or information, including, but not limited to, Permit Application, Permit Approval, Affidavit of Ownership or Control, Newspaper Public Notice, Photographs, Notices, Correspondance, Location Map, Registered Drawings for Plain Review and Side view (showing the critical line in relation to the proposed replacement of the existing bulkhead, and, also, adjacent existing structures), Certified Plats or Surveys of past improvements, Complaints from adjoining property owners, and a site map prepared or submitted to SCDHEC- OCRM under Permit No. 55533 dated September 25, 2006;
- h. Any and all documents and/or information, including, but not limited to, Permit Application, Permit Approval, Affidavit of Ownership or Control, Newspaper Public Notice, Photographs, Notices, Correspondance, Location Map, Registered Drawings for Plain Review and Side view (showing the critical line in relation to the proposed replacement of the existing bulkhead, and, also, adjacent existing structures), Certified Plats or Surveys of past improvements, Complaints from adjoining property owners, and a site map submitted to or in possession of SCDHEC- OCRM pertaining to Tommy W. Berry's Permit Numbered OCRM-07-509, to Replace Existing Bulkhead;
- i. Identify all special and general conditions allegedly violated by Tommy W. Berry as the permittee under Permit No. OCRM-07-509;
- j. Identify and provide all documentation and/or information that evidences the proposed bulkhead had not been placed in the same location as the existing bulkhead as required under Permit No. OCRM-07-509;and

May 12, 2009

Page 3

- k. Identify and provide all documentation and/or information that evidences the existing bulkhead had not been removed concurrently with the new bulkhead construction under Permit No. OCRM-07-509.

With kindest regards, I remain

Sincerely,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

Howell V. Bellamy, III

Howell V. Bellamy, III

HVBIII/ly

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- j. Identify and provide all documentation and/or information that evidences the proposed bulkhead had not been placed in the same location as the existing bulkhead as required under Permit No. OCRM-07-509;and

May 12, 2009

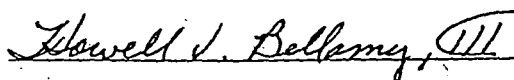
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HVBIII/lh