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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Presiding Court Judge

Case No. 2010-CP-26-6091

RECEIVED

FEB 17 2012

SC Court of Appeals

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.*

RECORD ON APPEAL

Howell V. Bellamy, Jr., Esq., SCB # 00642
Howell V. Bellamy, III, Esq., SCB # 66575
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorneys for Appellants

Carlisle Roberts, Jr., Esq., General Counsel
Davis Whitfield-Cargile, Esq.
Bradley Churdar, Esq., Chief Counsel OCRM
DHEC/OCRM
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(843) 953-0213
Attorneys for Respondent

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Bradley Churdar, Esq., Chief Counsel OCRM
DHEC/OCRM
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(843) 953-0213
Attorneys for Respondent

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STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

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

Plaintiffs,)

vs.)

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

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2010-CP-26-6091ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS*Appearances:**Howell Bellamy, Jr., Esq. and Howell Bellamy, III, Esq., Attorneys for the*
Plaintiffs, Tommy W. Berry, Sr. and Jo W. Berry*Bradley D. Churdar, Esq., Attorney for Defendant South Carolina*
Department of Health and Environmental Control, Office of Ocean and
Coastal Resource ManagementFILED
Horry County
2011 MAR 30 PM 10:49
JELANIE HUGHES-WARD
CLERK OF COURTSTATEMENT OF THE CASE

This matter comes before the Court pursuant to the defendant's Motion to Dismiss for lack of subject matter jurisdiction. A motion hearing was held on March 7, 2011.

Based upon the arguments of counsel and the pleadings of this case, I do hereby make the following findings of fact and conclusions of law.

FINDINGS OF FACT

Plaintiffs' property that is the subject of this civil action is located in Horry County, SC, and falls within the jurisdiction of the *Coastal Zone Management Act*.

On March 7, 2007, the defendant (DHEC-OCRM) issued the plaintiffs a critical area permit for the replacement of a bulkhead along plaintiffs' property. However, on August 2, 2007, DHEC-OCRM notified the plaintiffs that a Cease and Desist Directive to stop construction

of the bulkhead had been issued on July 23, 2007, and also issued a Notice of Intent to Revoke the plaintiffs' permit for alleged violations of the permit. On April 26, 2010, DHEC-OCRM issued Administrative Order 07M-012S ("administrative order") assessing the plaintiffs with a civil penalty for violating the specifications of the permit. The administrative order also required the plaintiffs to submit and adhere to a restoration plan to remedy the alleged violations. The plaintiffs sought review of the administrative order by the South Carolina Board of Health and Environmental Control. On June 14, 2010, the plaintiffs were informed that the South Carolina Board of Health and Environmental Control had decided on June 10, 2010, not to conduct a final review conference, thus affirming the administrative order. On July 8, 2010, the plaintiffs filed this action seeking judicial review of the administrative order.

CONCLUSIONS OF LAW

The plaintiffs argue that this court has jurisdiction in this judicial review pursuant to S.C. Code Ann. §§ 48-39-180 and/or 1-23-380. DHEC-OCRM argues that S.C. Code Ann. §48-39-180 does not bestow jurisdiction of this case on the court because the statute: 1) was repealed by Act 387, *2006 South Carolina Acts and Joint Resolutions* (Act 387); 2) is not applicable to administrative enforcement orders that assess civil penalties and require remedial action, such as the administrative order in this case; and/or 3) contemplates judicial review of an administrative law judge's final decision before the South Carolina Court of Appeals; not judicial review of a final agency decision before the Court of Common Pleas. DHEC-OCRM further argues that the plaintiffs have not exhausted all administrative remedies as required by S.C. Code Ann. § 1-23-380.

Contrary to plaintiffs' argument, neither S.C. Code Ann. § 48-39-180 nor § 1-23-380 grant the circuit court jurisdiction in this case.

S.C. Code Ann. § 48-39-180 governs the review of permit applications that have been “finally denied, revoked, suspended or approved subject to conditions of the department...” It does not govern the review of administrative enforcement orders that assess civil penalties and require other remedial actions such as the administrative order in this case. Whenever DHEC-OCRM determines that there has been a violation of a permit, the agency may issue an administrative enforcement order requiring compliance with the issued permit and may additionally impose a civil fine upon the violator as provided by S.C. Code Ann. § 48-39-170(C). Such action by DHEC-OCRM is administrative in nature and governed by the procedures of the *Administrative Procedures Act*. See *Hill v. SCDHEC*, 389 S.C. 1, 698 S.E.2d 612 (S. Ct. 2010).

S.C. Code Ann. § 1-23-380 grants the right of judicial review to a party “who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case....” The process for appealing Department decisions is set forth in S.C. Code Ann. § 44-1-60. “All department decisions involving the issuance, denial, renewal, suspension, or revocations of permits, licenses, or other actions of the Department which may give rise to a contested case shall be made using the procedures set forth in this section.” S.C. Code Ann. § 44-1-60(A) (emphasis added). S.C. Code Ann. § 44-1-60(G) establishes the South Carolina Administrative Law Court (“ALC”) as the place where a contested case occurs. Because the Plaintiffs failed to request a contested case hearing in the ALC and, thus, have not received a “final decision in a contested case,” they have not “exhausted all administrative remedies” as required by S.C. Code Ann. § 1-23-380. There is no appealable final administrative decision for this court to judicially review. *Oakwood Landfill, Inc v. SC Dept. of Health and Envtl. Control*, 381 S.C. 120, 132, 671 S.E.2d 646, 658 (Ct. App. 2009) (until the ALC ruled on the DHEC’s approval of landfill capacity there was no final agency

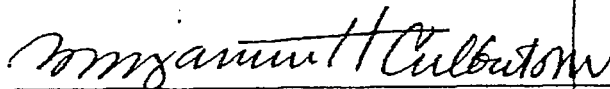
decision on the merits in the case and Appellants had not exhausted all of their administrative remedies).¹

Accordingly, because Plaintiff failed to comply with the provisions of S.C. Code Ann. § 44-1-60, this Court is without jurisdiction to render the relief Plaintiff has requested and the Motion to Dismiss by DHEC-OCRM should be granted. Since the Motion to Dismiss is granted on the grounds that the plaintiffs' failed to exhaust all administrative remedies, this court need not rule on DHEC-OCRM's ~~other arguments~~ for dismissal.

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the Motion to Dismiss by DHEC-OCRM is GRANTED and this action is dismissed.

AND IT IS SO ORDERED.



Benjamin H. Culbertson
Presiding Judge

Georgetown, SC
March 25, 2011

¹ This court also notes that since enactment of Act 387, ALC decisions in contested cases may be appealed directly to the South Carolina Court of Appeals.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE #: 2009-CP-26-5436

Tommy W. Berry, Sr., et al.
Plaintiff(s)

vs.

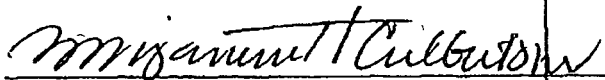
South Carolina Department
of Health and Environmental
Control, Office of Ocean and
Coastal Resource Management
Defendant(s)

**ORDER
DISPOSITION OF MOTIONS**

Plaintiff's Motion to Reconsider is DENIED.

** This motion is decided and ruled upon without oral arguments.*

AND IT IS SO ORDERED.



Benjamin H. Culbertson
Presiding Judge
15th Judicial Circuit

Dated at Georgetown, SC this 18th day of April, 2011.

Howell V. Bellamy, Jr.
Howell V. Bellamy, III
Plaintiff's Attorney

Bradley D. Churdur
Defendant's Attorney

CLERK OF COURT
JULIANE HUGGINS-WARD
11 APR 20 AM 10:10
HORRY COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

FILED
HORRY COUNTY

11 MAY 24 AM 9:13

CASE NOS.: 2009-CP-26-5436
2009-CP-26-6091

MELANIE LUCHINS-WARD
CLERK OF COURT

South Carolina Department
of Health and Environmental
Control-Ocean Coastal
Resource Management
Defendant(s)

Tommy W. Berry, Sr., et al.
Plaintiff(s)

vs.

ORDER DISPOSITION OF MOTIONS

Plaintiffs' Motion to Correct Clerical Errors is GRANTED as follows:

- the case number on the Plaintiffs' Motion to Reconsider Order Granting the Defendant's Motion to Dismiss, including its cover sheet, is changed from 2009-CP-26-5436 to 2009-CP-26-6091;

- the case number on the Final Order dated April 18, 2011, denying Plaintiffs' Motion to Reconsider is changed from 2009-CP-26-5436 to 2009-CP-26-6091.

/s/

*This motion was decided without oral arguments.

AND IT IS SO ORDERED.



Benjamin H. Culbertson
Presiding Judge
15th Judicial Circuit

Dated at Conway, SC this 19th day of May, 2011.

Howell V. Bellamy, Jr.
Howell V. Bellamy, III
Plaintiff's Attorney

Bradley D. Churdur
Defendant's Attorney



State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Wallace A. Mullinax, III
 Law Clerk

P. O. Box 479 (zip code 29442)
 401 Cleland St. (zip code 29440)
 Georgetown, South Carolina
 Telephone: (843) 545-3030
 Facsimile: (843) 545-3282
 Email: bculbertsonlc@sccourts.org

MEMORANDUM

To: BHC
 From: Wallace A. Mullinax (Initial: WAM)
 Subject: Case number on Motion to Reconsider Berry v. DHEC
 Date: 6/17/11

This dispute has resulted in the filing of two matters: 2009-CP-26-5436 and 2010-CP-26-6091. There has been significant confusion regarding which C/A number applies to this Motion to Reconsider. Relevant facts are as follows:

- 1) A Motion to reconsider was filed under 2009-CP-26-5436, but actually relates to 2010-CP-26-6091.
- 2) Order Denying Motion to Reconsider was also filed under 2009-5436.
- 3) Because the Motion to Reconsider actually relates to 2010-6091 instead of 2009-5436, Bellamy firm filed a Motion to Correct Clerical Errors in Plaintiffs' Motion to Reconsider and Order Denying Plaintiffs' Motion to Reconsider. This Motion to Correct has been filed under 2010-6091.
- 4) Order Granting Plaintiffs' Motion to Correct Clerical Errors was filed under 2009-CP-26-5436. Keep in mind that the Motion to Correct was filed under 2010-CP-26-6091. Therefore, we have an Order present in a file that addresses a Motion in another file.
- 5) Additionally, the Order granting Motion to Correct Clerical Errors shows that the applicable file numbers are 2009-5436 and 2009-6091. The true file numbers are 2009-5436 and 2010-6091.
- 6) Bellamy firm contacted us via email requesting that the Order granting Motion to Correct be amended to show 2010-6091 as opposed to 2009-6091.
- 7) I've reviewed their Motion to Correct and can confirm that their motion shows 2009-5436 and 2010-6091.
- 8) Accordingly, we should probably issue a revised/amended Order Granting Motion to Correct that shows the file numbers as 2009-5436 and 2010-6091.
- 9) All of this material should likely be contained in 2010-6091, as it all stems from the original Motion to Reconsider, which relates to 2010-6091.

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY 2011 JUN 24 PM 2:52
 HARRY COUNTY COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

CLERK OF COURT CASE NOS.: 2009-CP-26-5436
 2010-CP-26-6091

COPY

South Carolina Department
 of Health and Environmental
 Control-Ocean Coastal
 Resource Management
 Defendant(s)

Tommy W. Berry, Sr., et al.
 Plaintiff(s)

vs.

**AMENDED ORDER
 DISPOSITION OF MOTIONS**

Plaintiffs' Motion to Correct Clerical Errors is GRANTED as follows:

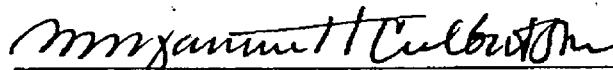
- the case number on the Plaintiffs' Motion to Reconsider Order Granting the Defendant's Motion to Dismiss, including its cover sheet, is changed from 2009-CP-26-5436 to 2010-CP-26-6091;

- the case number on the Final Order dated April 18, 2011, denying Plaintiffs' Motion to Reconsider is changed from 2009-CP-26-5436 to 2010-CP-26-6091.

*This motion was decided without oral arguments.

(This Amended Order shall replace the Order dated 5/19/2011.)

AND IT IS SO ORDERED.



Benjamin H. Culbertson
 Presiding Judge
 15th Judicial Circuit

Dated at Conway, SC this 17th day of June, 2011.

Howell V. Bellamy, Jr.
Howell V. Bellamy, III
 Plaintiff's Attorney

Bradley D. Churdur
 Defendant's Attorney



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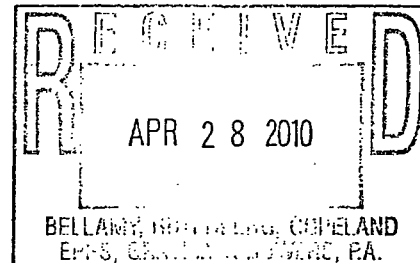
C. Earl Hunter, Commissioner

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,
Gravelly & 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**Myrtle Beach Office • 927 Shine Avenue • Myrtle Beach, SC 29577 • Phone: (843) 938-4598 • Fax: (843) 938-4596 • www.scdhec.gov



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C. Earl Hunter, Commissioner

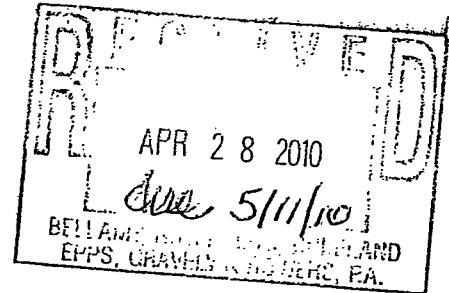
Promoting and protecting the health of the public and the environment

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

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:

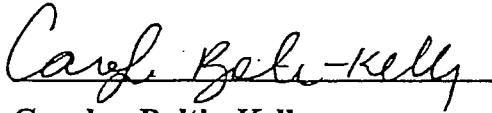
Attn: Sean M. Briggs
Enforcement Project Manager
Office of Ocean and Coastal Resource Management
927 Shine Avenue
Myrtle Beach, SC 29577

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.

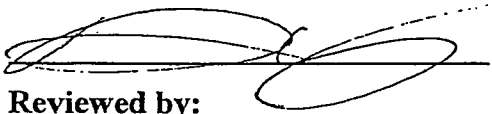
[Signatures on following page]

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



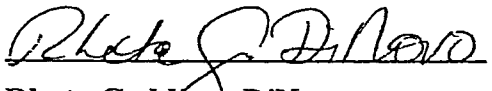
Carolyn Boltin-Kelly
Deputy Commissioner

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.

000024

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

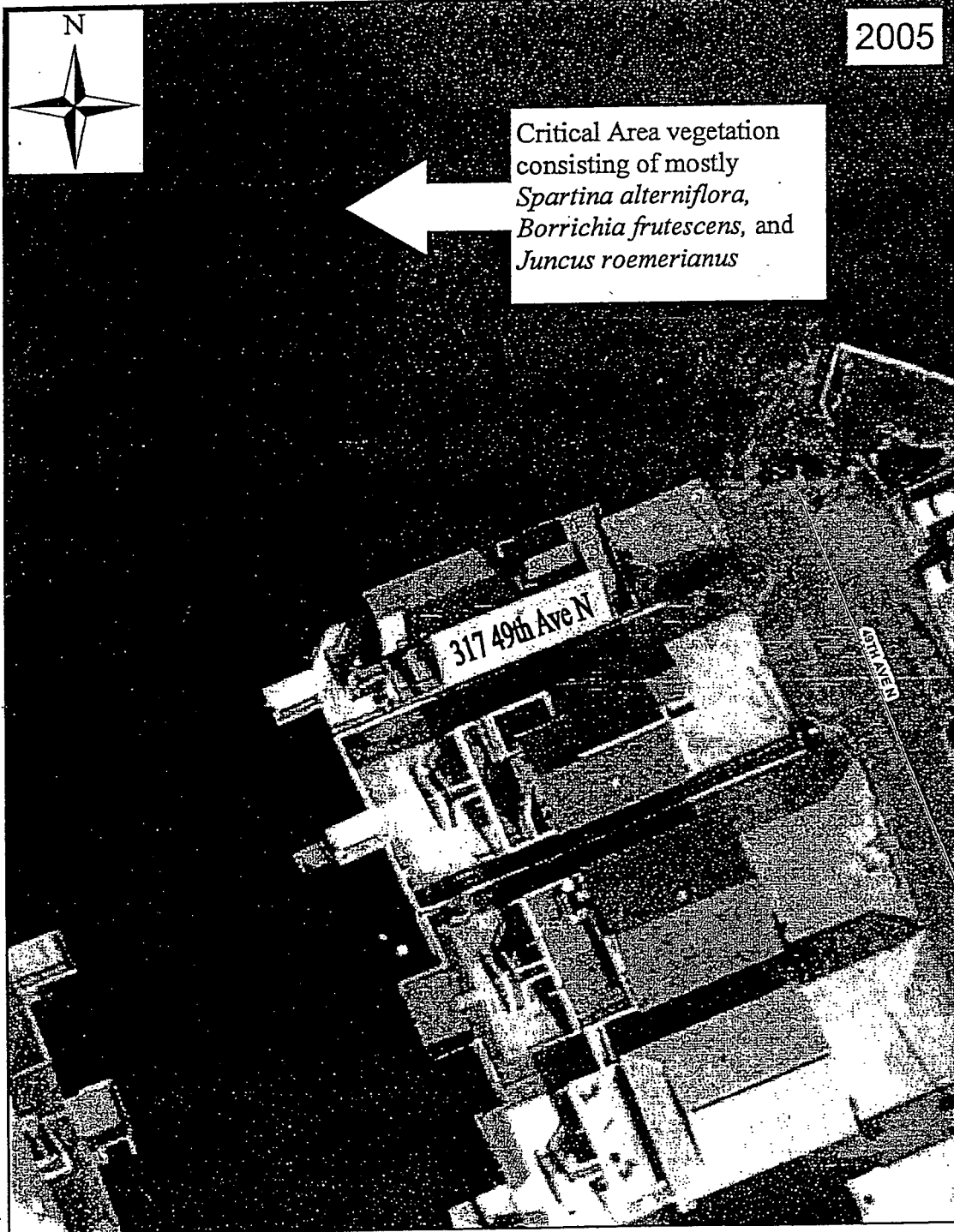
ATTACHMENT A

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



2005

Critical Area vegetation
consisting of mostly
Spartina alterniflora,
Borrchia frutescens, and
Juncus roemerianus

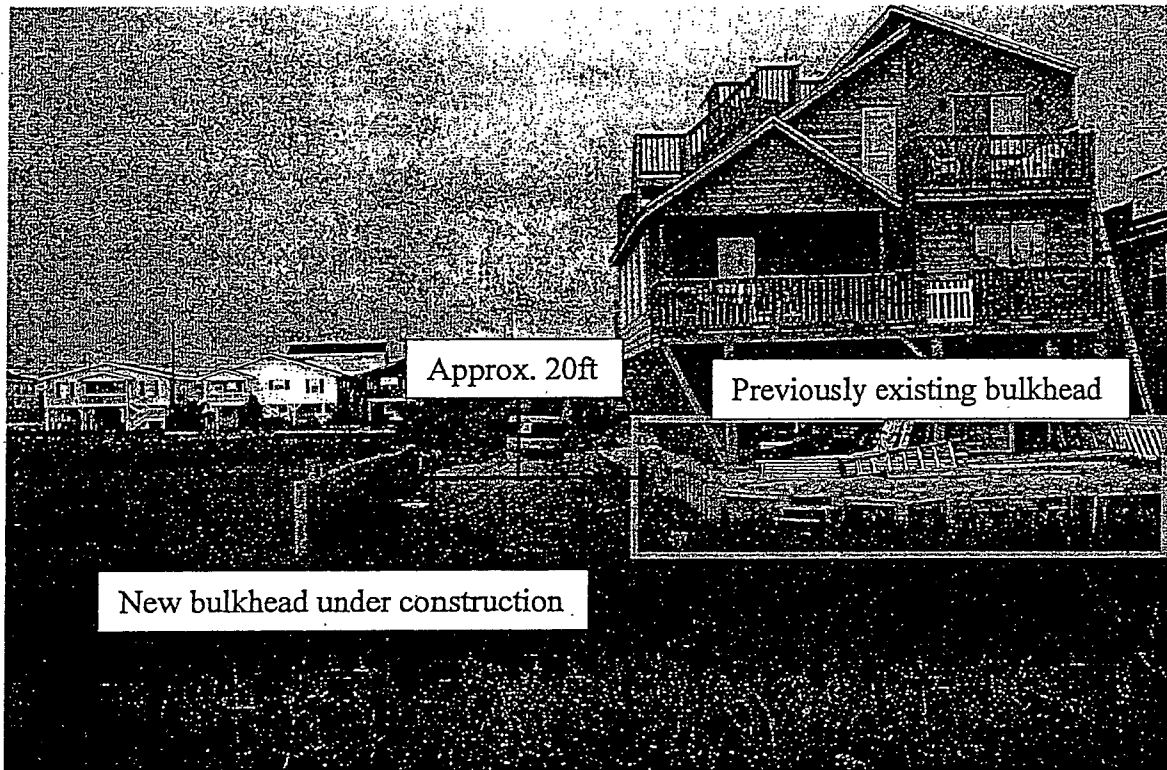


South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

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

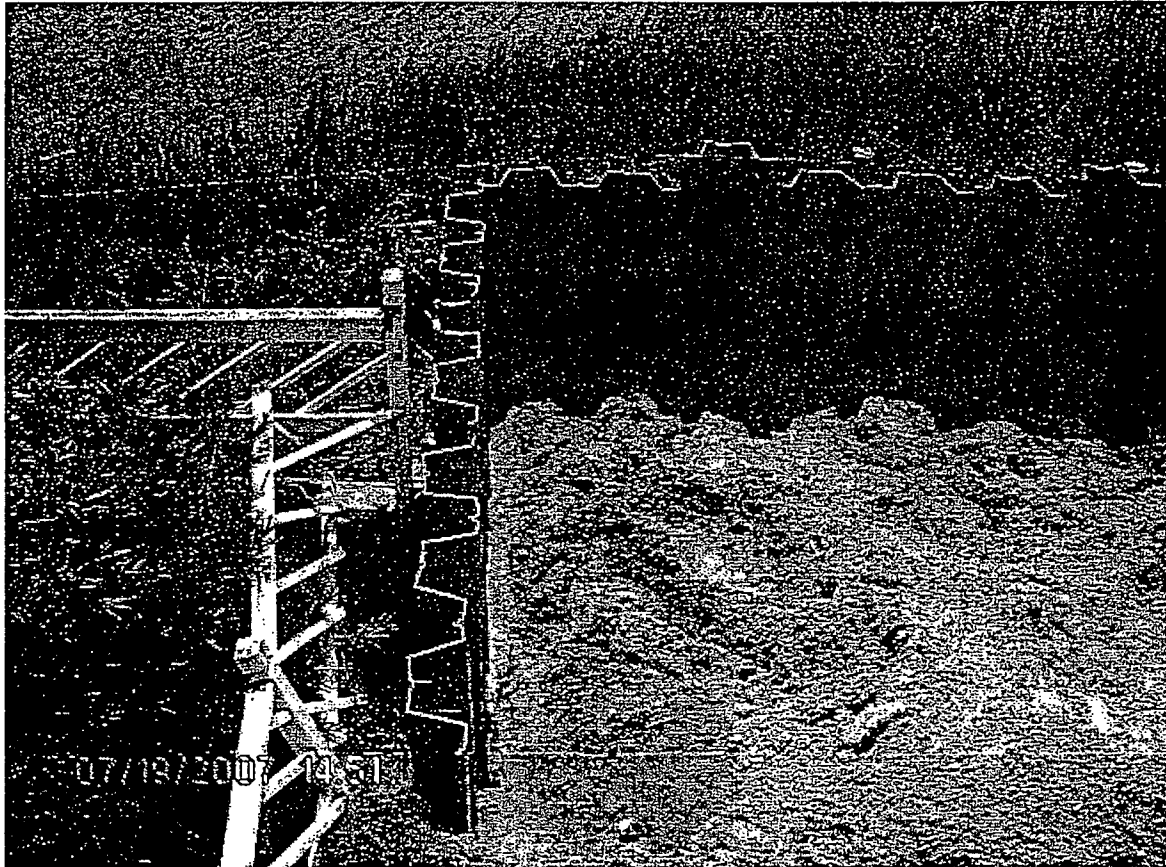
On 7/19/07, the author inspected the Site and documented the bulkhead under construction with the vinyl sheets installed as well as a large amount of dirt used as backfill in the tidelands critical area between the previous bulkhead and the new bulkhead. The purpose of this inspection was to document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

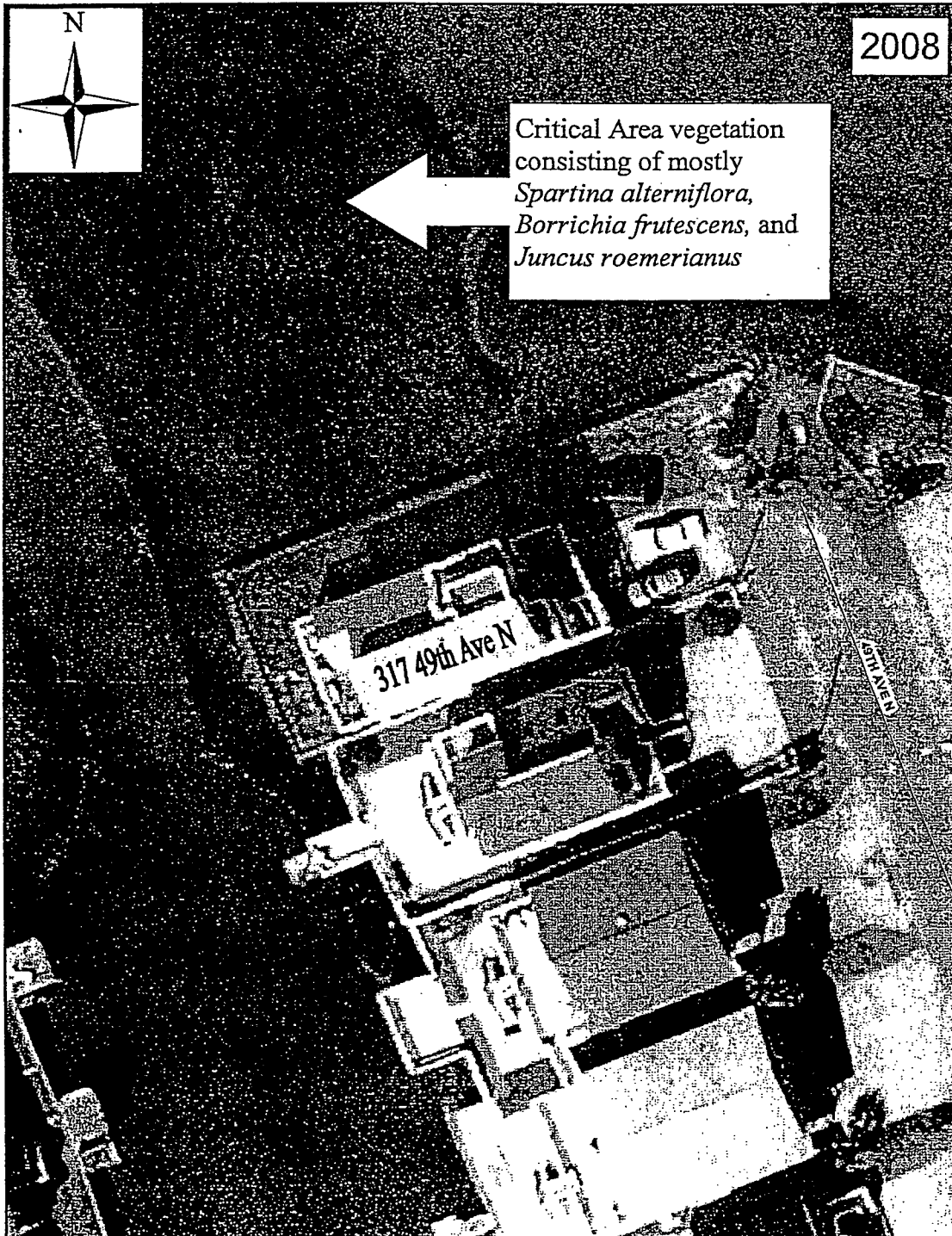


This photograph shows the western facing portion of the bulkhead with the whaler installed. The whaler has been highlighted in this photo for illustrative purposes.

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

ATTACHMENT E

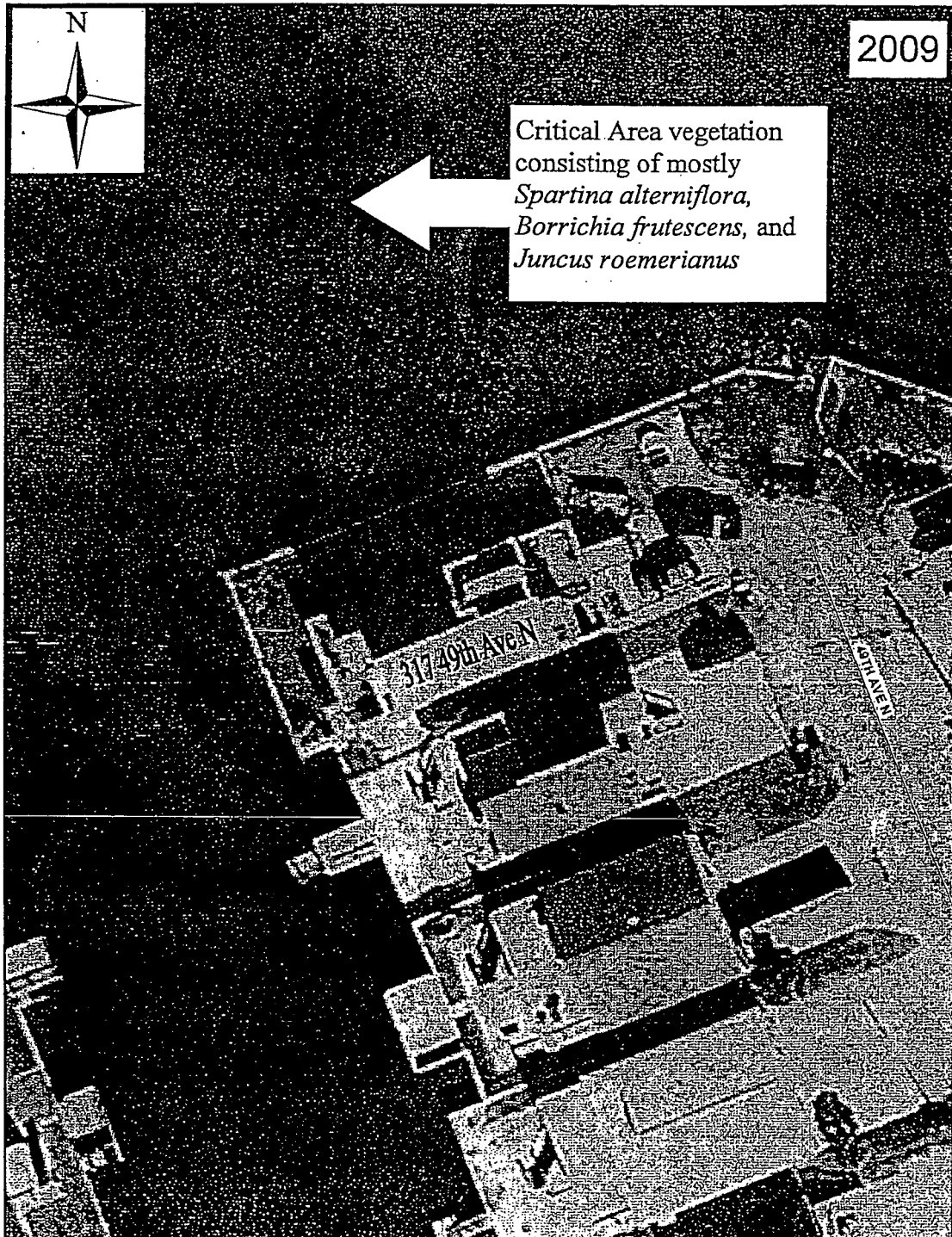
Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2008 Digital Orthophoto by Horry County



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.

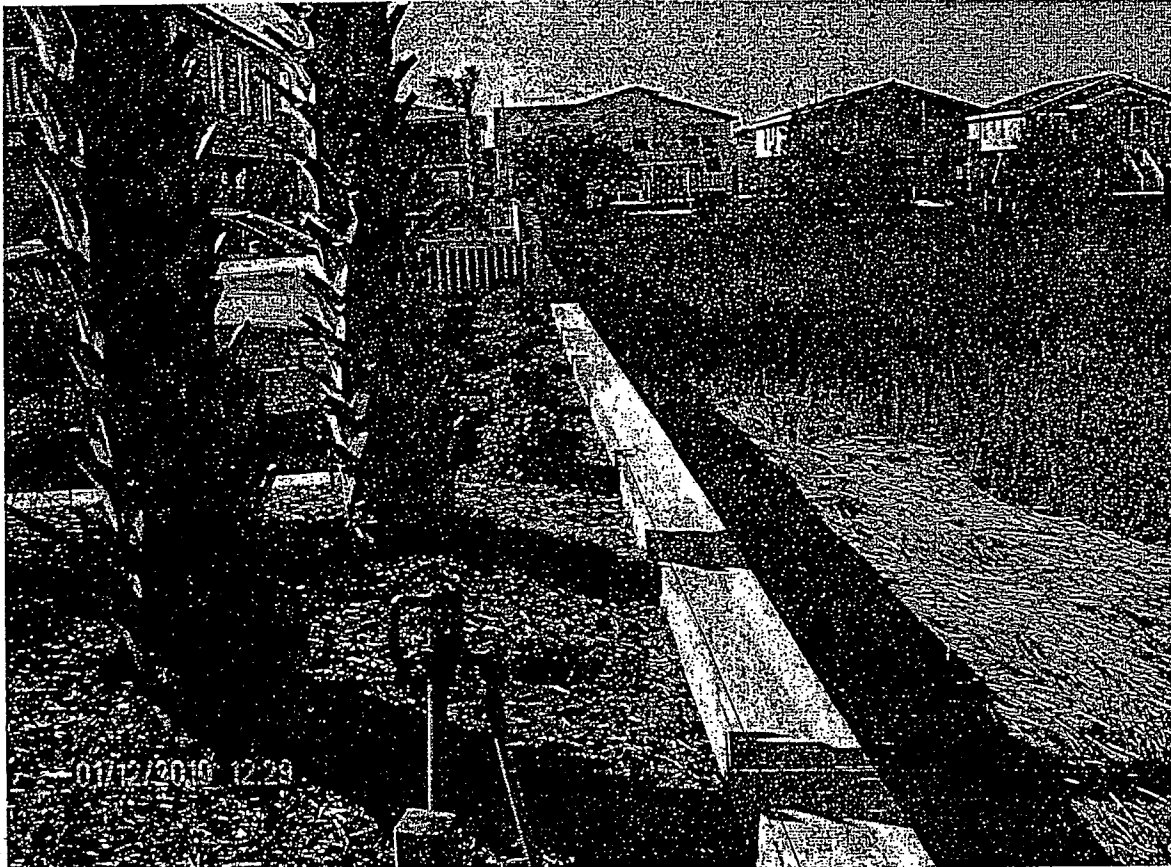
000038

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.

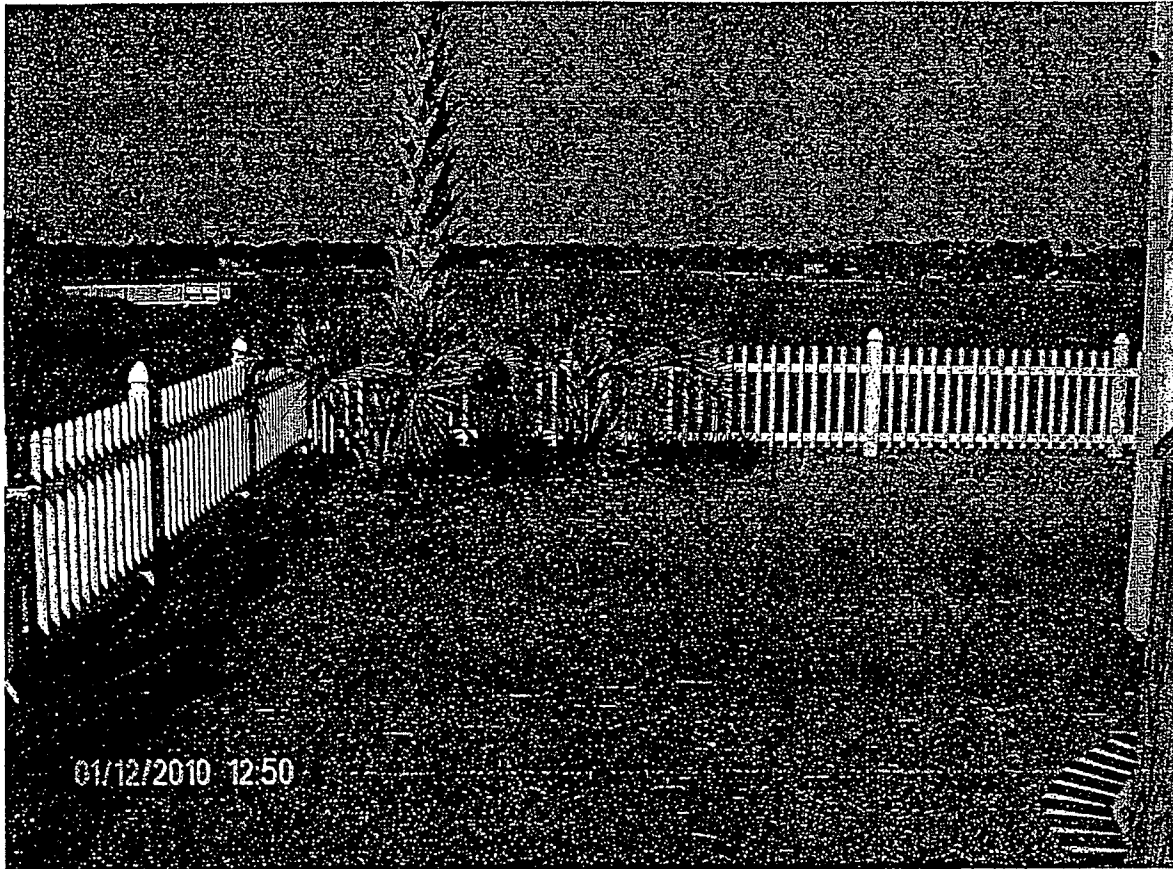
000040

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.

000041

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.

COUNTY OF HORRY

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

Respondents

CIVIL ACTION COVER SHEET

vs.

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

Petitioner)

- 2010 CP 26 6091 -

(Please Print)

Submitted By: Howell V. Bellamy, III

Address: Bellamy Law Firm

P.O. Box 357

Myrtle Beach, SC 29578

SC Bar #:

66575

Telephone #:

(843) 448-2400

Fax #:

(843) 448-3022

Other:

(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 SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
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.

FILED
10 JUL -8 PM 3:32
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2010-CP-26- 6091

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

vs.)

COMPLAINT/PETITION FOR
 JUDICIAL REVIEW

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

FILED
 10 JUL -8 PM 3:32
 CLERK OF COURT

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.**

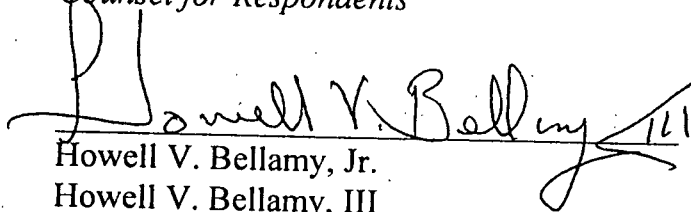
1000 29th Avenue North

P.O. Box 357. N.

Myrtle Beach, South Carolina 29578

(843) 448-2400

Counsel for Respondents


Howell V. Bellamy, Jr.
Howell V. Bellamy, III

Myrtle Beach, South Carolina

July 8, 2010.



000061

EXHIBIT A



000062

G. Earl Hunter, Commissioner

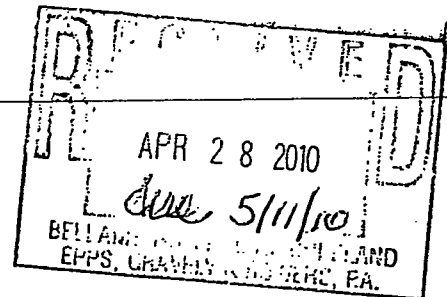
Promoting and protecting the health of the public and the environment

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

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



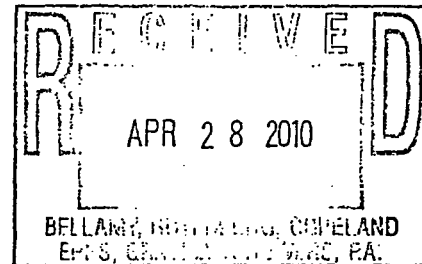
C. Earl Hunter, Commissioner

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
smB

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:

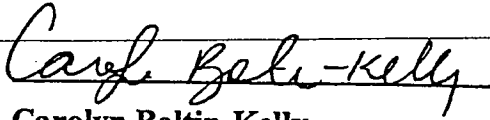
Attn: Sean M. Briggs
Enforcement Project Manager
Office of Ocean and Coastal Resource Management
927 Shine Avenue
Myrtle Beach, SC 29577

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

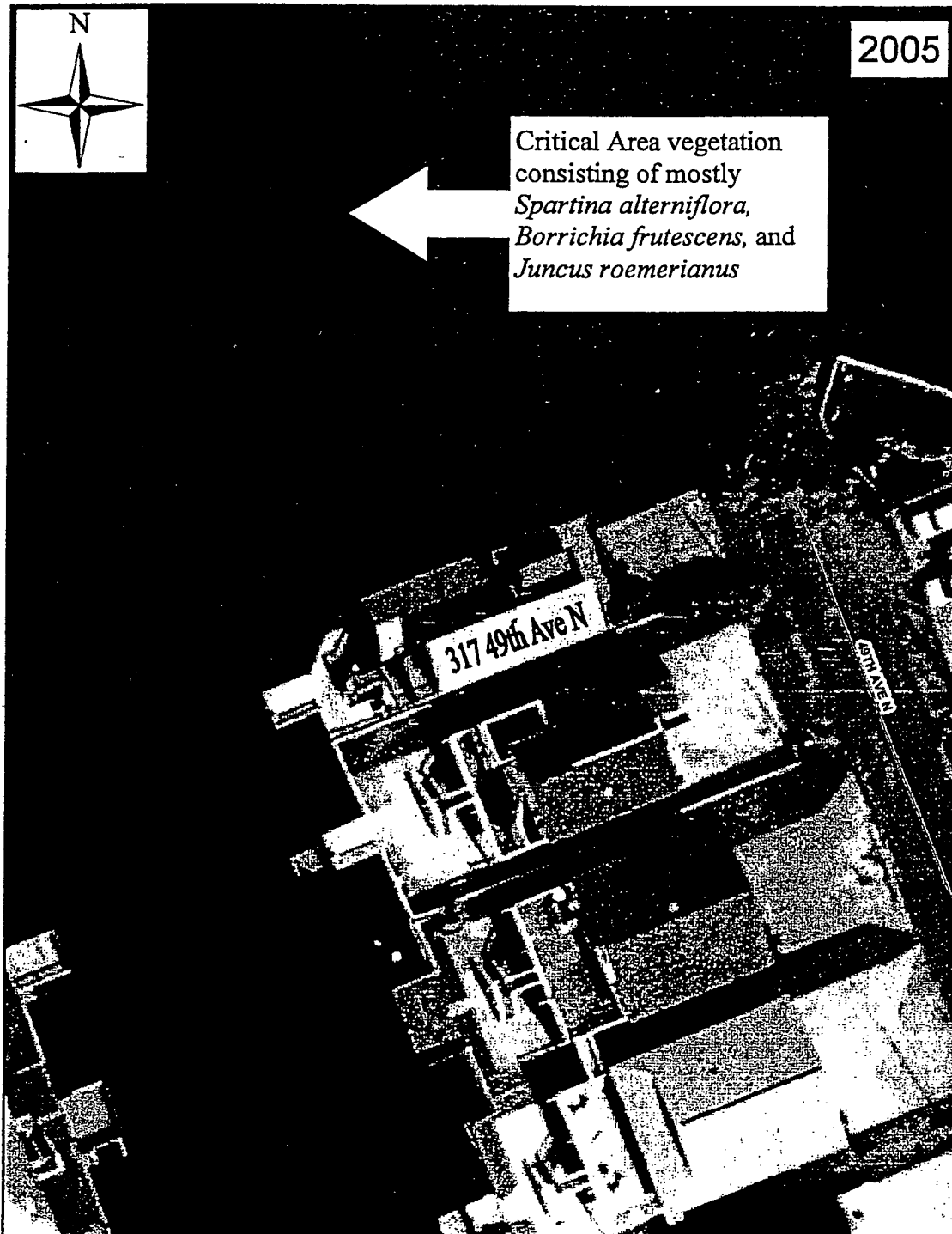
3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. 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

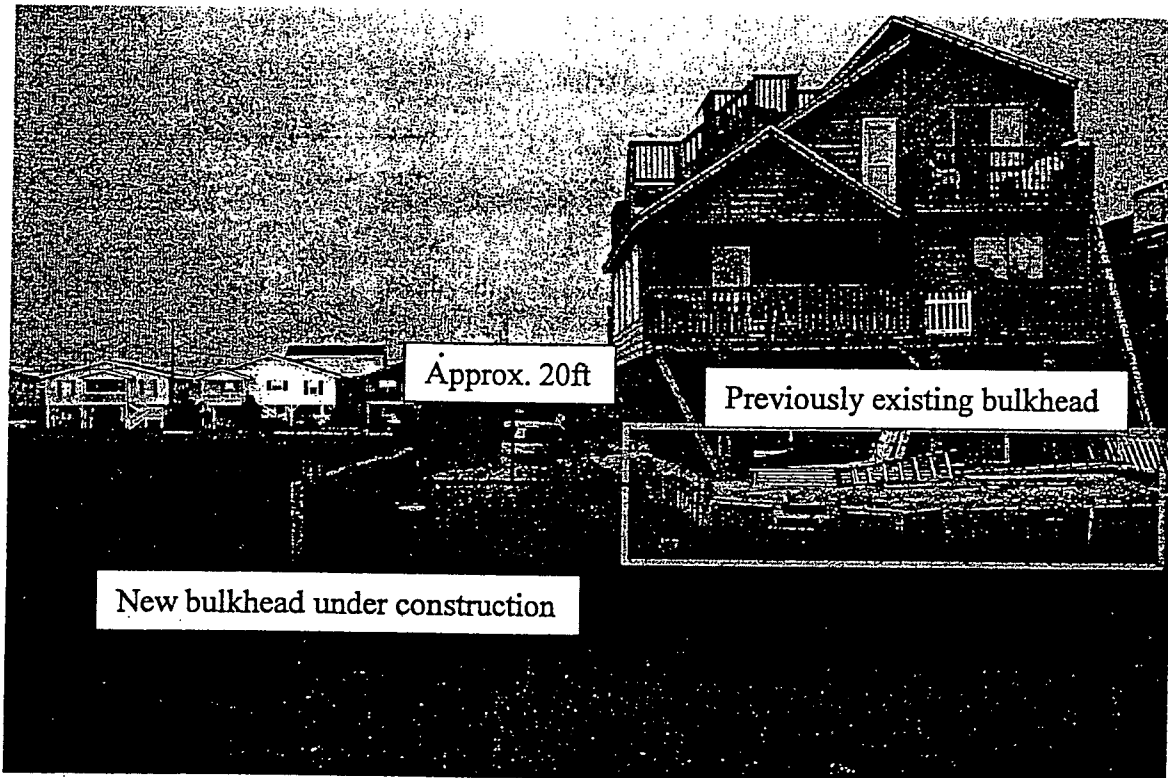


South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

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

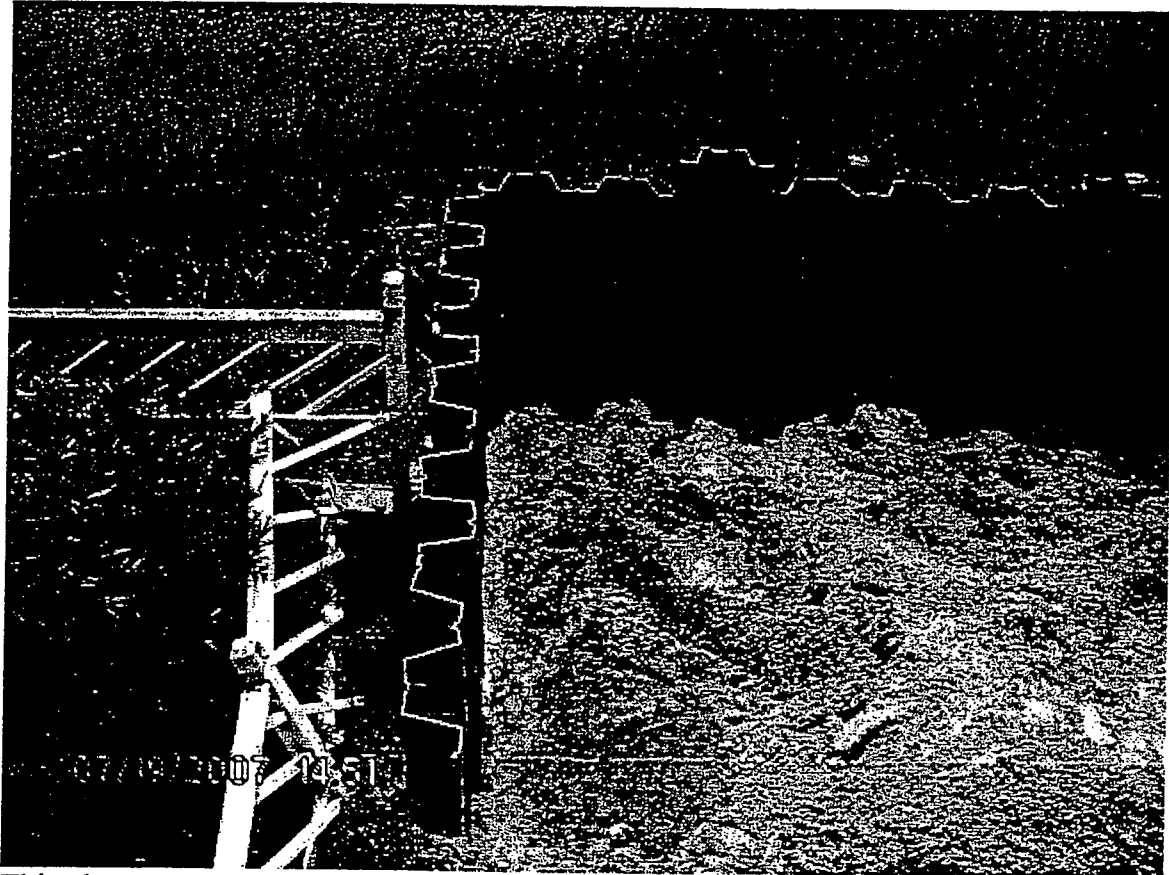
On 7/19/07, the author inspected the Site and documented the bulkhead under construction with the vinyl sheets installed as well as a large amount of dirt used as backfill in the tidelands critical area between the previous bulkhead and the new bulkhead. The purpose of this inspection was to document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

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

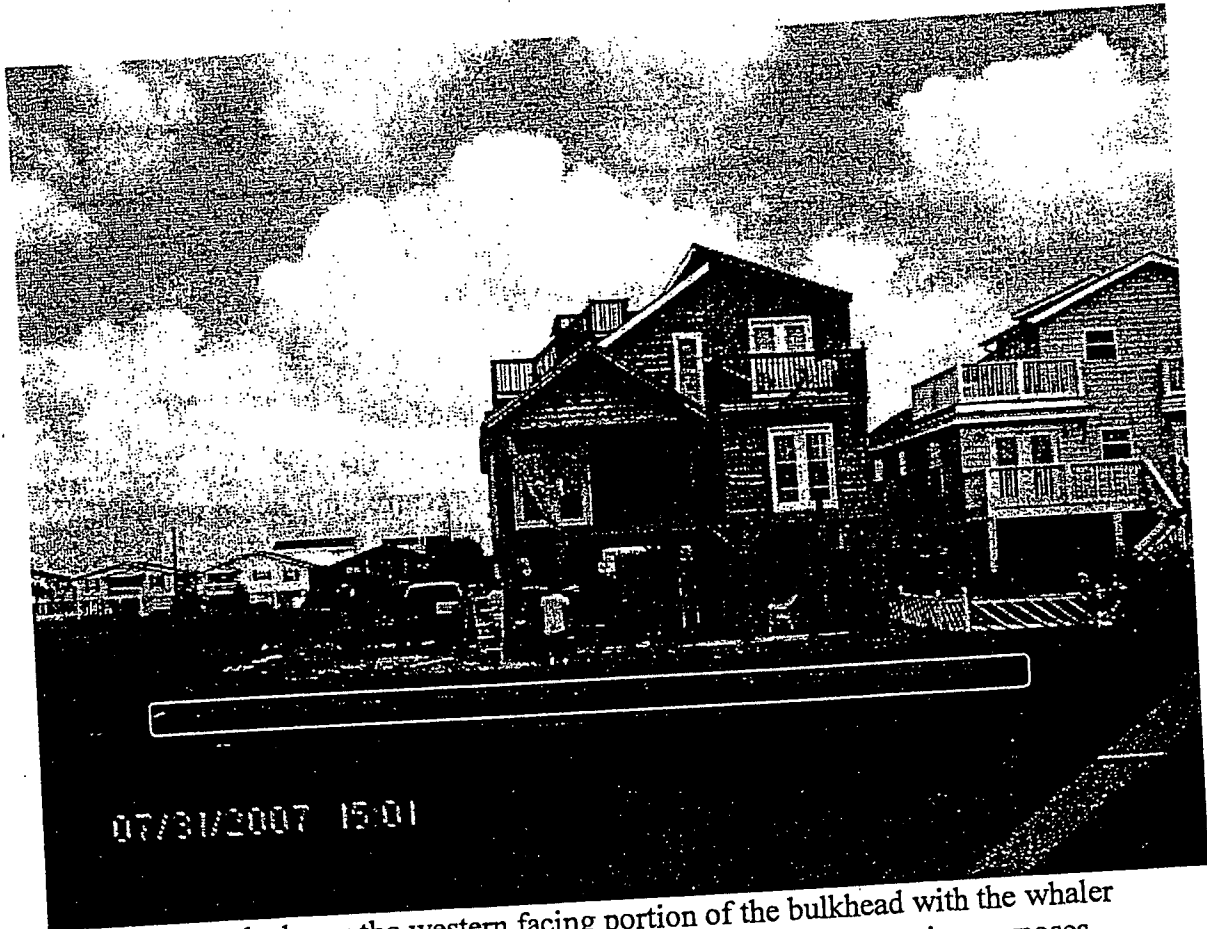
On 7/31/07, the author inspected the Site and documented the bulkhead completely installed with the exception of the cap. This inspection occurred following the issuance of both a Cease and Desist Directive and a Notice of Violation to the Berrys.

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.

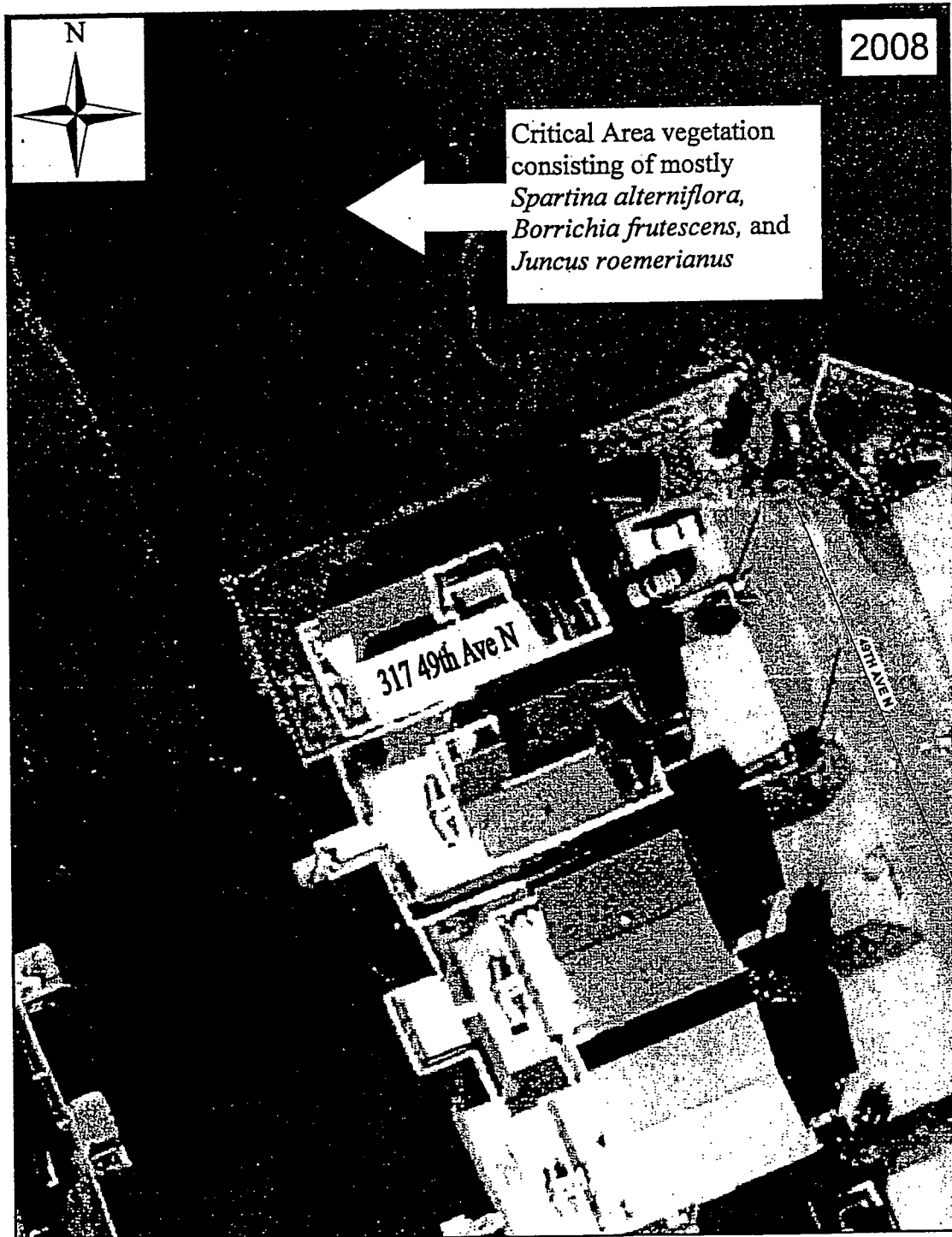


This photograph shows the western facing portion of the bulkhead with the whaler installed. The whaler has been highlighted in this photo for illustrative purposes.

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

ATTACHMENT E

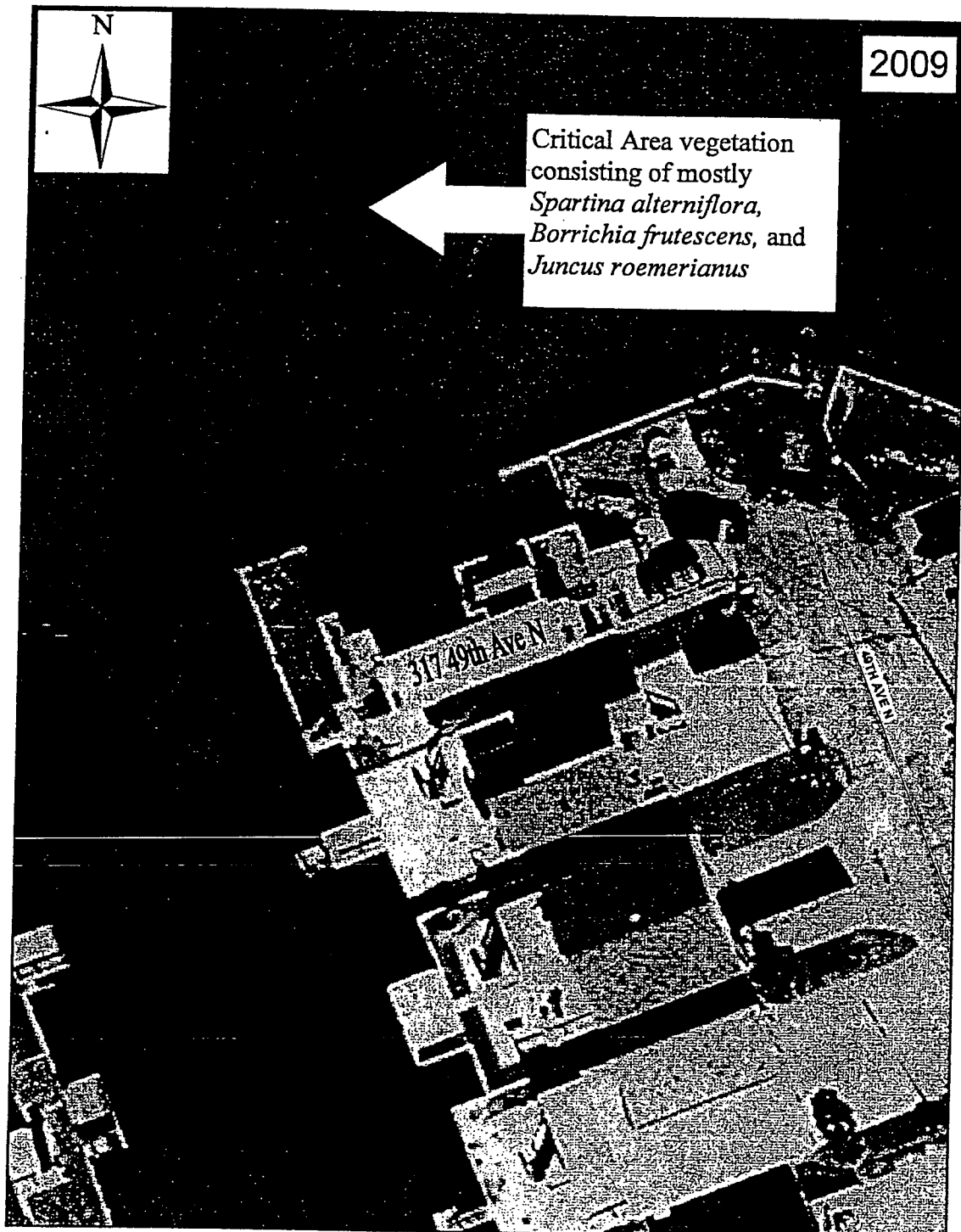
Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2008 Digital Orthophoto by Horry County



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

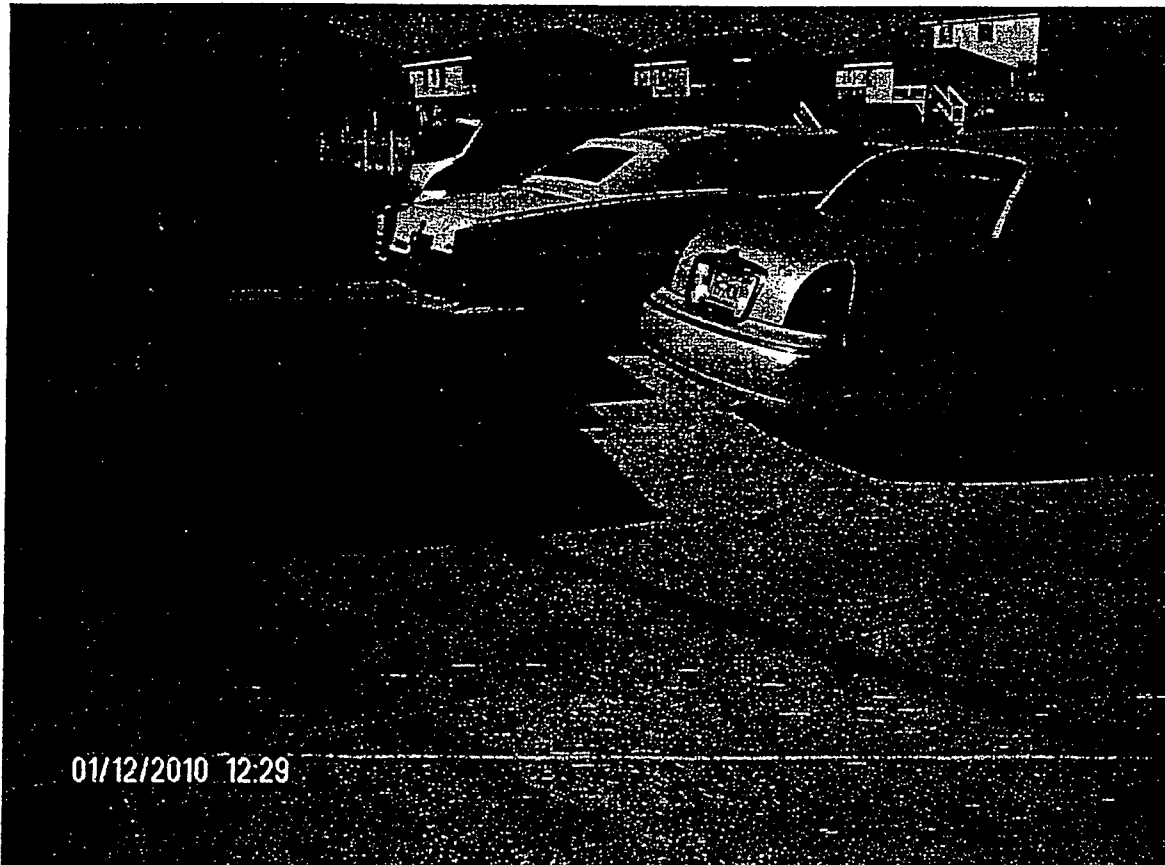
On 1/12/10, the author inspected the Site and documented additional improvements to the Site. The purpose of this inspection was to document these improvements which included a concrete pad, fencing, and landscaping.

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.



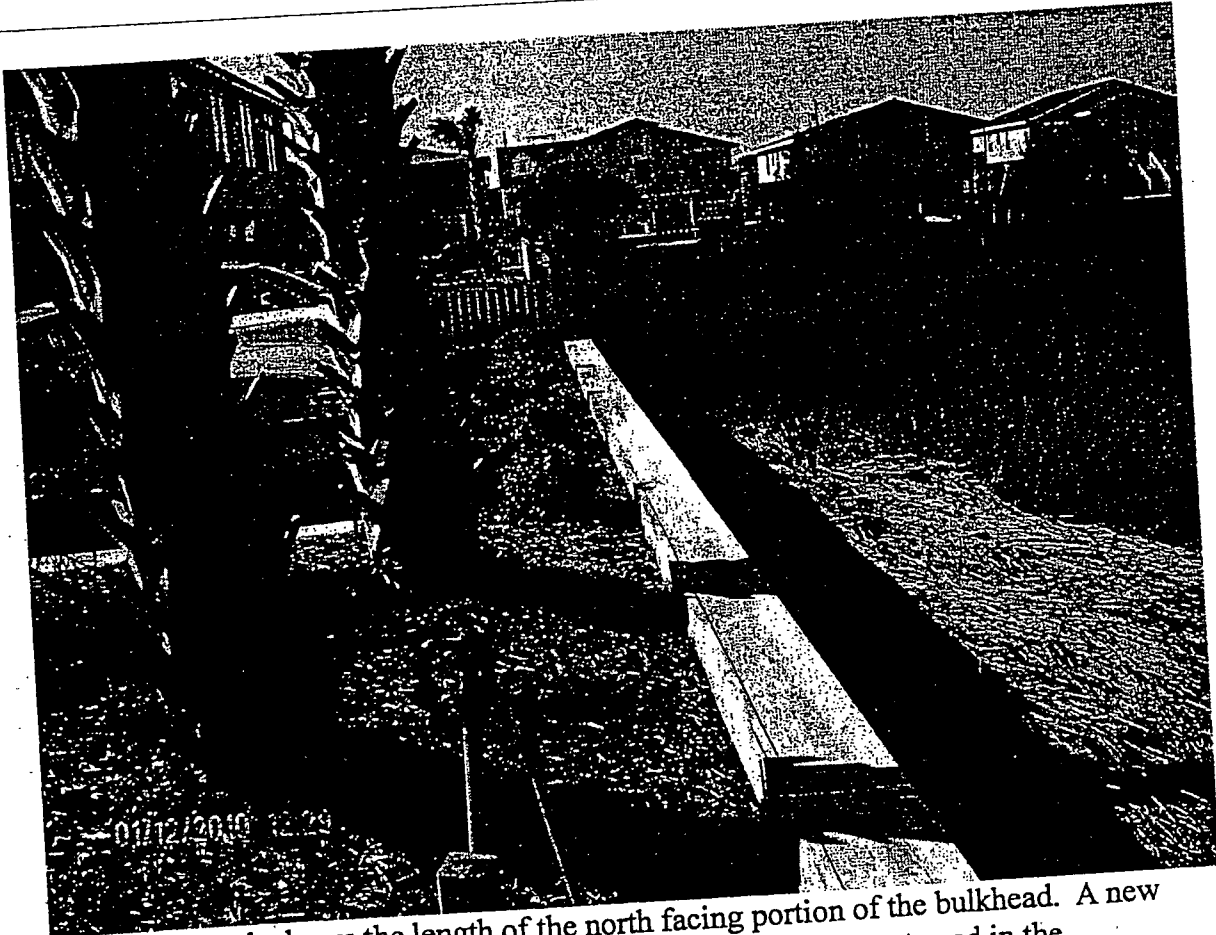
This photograph shows the concrete pad used as a part of the driveway that was installed on top of the fill placed in the tidelands critical area.

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.



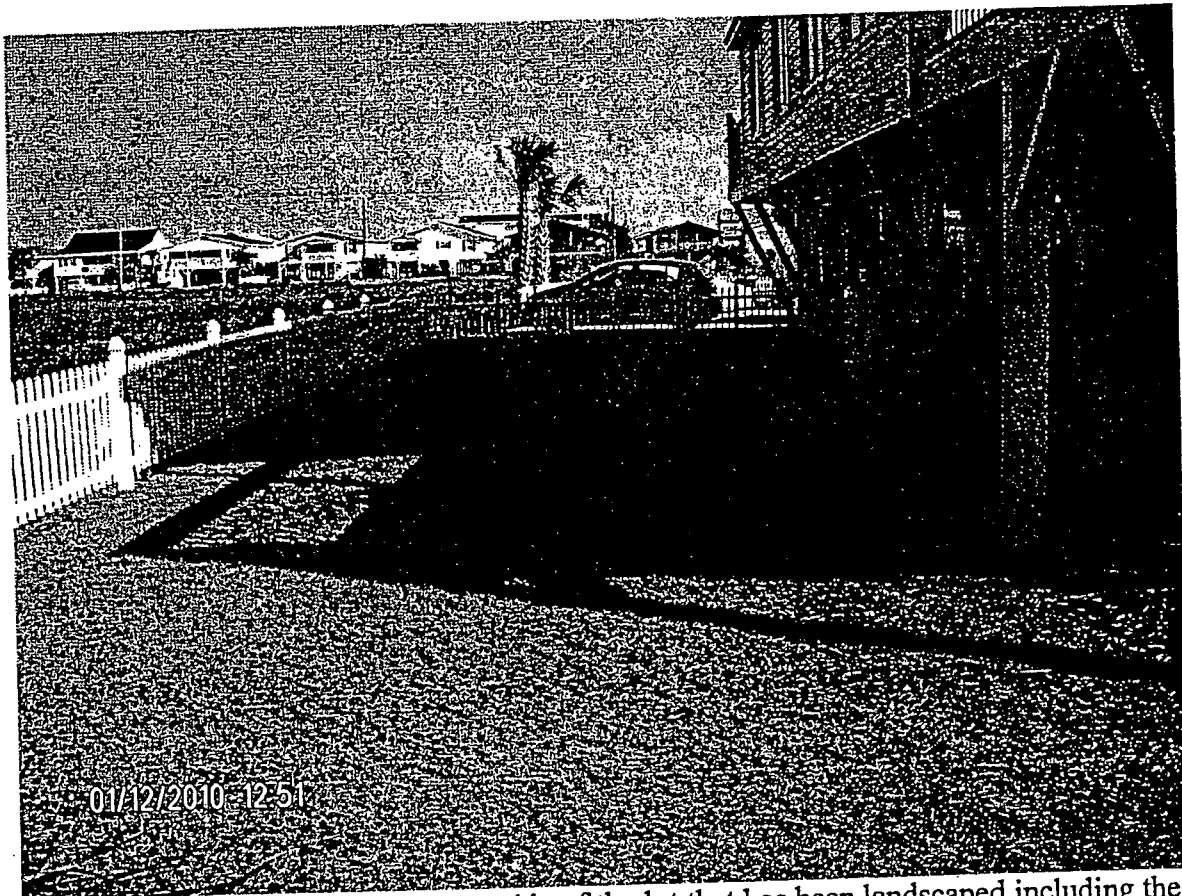
This photograph shows the length of the north facing portion of the bulkhead. A new fence is visible as well as landscaping and a portion of the concrete pad in the foreground.

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.



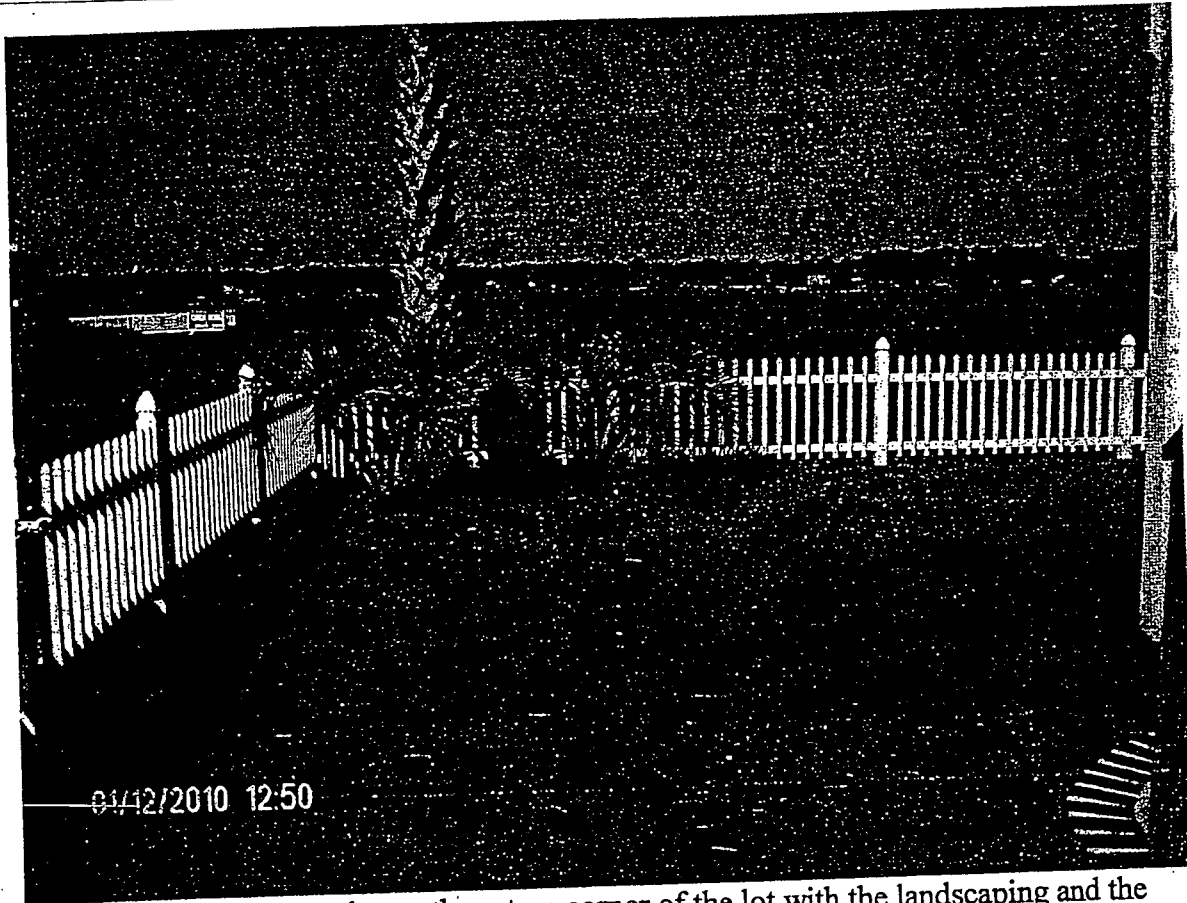
This photograph shows the northern side of the lot that has been landscaped including the placement of sod. Two piles for a new deck can be seen in the right had side of the picture.

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.



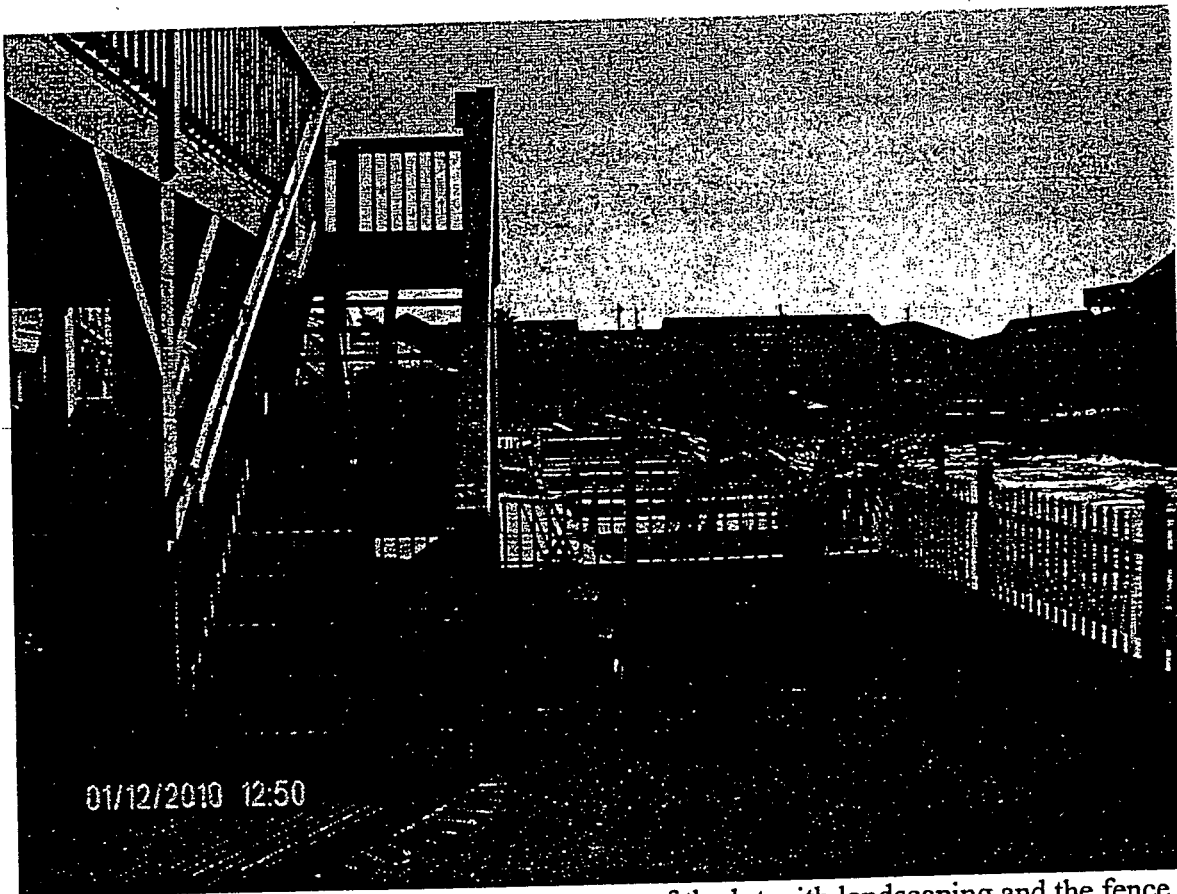
This photograph shows the northwestern corner of the lot with the landscaping and the fence in that area.

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

05/22/2009

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

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

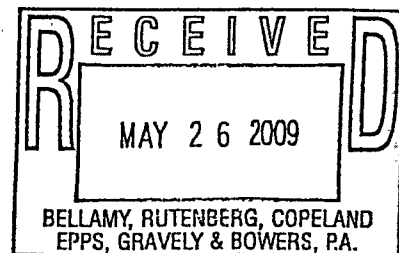
DEAR MR. BELLAMY,

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
FREEDOM OF INFORMATION
Promoting and protecting the health of the public and the environment

Bill To :

Invoice Date : 05/22/2009

Invoice Number: Q023058-1

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
Q023058-1

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 AgenciesAdjoining Property OwnersAgent or Contact

SCDNR: 2/21/07 NC POZ
 SPA: 2/23/07 NC
 SCDAH: _____
 SCDA: _____
 Others: _____

Wholesale Distributing, Inc
 Frank T. Boysia

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 POZ

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

APPLICATION REQUIREMENTS

Please Circle When Complete YES.

Date Received: Letters to Applicant:

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. _____

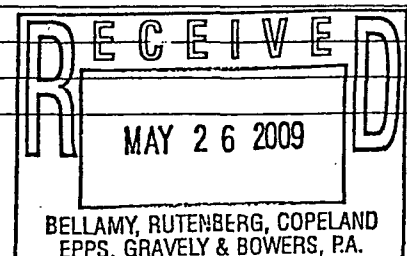
LETTER OF OBJECTIONS SUMMARY

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 CommentLocal 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 vegetation1. 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

10/20/06

(Name)

(Date)

VIII: Reviewed By:

1. Project Manager:

Marshall

03/07/07

(Signature)

(Date)

IX. Notes:

Same as water Knox 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 Certified Mail
311 49th Ave N.
North Myrtle Beach, SC 29582

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	\$.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

lete
 erse
 lece,

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

B. Received by (Printed Name) *JSB* Date of Delivery *8/2/07*

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

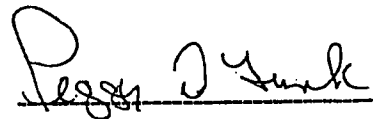
I, Peggy D. Funk, as an employee of DHEC-OCRM certify that I have, this day mailed the following Placard affixed thereto, to the following.

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

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

Peggy D Funk

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
U.S. Postal Service TM		Signature _____	
CERTIFIED MAILTM RECEIPT		Delivered by (Printed Name) <i>Nancy Pugh</i> ☐ Agent	
(Domestic Mail Only; No Insurance Coverage Provided)		☐ Addressee	
For delivery information, visit our website at www.usps.com		C. Date of Delivery _____	
OFFICIAL USE			
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	Date of Delivery _____	
Restricted Delivery Fee (Endorsement Required)		Type _____	
Total Postage & Fees	\$ 5.36	Certified Mail ☐ Express Mail	
Postmark Here <i>3-7-07</i>		Registered ☒ Return Receipt for Merchandise	
Sent To <i>Dr. H. Wayne Beam</i>		Insured Mail ☐ C.O.D.	
Street, Apt. No., or PO Box No. _____		Restricted Delivery? (Extra Fee) ☐ Yes	
City, State, ZIP+4 _____		Date of Delivery _____	
PS Form 3800, June 2002		106 1343 0029	
See Reverse for Instructions		102595-02-M-1540	

CERTIFICATE OF MAILING

RE: OCRM-07-509

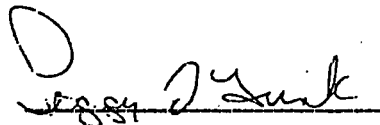
PERMITTEE: T. W. Berry

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

000105

cc: Elizabeth Dieck
Curtis Joyner
Barbara Neale

SC Department of Health

CONSTRUCTION AUTHORIZATION

and

Environmental Control
Office of Ocean and Coastal
Resource Management

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

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.

Waterway: Williams Creek

City: N Myrtle Beach

County: Horry (26)

Tanitra S. Marshall, Project Manager

Date: June 22, 2007

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

PERMITTEE/PROPERTY OWNER: _____

PERMIT NUMBER: _____ OCRM-06-07-509

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: 7-2-07PERMIT HOLDER/PROPERTY OWNER OR AGENT SIGNATURE: OwnerCONTRACTOR: 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

March 07, 2007

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

RECEIVED
JAI

Re: 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

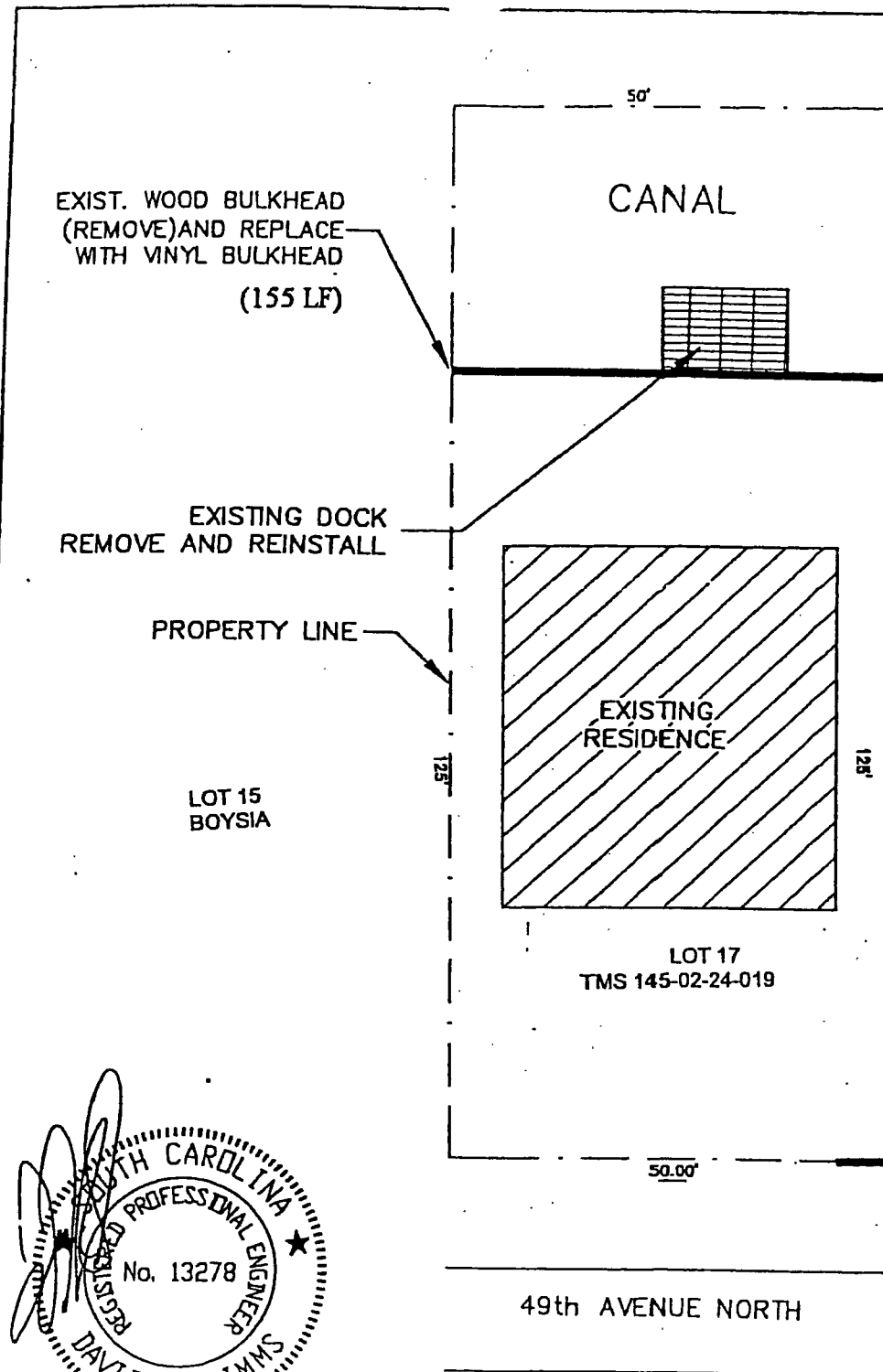
Other: Authorized State Official

P 2 of 5

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

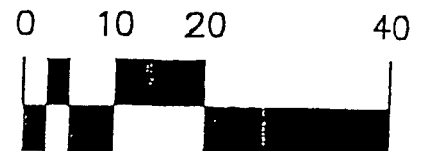
1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage 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.

p. 3 of 5



SEE SPECIAL
CONDITIONS

SITE PLAN

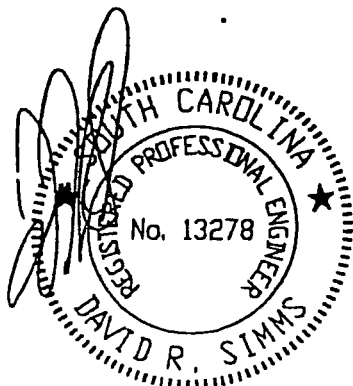


1"=20'

RECEIVED

FEB 02 2007

DHEC-OCRM
MYRTLE BEACH OFFICE



FOR PERMITTING ONLY
NOT FOR CONSTRUCTION

p. 4 of 5

APPLICANT:
TW Berry

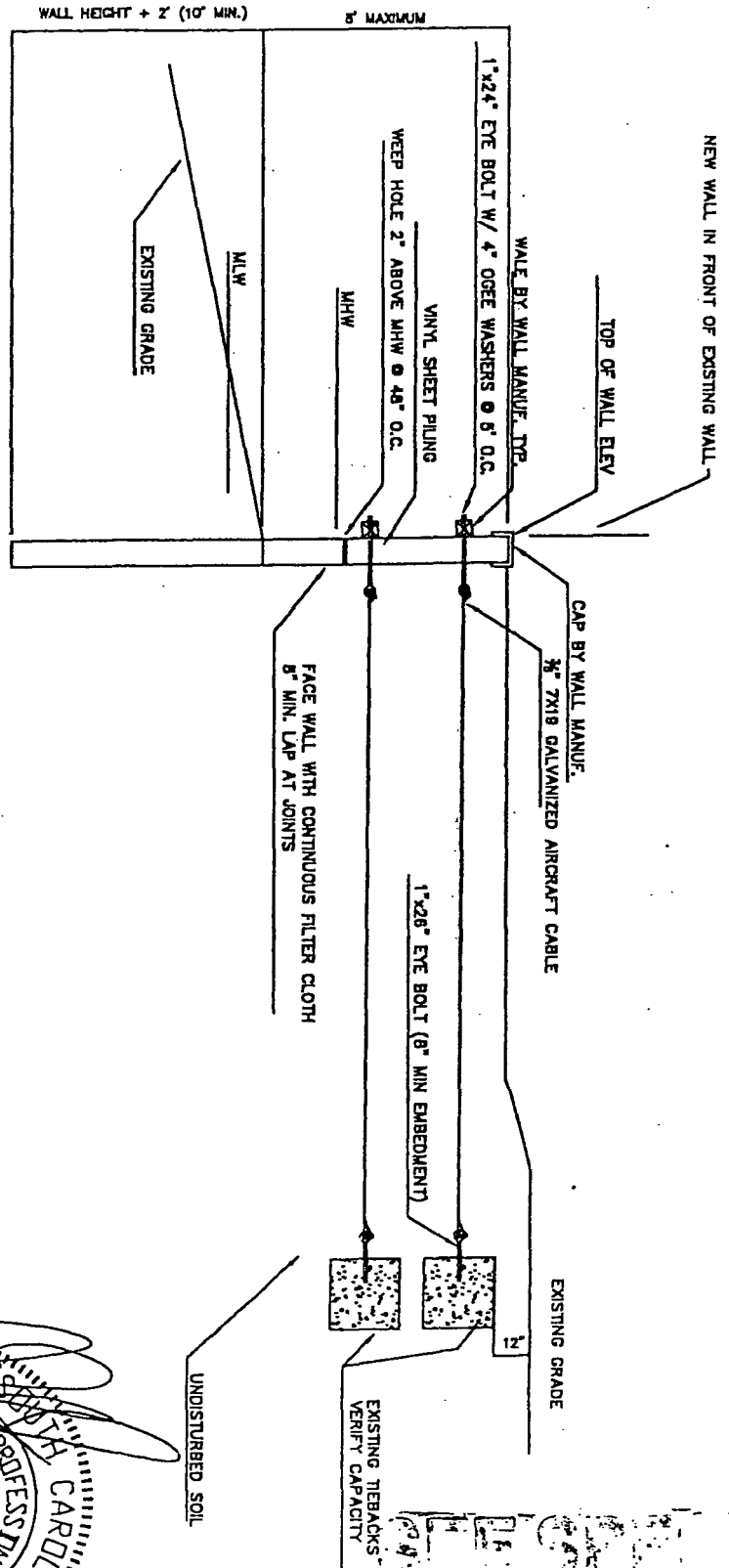
ACTIVITY: Replace Existing
Bulkhead

LOCATION: Cherry Grove
North Myrtle Beach

COUNTY: Horry

P/N# DCRU-07-509

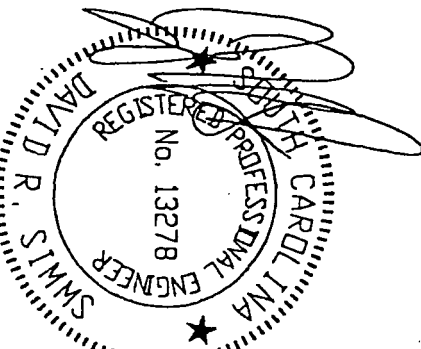
TOMMY W. BERRY, PETITIONER EXHIBIT "R"



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

RECEIVED

FEB 02 2007

DHEC-OCRM
MYRTLE BEACH OFFICE



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

APPEAL PETITIONED BY WIRIT "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

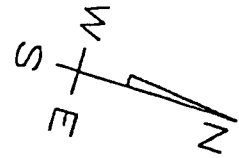
Please refer to P/N# OCRM-07-509



Tanitra S. Marshall, Project Manager

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

CANAL



EXISTING DOCK
REMOVE AND REINSTALL

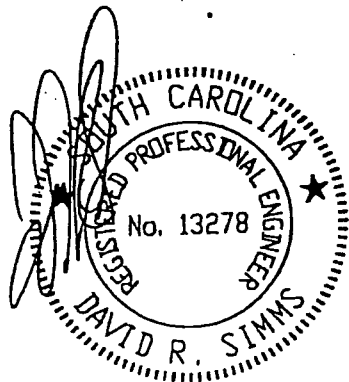
PROPERTY LINE

LOT 15
BOYSIA

EXISTING
RESIDENCE

LOT 18
WHOLESALE DIST.

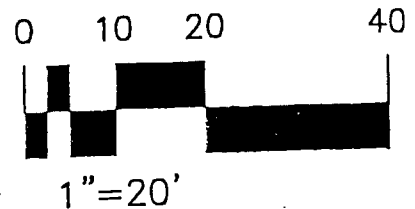
LOT 17
TMS 145-02-24-019



FOR PERMITTING ONLY
NOT FOR CONSTRUCTION

49th AVENUE NORTH

SITE PLAN



APPLICANT:
TW Berry
ACTIVITY: Replace Existing
Bulkhead

P/N# OCRN-07-509

LOCATION: Cherry Grove
North Myrtle Beach

COUNTY: Horry

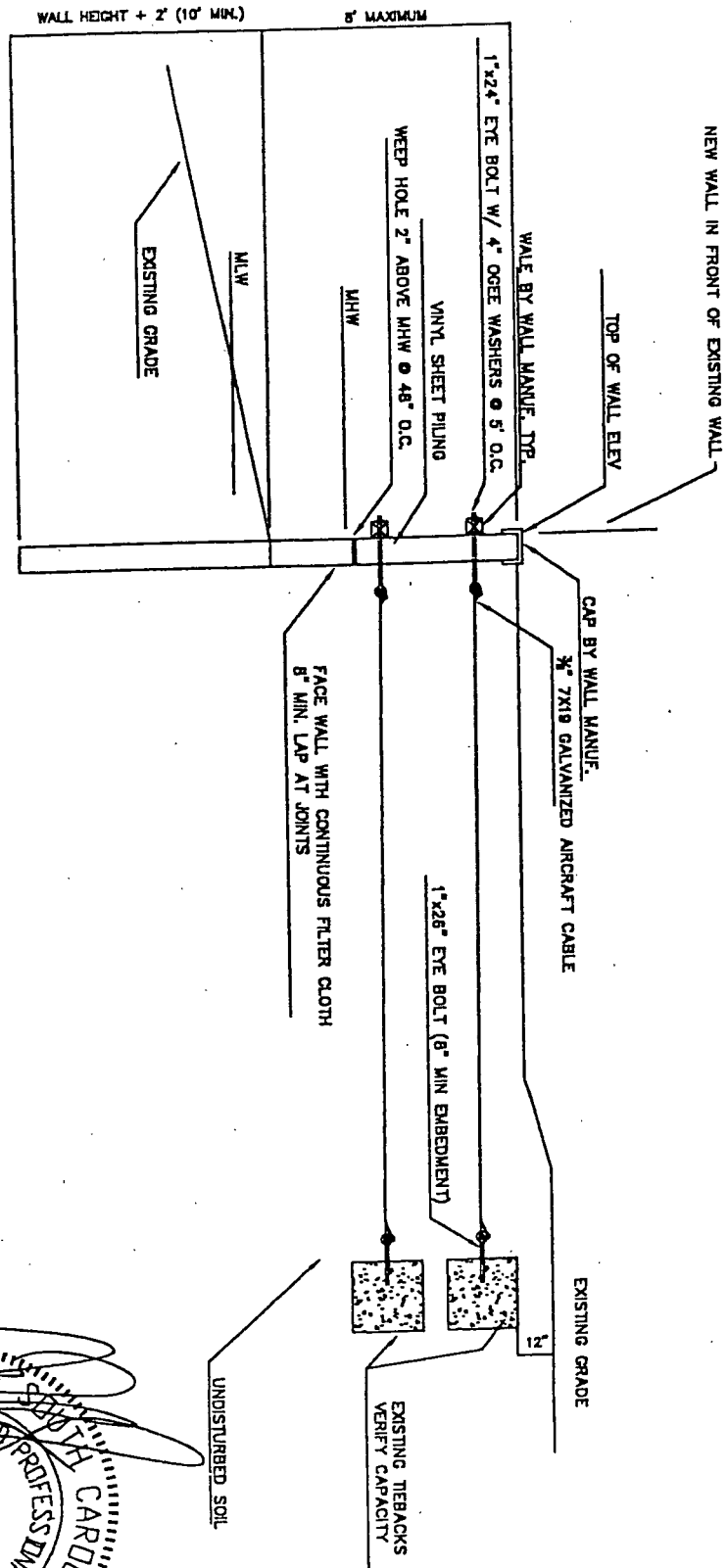
DATE: 1/25/2007

RECEIVED

FEB 02 2007

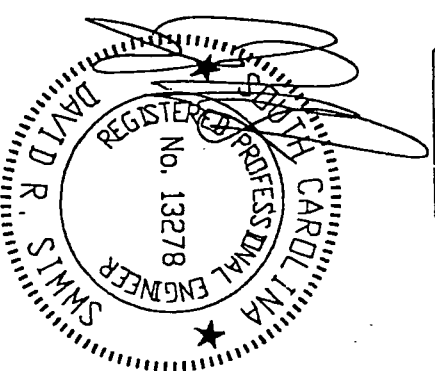
DHEC-OCRM
MYRTLE BEACH OFFICE

SHEET 2 OF 3



NEW BULKHEAD SECTION

NTS



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NOT FOR CONSTRUCTION

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APPLICANT: T W Berry

ACTIVITY: Replace Bulkhead

P/N# 00024-07-509

LOCATION: Cherry Grove

COUNTY: Horry

DATE: 1/25/2007

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 of Ocean and Coastal Resource Management for a permit to place approximately 155 fee public trash bins at the 1100 Avenue North Cherry (Section North Myrtle Beach) County, SC. Comments will be received by the Office of Ocean and Coastal Resource Management, 927 Shiloh Avenue, Myrtle Beach, SC 29577 until February 19, 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: 8 February 07

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

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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"

D H E C



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PAID

FEB 02 2007

PERMITTED

APPLICATION

DHEC-OCRM

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.
PO Box 37
Tabor City, NC
28463-0037

Frank T. Boysia
4517 BLITZSEL Dr.
Florence, SC
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

1/31/07
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
Charleston Beaufort Myrtle Beach
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 Harley 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 & Jerry
Signature of Record Holder or Lessee

Sworn to and subscribed before me at North Myrtle Beach SC. Harley 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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DHEC OCRM

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

EXISTING DOCK
REMOVE AND REINSTALL

PROPERTY LINE

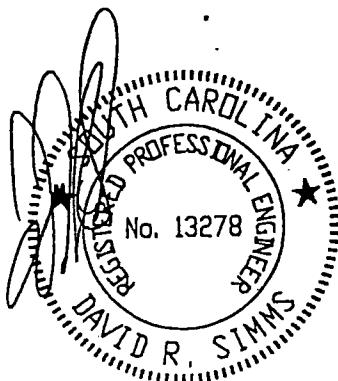
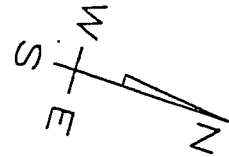
LOT 20
BOYSIA

CANAL

EXISTING
RESIDENCE

LOT 19
TMS 145-02-24-019

LOT 18
WHOLESALE DIST.



FOR PERMITTING ONLY
NOT FOR CONSTRUCTION

SITE PLAN

49th AVENUE NORTH

0 10 20 40



1"=20'

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DHEC-OCRM
MYRTLE BEACH OFFICE

SHEET 2 OF 3

APPLICANT:
TW Berry

ACTIVITY: Replace Existing
Bulkhead

P/N#

LOCATION: Cherry Grove
North Myrtle Beach

COUNTY: Horry

DATE: 1/25/2007

TOMMY W BERRY PETITIONER EXHIBIT "B"

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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 J S Berry
J S Berry, PURCHASER, whose address is 311 49th Ave. N, NMB, SC 29582
and Walter H. Knox III & 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 Forty 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. Morgan
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. Benz
PURCHASER

[Signature]
PURCHASER

Walter H. Kuntz
SELLER

Linda M. Kuntz
SELLER

AGENT

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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
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 12/20/06 Date 12/20/06 Buyer [Signature] Date 1-1-07
Rev. 1/03

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

	Yes*	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.

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FEB 22 2007

DHEC-OCRM

MOBILE BEACH OFFICE

Initials: WJB 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

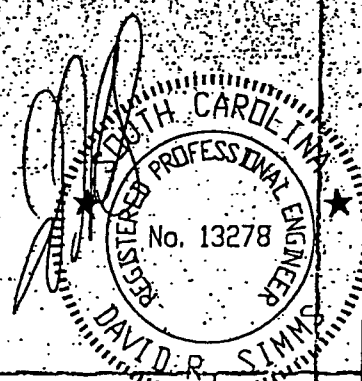
Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are 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: 1-1-07

Purchaser Signature: [Signature] Date: 1-1-07

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

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RECEIVED

DHEC-OCRM
MYRTLE BEACH OFFICE

D / N I 11

DATE 1 / 05 / 2007

39

000131



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 2398 Date: 1-31-07 66-112/531 56015 PRSCDHEC/OCRM \$250.00 Two hundred Fifty 3/100 Dollars BB&T BRANCH BANKING AND TRUST COMPANY GRAMERTON, NORTH CAROLINA App Fee Signature: [Signature] 005310112105196568559102398		\$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 Bull 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 17, 2007
 Permit Type: OCRM-Direct Critical Area Permit Updated: FEB 07, 2007 By: JUNE 17, 2007
 Sub-Type: Minor
 Program Area: OCRM - Permitting
 Permit ID: 57456
 Local Facility: D
 Operator: D
 Permit Status: Processing Application 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: Decision Date:
 Issued By: D Issued Date:
 Effective Date: Expires Date:
 Permit Number: CORE # - ? Accepted Date:
 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 - Regl... EFIS - Environmental Facility Information System 11:23 AM

PROJECT ASSIGNMENT SHEET

Date Received: 02/02/07P/N# CRN-07-509EFIS # 57456Applicant: 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: _____
 SCDA: _____
 Others: _____

*NOTE: See list of Interested Persons on Reverse
 APO's Notified? Please Initial & Date: BAS 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	_____	4. _____
Which Paper	_____	5. _____
County/State News ad recd	<u>11/06/06</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 5, 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)

10) Property width and width of spacing at edge of creek/river: 50' / 50'

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 Policies (list those that apply only):

- 1) CZMA:
- 2) Regulations (General Guidelines, Further Guidelines, Specific Project Standards): 30-11B(1,2,5)
30-11C
- 3) CZ Policies (Management Program Document): 30-12(A)(2)(c)

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

☐ YES ☒ NO

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

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):

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

VII. Field assessment by: Tanitra Marshall 10/20/06
(Name) (Date)

VIII: Reviewed By: Tanitra Marshall

1. Project Manager: Marshall 11/07/06
(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

7006 0100 0006 1342 9931

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
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 See Reverse for Instructions	

COMPLETE THIS SECTION ON DELIVERY

A. Signature		☒ Agent
* Amanda Sanderson		☐ Addressee
B. Received by (Printed Name)	C. Date of Delivery	
Amanda Sanderson	12-1	
D. Is delivery address different from item 1? ☐ Yes		
If YES, enter delivery address below: ☐ No		
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

3c 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
2450 Red Bluff Rd
Loris, SC 29569

Certified Mail

NAME:

SENDER - COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY		
U.S. Postal ServiceTM CERTIFIED MAILTM RECEIPT (Domestic Mail Only; No Insurance Coverage Provided) For delivery information visit our website at www.usps.com		Signature _____ ☐ Agent ☐ Addressee Received by (Printed Name) _____ C. Date of Delivery _____ Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No		
OFFICIAL USE		yee Carolina 2006 Service Type ☒ Certified Mail ☐ Registered ☐ Insured Mail ☐ Express Mail ☒ Return Receipt for Merchandise ☐ C.O.D. Restricted Delivery? (Extra Fee) ☐ Yes 10 0006 1342 9948 Receipt 102595-02-M-1540		
Postage	\$ 1.11			Postmark Here 11-16-06
Certified Fee	2.40			
Return Receipt Fee (Endorsement Required)	1.85			
Restricted Delivery Fee (Endorsement Required)				
Total Postage & Fees	\$5.36			
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

See Reverse for Instructions

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 I

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

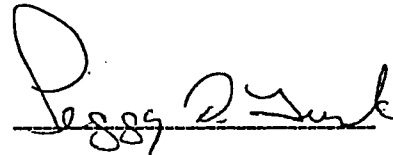
CERTIFICATE OF MAILING

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 117 Oak Meadow Dr. Bridgewater, VA 22812-3530	Regular Mail
NAME:	Hoyt Sanderson 2450 Red Bluff Road Loris, SC 29569	Regular Mail

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

ps
9-28-06

SC Department of Health and Environmental Control Office of Ocean and Coastal Resource Management		CONSTRUCTION AUTHORIZATION	
Permittee: Walter Knox III		Expiration Date: May 29, 2007	
Address of Permittee: 117 Oak Meadow Dr. Bridgewater, VA 22812		Permit Number: OCRM-06-550	
Contractor's Name: Hoyt Sanderson		Date Issued: December 4, 2006	
Contractor's License #: G107880		Location: 317 49 th Ave N. Cherry Grove section, North Myrtle Beach, SC	
Waterway: Man Made Canal		Authorized Work: 8.3' X 12.2' fixed pier head	
City: North Myrtle Beach		 Project Manager Tanitra S. Marshall, Project Manager	
County: Horry (26)		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: Walter Knox IICONTRACTOR: Sander 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:

Walter Knox II
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

12-2-06

(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

11/29/06

(MANAGER, CRITICAL AREA PERMITTING) (DATE)

Curtis M. Joyner

Or his Designee

Other Authorized State Official

SEE 000146
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" 57

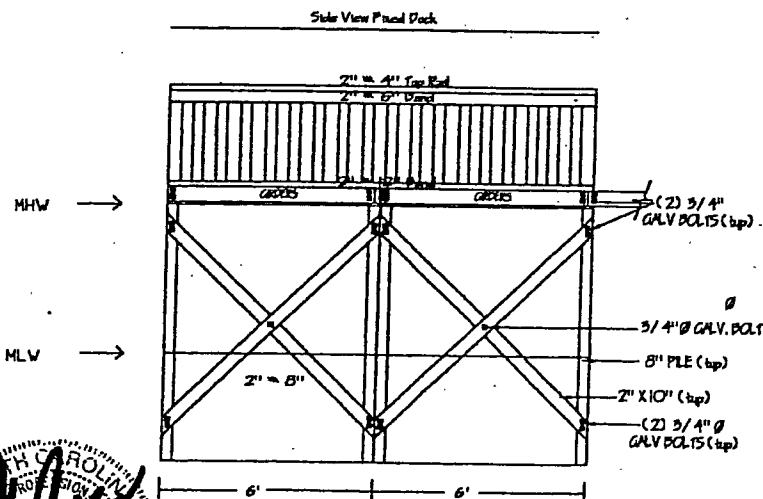
Proposed Details
NOT FOR SALES, CONVEYANCES OR RECORDATION.
September 25, 2006

Proposed Deck
replacement

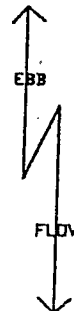
NOTES:

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

MARSH
GRASS



CANAL



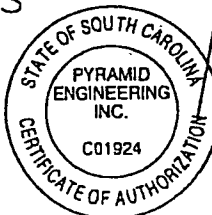
MARSH GRASS

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



PYRAMID
ENGINEERING & SURVEYING, INC.

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

(843) 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

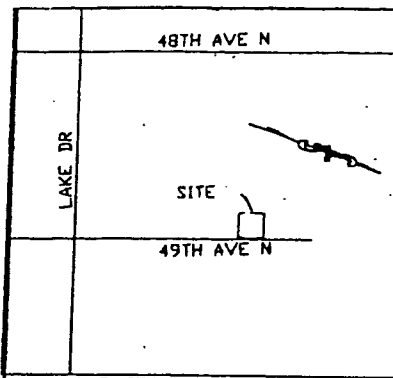
DEED REFERENCE IN BOOK 1996 PAGE 1292

PERMIT NUMBER: 55533 DATE: 9/25/06

SEE SPECIAL
CONDITION

CE PLAN

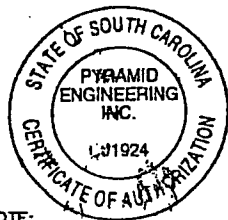
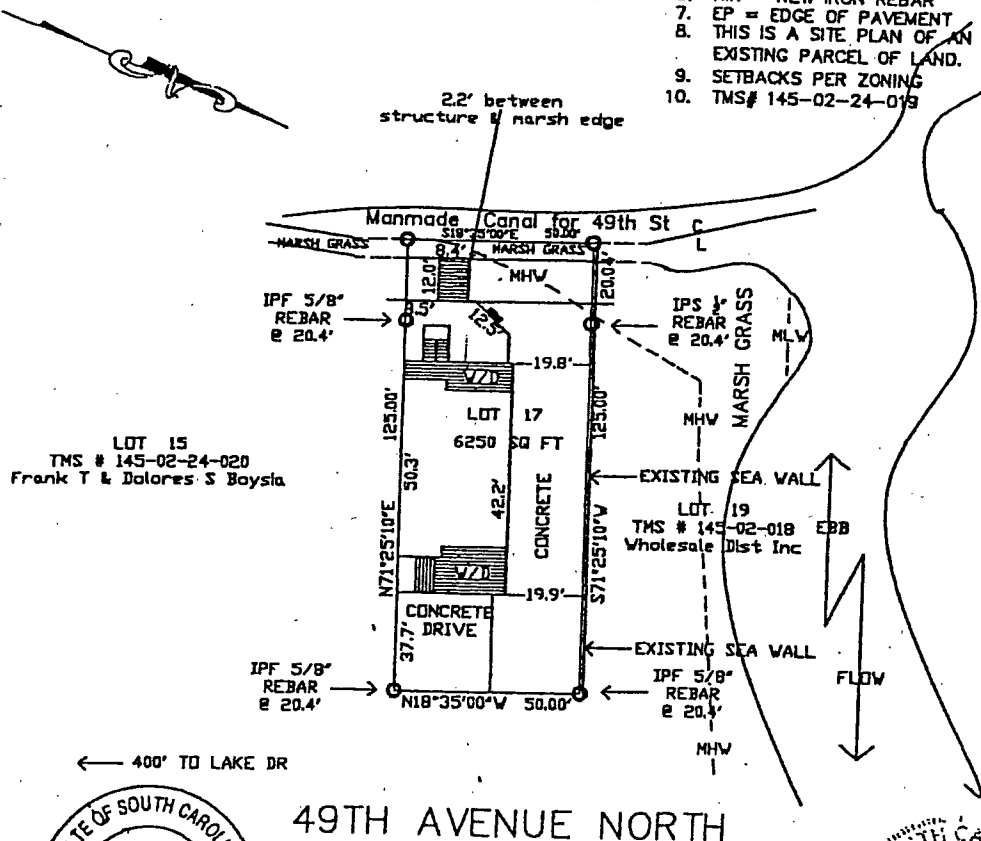
September 25, 2006



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



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

49TH AVENUE NORTH

GRAPHIC SCALE



(IN FEET)
1 inch = 40 ft

RECEIVED



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

SEP 27 2006 PROPOSED SITE PLAN
DHEC-OCRM OF
MYRTLE BEACH OFFICE 49th Ave N Heron Watch

SCALE 1"=40' N.M.B. TWP, HORRY COUNTY, SC

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



G. 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-06-0286

550

AUG 31 2006

\$150.00



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)

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.)

Holt Sanders
 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 C. Deloris Boysig Dr. Frank Boysig
 315 49th Ave. N 309 West 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 II
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.

Bartan H. Thickett
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

<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)

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)

6-18-06
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

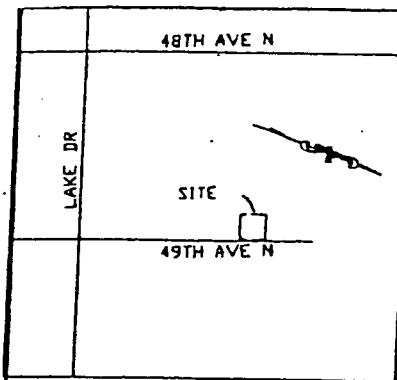
Page 8 SEP 05 2006

DHEC-OCRM
OFFICE

DHEC-OCRM
OFFICE

SITE PLAN

September 25, 2006

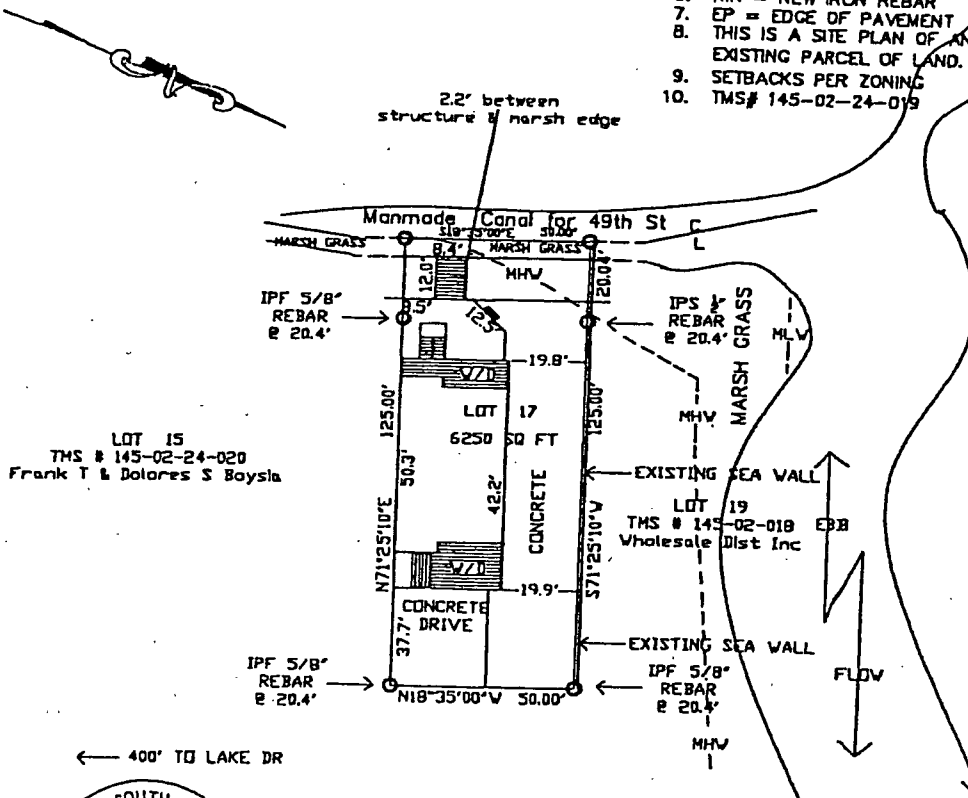


VICINITY MAP

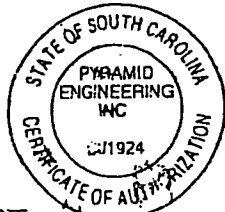
NOT TO SCALE

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 LIE IN AN AE 14 ZONE
SPECIAL FLOOD HAZARD AREA
ER F.E.M.A. PANEL# 45051C0603H
DATED 8-23-99

RECEIVED



SEP 27 2006

PROPOSED SITE PLAN

DHEC-OCRM

OF

MYRTLE BEACH OFFICE 49th Ave N

Heron Watch

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

SCALE 1"=40'

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

THE PROPERTY OF WALTER H & LINDA W KNOX

DEED REFERENCE IN BOOK 1996 PAGE 1272

PERMIT NUMBER: 55533 DATE: 9/25/06

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

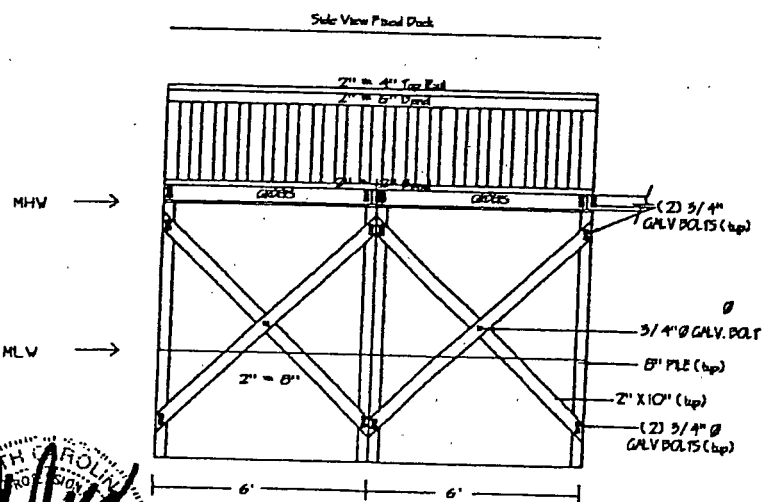
Proposed Dock replacement

NOTES:

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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

OCRM -06-530



CANAL



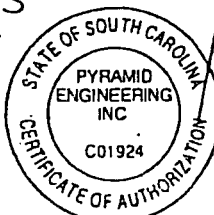
MARSH GRASS

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

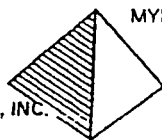
RECEIVED

SEP 27 2006

DHEC-OCRM
MYRTLE BEACH OFFICE



PYRAMID
ENGINEERING & SURVEYING, INC.



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

435 280 - 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



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

000159



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	
Pay to the order of <u>SC DHEC - OCRM</u> \$ <u>150.00</u> <u>One Hundred and Fifty</u> Dollars			\$150.00



ACH RT 061000104

for Walter H Knox III
⑆051000020⑆ 034711309⑆ 5866

Control

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

Int 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 2012

TOMMY W HERRY PETITIONER EXHIBIT "B"

68

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

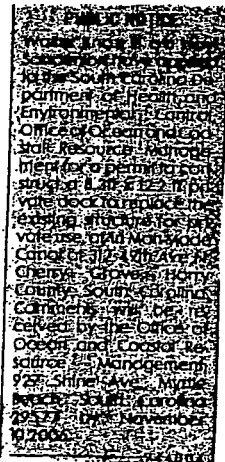
Before me, a Notary Public, personally appeared — Gary Wortel, who, after being duly sworn, deposes and says: That he is publisher of the Sun Publishing Company, Inc., at Myrtle Beach, South Carolina. In the county and state aforesaid: that the above ad(s) was (were) printed and published in said newspaper,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

000161

2734 3
GTS/vcp/knox/97358

RECEIVED

SEP 25 2006

DHEC-OCRM
MYRTLE BEACH OFFICEHorry County, S.C.
FILED
97 DEC -5 PM 3:02
Prepared by and Return to:
Louis M. Cook
Attorney at Law
800 Sea Mtn. Hwy
North Myrtle Beach, SC 29582STATE 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.

TE 630.50 COUNTY 266.75

MPT YES

(NO)

SSOR

1272
BOOK 1996 PAGE 1272

TOMMY W BERRY PETITIONER EXHIBIT "B"

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Property located at 317 49th Avenue North, North Myrtle Beach, South Carolina 29582, bearing Horry County Tax Map Number 145 02 24 019, was transferred by A. William Moss and Faye L. Moss To Walter H. Knox, III and Lindy W. Knox on December 5, 1997

The transaction was (Check one):

X an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$ 242,500.00

_____ not an arm's length real property transaction and the fair market value of the property is \$_____

The above transaction is exempt,. Or partially exempt, form the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et.seq. because the deed is:

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

A William Moss, Seller

SWORN to before me this 5th
day of December 1997.

Notary Public for

My Commission Expires: 8/10/23

*The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g., stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

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. Ponzio
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:

James Sealley
1st Witness

James J. Williams
Notary

Faye L. Moss
Faye L. Moss

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

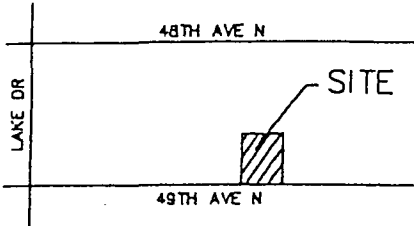
ACKNOWLEDGMENT
(UNDER S.C. Code Sect. 30-5-30©)

I, James J. 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.

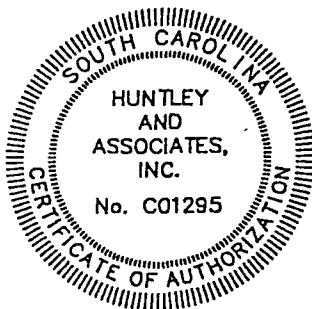
James J. Williams
Notary Public for South Carolina
My Commission Expires: 11-12-06

BOOK 1996 PAGE 1275

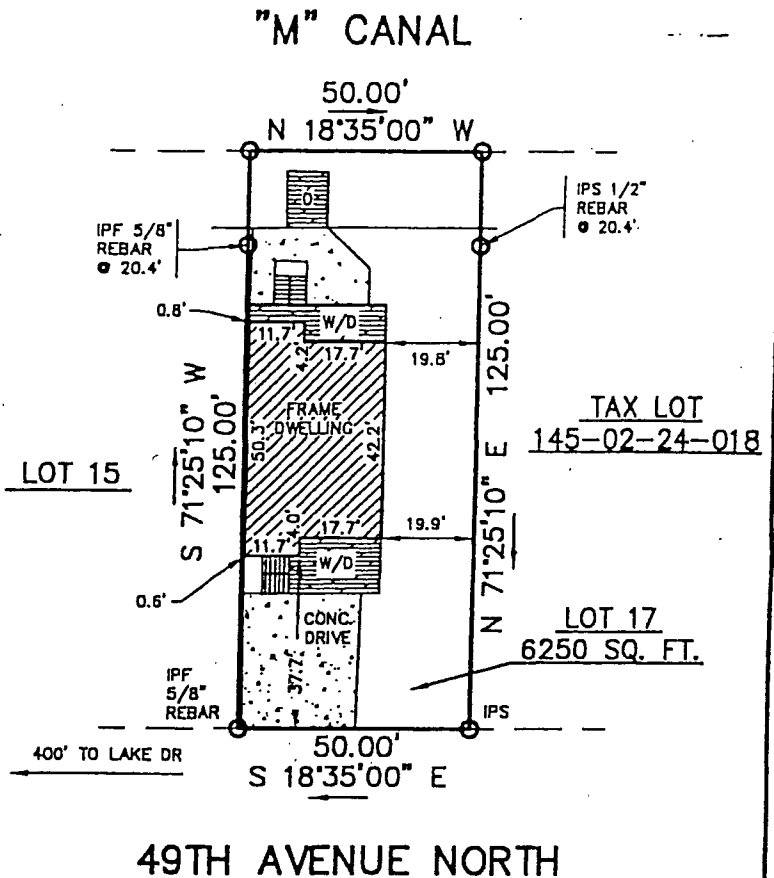


LOCATION MAP

IPF = IRON PIN FOUND
 IPS = IRON PIN SET
 W/D = WOOD DECK
 D = DOCK

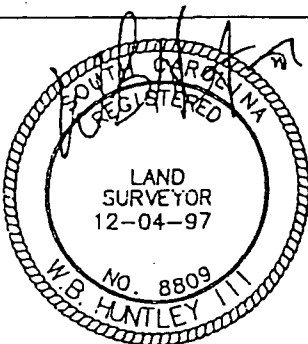


0' 40' 80' 120'
 SCALE 1" = 40'



FLOOD MAP #: 450110-0366-F
 DATED: 09-03-92. ZONE: "AE"
 ELEVATION: 14.00' (MSL)

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD. THIS PROPERTY IS LOCATED IN A DESIGNATED FLOOD HAZARD AREA. NO CERTIFICATION IS MADE TO THE EXISTENCE OR NONEXISTENCE OF WETLANDS. THIS IS A RESURVEY OF A PIECE, PARCEL OR LOT OF LAND PREVIOUSLY RECORDED IN BOOK 57 PAGE 74. ALL DIMENSIONS RELATING TO STRUCTURES ARE TO OUTSIDE WALLS. THIS PLAT IS THE PROPERTY OF HUNTLEY AND ASSOCIATES, INC., IS CERTIFIED ONLY TO THE PERSONS OR ENTITY NAMED HEREIN, AND MUST HAVE AN ORIGINAL SIGNATURE AND RAISED SEAL TO BE VALID.



RLS. NO. W.B. HUNTLEY III
 3809

STATE OF SOUTH CAROLINA
 HORRY COUNTY

CHERRY GROVE SECTION
 LOT 17 - BLOCK M1

SURVEY FOR

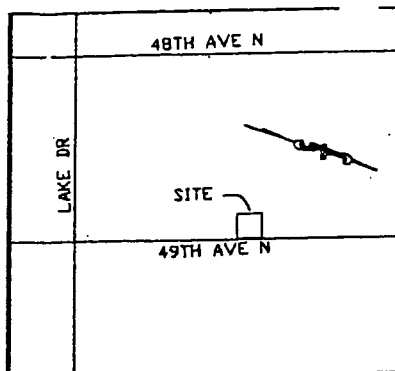
WALTER H. KNOX
 LINDA W. KNOX

HUNTLEY
 & ASSOCIATES, INC.
 LAND SURVEYING
 900 SOUTH POPLAR DRIVE
 SURFSIDE BEACH, S.C.
 (803) 238-8745
 FAX (803) 238-0458

REF. PLAT BOOK	57-74
REF. DEED BOOK	1026-449
TAX MAP	145-02-24-019
PARTY CHIEF	RLP
DRAWN	WBH
DATE	12-04-97
DATE	10077

SITE PLAN

August 24, 2006

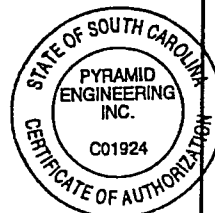
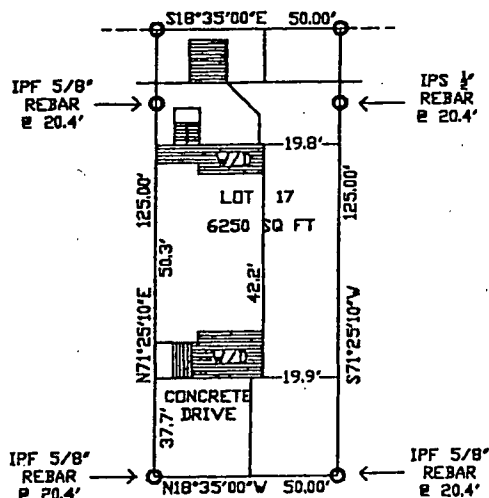


VICINITY MAP

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 # 145-02-24-020LOT 19
TMS # 145-02-018

← 400' TO LAKE DR

RECEIVED

49TH AVENUE NORTH

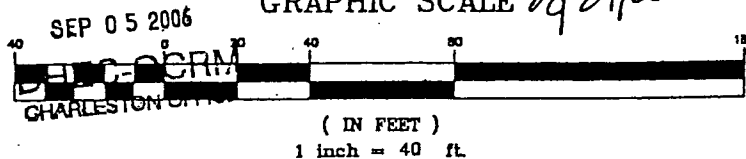
RECEIVED

AUG 31 2006

DHEC-OCRM
MYRTLE BEACH OFFICE

GRAPHIC SCALE 28/24/06

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

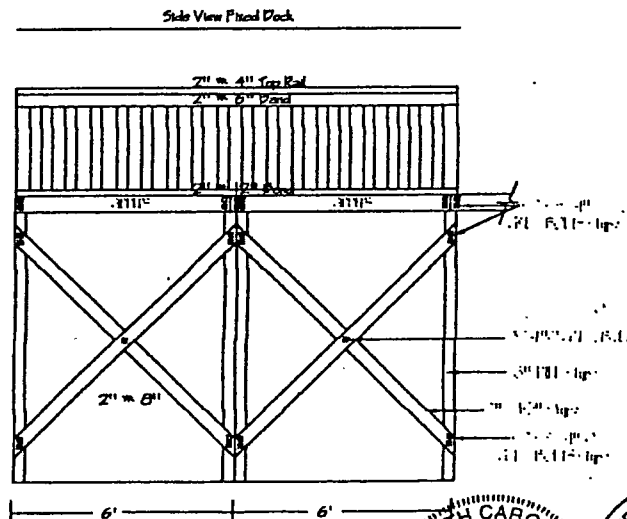
DEED REFERENCE IN BOOK 1996 PAGE 1272

Proposed Details
NOT FOR SALES, CONVEYANCES OR RECORDATION.
August 24, 2006

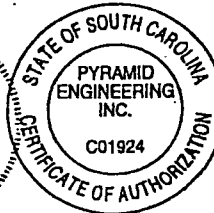
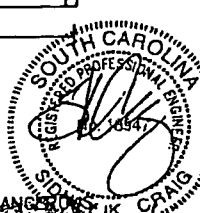
Proposed Deck replacement

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



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



RECEIVED 08/29/06 RECEIVED

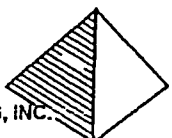
SEP 05 2006

DHEC-OCRM
CHARLESTON OFFICE

SEP 01 2006

DHEC-OCRM
MYRTLE BEACH OFFICE

PYRAMID
ENGINEERING & SURVEYING, INC.



1000 2ND AVENUE SOUTH, SUITE 110
NORTH MYRTLE BEACH, SOUTH CAROLINA
29582
(843) 280-3766

Proposed Details
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



C. Furl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

Void
 Berzose of
 date 1 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



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

1939

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

DATE 10-9-06 67-66/532

PAY
TO THE
ORDER OF

S.C. DHEC-OCRM

\$ 150.00

One Hundred and fifty

DOLLARS

Security Features
Guaranteed to \$100

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

FOR

Walter Knox permit

Hoy Sanderson

⑈001939⑈ ⑆053200666⑆ ⑆1060249780⑈

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

June 25, 2006
Date

Pay to the
order of

SCDHEC-OCRM \$ 150.00

One Hundred and Fifty Dollars



SUNTRUST

ACH RT 061000104

For

Walter H Knox III

⑆051000020⑆ 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 EXHIBIT "R"

80



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.

EFIS - Environmental Facility Information System

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

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			
Local Facility		D	Eng. Firm			
Operator		D	Status Date	SEP 28, 2006		Inactive
Permit Status	Processing Application					

Application Type	PERMIT APPLICATION	Received By	MARSHALL, TANITRA S	D	Received Date	SEP 07, 2006
		App. Track No.	731595		App. Date	SEP 07, 2006
		App. Disposition	Public Notice		Disp. Date	OCT 13, 2006
		App. Signed By		D		
		Decision			Decision Date	
		Issued By		D	Issued Date	
Reviews	Propagate App Info	Effective Date			Expires Date	
LEP	Public Notice	Permit Number	OCRM-06-550		Accepted Date	
		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

<OSC> <DBG>

1/ Start 2 Metarrange Present 3 EFIS - Environme... 4 Certificate of mailing 5 12:44 PM

Date Received: 8-31-06
 P/N# OCRM-06-550
 EFIS # 55533

PROJECT ASSIGNMENT SHEET

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

Requirements:

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 09/28/06

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.

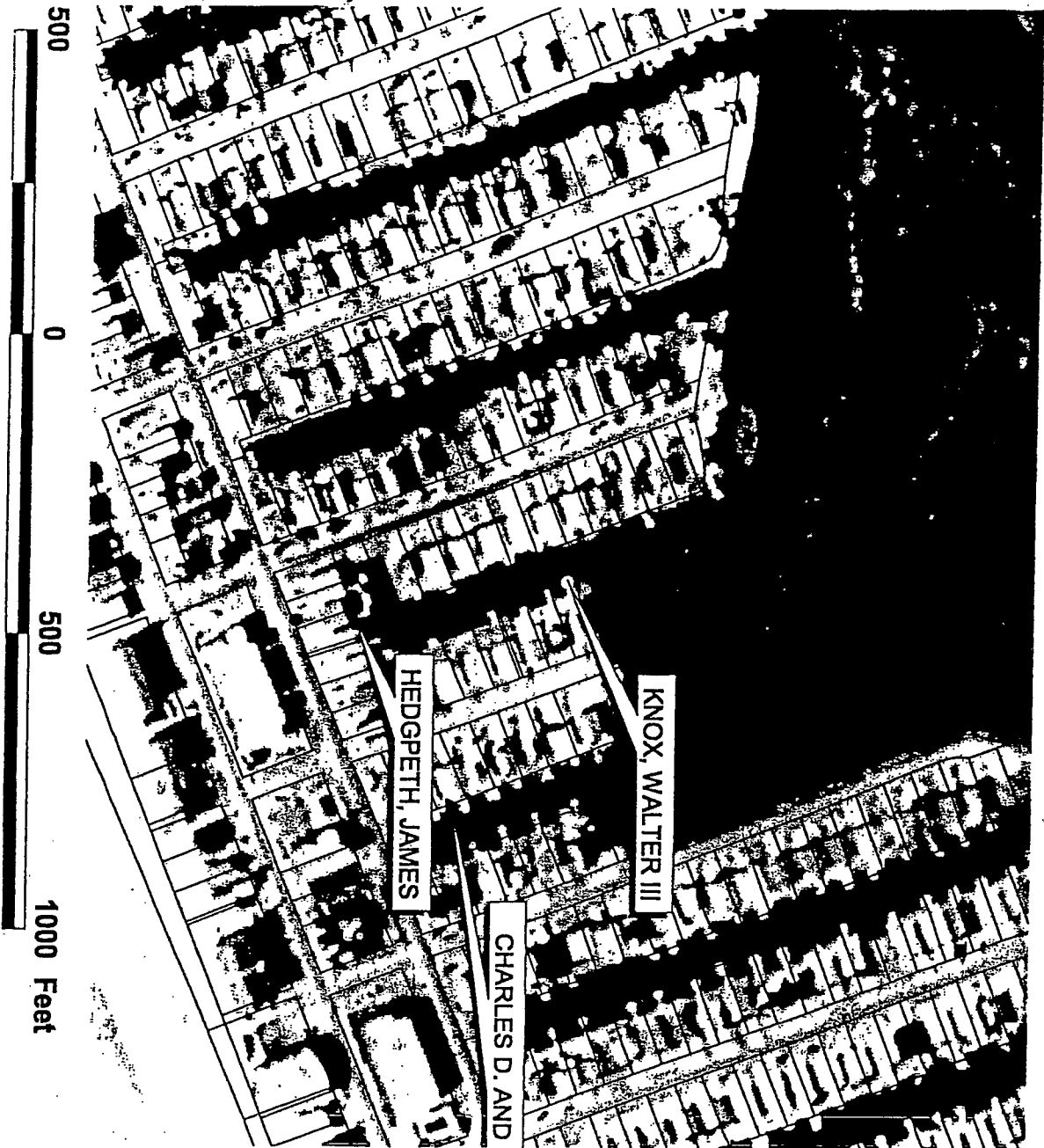
Should this application be forwarded to the Army Corps of Engineers (ACOE)?

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

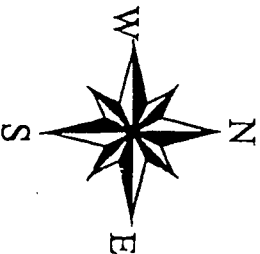
Do I need to get any other information in order to get this to project to public notice? more info for dwgs

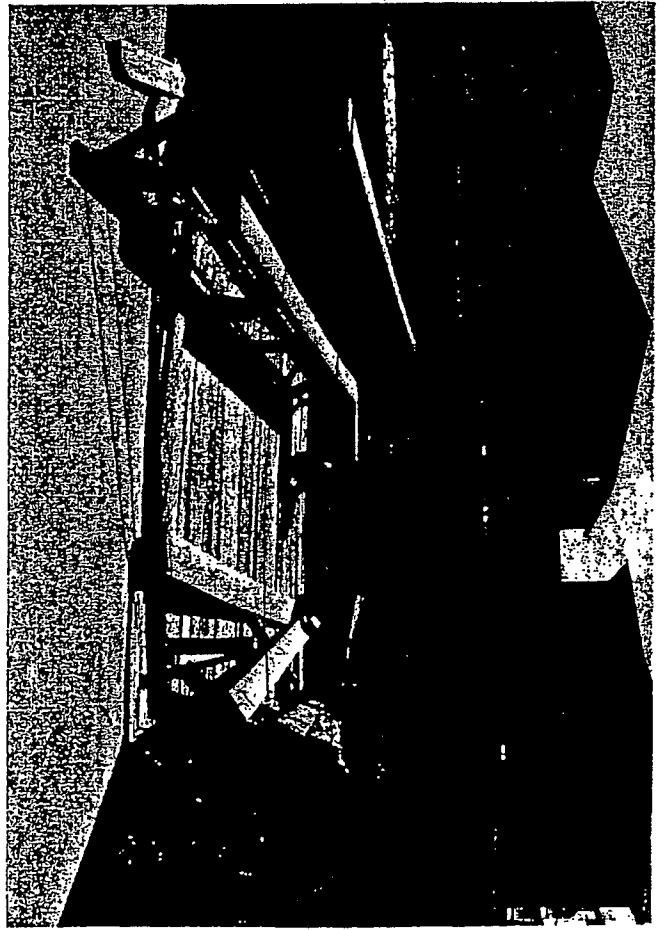
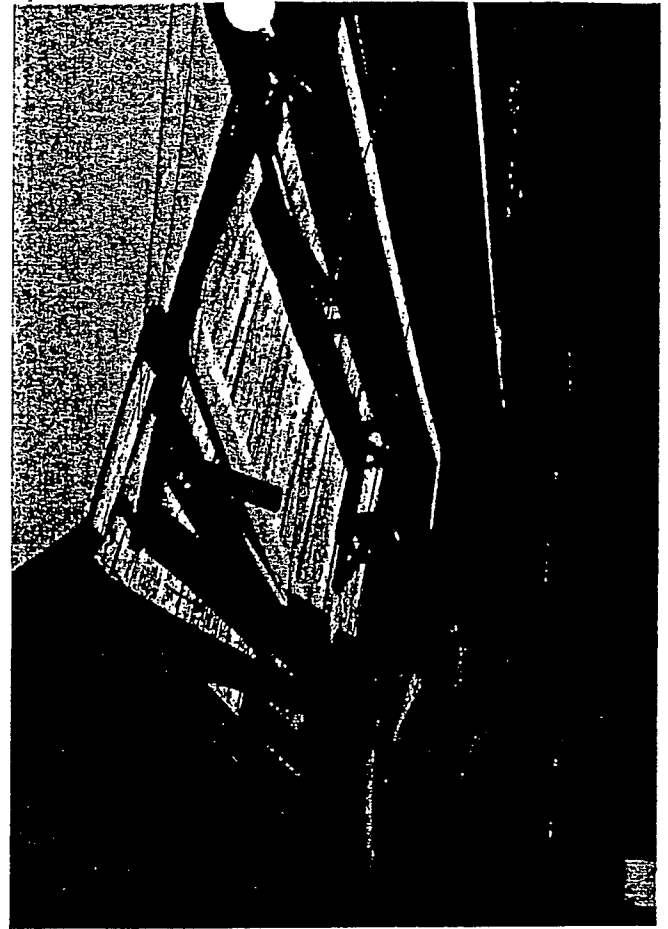
OCRM-06-550

Walter Knox III



- Critical Area Permits 06
- Critical Area Permits 04-05
- ▲ Critical Area Permits 01-03
- ⬢ Enforcements
- ⬢ Wetland Certs 06
- ⬢ Archaeological Survey Areas
- ⬢ Horry County Historic Survey
- ⬢ Endangered Species 2005
- ⬢ Shellfish Permits
- ⬢ Dock Master Plans
- ⬢ Aerial Photo Index (use lightening bolt to hotlink)
- ⬢ Horry Parcels 2005





Walter Knox III 65533
inmate - 0117-



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
crawford@dhec.sc.gov



000180

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

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

or

Walter H Knox III

05 0000 20 034711309

5866

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.**

RECEIVED

OCT 2 2006

DHEC-OCRM
CHARLESTON OFFICE

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

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

TOMMY W. REDDY, PETITIONER, EXHIBIT "B"

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

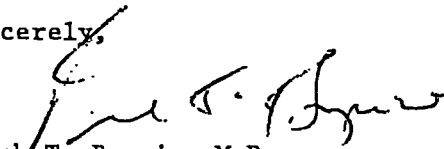
Tanitra S. Marshall, Project Manager
C/O SCDHEC
Office of Ocean and Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

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
0. ents



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

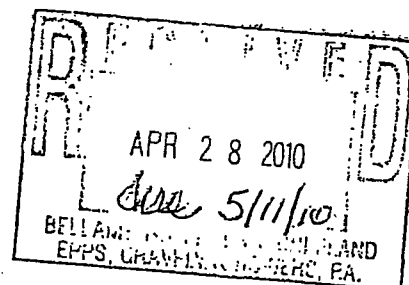
COPY

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) 932-4598 • Fax: (843) 932-4596 • 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

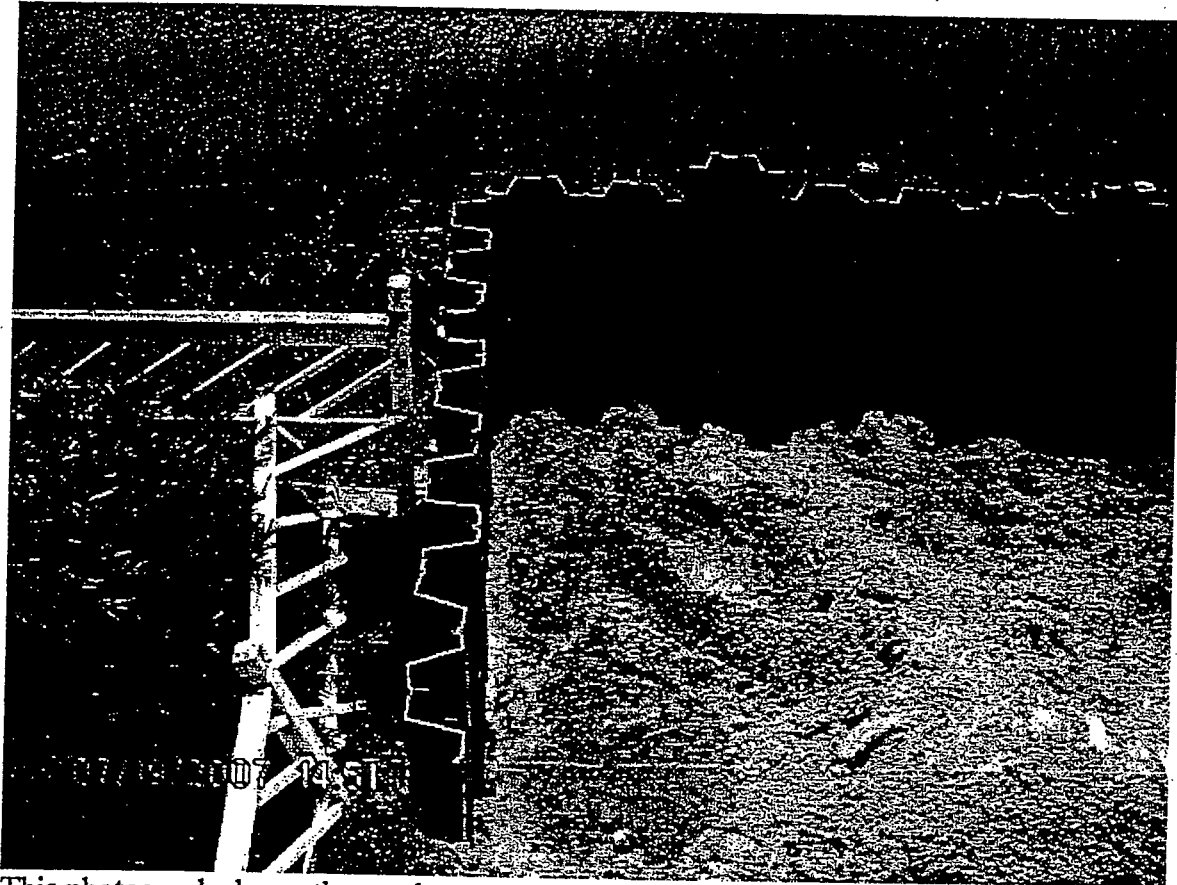
On 7/19/07, the author inspected the Site and documented the bulkhead under construction with the vinyl sheets installed as well as a large amount of dirt used as backfill in the tidelands critical area between the previous bulkhead and the new bulkhead. The purpose of this inspection was to document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



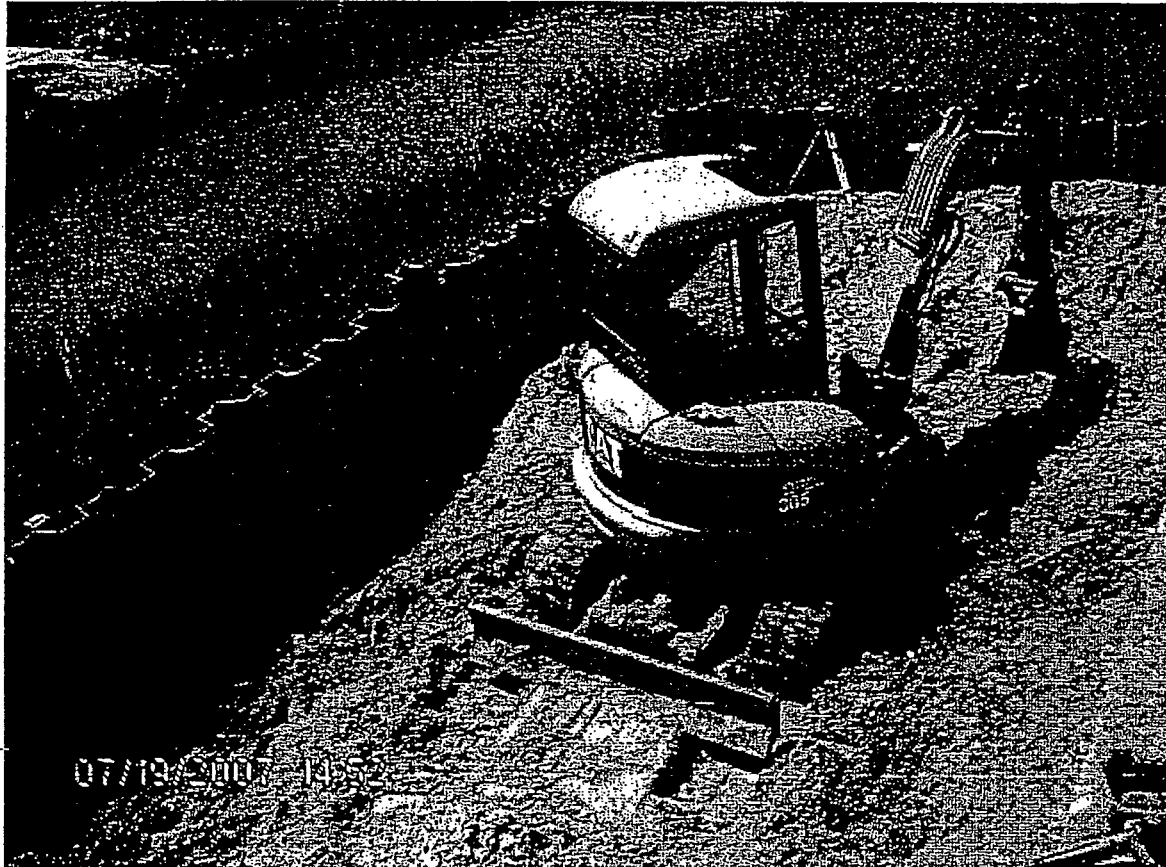
This photograph shows the southwestern corner of the new bulkhead and fill in the tidelands critical area.

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.



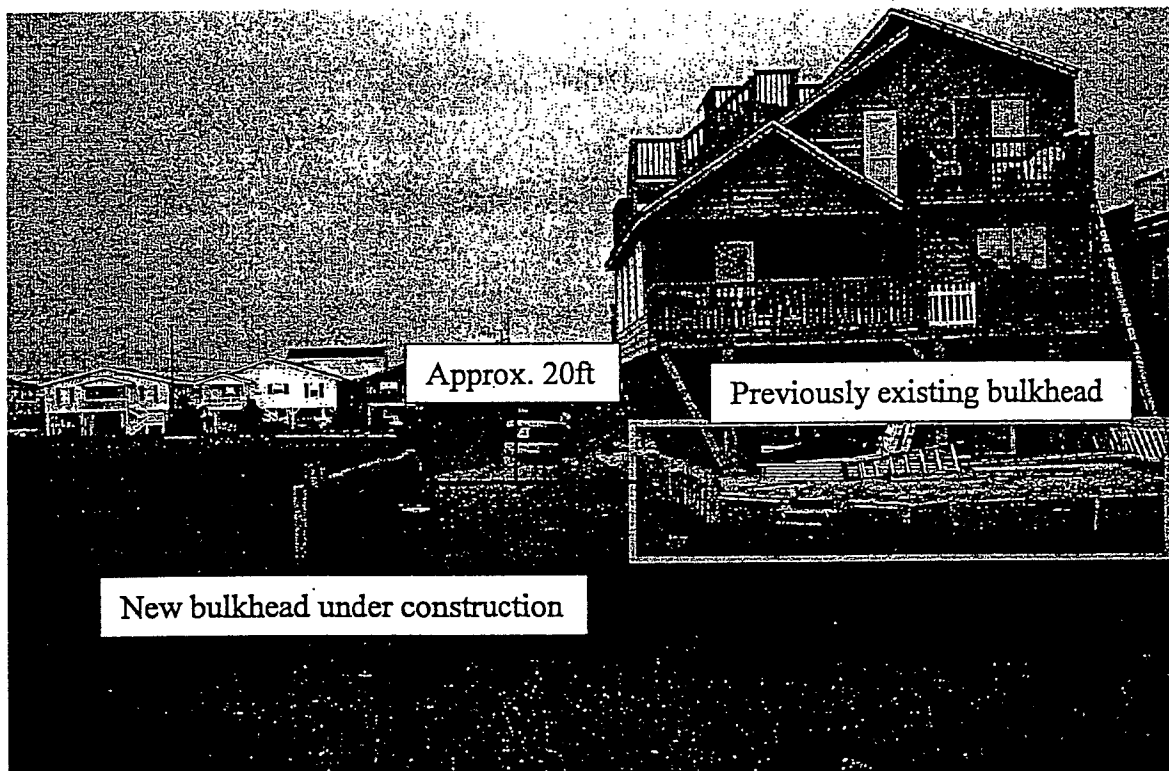
This photograph shows the northern side of the lot with new bulkhead and fill in the tidelands critical area.

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



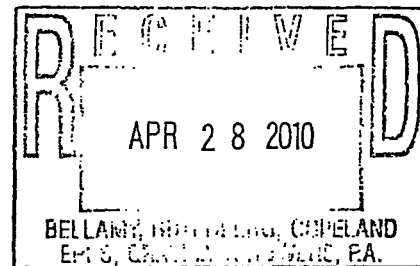
C. Earl Hunter, Commissioner

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 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:

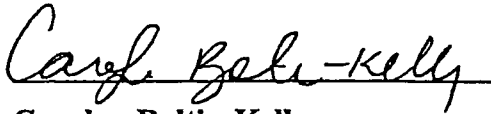
Attn: Sean M. Briggs
Enforcement Project Manager
Office of Ocean and Coastal Resource Management
927 Shine Avenue
Myrtle Beach, SC 29577

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.

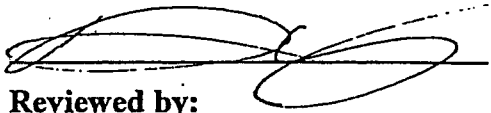
[Signatures on following page]

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 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.

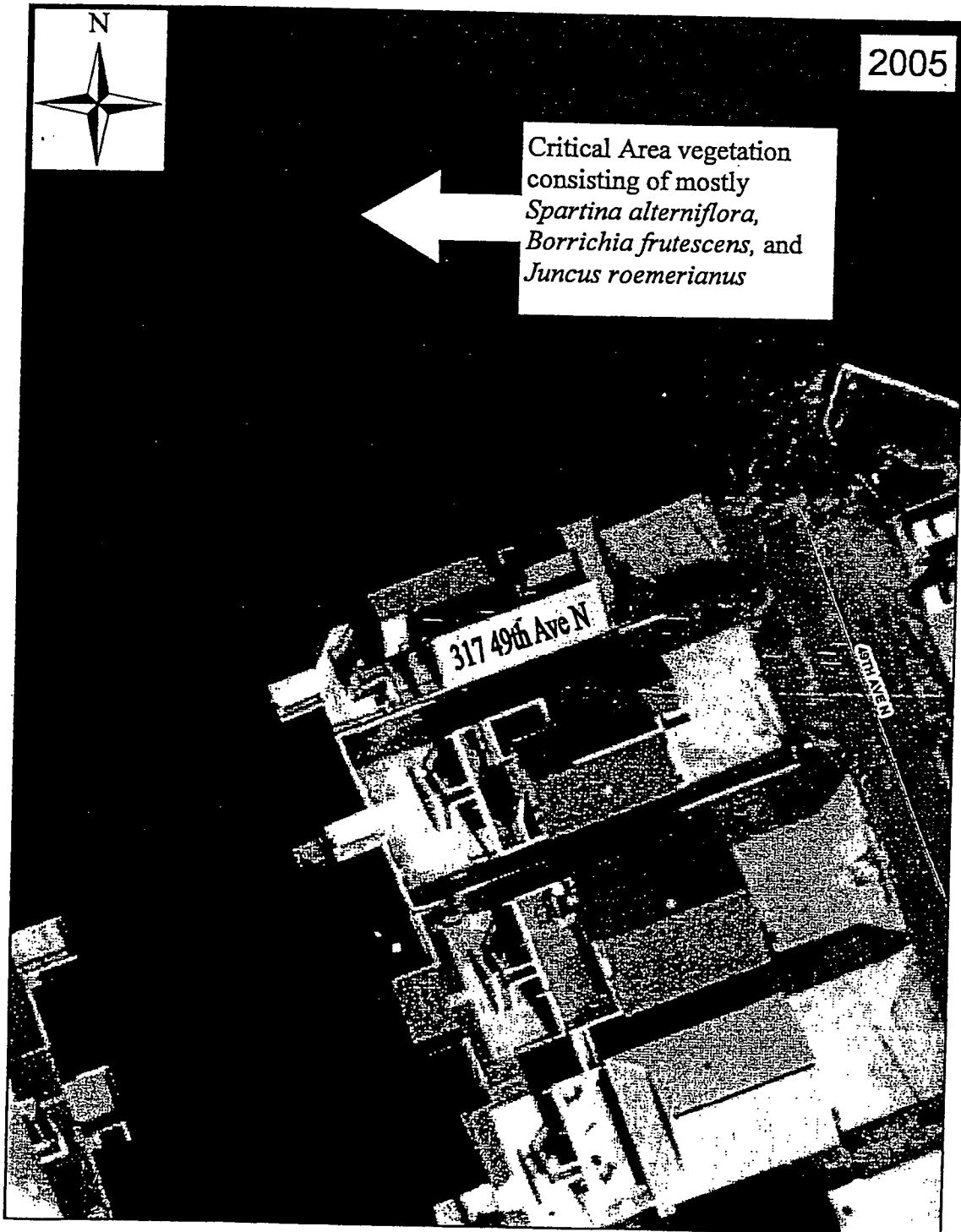


This photograph shows the western facing portion of the bulkhead with the whaler installed. The whaler has been highlighted in this photo for illustrative purposes.

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

ATTACHMENT A

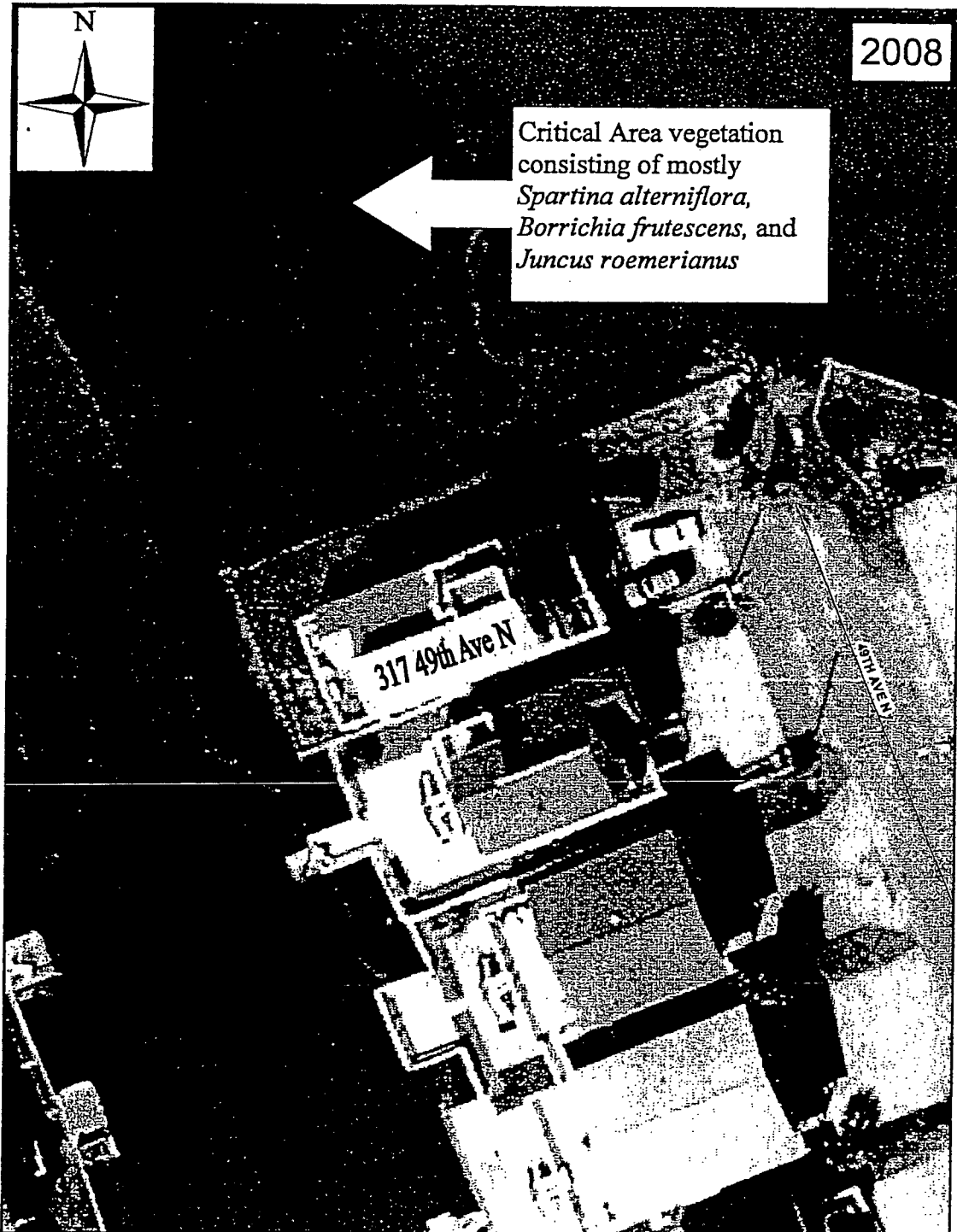
Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2005 Digital Orthophoto by Horry County



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

ATTACHMENT E

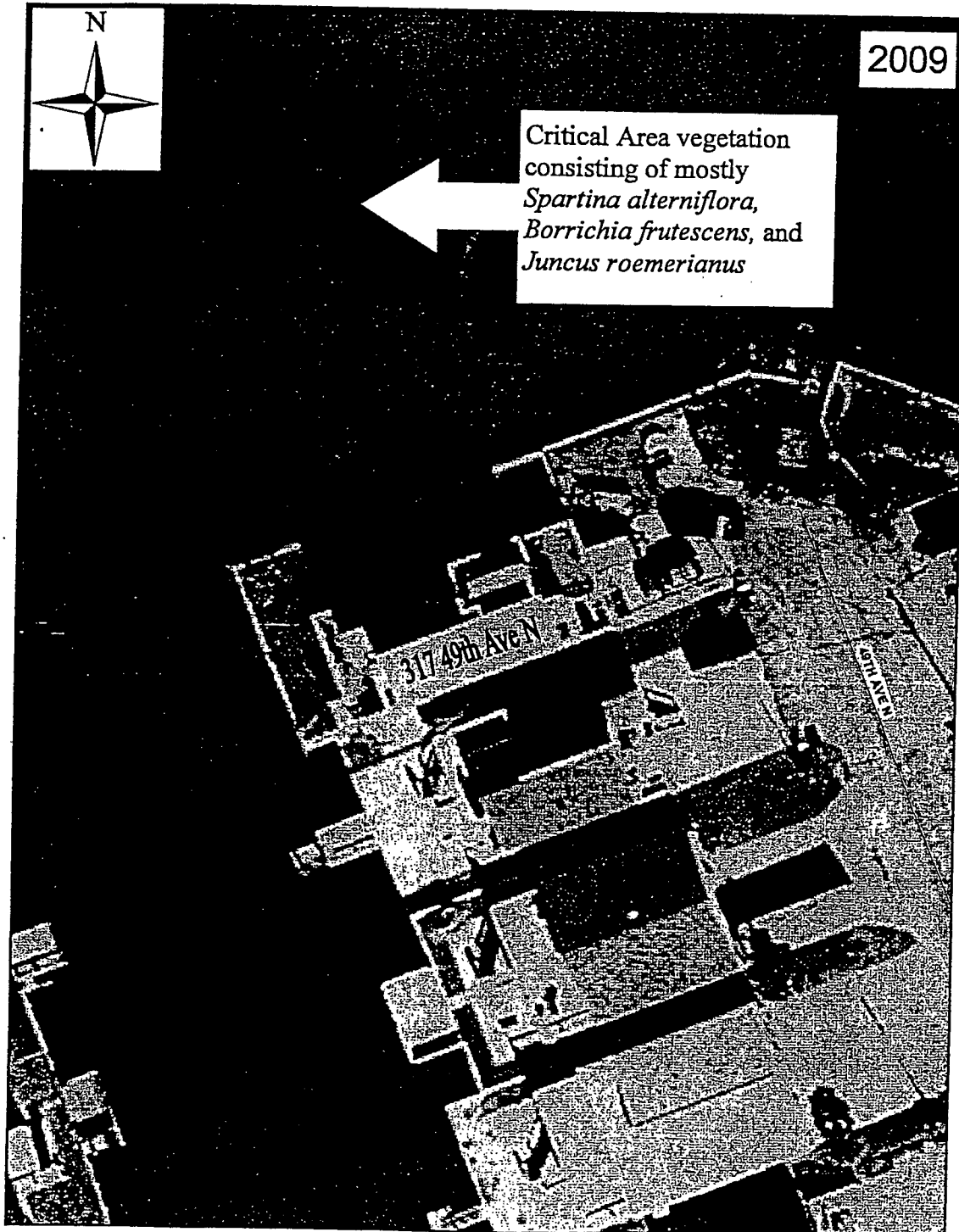
Berry, Tommy W., Sr. and Jo S.
317 49th Ave North, North Myrtle Beach, Horry County, SC
2008 Digital Orthophoto by Horry County



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

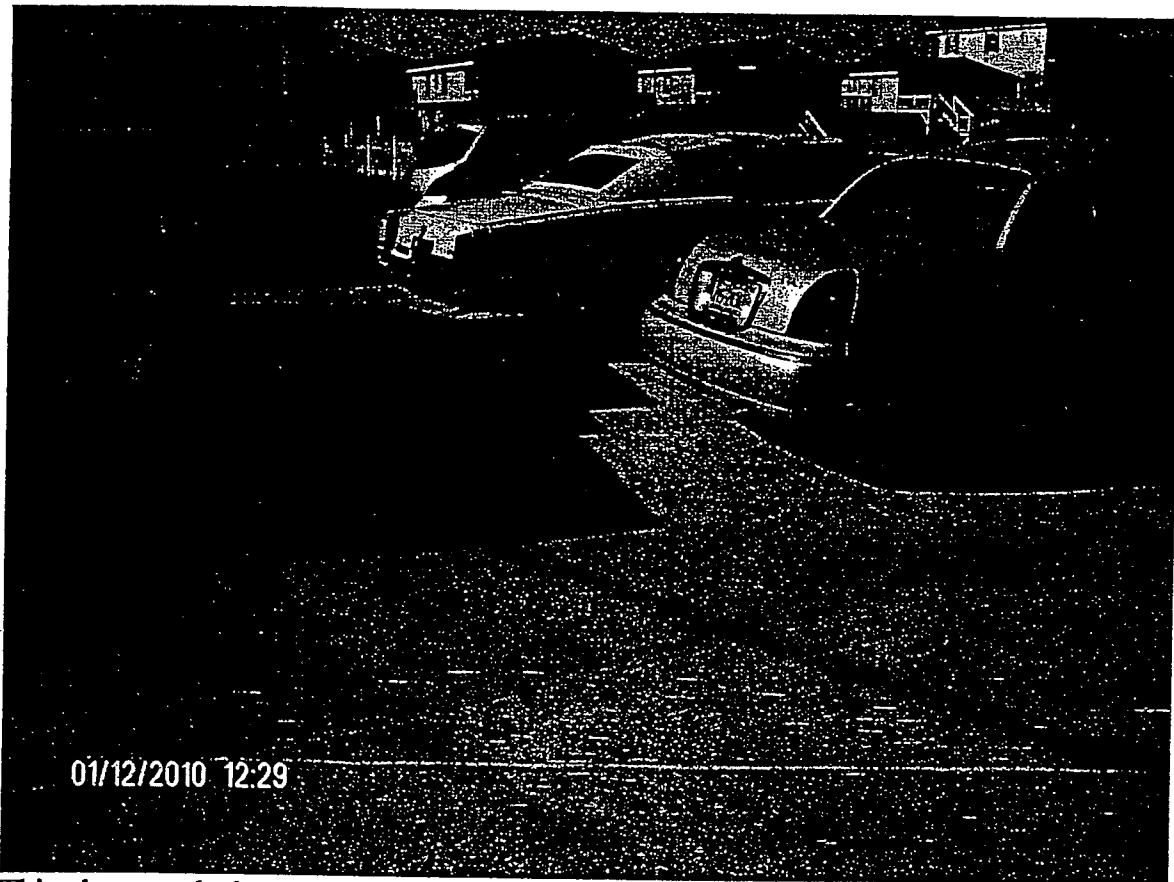
On 1/12/10, the author inspected the Site and documented additional improvements to the Site. The purpose of this inspection was to document these improvements which included a concrete pad, fencing, and landscaping.

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.



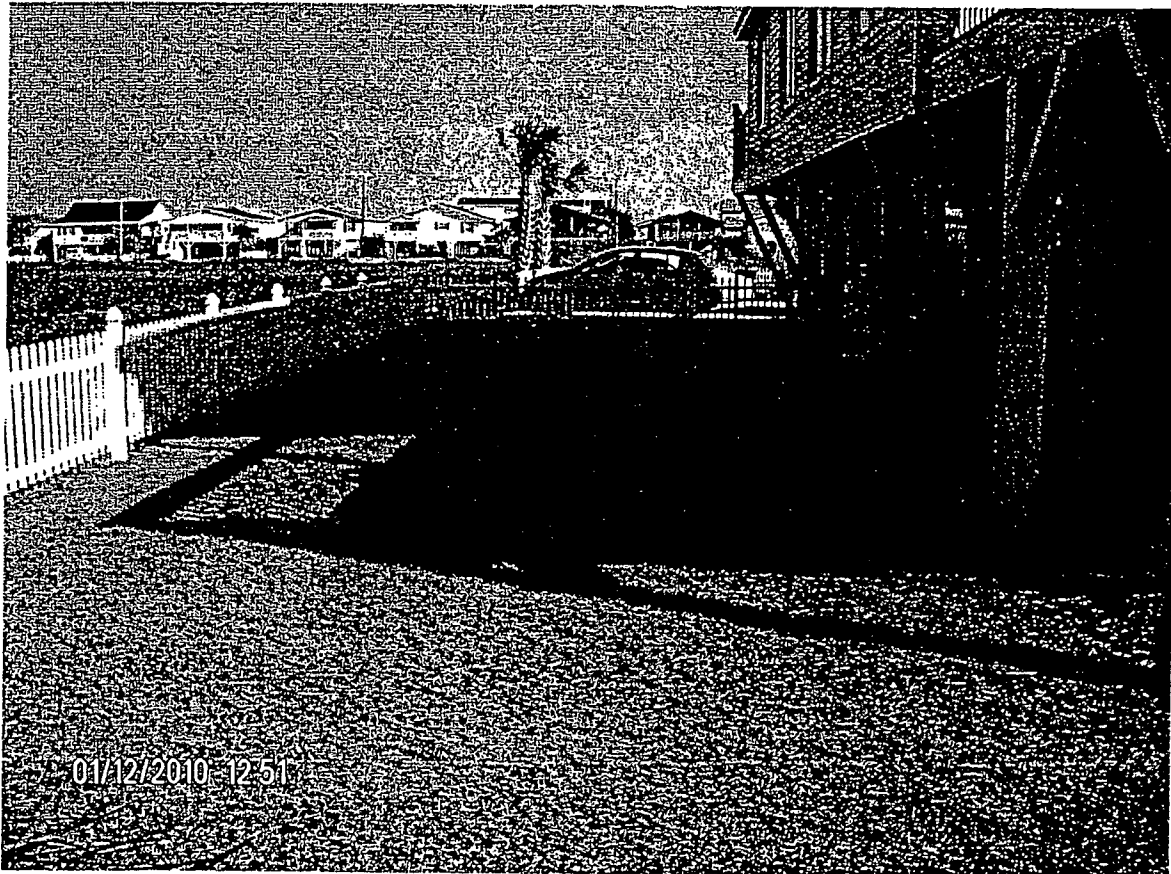
This photograph shows the length of the north facing portion of the bulkhead. A new fence is visible as well as landscaping and a portion of the concrete pad in the foreground.

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

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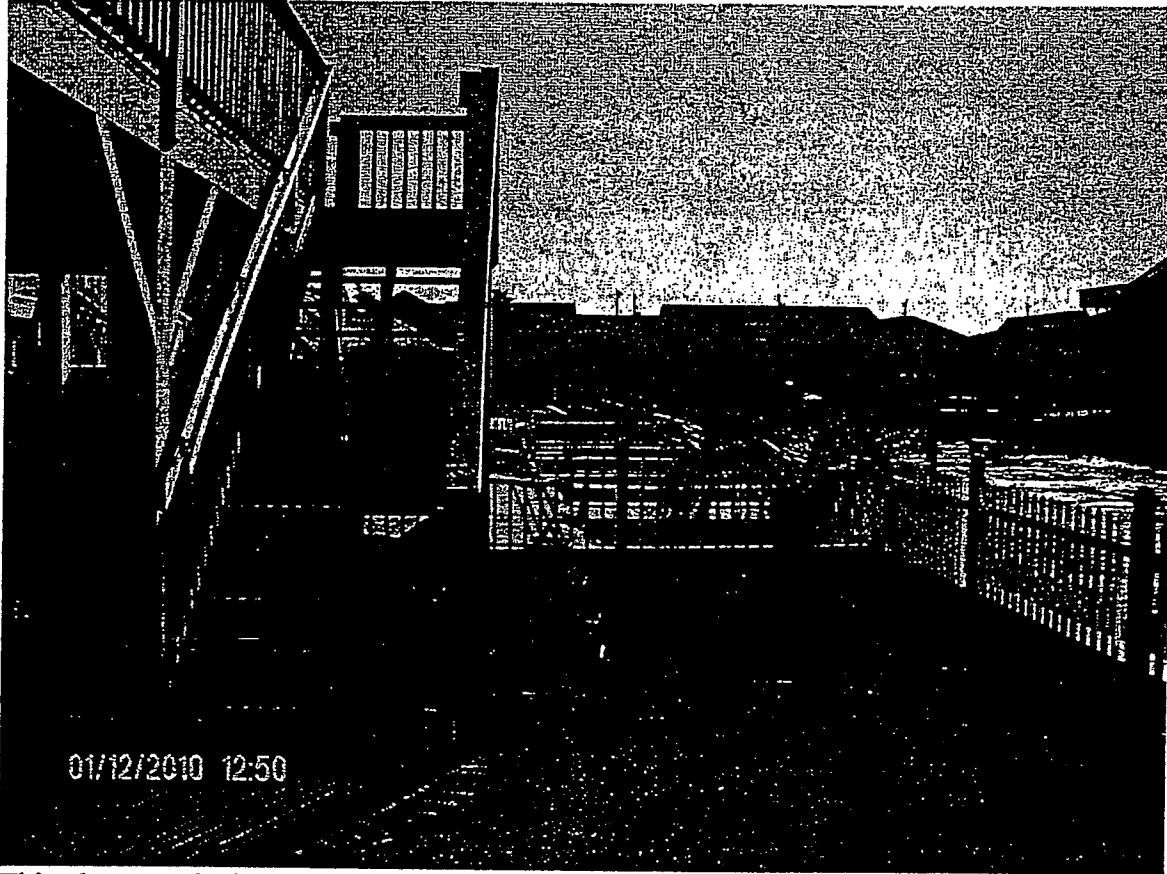
This photograph shows the northwestern corner of the lot with the landscaping and the fence in that area.

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 M. EPPS, JR.
 DAVID R. GRAVELY**
 EDWARD B. BOWERS, JR.*
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 W. JOSEPH CUNNINGHAM***
 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/lh

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May 12, 2009
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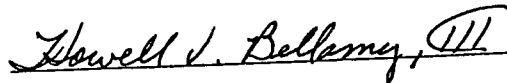
May 12, 2009
Page 3

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With kindest regards, I remain

Sincerely,

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


Howell V. Bellamy, III

HVBIII/lh

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2010-CP-26-6091

Tommy W. Berry, Sr.,)
et al.,)

Plaintiffs,)

Transcript of Record

vs.)

Hearing

Department of Health and)
Environmental Control)
South Carolina, et al.,)

March 7, 2011

Defendants.)

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Howell V. Bellamy, Jr., Esquire
Howell V. Bellamy, III, Esquire
Attorneys for Plaintiffs

Bradley David Churdar, Esquire
Attorney for Defendants

Grace L. Hurley, CVR-CM
Circuit Court Reporter

1 There were no exhibits marked during the hearing.
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1 (On the record, March 7, 2011.)

2 THE COURT: All right, 2010-CP-26-6091, Berry
3 versus Department of Health and Environmental Control. All
4 right, this is case number 2010-CP-26-6091, Tommy W. Berry,
5 Sr., and others versus Department of Health and Environmental
6 Control of South Carolina, et al. According to my roster the
7 matter is before the Court on a motion to dismiss by the
8 Defense, the Department of Health and Environmental Control.
9 All right, please give the court reporter your names and who
10 you represent.

11 MR. BELLAMY, III: Howell V. Bellamy, III, I along with
12 my father, Howell V. Bellamy, Jr., represent Tom and Jo Berry.

13 THE COURT: All right.

14 MR. BELLAMY, III: The Plaintiffs or the Petitioners.

15 MR. CHURDAR: Your Honor, my name is Brad Churdar.
16 I am chief counsel for the Office of Ocean and Coastal
17 Resource Management, here representing the department.

18 THE COURT: All right, sir.

19 MR. BELLAMY, III: Your Honor, if I may approach, these
20 are a copy of the code sections that we may refer to, so if we
21 read something you can follow us.

22 THE COURT: All right, Mr. Churdar, is that
23 pronounced Churdar?

24 MR. CHURDAR: Yes, sir; yes, sir.

25 THE COURT: All right, your motion?

1 MR. CHURDAR: Yes, sir. Your Honor ---

2 THE COURT: All right, let me hear from you.

3 MR. CHURDAR: --- yes, sir, this is, this is a
4 motion for lack of jurisdiction under Rule 12(B)(1). It is
5 almost exclusively procedural. I don't, I don't believe that
6 a lot of facts are necessary, but just to orient the Court,
7 Your Honor, the Plaintiffs have filed an action seeking
8 judicial review of a final administrative order that was
9 issued by the department, and it is the department's
10 contention that we're in the wrong jurisdiction. This case
11 should be heard before the administrative law court, not the
12 Court of Common Pleas, and the background or the history to
13 how I get to that is the South Carolina General Assembly back
14 in 2006 enacted Act 387. I have a copy of that and will hand
15 it up to the Court but if I could just read briefly from the
16 preamble of it and I believe that is instructive and
17 dispositive as to what -- where this matter should be.

18 Just briefly, Act 387 was an effort by the General
19 Assembly to streamline the administrative, exhaustion of
20 administrative remedies amongst all of the state agencies so
21 that there was a fairly uniform process. There are a few
22 agency decisions that were kept out of Act 387, but the Office
23 of Ocean and Coastal Resource Management Agency's decisions
24 were not. They were included in that act and I'd just like to
25 read from the preamble that says, "To amend Sections 48-39-

1 180," and then two other ones under Title 48, "all as amended,
2 all relating to judicial review of permit determinations by
3 the Coastal Zone Management appellate panel, also as to
4 provide for appeal to the administrative law court and then
5 the Court of Appeals," and Your Honor, if you would like to
6 have a copy or have this I can.

7 THE COURT: All right, let me take a look at
8 that.

9 MR. CHURDAR: I've tabbed.

10 THE COURT: Thank you.

11 MR. CHURDAR: Your Honor, the reason that is
12 significant is because the Berrys have brought their action
13 for judicial review under 48-39-180, and it is my contention
14 that 48-39-180 is no longer viable after Act 387 was passed in
15 2006. Notwithstanding Act 387, Your Honor, it is my position
16 that this matter is not viable anyway and it is not viable for
17 a couple of different reasons. First of all, Act, excuse me,
18 Section 49 - 48-39-180 addresses an applicant whose
19 application, permit application has been finally denied,
20 revoked, suspended or approved subject to conditions of the
21 department, and then it goes on and discusses judicial review
22 in the Circuit Court, but Your Honor, what we have here today
23 is according to the pleadings of the Berrys is not a permit
24 application denial, revocation, suspension or approval. That
25 is not what they are contesting. What they are contesting is

1 the administrative order that the Office of Ocean and Coastal
2 Resource Management issued against them for filling the
3 critical area with dirt, the - a marsh basically is what it
4 was down to; and so, what they're ---

5 THE COURT: So, you're saying they never saw the
6 permit?

7 MR. CHURDAR: Well, no, Your Honor, what I'm saying
8 is the underlying cause of action that the Berrys have filed
9 this under is addressing the administrative order. The
10 department, the department has authority when there is a
11 violation or a land disturbance or something like that in the
12 critical area to engage in - with the party, property owner in
13 this instance, into, in a - enter into a consent order to
14 remedy the violation of the Coastal Tidelands and Wetlands Act
15 or if there is no consent between the department and the
16 property owner, the owner then they can issue an
17 administrative order.

18 THE COURT: Which is what they did.

19 MR. CHURDAR: Correct.

20 THE COURT: Okay.

21 MR. CHURDAR: That is, that is what we have in this
22 instance. Now, I suspect from, from Mr. Bellamy's charts here
23 that, that he will want to get into more of the substance of
24 the argument itself, but this is purely a procedural motion,
25 that this Court doesn't have jurisdiction. So, according to

1 their own pleadings they have - they are requesting judicial
2 review of the administrative order, not a permit revocation,
3 not a permit denial, nothing like that.

4 THE COURT: Okay, all right.

5 MR. CHURDAR: So, and that is, Your Honor, that is
6 what 48-39-180 was intended to do, if it wasn't even revoked
7 under Act 387 anyway, but from what I, what I handed up
8 previously I believe that Act 387 revoked the authority of 48-
9 39-180. Under the Administrative Procedures Act, Title 1-23-
10 600 that establishes what the jurisdiction or what the
11 procedure is in a situation like this, and it says that the
12 administrative law court has the jurisdiction to review and
13 enforce an administrative process issued by an agency or a
14 department of the executive branch of government which would
15 be - include DHEC OCRM, such as a subpoena, administrative
16 search warrant, cease-and-desist order or other similar
17 administrative order or process. So, when you look at what
18 the Administrative Procedures Act is contemplating and then
19 you look at what is required by Title 44-160 it establishes
20 what the Berrys' steps that had to be addressed or gone
21 through before they had exhausted their administrative
22 remedies, and I mention this just in summary fashion in my
23 motion on page two of the motion and that is actually page
24 three of the motion and that is that there has to be a staff
25 decision, which there was in this case, that being the

1 issuance of the administrative order, a DHEC board decision,
2 which there was in the sense that the Berrys have appealed
3 from the OCRM staff decision to the full DHEC board and the
4 full DHEC board declined to hear that and then the third step
5 in exhausting administrative remedies is a contested case
6 before the South Carolina administrative law court and that is
7 in 44-160(F) it says if the board declines in writing to
8 schedule a final review conference, which is what happened in
9 this case, or if a final review conference is not conducted
10 within 60 days the staff decision becomes a final agency
11 decision and an applicant, permittee, licensee or affected
12 person requests pursuant to Subsection G a contested case
13 before the administrative law court. So, until they do that
14 they haven't exhausted their administrative remedies anyway.
15 So, if Section 48-39-180 is even viable, and I'm not saying it
16 is, but I'm saying if it is they have to go through all these
17 steps, these three steps, go to the administrative law court,
18 and then, well, it is my contention that then they'd go to the
19 Court of Appeals, but I'm saying if the Court finds that 180
20 were viable then they would come to circuit court here. Until
21 they have exhausted their administrative remedies the Court
22 does not have jurisdiction and this matter should be
23 dismissed.

24 THE COURT: All right, thank you.

25 MR. CHURDAR: Thank you.

1 THE COURT: All right, Mr. Bellamy.

2 MR. BELLAMY, III: Yes, sir, Your Honor. Hold on one
3 second.

4 May it please the Court, Your Honor?

5 THE COURT: Yes, sir.

6 MR. BELLAMY, III: Your Honor, let me, I think - Your
7 Honor, what I would like to do at this point in time is kind
8 of give a factual, procedural history of the case because I
9 think it bears some merit as far as jurisdiction because a
10 motion, a motion to dismiss on 12(B)(1), let's see, 12(B)(1)
11 is for jurisdictional reasons. However, when a judge, a
12 judge, as far as when Your Honor, if you deny the motion to
13 dismiss based on 12(B)(1), it would not be immediately
14 appealable because the motion is, the denial is not on the
15 merits of the case, and the reason why it's important is
16 there's some factual issues in this case are really
17 disconnected from the parties and let me explain why, excuse
18 me. Your Honor, back on February 2nd of 2007 Wayne Beam, who
19 was, who was the former deputy, he was a former deputy
20 chairman for DHEC OCRM at that point in time. He had since
21 left DHEC OCRM and was in private practice. The Berrys
22 contacted Mr. - Dr. Beam and for purposes because they were
23 going to buy a house at Cherry Grove that was located at I
24 think 317 49th Avenue and it fronted on a canal and on
25 Williams Creek and they consulted with Dr. Beam about the

1 purpose of getting a bulkhead, and on February 2nd, 2007, Dr.
2 Beam submitted an application for a critical area permit on
3 behalf of Mr. and Mrs. Berry for the replacement of a
4 bulkhead, and what's important is and this is pursuant to the
5 Coastal Zone Management Act under, under Title 48, Chapter 39,
6 which is consistent with the section that we brought this
7 lawsuit under for seeking judicial review under title, excuse
8 me, under Section 48-39-180, which that section is in the
9 Coastal Zone Management Act, seeking judicial review regarding
10 a de novo action on the part of the department and what's
11 important is is that on that, on that - we filed for a - for
12 an application to get a critical area permit to alter the
13 critical area, and the reason why that's important is if
14 you're not going to build something within a critical area you
15 don't need to get the permit.

16 When we submitted the application, Dr. Beam submitted the
17 application on behalf of the Berrys for their critical - to
18 get the critical area permit to alter the critical area to
19 build a bulkhead for erosion control, these two certified
20 drawings were attached to the application, and that's
21 important, and I think I've gotten - I think Your Honor has a
22 copy of them that you have up there.

23 THE COURT: Okay.

24 MR. BELLAMY, III: And what's important to note first
25 is, Your Honor, if I could use - my, my eyesight is bad.

1 MR. CHURDAR: Well, if I could just say this, Your
2 Honor, this is, this is - I think this really goes more to the
3 merits of the case, not that - their jurisdictional posture.

4 THE COURT: Well, from what I understand he's
5 saying that they are appealing a de novo action taken by the
6 department that is authorized under 48-39-180. I anticipate
7 that's where you're going with it.

8 MR. BELLAMY, III: Well, Your Honor, what we're, yeah,
9 we're appealing, yeah, the ---

10 THE COURT: Okay.

11 MR. CHURDAR: The administrative order is what the
12 pleadings say.

13 THE COURT: Well, he's saying that - I'm assuming
14 your argument is is that the administrative order is the de
15 novo action taken by OCRM.

16 MR. BELLAMY, III: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. BELLAMY, III: Well, let me restate that. What
19 we're saying, and Your Honor ---

20 THE COURT: Let me, just, just back up. I'll let
21 you go ahead and make your argument. Let me go ahead and hear
22 from him in full.

23 MR. BELLAMY, III: Your Honor, this was the site plan
24 right here, the lot 17 is the Berrys' property and it's 50 by
25 125, and right on the northern property line the - there was a

1 northern property line is where the vinyl bulkhead was to be
2 built and if you can see right here the vinyl bulkhead it was
3 supposed to be, a wooden bulkhead was supposed to be removed
4 and simultaneously replaced with a vinyl bulkhead and it's
5 supposed to be 155 linear feet, and you can see it's right on
6 the northern property line. Then on the western side of the
7 property if you, if you measure it from the scale it's about
8 20 feet channel-ward to the canal and this is Kaye Canal right
9 here, and this is where the bulkhead was supposed to be
10 located on the western side of the Berrys' property, and the
11 point I want to make, reiterate is is this document was
12 attached to the permit application submitted by Dr. Beam on
13 behalf of the Berrys and it clearly, clearly and unambiguously
14 shows that the vinyl bulkhead, which was to replace a wooden
15 bulkhead at the same location, is on the northern property
16 line right here, and then on the western side it's about 20
17 feet channel-ward where it's basically connected to the dock.

18 THE COURT: Okay.

19 MR. BELLAMY, III: Okay, Your Honor, what I've got right
20 here this was the other document that was attached was the
21 bulkhead section and these two documents, one point that's
22 important to note is when they submitted the permit
23 application, the two attached documents were the site plan and
24 the bulkhead and they were both checked off as complete,
25 signed, sealed and by the professional engineer and in the -

1 and what I'm saying is as far as the review conducted by staff
2 regarding the - whether they would accept or deny the permit
3 application they checked that they have - basically there was
4 no need to get any other information, there was nothing
5 incorrect about the documents that were submitted with the
6 permit application. That's important, and if Your Honor looks
7 right here you can see these are tiebacks right here and you
8 can see that there is the existing grade and obviously in
9 order to establish the retaining wall right here you're going
10 to have to put tiebacks down about every four feet and clearly
11 the implication is based upon this document you're going to
12 have to put the fill dirt in it because you're going to have
13 to dig out, put the tiebacks and you're going to put fill dirt
14 on top of it because you can see existing grade it's 12 inches
15 above the tiebacks right here.

16 THE COURT: All right.

17 MR. BELLAMY, III: Okay, then again what I want to point
18 out is upon receipt and review of these two professional
19 drawings the department never called, never contacted Dr. Beam
20 or in the alternative contacted Mr. and Mrs. Berry and said
21 they're incorrect or the information is misleading or anything
22 like that.

23 MR. CHURDAR: Your Honor, I'm sorry, I mean I've
24 got to object to - this is, a couple of things, number one,
25 it's, it's - there have been no depositions taken, there has

1 been no evidence. This is hearsay, and second of all, I would
2 object to the, to the relevance of not only exhibits that have
3 been put onto a foam board but also the relevance of the
4 entire packet as it relates to what is a very narrow motion on
5 the jurisdiction of this Court.

6 THE COURT: All right.

7 MR. BELLAMY, III: Your Honor, I'll, I'll ---

8 THE COURT: Overrule it. I'll allow you to go
9 ahead and make your argument.

10 MR. CHURDAR: All right.

11 MR. BELLAMY, III: Okay, Your Honor, for the record I've
12 got the project assignment sheet which is number - Exhibit
13 Number Three. This was - when we filed a FOYA request this
14 document was furnished to us by the department, and clearly,
15 Your Honor, it says professional drawings required, are the
16 drawings stamped, yes, are the drawings signed, are the
17 drawings computer-generated, are the drawings complete, and
18 they checked all, I think, all four of the boxes, and this
19 says drawings need work or a letter requesting correct
20 drawings sent on - you see they didn't check the box.

21 THE COURT: All right.

22 MR. BELLAMY, III: On March 17th, 2007, DHEC OCRM issued
23 a critical area permit to the Berrys to build a replacement
24 bulkhead in the critical area. The special conditions and,
25 Your Honor, I've got up there there's a copy of the permit

1 application, and it should be listed as, hold on a second,
2 permit application is, this is number five, Your Honor, and
3 it's important to note that it says the plans submitted by you
4 attached hereto show the work consists of the following. It's
5 a description of the work, of the structure of the bulkhead to
6 be installed on the Berrys' property. The work as proposed
7 and shown on the attached plans consist of constructing a
8 replacement bulkhead. A wooden bulkhead will be removed and
9 replaced with a vinyl bulkhead to be built in the same
10 location. The existing dock will be removed and reattached
11 upon completion of the construction. The purpose of the
12 proposed activity is for erosion control. The special
13 conditions cited in the permit were the proposed existing
14 bulkhead is removed concurrently with the new bulkhead
15 construction and the proposed bulkhead is placed in the same
16 location as the existing bulkhead, and one other thing, Your
17 Honor, that I want to point out and I'll tie it up pretty
18 quick but ---

19 MR. CHURDAR: And Your Honor, just for streamlining
20 purposes I don't want to continue to interrupt Mr. Bellamy. I
21 just say I have a continuing objection to this and that'll be
22 ---

23 THE COURT: All right.

24 MR. BELLAMY, III: Your Honor, we're tying it together
25 based upon his, his argument is is simply is that he's filed a

1 12(B)(1) motion for lack of subject matter jurisdiction based
2 upon the fact that they're alleging, the department is
3 alleging we did not exhaust our administrative remedies and
4 I'll deal with that, I'll get to that. I'm trying to
5 factually put it together, but right here, Your Honor, I've
6 got a permit application, public notice, and this is important
7 right here, it shows, which is Exhibit Number Four, and I'll
8 state for the record it says the work, the work as proposed
9 and shown on the attached plans consist of construction and a
10 replacement bulkhead, a 155 foot long wooden bulkhead will be
11 removed and replaced with a vinyl bulkhead to be built in the
12 same location. The existing dock will be removed and
13 reattached, so on and so forth. That's important.

14 Now, on July 19th, Wayne - on July 19th Sean Briggs, who's
15 an agent with DHEC OCRM, conducts a site inspection. Your
16 Honor, if I weren't clear then I want to make it clear that on
17 ~~March 7th~~, 2007, DHEC did issue a critical area permit to the
18 Berrys again to construct a bulkhead within the critical area
19 as identified on the attachments and professional drawings.
20 Also, I think on June, June 22nd, 2007, the City of Myrtle
21 Beach issued a building permit to the Berrys in conjunction
22 and in accordance with the attached drawings which I've showed
23 Your Honor. They were attached to the permits which are these
24 two drawings. I think I listed them on the, on the exhibits I
25 handed you. They are like 4-1 and 4-2.

1 THE COURT: All right.

2 MR. BELLAMY, III: Now, on July 19th Wayne Beam, he's an
3 agent of - he's an enforcement officer with DHEC OCRM,
4 pursuant to a complaint goes by the Berrys' residence and
5 looks at the work that's being done as far as the bulkhead.
6 He shows up at the residence, makes certain findings and notes
7 and whatever after he conducts an inspection. He subsequently
8 - they send out a letter of notice. What ultimately happens
9 is he, he makes a finding that the Berrys have constructed
10 their bulkhead in the critical area and also that they placed
11 fill dirt behind the bulkhead. Those are the two major
12 violations, unauthorized fill in the critical area and that
13 they unauthorized placement of the bulkhead in the critical
14 area.

15 Now, what's important to note is is that if you look at
16 and let me - what I want to go to right now, Your Honor, is -
17 hold on one second, is on the - what I've got right here, Your
18 Honor, which is marked for the record as Exhibit Number Nine,
19 it's a cover page, and this is the administrative order. The
20 point that I want - the point that I want to point out is is
21 that in paragraph three, under findings of facts, this order
22 was, I think, prepared by Sean Briggs, it says the - and
23 here's what's important, the previous existing north-facing
24 portion, and Your Honor has a copy of this to review.

25 THE COURT: All right.

1 MR. BELLAMY, III: A bulkhead was located generally,
2 here's what he says, I'll read this right here, on paragraph,
3 findings of fact, paragraph three, the previously existing
4 north-facing portion of the bulkhead was located generally
5 underneath the length of the house. The previously existing
6 west-facing portion of the bulkhead extended approximately 22
7 feet beyond the edge of the house. He said the previously
8 existing bulkhead is clearly shown on page one, attachment B.

9 Then he goes on to say in paragraph six, he said on July
10 19th, 2007, Sean M. Briggs, Mr. Briggs, DHEC OCRM enforcement
11 officer conducted an inspection of the site and observed the
12 bulkhead consisting of vinyl sheets and was being
13 approximately 20 feet channel-ward of the existing bulkhead in
14 the tidelands critical area along the northern property line
15 approximately 10 feet channel wide on the western property
16 line. Mr. Briggs observed a large mass of fill dirt,
17 backfill in the tidelands critical area between the ~~previous~~
18 bulkhead and the newly constructed bulkhead.

19 The point I'm trying to make is, is that, Your Honor,
20 based upon, of course, what this - what the July 19th
21 inspection, what's happening on that inspection is is Sean
22 Briggs is taking the position where it's right here on the
23 northern property line that's not where the bulkhead is
24 supposed to be built. He's taking the position it's supposed
25 to be built underneath the house right here, there's a

1 bulkhead under there. So, and that's the reason why I wanted
2 to go in depth and detail to show you based upon the drawings,
3 based upon the public notice to the public and to the other
4 comments by the other agencies in the state that it was
5 furnished that - throughout to - as far as when they had
6 public hearings and when they sent out the notices as far as
7 public notice to the other agencies within the state they were
8 all put on notice that the bulkhead was built, was going to be
9 built on the northern property line right here and it was
10 going to be built approximately 20 feet on the western
11 property line and then what happened when Sean Briggs did the
12 inspection on July 19th he now takes the position that the
13 bulkhead should have been built underneath the house right
14 here, and, Your Honor, I've sent a FOIA request to OCRM. I
15 sent a FOIA request to the DHEC OCRM. They sent me a package
16 and there's no documentation in their package or any, what I
17 would say any administrative record indicating that the
18 bulkhead was supposed to be built underneath the Berrys'
19 house.

20 Now, again, Your Honor, the point I want to make is based
21 upon the attached permitted drawings, based upon the permit
22 and the attached professional drawings it's clear that they
23 built the bulkhead, what I'm talking about the replacement
24 vinyl bulkhead replacing the old wooden bulkhead in the
25 location that it was specified in the professional drawings

1 or the - in the permit. However, DHEC OCRM is taking a
2 different position, the bulkhead should've been built
3 somewhere else, but the point I'm trying to make is they have
4 no administrative records or documentation to substantiate
5 their position. So, what happens is, and the point is, Your
6 Honor, the other thing I wanted to bring out is on the - give
7 me one second, there's a, one second, Your Honor, point out,
8 right here, I'll find it, Your Honor, if you have one of the
9 things that I handed you I could show you exactly what I'm
10 trying to - right here. I apologize, flip to it real quick.
11 Your Honor, what I'm referring to is the DHEC OCRM critical
12 area permitting regulations, it's edition, publication dated
13 October 25th, 2008. I'm referring to page seven, and this is
14 the definition, Subsection 22, erosion control structures and
15 beach renourishment. It states right under here, bulkhead, it
16 defines it as a retaining wall designed to retain fill
17 material ~~but not~~ to withstand wave forces on exposed
18 shoreline. So, by its own definition is a bulkhead obviously
19 it's supposed to retain fill material, and clearly, not to
20 beat a dead horse, if you look at the engineer drawings as far
21 as the specification for the installation of the vinyl
22 bulkhead, clearly to install it you're going to have to dig
23 down and remove fill material and you're going to have to put
24 fill material back to establish the existing grade based upon
25 where the tiebacks are located.

1 THE COURT: All right.

2 MR. BELLAMY, III: So, again, Your Honor, I want to
3 point out after they - after Sean Briggs conducted his
4 inspection on July 19th, 2007, it was the position of the
5 department that our client, Mr. and Mrs. Berry, had committed
6 unauthorized activity or committed an unauthorized activity in
7 violation of the permit, the grounds being, one, that they
8 built their retaining wall, vinyl retaining wall in the
9 critical area, and two, that they - and two, that the Berrys
10 placed unauthorized fill material in the critical area. The
11 point I'm trying to make is the permit authorized them to
12 build the retaining wall in the critical area and you can't
13 ---

14 MR. BELLAMY, JR.: Where it was built, where it was
15 built.

16 MR. BELLAMY, III: Where it was built. Now, on
17 August 2nd, 2007 the department, DHEC OCRM issues a notice of
18 intent to revoke the Berrys' permit. Now, then you go from
19 2007 until the next relevant date would be on April 26, 2010,
20 where the department issued an order of revocation regarding -
21 - an order revoking - an order, administrative order revoking
22 the Berrys' critical area permit, and the point I'm trying to
23 make, Your Honor, is they go from August, August 2nd, 2007,
24 all the way to April 27th, 2010, that's a huge, that's a huge
25 period of time where nothing happens, and the point that I'm

1 trying to make is obviously my contention, and obviously the
2 contention of my clients is is DHEC obviously screwed up or
3 didn't do something wrong or didn't properly review the plans
4 or for whatever reason something happened because normally if
5 they had a clear-cut case they wouldn't have waited almost
6 four years, it's four years to the day that Mr. and Mrs. Berry
7 got their permit to build their critical area, and normally
8 DHEC OCRM works pretty quick, and the reason why they've - I
9 guess they've kind of waited on this case is because there are
10 a lot of factual issues that are, things that, you know,
11 there's a lot of disconnects and nobody really knows the
12 answers to, and one of the things I would mention when I
13 talked to Bradley he indicated Tomika Marshall had said that
14 at the time that Mr. and Ms. Berry, Wayne Beam had submitted
15 the permit, that permit application, they did not ---

16 MR. CHURDAR: You know, I'm sorry, I've got to
17 object first of all because the conversation that he's
18 referring to I have had follow-up conversation that I haven't
19 even talked to him about that negates what I believe he's
20 getting ready to say about Tomika Marshall and what she said,
21 I mean.

22 THE COURT: Okay.

23 MR. CHURDAR: Your Honor this is, this is so far
24 afield of, of ---

25 MR. BELLAMY, III: That's fine; that's fine.

1 THE COURT: I'll give you an opportunity to
2 reply. Let him, I'm going to let him argue in ---

3 MR. BELLAMY, III: Okay, all right, so, Your Honor, they
4 issue, DHEC OCRM issues an administrative order on April 27th,
5 2007. Within 15 days the Berrys respond to the administrative
6 order, file an appeal, taking issue with the allegations, the
7 factual allegations, the legal conclusions that we think are
8 incorrect, and essentially what - if you go back and look at
9 the administrative order what it basically says is is that our
10 clients, Mr. and Mrs. Berry, built a retaining wall in the
11 critical area and where they built the retaining wall they
12 placed fill dirt behind, fill dirt behind it, and essentially
13 that's what the major violation is and, two, that they did not
14 build a retaining wall where the alleged documents indicated
15 they should have built it. The DHEC, the administrative order
16 takes the position that a retaining wall should have been
17 built 20 feet closer to the house. There's a little, there's
18 a foundation wall, they indicated they should have built the
19 retaining wall right there even though the permit, the notice
20 as far as notification and all that, the professional
21 documents show otherwise.

22 So, what happens, after we file an appeal, we've got 60
23 days, from where we filed an appeal and we have 60 days and
24 we're waiting to have a conference with the, with the board,
25 and let me find, give me one second. It's right here. The

1 letter I've got is Exhibit 11, and this is what on June 14th,
2 2010, Your Honor, it is, said Mrs. Berry, let me read it for
3 the record, it says the South Carolina Board of Health and
4 Environmental Control decided on June 10, 2010, not to conduct
5 a final review conference on the above-referenced matter.
6 South Carolina Code Section 44-1-60, Subsection F provides if
7 a final review conference is not conducted in 60 days the
8 department decision becomes the final agency decision. Your
9 Honor, our position is pursuant to this document under,
10 under section 44-1-60, Subsection F that this is when the
11 department, the final agency decision is on this day and the
12 reason why we take that position is that, is that pursuant
13 to Section 1-23-380, Your Honor, give me one second, and Your
14 Honor, what I've got right here is I've got a - where I've
15 produced a copy of this from West Law it's Section-1, 2 - 23-
16 310 definitions, and what I'm going to - I'm referring to
17 subsection ~~2~~ under 1-23-310 definitions and it's the
18 definition of an agency and it says agency means each state
19 board, commission, department or officer other than the
20 legislature, the courts or, or the administrative law court
21 authorized by law to determine a contested case.

22 All right, what I want to show you right now, pursuant -
23 prior to the 2008 amendment, and Your Honor, this was amended
24 by 2000 Act, Number 2-34, Section 3, effective June 16, 2008,
25 and prior to that date the definition of agency included as

1 follows, means each state board, commission, department or
2 officer other than the legislature or the courts that to
3 include, let me read that, other than - all right, let me read
4 it again, okay, agency means each state board, commission,
5 department or officer other than the legislature or the courts
6 not, not, Your Honor, it's right here, let me see, but excuse
7 me, but to include the administrative law court,
8 administrative law division, but to include the administrative
9 law judge division authorized to, authorized by law to
10 determine contested cases. So, what you're having prior to
11 the amendment, the 2008 amendment the administrative law
12 division was part of the agency definition. After the 2008
13 amendment the administrative law court is no longer a part of
14 the definition of an agency and why is that relevant?
15 Pursuant to Section 1-23-380, titled, Your Honor, judicial
16 review upon the exhaustion of administrative, administrative
17 remedies, it provides a party who has exhausted all
18 administrative remedies available within the agency and who is
19 aggrieved by a final decision in a contested case is entitled
20 to judicial review pursuant to this article and article 1, and
21 we state our position is, since the administrative law court,
22 the ALG is no longer part of the agency, and understand, Your
23 Honor, this is the Administrative Procedures Act, and when
24 there's a final agency decision, and we maintain that the
25 final agency decision is when the board or DHEC OCRM decided

1 not to have a review conference and they notify us. They
2 notified my client, the Berrys, on June 14th, 2010. At that
3 point in time our remedy was or at least we have the right as
4 I maintain and I don't need to go any further as far as me add
5 the next relevant section is, it says - so, what we're
6 basically saying is is they're taking the position the, DHEC
7 OCRM's position is that once there is a denial, then as part
8 of our administrative remedies we have to request a contested,
9 a contested case hearing with the administrative law court.
10 My position is, Your Honor, that is no longer an
11 administrative remedy, that is a judicial remedy based upon
12 the fact that after the 2008 amendment the administrative law
13 court division is no longer a part of the agency definition.
14 Further, the - it goes on to say that this section does not
15 limit utilization of other scope of judicial review available
16 under other means of review, redress, relief or trial de novo
17 provided by law.

18 So, what that - the way I read that, Your Honor, and it's
19 at Section 1-23-380 once the applicant or the party has
20 established basically, has administratively exhausted their
21 remedies within the agency they have a right to either file a
22 petition with the administrative law court or they can file a
23 petition like we did under Title 48-39-180 with the circuit
24 court seeking judicial review, judicial review of our permit
25 which was approved, which was revoked and subsequently,

1 finally denied on June 14, 2010, and Your Honor, we believe
2 that this section - let me read this section to you, it's -
3 I've done the research. This section is viable, it hasn't
4 been repealed. It was actually cited in one case that I was
5 doing, shepardizing in the state. So, Your Honor, as an
6 officer of the court I would say this case is - this statute
7 is still viable.

8 It's mentioned, Your Honor, I would even say that it's
9 mentioned, the case is actually - the statute right here is
10 mentioned in the South Carolina Department of Health and
11 Environmental Control versus - it's Wayne Hills, excuse me,
12 versus the South Carolina Department of Health and
13 Environmental Control and they mention this statute, and the
14 reason why that ---

15 THE COURT: What's the date of that case?

16 MR. BELLAMY, III: This case is August 23rd, 2010.

17 THE COURT: When was it argued?

18 MR. BELLAMY, III: It was argued - it was heard on June
19 25th, 2010, decided on August 23rd, 2010.

20 THE COURT: And what were they - that was an
21 appeal of, what was the, that was an appeal from an
22 administrative decision?

23 MR. BELLAMY, III: Yeah, yeah, and Your Honor ---

24 THE COURT: And what was the date of the decision
25 that was being appealed? Do you know that?

1 MR. BELLAMY, III: Yes, sir, Your Honor, this case was
2 prior to 2006 as far as the facts of the case.

3 THE COURT: Okay.

4 MR. BELLAMY, III: And it, it was under the old set of
5 cases where when you filed a - when you've got an agency
6 decision and you file an appeal, the fact finder was the
7 administrative law court and then they appealed it to the
8 appellate counsel, and then at that point in time then you
9 would, you know, the appeal, I guess, would be to the circuit
10 court or that's - those were the facts in that case but it -
11 the relevancy is is that in this particular case Ken Moss was
12 representing Wayne Hill and they took the position that the
13 administrative law court did not have subject matter
14 jurisdiction to hear an appeal in the case based upon the
15 factual issues to where they're - the issue in that case was
16 that the DHEC OCRM couldn't identify, locate where the
17 critical area line was and they're saying that they couldn't
18 but it's a jurisdictional issue but what they did is is they
19 mention this particular section as a basis of establishing
20 their jurisdiction as far as to hear this and the point I'm
21 trying to make is, Your Honor, that what's happened here in
22 this particular case is if you look at our documents as far as
23 the permit, as far as professional drawings submitted which
24 were - which basically my client used, Mr. and Mrs. Berry used
25 to construct the replacement bulkhead, vinyl bulkhead in the

1 same location on the northern property line and also on the
2 western side of their property as, as shown on the documents
3 that there's a huge, huge disconnect in this case and one of
4 the things, the reason why that first we take the position as
5 far as jurisdictional arguments that, one, that we've
6 exhausted our administrative remedies, and two, that pursuant
7 to Title 1-23-380 we have a right to seek judicial review
8 under a statute under which is basically Section 49-31-80 and
9 then let me just read the first part of the statute, Your
10 Honor. It says any applicant whose permit has been finally
11 denied, which our permit has been finally denied based upon
12 the DHEC OCRM letter of June 14th from the board, revoked and
13 suspended. Obviously our permit was approved, then it was
14 suspended and then subsequently it was revoked pursuant to the
15 administrative order, and it goes on to say any person, then
16 it goes on to say, may seek judicial review as provided in
17 Chapter 23 of Title One which deals with, with basically the
18 administrative order, deals with the administrative protection
19 act or may, or any person adversely affected, it goes on to
20 say, may obtain judicial review as provided in Chapter 23,
21 Title One or may file a petition in the circuit court having
22 jurisdiction over the affected land for a review of the
23 department's action de novo, and that's what we're trying to
24 do. Even if, Your Honor, we did not, let's say for the sake
25 of argument did not, if our client, Mr. and Mrs. Berry, did

1 not exhaust their administrative remedies our position would
2 be that under, that under Title 1-23-30 it goes on to say in
3 the last sentence, it says a preliminary, procedural or
4 remediated, immediate agency action or ruling immediately, is
5 immediately appealable if review, if review of the final
6 agency decision would not provide - I'm sorry, my eyesight's
7 getting bad, an adequate remedy. Our position is our, is that
8 having a, having a contested case before the administrative
9 law court, contested hearing case before the administrative
10 law court is not going to help Mr. and Mrs. Berry because what
11 we've pled in our petition deals with areas of basically we've
12 submitted governmental estoppel issues, estoppel by record,
13 we've submitted issues regarding damages, we've submitted
14 issues regarding due process, and these are, essentially some
15 of these are claims that are not essentially heard by the
16 administrative law court. We feel and also the relief that
17 we're trying to request is more of a judicial or an equitable
18 relief because the point - what is, you know, the point that -
19 what's going to happen is somebody is going to have to make a
20 decision, one, you know, our clients have to remove a part of
21 the bulkhead, that they have to remove all of the bulkhead and
22 who's going to pay for it, and these are issues that are, I
23 would submit to Your Honor, are not really proper issues for
24 the administrative law court to decide because they deal with
25 equitable issues that would be better presented to a Circuit

1 Court Judge, and Your Honor, I would say that, you know,
2 under, that under Title 1-23-380 that we have the right under
3 that last sentence. It says again if review of the final
4 agency decision would not provide an adequate remedy then I
5 think this section gives us the right to appeal it, to seek
6 judicial review of the circuit court, and the point being is
7 if the administrative law court has a right to hear the
8 contested hearing it doesn't necessarily mean that they have
9 exclusive jurisdiction of that area and this is a complicated
10 case, Your Honor, because obviously somebody is going to have
11 to make a decision that if the staff at the department made a,
12 for whatever reason, if - whatever, whatever happened,
13 whenever they approved it and now, and now what they want to
14 do is after the fact take the position that what they
15 initially approved was incorrect. However, they don't have
16 any documents to support their position that the, that as far
17 as the bulkhead should be replaced or built underneath the
18 house. So, ultimately, somebody is going to have to make that
19 decision and I think a circuit court is in a better position
20 from an equitable standpoint and from an injunctive standpoint
21 in dealing with damages, too, who's going to have to pay for
22 it. I mean, if - assuming that if DHEC OCRM did make a
23 mistake, assuming that the staff didn't properly review the
24 documents and, and, and they maybe relied upon what Dr. Beam
25 said or maybe for whatever reason, who knows, but the point

1 being is should the Berrys be responsible for something that
2 they didn't do as far as, you know, dealing with their duties
3 and responsibilities as agents for DHEC OCRM, and one last
4 thing that I want to point out, Your Honor, is that - this is
5 Exhibit Number Two, and it states right here. This is dated
6 March 3rd, March 7, 2007, and it said a field assessment by
7 Tamika Marshall. It's dated October 20th, 2006.

8 So, when DHEC OCRM approved the permit and approved the
9 attached drawings they did so with their eyes wide open.
10 They've never alleged that Mr. and Mrs. Berry had presented
11 anything fraudulently or misrepresented anything to them as
12 far as getting the permit to build a retaining wall on their
13 property, and clearly, Your Honor, just simply let me just
14 state this, Mr. and Mrs. Berry built the retaining wall where
15 the professional drawings and the permit told them to build it
16 and thank Your Honor for taking the time to listen to this.

17 THE COURT: All right, anything in reply?

18 MR. CHURDAR: Thank you, Your Honor. Your Honor, I
19 would just to not beat a dead horse but just reiterate to the
20 Court the Berrys have set the parameters of what this action
21 is by bringing a judicial review action of the administrative
22 order and that, that's why we're here. I mean, all the
23 underlying matters are something that would get, would be
24 addressed on the merits, but since so much of the merits have
25 actually been addressed I just want to address a couple of

1 things and highlight this with the caveat that I'm only doing
2 it because it has been brought up. I don't - I believe that
3 what I'm saying really at this point is beyond the scope of
4 whether or not this Court has jurisdiction over it. Be that
5 as it may, Mr. Bellamy has indicated that the, and I'm sorry I
6 don't have the exhibit number, but has indicated that the
7 permit application, public notice has an attachment with a
8 drawing. In fact, it's one of the, it's one of these, this,
9 this right here that he has made reference to was attached to
10 the public notice, and if I could invite your attention to the
11 public notice it says that the work that is being described on
12 the second line is a 155 foot long wooden bulkhead, will be
13 removed and replaced with a vinyl bulkhead to be built in the
14 same location, and Your Honor, if you will look at the
15 engineer's drawing prepared by Mr. David Simms he has on there
16 a application for 155 linear feet. Now, at the bottom of, at
17 the bottom of this drawing right there it indicates, Your
18 Honor, that this is - that the property is, the property is 50
19 feet. It says right there, 50 feet across, 125 feet long.
20 This is the northern property line. This is the western
21 property line. Now, in order to get 155 linear feet it can't
22 be 125 feet plus 50 feet. That's 175 feet and that is, in
23 fact, approximately what they've built. They built 20 feet
24 out into the critical area, and if you look at attachment B,
25 which is part of the - attachment B to the administrative

1 order from Sean Briggs you can, you can see that there is an
2 original bulkhead right underneath the property line. That
3 bulkhead right there ---

4 MR. BELLAMY, JR.: Your Honor, Your Honor, I haven't
5 said anything but I've got to object. Now, counsel is taking
6 - if you look at the permit and the map that Dr. Beam prepared
7 it does not show the permit being built up against the house.
8 It shows it being built on a 50 by 125 foot lot at a hundred,
9 125 which is the northern property line. It doesn't say it's
10 up against the house. We've been arguing that from day one.

11 THE COURT: All right, I'm going to allow him to
12 argue his motion. Go ahead.

13 MR. CHURDAR: Okay, Your Honor, what I'm saying is
14 the picture speaks for itself.

15 THE COURT: All right.

16 MR. CHURDAR: The, the bulkhead is right, right
17 under the house. In order to get 155 linear feet you can't
18 build all the way out to the property line that's in the marsh
19 but Your Honor, the only thing - this, this really is beyond
20 the scope of a motion to dismiss for lack of jurisdiction. I
21 just bring that up because we got so much into the merits of
22 it. What, what I would highlight is in my motion I make
23 reference to the Court, South Carolina Court of Appeals 2009
24 opinion Oakwood Landfill versus DHEC, in which the appellate
25 court held that until the administrative law court ruled on

1 DHEC's approval of landfill capacity there was no final agency
2 decision on the merits in the case and appellant had not
3 exhausted all of their administrative remedies. That's why
4 we're here.

5 MR. BELLAMY, III: I'm sorry, Brad, what case did you
6 mention?

7 MR. CHURDAR: Oakwood Landfill.

8 MR. BELLAMY, III: Your Honor, that ---

9 THE COURT: Listen ---

10 MR. BELLAMY, III: Okay.

11 THE COURT: --- you all have argued for over 45
12 minutes. This is a 15 minute motion ---

13 MR. BELLAMY, III: Sure.

14 THE COURT: --- that's gone on for over an hour.

15 MR. BELLAMY, III: Yes, sir.

16 THE COURT: If you haven't made your points by
17 now you're not going to be able to. So, let ~~him~~ finish up.

18 MR. BELLAMY, III: Yes, sir.

19 THE COURT: All right, go ahead.

20 MR. CHURDAR: And Your Honor, my, my point is
21 simply that the 44-160 establishes what is required for
22 exhausting administrative remedies, and until that happens
23 this - it is premature to go anywhere besides the
24 administrative law court, and Your Honor, based on all these -
25 one another thing, Your Honor, I would just mention and I

1 believe the Court has already picked up on that and that is
2 Wayne Hill was pre-Act 387. So, to the extent that they are
3 relying on Section 1-23-380 under Wayne Hill, Wayne Hill was,
4 the facts of Wayne Hill were prior to the legislature's
5 enactment of Act 387.

6 One final point, even assuming that Act - I mean, that 1-
7 23-380 would come into play here, Mr. Bellamy has indicated
8 that what would trigger this is the fact that the final agency
9 decision would not provide an adequate remedy. I don't even
10 understand that. Your Honor, if, if what they're asking for
11 cannot be established and that is the reversal of the
12 administrative order in an administrative law court, I don't
13 know what a Circuit Court could do. I mean, the Circuit
14 Court's going to make the same decision. If the
15 administrative order is reversed they can go back and apply
16 for the permit that they've gotten if in fact the permit that,
17 I mean, the work that ~~they~~ did was in accord with the permit,
18 which is essentially what reversing the administrative order
19 would do. My point is they can get an inadequate remedy
20 before the administrative law court via the reversal of the
21 administrative order if the judge determined that that was the
22 appropriate course of action to take.

23 THE COURT: All right.

24 MR. CHURDAR: Thank you.

25 THE COURT: All right, I'm going to take the

1 matter under advisement. Both parties are to submit proposed
2 orders setting forth your positions by this Friday at 12 noon,
3 just e-mail them to me; okay?

4 MR. BELLAMY, III: Yes, sir, Your Honor.

5 MR. CHURDAR: Yes, sir, thank you.

6 THE COURT: All right.

7 (Adjourned.)

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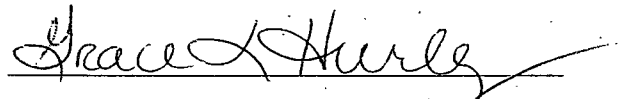
24

25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of the hearing held in the case of Tommy W. Berry, Sr., et al. v. Department of Health and Environmental Control of South Carolina, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on March 7, 2011.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM

Official Reporter

April 29, 2011.

000260

		RECEIVED PAID FEB 02 2007 PERMIT FEB 02 2007 APPLICATION 250.09 DHEC-OCRM 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.
 PO Box 37
 Tabor City, NC
 28463-0037

FRANK T. BOYSLA
 4517 BLITZSEL Dr.
 Florence, SC
 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

<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)

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.

Tone
Signature of Applicant

1/31/07
Date

HES
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
Charleston Beaufort Myrtle Beach
 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 & Jerry
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

RECEIVED

FEB 02 2007

REC OCRM

Date Received: 04/02/07P/N# DCRM-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

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 vegetation1. 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 Knox 06-550. There are shellfish class
in the area.

X. Attachments Required:

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



000267

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 29211-1863

RECEIVED

Re: 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
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

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,

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)

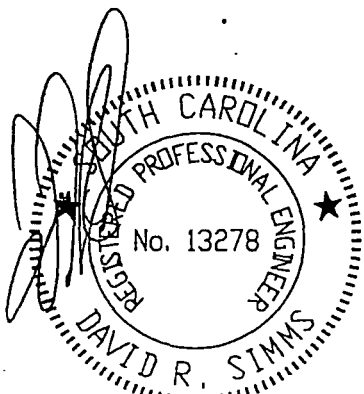
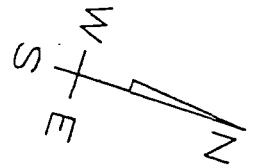
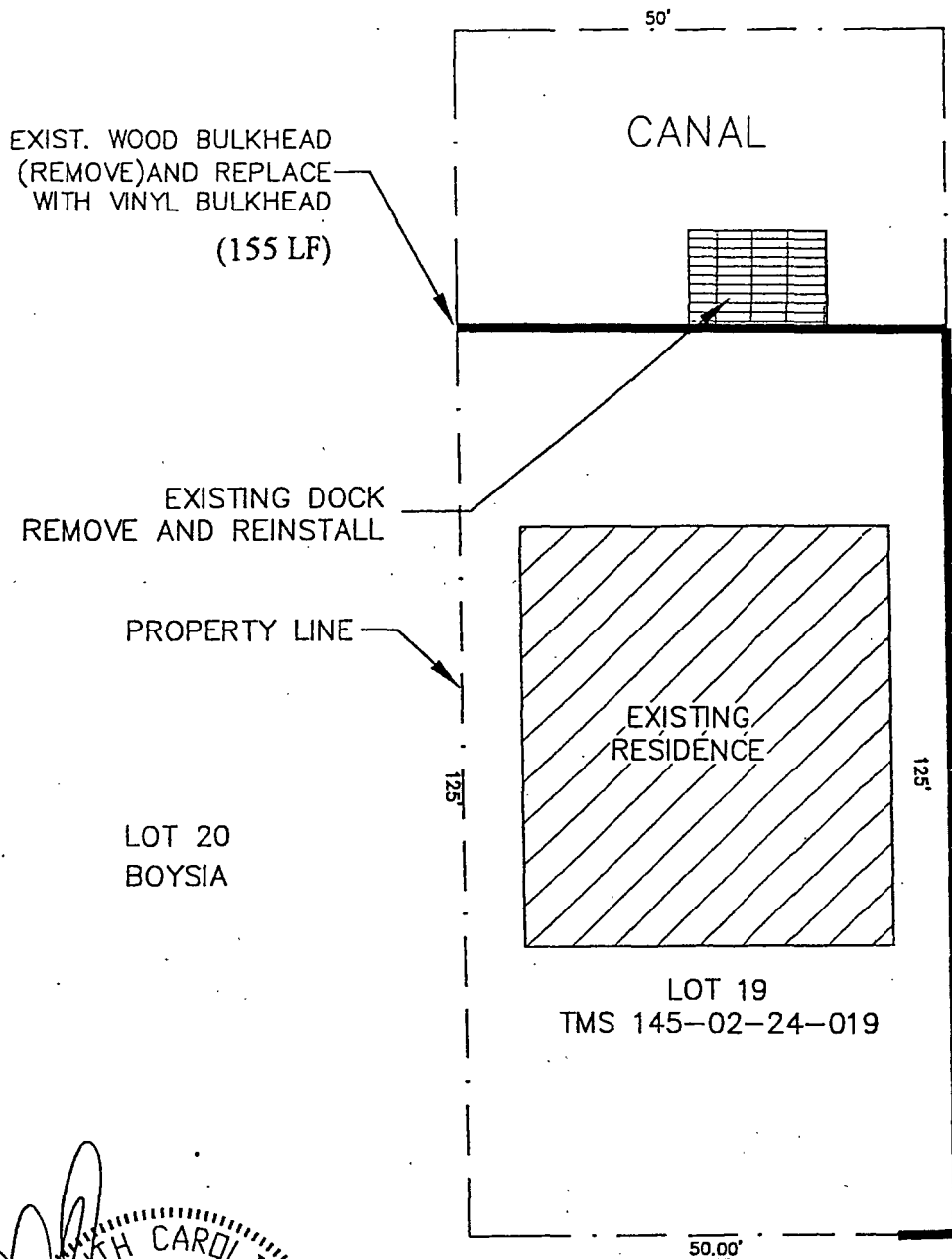
Curtis M. Joyner

Or his Designee

Other: Authorized State Official

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

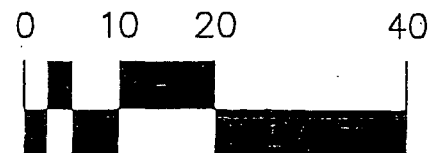
1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage 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.



FOR PERMITTING ONLY
NOT FOR CONSTRUCTION

49th AVENUE NORTH

SITE PLAN



1"=20'

APPLICANT:
TW Berry

ACTIVITY: Replace Existing
Bulkhead

P/N#

LOCATION: Cherry Grove
North Myrtle Beach

COUNTY: Horry

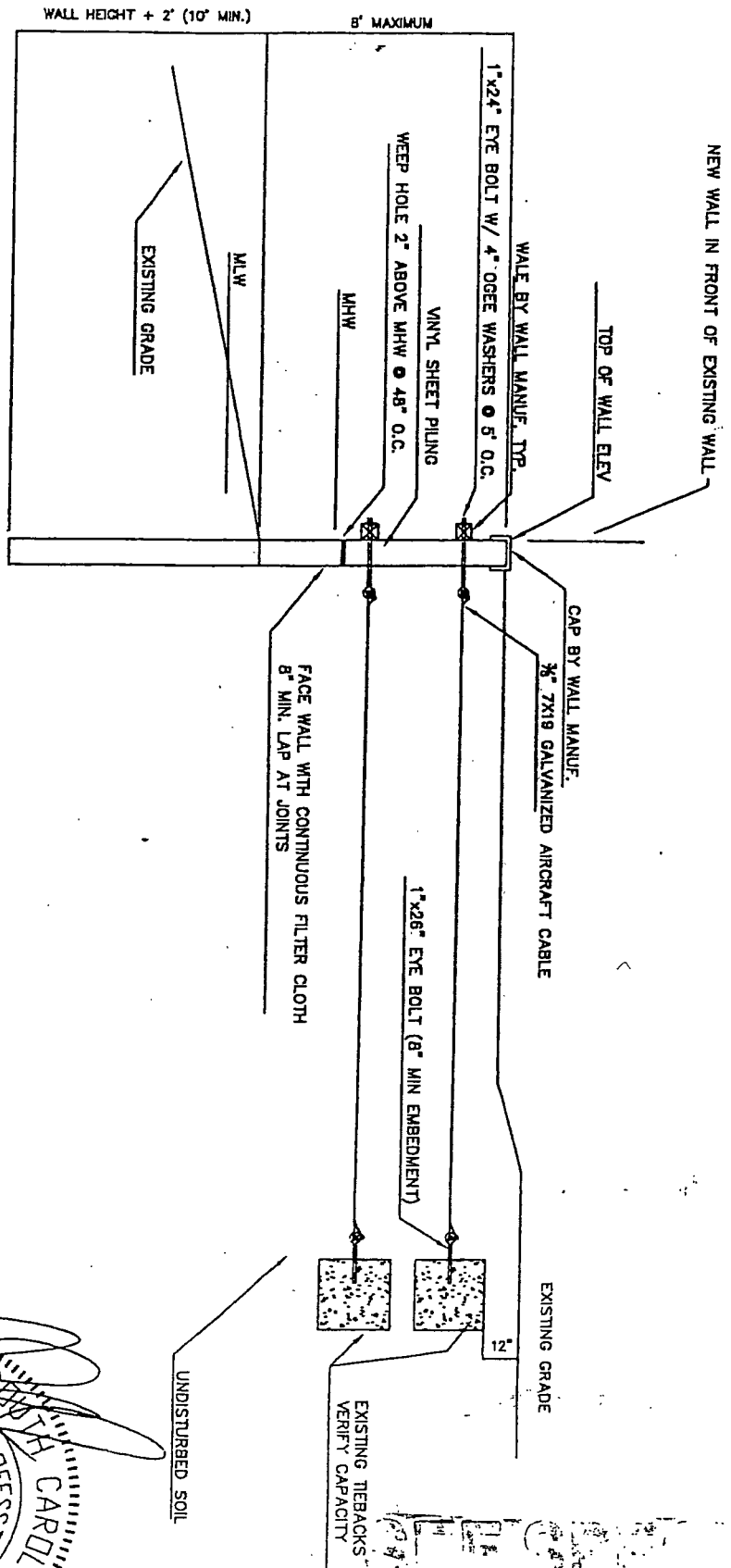
DATE: 1/25/2007

RECEIVED

FEB 02 2007

DHEC-OCRM
MYRTLE BEACH OFFICE

SHEET 2 OF 3



NEW BULKHEAD SECTION

NTS

APPLICANT: T W Berry

ACTIVITY: Replace Bulkhead

P/N# OCRM-07-509

LOCATION: Cherry Grove

COUNTY: Horry

DATE: 1/25/2007

RECEIVED

FEB 02 2007

DHEC-OCRN
MYRTLE BEACH OFFICEFOR PERMITTING ONLY
NOT FOR CONSTRUCTION

000273

EXHIBIT 5



C. Earl Hunter, Commissioner

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

DHEC-OCRM
MYRTLE BEACH OFFICE

March 07, 2007

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

SEE [unclear]

Re: 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
EnclosureSOUTH 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

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

Authorized Works: 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.

Waterway: Williams Creek

City: N Myrtle Beach

County: Horry (26)

Tanita S. Marshall, Project Manager

Date: June 22, 2007

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

To Schedule Inspections
Call before 4:00 pm
24 Hours in Advance
843-280-5560

PERMIT



City of North Myrtle Beach Building Division 1018 2nd Avenue S. N. Myrtle Beach, SC 29582

PERMIT # : BLD2007-01191

ISSUED: 7/13/2007

PROJECT NAME:
Flood Zone: AE15+0

Front Setback: 0.00
Side Setbacks: 0.00
Rear Setback: 0.00

EXPIRES: 1/13/2008

Note: This permit will expire if the work does not commence within 180 days from the date of issuance, or if the authorized work is abandoned for a period of 180 days or more.

SITE ADDRESS: 317 49TH AVE N
1450224019

DESCRIPTION A wooden bulkhead will be removed & replaced with a vinyl bulkhead. The existing dock will be
of WORK: removed and re-attached upon the completion of the bulkhead construction.

OWNER/APPLICANT : TOMMY W BERRY SR. & JO S
311 29TH AVE NORTH
NMB SC 29582

CONTRACTOR : HOMEOWNER
FILED DISCLOSURE STATEMENT
WITH COUNTY

CONDITIONS OF APPROVAL:

1 * PER DHEC PERMIT / OCRM-OCRM-07-509 /
EXPIRATION DATE 12/22/2007.*

The required inspections will be signed by the City Inspection Staff and the Inspector that performs the Certificate of Completion or Certificate of Occupancy will bring this schedule back to the City for permanent record and processing.

INSPECTION SCHEDULE				INSPECTOR Approval	DATE
1.	Temporary Power Pole	☐	☒		
2.	Foundation-Zoning Front ☐ Sides ☒ Rear ☐				
3.	Foundation				
4.	Slab Plumbing				
5.	Slab Mechanical				
6.	Slab - Electric				
7.	Slab Poly wire				
8.	Elevation Certificate (See Instruction # 3 on Back)				
9.	Sheathing - Roof (See Instruction #6 on Back)				
10.	Sheathing - Wall				
11.	Grounding / Bond Pool				
12.	Rough-In Electric				
13.	Rough-In Plumbing				
14.	Rough-In Mechanical ☐ Gas ☐ Hood ☐				
15.	Rough Framing				
16.	Above Ceiling: Electric ☐ Mechanical ☐				
17.	Insulation: Floor ☐ Wall ☐ Ceiling ☐				
18.	Zoning Compliance - Setbacks (See Instruction #7D on Back)				
19.	Subcontractors List (See Instruction #7C on Back)				
20.	Elevation Certificate (See Instruction #7B on Back)				
21.	Sewer/ Water Tap				
22.	Final Electric				
23.	Final Plumbing				
24.	Final Mechanical ☐ and/or Gas ☐				
25.	Final Framing				
26.	Certificate of Occupancy or Completion				
27.	Other:				

City of North Myrtle Beach – Building Division
1018 2nd Avenue South, North Myrtle Beach, SC 29582
OFFICE HOURS - 8:00 a.m. until 5 p.m. Monday – Friday

000276

CALLING FOR AN INSPECTION: (843) 280-5560 (MUST BE CALLED IN BY 4:00 PM)

1. 24-hour notice is required to schedule an inspection.
2. Permit number, address of property and type inspection requesting.
3. Owner or contractor must do all calling. **DO NOT** let your subcontractors call for inspections.
4. Coordinate all inspections, especially in subdivisions where a contractor has more than one house under construction.
5. Inspections that may be required but not circled in no way implies the inspection is not needed.

STAGES IN WHICH TO CALL:

1. When an inspection is made we sign the permit card or leave an inspection report. If a power or gas permit is required we leave it in the permit box or disconnect and a gold sticker is placed on the meter base.
2. A Port-a-John must be on site prior to calling for your temporary service.
3. **Before you pour any concrete**, call for an inspection. You must have your property lines marked and a line from the foundation to the property line, showing your SETBACKS.
4. All **Flood Zone** properties must have under construction **Elevation Certificate** submitted, **approved and on file** with the Building Official **prior** to going vertical with construction.
5. **ROUGH-IN:** Framing, electrical, plumbing, gas, heating and air must be roughed in (We check them all at one time when possible), before insulation. Commercial & multi-family buildings must have fire inspection at this time **(280-5614)**.
6. **ROOF:** A signed letter from the contractor/builder certifying that the roof sheathing/nailing meet the engineers specifications and that the roofing material (e.i. shingles, etc.) have been installed to the manufactures specifications.
7. **After insulating. FINAL:** At this time a power permit is issued, if everything is to code. Building must be complete and ready to move in, except power. Additionally, the following must be completed:
 - ^A **Commercial and multifamily buildings** must have final fire inspection, planning and zoning approvals before calling for a final. They must also have their parking and landscaping complete.
 - ^B **Flood Zone** properties must have a "finished construction" **Elevation Certificate** submitted, **approved and on file** with the Building Official **prior to scheduling a final for power**.
 - ^C **Sub-Contractor's Roster Card** must be submitted to the City's Business License Department for an approval number **prior to scheduling a final inspection**.
 - ^D **Residential 1 & 2 Family – Must locate and string all property pins** or submit an as-built survey to the Zoning Administrator (NO Faxes or copies of faxes) Deliver Survey to office or have on site.
8. **Certificate of Occupancy:** after the power is turned on and everything has been completed, then make sure everything works and is safe. Commercial and Multi-family buildings required an inspection by the following departments: **Building and Zoning:** 280-5560, **Fire:** 280-5614 and **Public Works:** 280-5685.

THIS PERMIT ALONG WITH A SET OF PLANS AND YOUR SUBCONTRACTOR ROSTER CARD MUST BE DISPLAYED AT THE ADDRESS ON THE PERMIT DURING THE ENTIRE PERIOD OF CONSTRUCTION. THIS CITY INSPECTOR WILL TAKE THIS PERMIT INSPECTION SCHEDULE BACK TO THE CITY FOR PERMANENT RECORDING.

THIS PERMIT IS GOOD FOR AS LONG AS YOU ARE WORKING, JUST SO YOU DO NOT STOP FOR A PERIOD OF SIX MONTHS (YOU MUST HAVE AN INSPECTION WITHIN EVERY SIX MONTHS FOR THE PERMIT TO STAY VALID). PERMITS MAY BE REVOKED OR SUSPENDED FOR ANY VIOLATIONS OF ANY REGULATIONS IN EFFECT BY ORDINANCE OR OTHERWISE.



000277

C. Earl Hunter, Commissioner

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

CEASE AND DESIST DIRECTIVE

July 23, 2007

Mr. Tommy Berry
317 49th Avenue N
North Myrtle Beach, SC 29582

RE: Unauthorized fill and bulkhead in tidelands critical area

Dear Mr. Berry:

A recent site visit has revealed that unauthorized material has been placed in the tidelands critical area of your property located at 317 49th Avenue N, North Myrtle Beach, Horry County, South Carolina (TMS#145-02-24-019), without the proper OCRM authorization. It is our understanding that material consisting of fill dirt and approximately 175 linear feet of vinyl bulkhead was placed along a canal and along Williams Creek. This activity has not been permitted or otherwise legally authorized by OCRM. Information available to this office indicates that you are responsible for the work described above as the property owner and the person performing the work.

Such activity is a violation of Sections 48-39-50, 130, 160 and 170 of the 1977 Coastal Zone Management Act, as amended, which requires that any activity in, or alteration of, the critical area be permitted or be otherwise legally authorized by the OCRM. As a result of this violation of the Act, OCRM is required to take appropriate corrective action and can assess administrative fines.

You are hereby directed to cease and desist immediately from placing any more material along the canal or creek at the site referenced above. If you do not comply with this request, please be advised that the Department, pursuant to Reg. 72-313, will issue a stop work order and seek a temporary injunction in Circuit Court if necessary. Please contact my office at (843) 238-4528 if there are any questions regarding this directive.

Sincerely,

Sean M. Briggs
Enforcement and Compliance Project Manager

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

000278

cc: Curtis Joyner, Critical Area Section Manager SCDHEC/OCRM
Barbara Neal, Director, Regulatory Programs Division SCDHEC/ OCRM
Van Whitehead, Staff Attorney SCDHEC/OCRM



G. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

NOTICE OF VIOLATION

July 25, 2007

Mr. Tommy Berry
317 49th Avenue N
North Myrtle Beach, SC 29582

Re: Unauthorized fill and bulkhead in the tidelands critical area.

Dear Mr. Berry:

This letter will serve as notice of violation of the South Carolina Coastal Zone Management Act. Specifically, the following activity was observed:

Description of Activity: the unauthorized installation of a bulkhead and fill in the tidelands critical area

Site Location: On and adjacent to Williams Creek at 317 49th Avenue N, North Myrtle Beach, Horry County, South Carolina (TMS#145-02-24-019).

Specific Program Violation: South Carolina Coastal Zone Management Act for an activity in the tidelands critical area.

This notice is not necessarily indicative of a formal enforcement and OCRMI may or may not pursue additional action. Should further action be required, you will be contacted shortly by OCRMI. This additional contact may be for the purpose of scheduling an enforcement conference and/or pursuing an enforcement consent order. Possible administrative penalties may also be discussed at this time. This action may also be pursued as outlined in Section 48-39-170 (A) of Chapter 39 of Title 48 of the 1976 Code, as Amended.

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

Sincerely,

Sean M. Briggs
Enforcement and Compliance Project Manager
Regulatory Programs Division



000280

C. Earl Hunter, Commissioner

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

ADMISSIONS LETTER

July 25, 2007

Mr. Tommy Berry
317 49th Avenue N
North Myrtle Beach, SC 29582

Re: Unauthorized fill and bulkhead in the tidelands critical area.

Dear Mr. Berry:

As you have previously been informed by the **Notice of Violation**, the construction of bulkhead in tidelands critical area adjacent to Williams Creek at 317 49th Avenue N, North Myrtle Beach, Horry County, South Carolina (TMS#145-02-24-019), has not been permitted or otherwise legally authorized by OCRM. The South Carolina Coastal Zone Management Act, S.C. Code Ann. §§48-39-10 et seq. (Supp. 2006), requires that any construction or other activity in the coastal zone be permitted or otherwise legally authorized by OCRM.

OCRМ is mandated by law to enforce the provisions of the Act. Pursuant to Reg. 30-8(F)(1), this Admissions letter is being issued, along with findings of fact, which have been drafted after an investigation by OCRM staff. Please find a copy of these findings of fact enclosed. Reg. 30-8(F)(2) provides that the responsible party must either admit these facts or send OCRM their version of the facts, along with any other information you might wish us to consider, **by August 14, 2007**. A failure to respond will result in a conclusion by the Department that you admit the truth of these facts.

Should your response indicate that more investigation is necessary, OCRM will contact you. If you have any questions concerning this notice, you may contact me at (843) 238-4528, Ext. 149. Thank you for your prompt attention to this matter.

Sincerely,

Sean M. Briggs
Enforcement and Compliance Project Manager
Regulatory Programs Division

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
PROPOSED FINDINGS OF FACTS

1. Mr. Tommy Berry is the owner of certain property abutting the critical area regulated by the S. C. Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (OCRM), and located on and adjacent to Williams Creek at 317 49th Avenue N, North Myrtle Beach, Horry County, South Carolina (TMS#145-02-24-019).
2. Mr. Tommy Berry, as the property owner and/or entity who authorized the work, is responsible for the unauthorized activity at the above location.
3. The installation of the following has not been permitted or otherwise legally authorized by the OCRM as required by law and is therefore considered unauthorized: construction of a bulkhead and approximately 3500 square feet of fill in the tidelands critical area.
4. Please state any additional facts that you deem pertinent to this investigation and return to OCRM by August 14, 2007.

cc: Van Whitehead, DHEC-OCRM, Staff Attorney
Barbara Neale, DHEC-OCRM, Director of Regulatory Division
Megan Dangerfield, DHEC-OCRM, Coordinator of Enforcement and Compliance
Curtis Joyner, DHEC-OCRM, Manager of Critical Area Permitting



000283

G. 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 continued 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

000284

cc: Elizabeth Dieck
Curtis Joyner
Barbara Neale

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

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 ERR 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

BOARD:
Paul C. Aughry, III
Chairman
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Vice Chairman
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Secretary



000294

Henry C. Scott

M. David Mitchell, MD

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C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

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 3937 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." **JUN 15 2010**

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

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

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

Plaintiffs,

vs.

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

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2010-CP-26-6091

**DEPARTMENT'S MOTION TO
DISMISS [RULE 12(b)(1), SCRPC]**

FILED
2010 AUG 12 PM 12:56
CLERK OF COURT
MELANIE HIGGINS-WARD
CANCELED

Comes now the Respondent South Carolina Department of Health and Environmental Control (DHEC, or "the Department") and respectfully requests this Court grant the Department's Motion to Dismiss in accordance with Rule 12(b)(1), SCRPC.

FACTUAL BACKGROUND

Plaintiffs' property that is the subject of this civil action falls within the jurisdiction of the Coastal Zone Management Act.

Plaintiffs constructed a bulkhead and concrete driveway; installed a fence and placed approximately 2,639 square feet of fill dirt in the tidelands critical area without a permit and in violation of the Coastal Zone Management Act.

As a result of Plaintiffs' unauthorized activities, the Department issued Administrative Order 07M-012S on April 26, 2010 which assessed a civil penalty and required Plaintiffs to submit a restoration plan to return the impacted area to its condition prior to the unauthorized activities referenced in the Order.

Plaintiffs sought review of Administrative Order 07M-012S by the South Carolina Board of Health and Environmental Control ("Board").

FILED
2010 AUG 27 PM 12:48
CLERK OF COURT
MELANIE HIGGINS-WARD

On June 10, 2010, the Board denied Plaintiffs request for a Final Review Conference. Now Plaintiffs seek judicial review of the Department's Administrative Order. Plaintiffs assert that, per S.C. Code Ann. § 48-39-180 (1976), this Court has subject matter and personal jurisdiction over this case.

ARGUMENT

S.C. Code Ann. § 48-39-180 (1976) does not confer jurisdiction on this Court to adjudicate this matter.¹ Accordingly, Civil Action No.: 2010-CP-26-6091 should be dismissed with prejudice for the following reasons:

1. Plaintiffs are not seeking redress of a *permit application denial*, but rather they are asking this Court to overturn the above-referenced Administrative Order that was issued because Plaintiffs were doing work without a permit. S.C. Code Ann. § 48-39-180 (1976) applies to permit applications, not Administrative Orders. See *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (Sup. Ct. 1995) ("... argument that S.C. Code Ann. § 48-39-180 (1987) required the circuit court to conduct a *de novo* review is without merit. Section 48-39-180 expressly applies only to persons who have *actually applied* for a permit or those adversely affected by an *existing* permit. As Grant admits he never applied for a Coastal Council permit, section 48-39-180 does not apply in this case.").

2. Even if judicial review of Administrative Orders was permissible under S.C. Code Ann. § 48-39-180 (1976), the Plaintiff's Order has not been "finally denied" as required by S.C. Code Ann. § 48-39-180 (1976). In order for a denial to be "final", the Plaintiffs must comply with the requirements of S.C. Code Ann. § 44-1-60 (1976). The steps set forth in S.C. Code §

¹ S.C. Code Ann. § 48-39-180 (1976) "Any applicant whose *permit application* has been finally denied, revoked, suspended or approved subject to conditions of the department, or any person adversely affected by the permit, 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 review of the department's action 'de novo' ..." (Emphasis added).

Ann. 44-1-60 require the following: (a) SCDHEC staff decision (b) a SCDHEC Board Decision, and (c) a contested case hearing decision by the South Carolina Administrative Law Court ("ALC"). When a Plaintiff fails to request a contested case hearing, there is no appealable final administrative decision because the Plaintiff has not exhausted all administrative remedies.

Oakwood Landfill, Inc v. SC Dept. of Health and Envtl. Control, 381 S.C. 120, 132, 671 S.E2d. 646, 658 (Ct. App. 2009) (until the ALC ruled on the DHEC's approval of landfill capacity there was no final agency decision on the merits in the case and Appellants had not exhausted all of their administrative remedies).

WHEREFORE, for the reasons stated above, the Department respectfully requests that the Court issue an Order dismissing this contested case with prejudice.

S.C. DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL



Bradley D. Churdar
S.C. Bar. # 12829
Chief Counsel, OCRM
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405
(843) 953-0213
(843) 953-0201 (fax)
churdabd@dhec.sc.gov

Attorney for Defendant

Charleston, South Carolina
August 11, 2010

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2009-CP-26-5436

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

Petitioners/Plaintiffs,

vs.

MOTION TO RECONSIDER ORDER
 GRANTING THE DEFENDANT'S MOTION
 TO DISMISS UNDER 12(B)(1) DUE TO LACK
 OF SUBJECT MATTER JURISDICTION

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

Respondent/Defendant.

FILED
 COUNTY
 2011 APR -6 PM 4:17
 MELANIE HUGGINS-WARD
 CLERK OF COURT

COMES NOW, the Plaintiffs' ("Berrys") Motion to Reconsider, pursuant to Rules 2 and 59 of the South Carolina Rules of Civil Procedure, through their undersigned Counsel, requesting an Order of the Court to set aside (and/or grant their motion to reopen) the order dismissing of the Berrys' petition on the basis of subject matter jurisdiction. In support of this Motion, the Berrys present and argue the following exceptions identified in Paragraph A, B, C and D of this Motion. In support of their Motion to Reconsider, the Berrys have included the following relevant documents:

Exhibit No. 1: Berrys' Permit Application submitted by Dr. H. Wayne Beam, the former Deputy Commissioner of DHEC-OCRM, on February 2, 2007 (two pages);

Exhibit No. 2: DHEC-OCRM's Technical Summary of Review prepared by Tanitra S. Marshall regarding the Berrys' critical area permit number: OCRM-07-509 dated February 2, 2007, (three pages);

Exhibit No. 3: DHEC-OCRM's Project Assignment Sheet was prepared by Tanitra S. Marshall regarding the Berrys' critical area permit numbered: OCRM-07-509 dated **February 2, 2007**, (one page);

Exhibit No. 4: DHEC-OCRM's Permit Application Public Notice dated February 16, 2007, regarding Permit Number: OCRM-07-509, (one page);

Exhibit No. 5: Berrys' critical area permit numbered: OCRM-07-509 was issued by DHEC-OCRM on **March 7, 2007**, (six pages), and, also, includes:

4-1. Site Plan for the installation of a vinyl bulkhead on Lot 17, dated January 25, 2007; and

4-2 Engineered specification for the installation of a vinyl bulkhead on Lot 17 dated January 25, 2007.

Exhibit No. 6: Construction Authorization issued on **June 22, 2007**, to construct a vinyl bulkhead on the Berrys' property under Permit OCRM-OCRM-07-509, (one page);

Exhibit No. 7: DHEC-OCRM's Letter to the Berrys dated **September 5, 2007**, from Tanitra S. Marshall regarding a misprint in their approved critical area permit numbered: OCRM-07-509, (one page);

Exhibit No. 8: DHEC-OCRM's Notice of Intent (Letter) to Revoke the Berrys' critical area permit numbered: OCRM-07-509 dated **August 2, 2007**, (one page);

Exhibit No. 9: DHEC-OCRM's Administrative Order(07M-0128) of Revocation of the Berrys' critical area permit numbered: OCRM-07-509 dated **April 27, 2010**, (thirty-five pages);

Exhibit No. 10: Berrys' Appeal of SCDHEC-OCRM's Administrative Order (07M-0128) filed on **May 11, 2010**, with the office of The Commissioner, Chief of Staff, and Clerk of SCDHEC-OCRM (ten pages); and

- Exhibit No. 11: DHEC-OCRM's letter dated June 14, 2010, informing the Berrys that S.C. Board of Health and Environmental Council had decided on June 10, 2010, not to conduct a Final Review Conference (two pages).
- Exhibit No. 12: DHEC-OCRM's Notice of Violation and Admissions letter dated July 25, 2007 (two pages).
- Exhibit No. 13: DHEC-OCRM's Proposed Order Granting Departments Rule 12(b)(1) Motion to Dismiss (eight pages).
- Exhibit No. 14: Order Granting Defendant's Motion to Dismiss dated March 25, 2011.

STANDARD OF REVIEW

Pursuant to Rule 12(b)(1), SCRCP, the movant challenges the power of the court over the subject matter. "The question of subject matter jurisdiction is a question of law for the court." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App., 2009) (citing *Bargesser v. Coleman Co.*, 230 S.C. 562, 96 S.E.2d 825 (1957)). The motion may be supported by, and the court may consider, affidavits or other evidence necessary to determine the question of jurisdiction. *Id.*

Furthermore, absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in S. C. Code Ann. § 14-3-330 (1976 & Supp. 1994). Because an order denying a Rule 12(b)(1) motion to dismiss does not fall into any of these categories, such orders are not immediately appealable¹. *Woodard v. Westvaco Corp.*, 319 S.C. 240,

¹ An order *denying* a motion to dismiss for lack of subject matter jurisdiction does not *finally* determine anything. See *McLendon v. South Carolina Dep't of Highways and Pub. Transp.*, 313 S.C. 525, 443 S.E.2d 539 (1994) (like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage in the proceedings). Consequently, while such orders may involve a substantial right, they do not fall under § 14-3-330(2)(a) because they do not in effect determine

460 S.E.2d 392 (1995), *overruled on other grounds by Sabb v. South Carolina State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002).

STATEMENT OF THE FACTS

1. On February 2, 2007, DHEC-OCRM received a permit application from Dr. H. Wayne Beam on behalf the Berrys for the alteration of the critical area on their property pursuant to Coastal Zone Management Act (Act 123) of the 1977 South Carolina General Assembly. The Berry's proposed permit application, in relevant part, provided:

APPLICANT:	T. W. Berry c/o Dr. H. Wayne Beam P. O. Box 11863 Columbia, S. C. 29211-1863
LOCATION:	On and adjacent to a man-made canal off of Williams Creek at 317 49 th Ave. 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 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.

the action and prevent a judgment from which an appeal might be taken or discontinue the action. For the same reason, such orders do not "involve the merits" under § 14-3-330(1). See *Mid-State Distributors v. Century Importers*, 310 S.C. 330, 426 S.E.2d 777 (1993) (for an order to "involve the merits" as that term is used in § 14-3-330, it must *finally determine* some substantial matter forming the whole or a part of some cause of action or defense).

2. Berrys' critical area permit application included attached professional drawings: *a plat of their residence and the affected property, and an as-built survey for the installation of the new vinyl bulkhead*, that were acknowledged by the department to be complete, and correctly stamped, signed, and sealed by their professional engineer David R. Simms, P.E. The professional draws are attached hereto, and marked as **Exhibits 4-1, and 4-2**. Further, the department never sent a letter to the Berrys indicating that their professional drawings needed work, or were incorrect. Additionally, the department never revoked the Berrys' critical area permit on the grounds that fraudulent information had been provided by them in accordance with S. C Code Ann. § 48-39-50(H).

3. On March 7, 2007, DHEC-OCRM issued a critical area permit numbered OCRM-07-509 to the Berrys for the replacement of a bulkhead on their property. Specifically, the permit authorized the removal and replacement of a **155' long wooden bulkhead** located on their northern and western property lines with a vinyl bulkhead² to be built in the same location. **It is undisputed that the Berrys constructed the 155' long wooden bulkhead in the exact location designated in the above referenced permit.**

4. On August 2, 2007, Tanitra S. Marshall ("Marshall"), DHEC-OCRM Wetland Project Manager, issued a Notice of Intent to Revoke a letter to the Berrys regarding their critical area permit (OCRM-07-509), notwithstanding the fact that they had constructed their vinyl bulkhead in accordance with the approved drawings attached to their permit.

² R.301(D)(22)(b) entitled Critical Area permitting Regulations defines a Bulkhead as follows: a retaining wall designed to retain fill material, but not to withstand wave forces on an exposed shoreline.

5. On April 27, 2010, DHEC-OCRM issued and mailed Enforcement/Administrative Order 07M-012S ("Enforcement Order") to the Berrys. The Enforcement Order incorrectly required the Berrys to pay: (1) within fifteen (15) days of the effective date of this Enforcement 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.

6. On May 11, 2010, the Berrys filed an Appeal in response to DHEC-OCRM's Enforcement Order, and argued that the findings of fact and conclusions of law were incorrect as stated in the Enforcement Order (07M-012S).

7. On June 14, 2010, the Berrys were notified by DHEC-OCRM that the South Carolina Board of Health and Environmental Control Board ("Board") had decided not to conduct a final review conference regarding revocation of the Berrys' critical area permit through their Enforcement Order 07M-012S. Accordingly, DHEC-OCRM's Enforcement Order 07M-012S became the "final agency decision" 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 (Enforcement Order) becomes the *final agency decision* . . ."

In response to the Court dismissing the Berrys' petition for judicial review in circuit court, they, respectfully, assert the following exceptions to the Court's Order:

A. Berrys argue, respectfully, that the Court erred in concluding that the Circuit Court lacked subject matter jurisdiction to review their petition of the Department's

suspension, and/or revocation of their critical area permit (OCRM-07-509) under S.C. Code Ann. § 48-39-180, 1976, as amended. Specifically, the Court erred in interpreting the language of the S.C. Code Ann. § 48-39-180 to exclude the review of enforcement orders to the extent that it divests the Circuit Court of its concurrent jurisdiction, and defeats the plain legislative intent of the statute.

1. Interpretation of S. C. Code Ann. § 48-39-180.

a. *Rules of Statutory Construction*

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislature's intent. Chem-Nuclear Sys., LLC v. S.C. Bd. of Health and Env'tl. Control, 374 S.C. 201, 205, 648 S.E.2d 601, 603 (2007); Clear and unambiguous statutes require no statutory construction and should be applied by the court according to their literal meaning. Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007); The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. State v. Sweat, 379 S.C. 367, 665 S.E.2d 645, 650 (Ct. App. 2008) Under the "plain meaning rule," it is not the court's place to change the meaning of a clear and unambiguous statute. Vaughn v. Bernhardt, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001) (citing Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). When reasonably possible, statutes in apparent conflict should be interpreted to allow both to stand. Nat'l Adver. Co., Inc. v. Mount Pleasant Bd. of Adjustment, 312 S.C. 397, 400, 440 S.E.2d 875, 877 (1994); Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992); Powell v. Red Carpet Lounge, 280 S.C. 142, 145, 311 S.E.2d 719, 721 (1984); see also Florence County v. Moore, 344 S.C. 596, 545 S.E.2d 507 (2001) ("Our goal in construing statutes is to harmonize conflicting statutes when ever possible and to prevent an interpretation that would lead to a result that is plainly absurd."). see State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) ("In seeking the intention of the legislature, we must presume that it intended by its actions to accomplish something and not to do a futile thing."). Spectre.

LLC v. South Carolina Dept. of Health and Environmental Control, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010) (“Repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation.”) (Quoting from *Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc.*, 368 S.C. 137, 141-42, 628 S.E.2d 38, 41 (2006), citing *Mims v. Alston*, 312 S.C. 311, 440 S.E.2d 357 (1994). Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them. *Id.*, citing *City of Rock Hill v. South Carolina DHEC*, 302 S.C. 161, 167, 394 S.E.2d 327, 331 (1990). Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect. *Wilder v. South Carolina Hwy. Dep’t*, 228 S.C. 448, 90 S.E.2d 635 (1955); see also *Wooten ex rel. Wooten v. S.C. Dep’t of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) (a specific statutory provision prevails over a more general one).

2. Applying the Rules of construction above to S. C. Code Ann. § 48-39-180.

S. C. Code Ann. § 48-39-180 concerns the circuit court’s judicial review of permit determinations made, in the first instance, by the Department. The statute provides:

Any applicant whose permit application has been *finally denied, revoked, suspended or approved subject to conditions of the department*, or any person adversely affected by the permit, *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 review of the department's action “de novo” or to determine whether the department's action so restricts or otherwise affects the use of the property as to *deprive the owner of Enforcement existing practical use and is an unreasonable exercise of the state's police*

power because the action constitutes the equivalent of taking without compensation.

In the present case, the Berrys argue the Court's exclusion of the Berrys' "Enforcement/Administrative Order 07M-012S" from judicial review, under S. C. Code Ann. § 48-39-180, is improper, and in violation of the Rules of Statutory Construction as described above. It also, deprives and divests them (as suspended or revoked permittees) of their constitutional rights, judicial remedies, and compensation as expressly set forth in the language of the statute.

In the present case, the Berrys are suspended or revoked permittees that, clearly, fall within the jurisdiction of S.C. Code Ann §§ 48-39-10, et seq., Coastal Zone Management Act. Accordingly, based on the clear, plain, and unambiguous language of S. C. Code Ann. § 48-39-180, the Berrys' "Enforcement/Administrative Order 07M-012S" is, also, governed by the provisions of this statute in order to protect their rights and civil remedies from DHEC-OCRM's unauthorized "Enforcement/Administrative Order 07M-012S" for the reasons, previously, discussed in the Berrys' statement of facts. *See Media General Communications, Inc. v. South Carolina Dept. of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.").

Further, the Berrys challenge DHEC-OCRM's Enforcement Order not on administrative, but, rather on a judicial and/or civil claims basis due to the unique facts and circumstances involved in this particular case. For example, if DHEC-OCRM' was negligent in processing the Berrys' permit application and attachments, then who pays for the removal and replacement of the

bulkhead: the Berrys or Department? Next, if DHEC-OCRM's removal of bulkhead causes catastrophic failure to the structural foundation of the Berrys' residence and damages it beyond repair, then who pays for the reconstruction of the Berrys' residence between the parties? Further, does the Department's unauthorized removal of the bulkhead so restrict or otherwise deprive the Berrys of all existing practical use of their property? Additionally, if the Department's unauthorized removal action (administrative order) is an unreasonable exercise of the state's police power, then are the Berrys entitled to just compensation under S. C. Code Ann. § 48-39-180?

Accordingly, the above-mentioned issues (legal and factual) with question marks are involved in the record of this case, and are more judicial and/or civil in nature rather than administrative. As such, the Berrys contend that the circuit court is better equipped to deal with these issues (legal and equitable) instead of the ALJ. See South Carolina Dept. of Consumer Affairs v. Foreclosure Specialists, Inc. 390 S.C. 182, 700 S.E.2d 468 (Ct. App. 2010) ("The ALC has no authority to decide civil matters or to award monetary damages in cases.").

- B. Berrys argue, respectfully, that the Court erred in concluding that ALJ has exclusive jurisdiction, under S.C. Code Ann. § 44-1-60(G), 1976, as amended, to hear "[a]ll department decisions involving the issuance, denial, ... suspension, or revocation of permits obtained under the Coastal Zone Management Act ("CZMA"). Further, the Berrys argue, respectfully, that the Court erred in concluding that they had not complied with provisions of S.C. Code Ann. § 44-1-60.

a. Construction of S. C. Code Ann. 44-1-60

"The cardinal rule of statutory construction is that we are to ascertain and effectuate the actual intent of the legislature." Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). "The words of a statute must be given their plain and ordinary meaning without resorting

to subtle or forced construction to limit or expand a statute's operation." *Elmore v. Ramos*, 327 S.C. 507, 510-511, 489 S.E.2d 663, 665 (Ct. App.1997).

S. C. Code Ann. § 44-1-60 provides in relevant part:

(A) All department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this section.

(G) An applicant, permittee, licensee, or affected person **may** file a request with the Administrative Law Court for a contested case hearing within thirty calendar days after:

In the case at bar, the Berrys assert that the clear and unambiguous language of S. C. Code Ann. § 44-1-60 does not vest the ALJ with exclusive jurisdiction to hear "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits" that arise within the jurisdiction of S.C. Code Ann §§ 48-39-10, et seq., Coastal Zone Management Act ("CZMA"). For example, S. C. Code Ann. § 44-1-60(G)'s use of the term "may," instead of "shall" reflects that the Berrys had an option rather than a mandate to file for a contested case hearing with the ALJ. See *Kennedy v. South Carolina Ret. Sys.*, 345 S.C. 339, 352-53, 549 S.E.2d 243, 250 (2001) (The "use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute."

Further, Title 44, Chapter 1, and, specifically, the language of S. C. Code Ann. § 44-1-60 does not exclude on its face all other relevant rights and remedies of other applicable statutes, like S. C. Code Ann § 48-39-180. See, e.g., S. C. Code Ann. § 42-1-540 (2007) (providing the rights and remedies provided under Workers' Compensation Act "shall exclude all other rights and remedies).

As further evidence of the ALJ and, specifically, S. C. Code Ann. § 44-1-60 lack of exclusive jurisdiction to hear all administrative appeals under CZMA, the Berrys point out that the General Assembly, in 2006, amended S. C. Code Ann. § 48-39-180, along with several other statutes regarding the direction and flow of administrative appeals. Specifically, S. C. Code Ann. § 48-39-180, was, further, amended to read in relevant part:

Any applicant whose permit application has been finally denied, revoked, suspended or approved subject to conditions of the department, or any person adversely affected by the permit, *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 review of the department's action "de novo" or to determine whether the department's action so restricts or otherwise affects the use of the property as to deprive the owner of its existing practical use and is an unreasonable exercise of the state's police power because the action constitutes the equivalent of taking without compensation.

Act No. 387, § 49, 2006 S.C. Acts & Joint Resolutions.

Accordingly, pursuant to the 2006 amendment to S. C. Code Ann. § 48-39-180, the Berrys argue that it was the General Assembly's clear and unambiguous intent not to divest the circuit court of its concurrent jurisdiction to hear administrative appeals from the CZMA, based upon the addition of the following language: "*may obtain judicial review as provided in Chapter 23 of Title 1, or may,*" without deleting the statute's prior language: "*file a petition in the circuit court having jurisdiction over the affected land for a review of the department's action "de novo,*" . Accordingly, the 2006 Amendment to S. C. Code Ann. § 48-39-180 contradicts the legislative intent and/or repeal by implication argument (" Act No. 387") made in the circuit court by Attorney Bradley D. Churdar at the hearing on March 7, 2011, and , also, in his proposed order.

Further, the 2008 amendment to 23 S. C. Code Ann. Regulation 30-8(F) (4), is, further, evidence of the department's clear and unambiguous intent not to divest the circuit court of its concurrent jurisdiction to hear administrative appeals under the CZMA. For example, the 2008 amendment by the Department rewrote paragraph (F)(4) to provide: "**Any persons to whom an order is issued may appeal it pursuant to applicable law, including S.C. Code Title 44, Chapter 1; Title 1, Chapter 23; and Title 48, Chapter 39** [S. C. Code Ann. § 48-39-180]; *cf.* 23A S. C. Code Ann. Regulation. 30-8(F)(4) (Supp.2003) ("Once the Enforcement Order is issued the responsible party has 15 days to appeal the Order to the Administrative Law Judge Division pursuant to R.30-6. Failure to act within 15 days will result in the Department seeking enforcement of the order in Circuit Court.").

Accordingly, the 2008 amendment to 23 S. C. Code Ann. Regulation 30-8(F) (4) permitting review under **Title 48, Chapter 39** [S. C. Code Ann. § 48-39-180], is consistent with the General Assembly's clear and unambiguous intent not to divest the circuit court of its concurrent jurisdiction to hear administrative appeals under the CZMA.

b. Finality of Agency Decision and compliance with S. C. Code Ann. § 44-1-60.

S. C. Code Ann. § 44-1-60(F), in relevant part, provides:

No later than sixty days after the date of receipt of a request for final review, a final review conference must be conducted by the board, its designee, or a committee of three members of the board appointed by the chair. **If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision....**

In the present case, when the Board declined to conduct a final review conference on June 10, 2010, it affirmed the department's Enforcement Order (07M-012S) which became the "final agency decision" under S. C. Code Ann. § 44-1-60(F). As additional evidence, DHEC's Attorney

Bradley D. Churdar admitted, in his Proposed Order submitted to the Court on March 13, 2011, that the Berrys had "received a "final agency decision" from the Department" (Exhibit No. 12, ¶ 3 at Page 6).

Furthermore, since the ALJ is no longer considered a defined part of the DHEC "Agency," the Berrys, need not request a contested case hearing with the ALJ to exhaust all of their administrative remedies. See S. C. Code Ann. § 1-23-310(2) (2005), as amended by Act. No. 334, § 3, 2008 S.C. Acts 3301, 3303 (defining "agency" as "each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases") (emphasis added); see the 2008 amendment, in item (2) of § 1-23-310, eliminated the "administrative law judge division" from the definition of an "Agency". See Guerard v. Whitner 276 S.C. 521, 280 S.E.2d 539 (1981)(Coastal Council is an Agency). Further, S. C. Code Ann. § 48-39-180 gives the Berrys the right to elect between filing a petition in the circuit court or with the ALJ under Chapter 23 of Title 1. The Berrys choose to file their petition in the circuit court instead of the ALJ because of the possible involvement of issues of negligence and damages on the part of the DHEC-OCRM.

C. Berrys argue, respectfully, that the Court erred in interpreting the language of S. C. Code Ann. 1-23-380, 1976, as amended, to the extent that it concluded that the Circuit Court lacked subject jurisdiction to hear "preliminary, procedural, or intermediate agency action" appeals arising from the Department's suspension, or revocation of a permittee's permit like the Berrys. Specifically, the Berrys assert that even if they failed to exhaust their administrative remedies, which is expressly denied, the Court erred in concluding that exhaustion before the ALJ was required in this case since final review of agency decision by the ALJ would not have provided the Berrys with an adequate remedy.

South Carolina, like most jurisdictions, recognizes exceptions to the exhaustion of administrative remedies requirement. The general rule is that administrative remedies must be

exhausted absent circumstances supporting an exception to application of the general rule. Andrews Bearing Corp. v. Brady, 261 S.C. 533, 536, 201 S.E.2d 241, 243 (1973); Ex parte Allstate Ins. Co., 248 S.C. 550, 567, 151 S.E.2d 849, 855 (1966). A commonly recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of administrative remedies would be a vain or futile act. Moore v. Sumter County Council, 300 S.C. 270, 273, 387 S.E.2d 455, 458 (1990); Ward v. State, 343 S.C. 14, 19, 538 S.E.2d 245, 247 (2000)(requiring a party to go before an agency or ALJ who cannot rule on the constitutionality of a statute would be a futile act); Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue, 342 S.C. 34, 39, 535 S.E.2d 642, 645 (2000); Stinney v. Sumter School Dist. 17, 382 S.C. 352, 675 S.E.2d 760 (Ct. App. 2009)(unable to seek damages in a direct appeal). "Futility, however, must be demonstrated by a showing comparable to the administrative agency taking 'a hard and fast position that makes an adverse ruling a certainty.' " Law v. S.C. Dep't of Corr., 368 S.C. 424, 438, 629 S.E.2d 642, 650 (2006) (citing Thetford Props. IV Ltd. P'ship v. U.S. Dep't of Hous. & Urban Dev., 907 F.2d 445, 450 (4th Cir.1990)). Another exception to the exhaustion requirement is recognized when an agency has acted outside of its authority. Responsible Econ. Dev. v. S.C. Dep't of Health & Envtl. Control, 371 S.C. 547, 553, 641 S.E.2d 425, 428 (2007).

Analogous to the cases cited above, in the instant case, if the ALJ cannot hear the Berrys' civil or equitable claims, then a contested case hearing would likely prove to be futile exercise, and leave the Berrys without an adequate remedy at law. See S. C. Code Ann. 1-23-380 of the South Carolina Code (Supp.2009) (provides in pertinent part, "*A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency*

decision [by the ALJ] would not provide an adequate remedy." Id., see also Jean Hoefer Toal, et al., Appellate Practice in South Carolina 49 (2d ed. 2002).

Here, because of the numerous evidentiary, procedural, civil, and equitable issues involved in this case as argued at the hearing, the Berrys assert that exhaustion would be impracticable under these set of facts. Accordingly, further, review by the ALJ would not provide them with an adequate remedy at law based on the following exceptions set forth below:

1. ALC has no authority to decide civil matters or award compensation damages regarding the issues of record in this case. *See South Carolina Dept. of Consumer Affairs v. Foreclosure Specialists, Inc.* 390 S.C. 182, 700 S.E.2d 468 (Ct. App. 2010) ("The ALC has no authority to decide civil matters or to award monetary damages in cases.") ("[R]egulatory bodies ... have only the authority granted them by the legislature."); *see also* Randolph R. Lowell, *South Carolina Administrative Practice and Procedure*, 152 (2d ed. 2008);
2. ALC has no authority to make findings of fact and conclusions law as to whether the department's alleged illegal enforcement action so restricts or otherwise affects the Berrys' permanent use of their property to deprive them of their practical existing use. For example:
3. ALC has no authority to make findings of fact and conclusions law as to whether the department's alleged illegal enforcement action is an unreasonable exercise of the state police power;
4. ALC has limited or no authority to make findings of fact concerning whether certain equitable defenses asserted in Berrys' petition estop the department's alleged unauthorized enforcement order to revoke their critical area permit;
5. ALC has no inherent powers and limited equitable powers at best through which it may grant the equitable relief requested by the Berrys to protect them from the department's alleged unauthorized enforcement order to revoke their critical area permit; and
6. ALC has no legal authority or limited equitable powers at best to make findings of fact and/or conclusions law to determine who should pay for the restoration plan, including the corrective action to return the alleged impacted critical area at the Berrys' residence to its alleged pre-existing condition including the removal of their new vinyl bulkhead and associated fill, as well as a planting schedule to replace marsh vegetation, if it is determined that

both parties are responsible and/or at fault for the alleged unauthorized activity described in the Enforcement Order.

- D. Berrys argue, respectfully, that even if they timely asserted their rights mistakenly in the wrong forum, which is expressly denied, the doctrine of equitable tolling applies. However, at the motion hearing on March 7, 2011, it was the stated position of DHEC-OCRM's Attorney Bradley Churdar that if the Court granted the Department's motion to dismiss, then the Berrys would be jurisdictional precluded from requesting a contested hearing before the ALJ.

Although this Court need not reach the issue of equitable tolling because the Berrys timely asserted their rights in the right forum, the application of this doctrine nevertheless precludes the dismissal of their petition. In order to serve the ends of justice, South Carolina courts apply the doctrine of equitable tolling to suspend a particular limitations period. *See, e.g., Hooper v. Ebenezer Senior Servs. and Rehab. Ctr.* 386 S.C. 108, 687 S.E.2d 29 (2009) ("In order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations.").

" 'Tolling' refers to suspending or stopping the running of a statute of limitations; it is analogous to a clock stopping, then restarting." 51 Am. Jur. 2d *Limitation of Actions* § 169 (2000). "Tolling may either temporarily suspend the running of the limitations period or delay the start of the limitations period." *Id.* "Equitable tolling is a nonstatutory tolling theory which suspends a limitations period." *Ocana v. Am. Furniture Co.*, 135 N.M. 539, 91 P.3d 58, 66 (2004).

Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. *Rodriguez v. Superior Court*, 176 Cal. App.4th 1461, 98 Cal. Rptr.3d 728 (2009). "Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period 'to ensure fundamental practicality and fairness.' " *Id.* at 736 (citation omitted).

In Hooper, the South Carolina Supreme Court, also, observed that other State and Federal "jurisdictions have considered tolling in a variety of contexts and have developed differing parameters for its application" Id. For example, Kaplan v. Morgan Stanley & Co., --- Vt. ---, ---, 987 A.2d 258, 264 (2009) ("Equitable tolling applies either where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or where the plaintiff has timely raised the same claim in the wrong forum.") (citing Beecher v. Stratton Corp., 170 Vt. 137, 743 A.2d 1093, 1098 (1999)); cf. Machules v. Dep't of Admin., 523 So.2d 1132, 1134 (Fla.1988) (stating the doctrine of equitable tolling, unlike equitable estoppel, does not require deception or misrepresentation by the defendant; rather, it serves to ameliorate the harsh results that sometimes flow from a strict, literalistic application of administrative time limits). Id. See, e.g., Burnett v. New York Central R.R., 380 U.S. 424, 428-30, 85 S. Ct. 1050, 1054-55, 13 L. Ed.2d 941 (1965) (wrong forum).

Although there is no South Carolina decision pertaining to the application of equitable tolling to administrative proceedings, the considerations and rationals discussed in above mentioned cases support the doctrine's application to the Berry case. For example, the Berrys, like the claimants in Machules v. Dep't of Admin. supra., and Burnett v. New York Central R.R. supra., had only one claim, one right, and one remedy, which they timely filed in the wrong forum.

Further, the Berrys, like the claimants in Machules v. Dep't of Admin. supra., and Burnett v. New York Central R.R. supra., did not sleep on their rights but brought an action within the statutory time period in the, allegedly, wrong forum.

Finally, the Department, as the party relying on the time limitation, clearly, can not claim any undue prejudice by any delay or stale claims since it was aware the Berrys were actively

pursuing their, timely, filed petition in the alleged wrong forum. See Burnett v. New York Cent. R. Co., *supra.*, 380 U.S. at 428, 85 S. Ct. at 1054 (Statutes of limitations are primarily designed to assure fairness to defendants. Such statutes "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." (Quoting from Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342, 348-349, 64 S. Ct. 582, 586, 88 L.Ed. 788.

Permitting equitable tolling, under the present circumstances, is consistent with the flexible application of the doctrine as suggested by the Supreme Court in Hopper in order to provide relief to the aggrieved parties. *Id.* Specifically, the Court held , "[t]he equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.") (quoting Hausman v. Hausman, 199 S.W.3d 38, 42 (Tex. App. 2006)).

For the reasons discussed above, this Court should apply the doctrine of equitable tolling to the unique facts and circumstances in the Berrys' case.

CONCLUSION

Based on the foregoing reasons and analysis, the Berrys request the following legal and equitable relief:

1. That the Court grant the Berrys' Motion to Reconsider based on the exceptions presented and argued including, but not limited to, Paragraphs A, B, C, and D, and then deny DHEC-OCRM's motion to dismiss the Berrys' petition under 12(b)(1), SCRPC;
2. In the alternative, if the Berry's Motion to Reconsider is denied, they request the Court to rule, based on the record compiled at the March 7, 2011 hearing, that the equitable tolling doctrine applies to the unique facts and circumstances in this case; and
3. Further, the Berrys, respectfully, argue that the Court should grant their Motion to Reconsider in order to more fully develop the factual and legal issues involved in the record of this case between the parties for the reasons stated in the body of this Motion. Further, the circuit court, not the ALJ, has the exclusive authority to decide civil matters and/or award damages in cases.

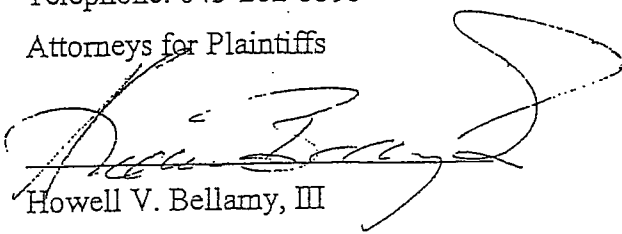
Respectfully submitted

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29TH Ave. N.

Myrtle Beach, S. C. 29577

Telephone: 843-282-5393

Attorneys for Plaintiffs



Howell V. Bellamy, III

Howell V. Bellamy, Jr.

Myrtle Beach, S.C.

April 6, 2011

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2010-CP-26-6091

SCDHEC/OCRM.....Respondent

v.

Tommy W. Berry, Sr. & Jo S. Berry Appellants

NOTICE OF APPEAL

Tommy W. Berry, Sr. & Jo S. Berry appeal the order of the Honorable Benjamin H. Culbertson dated **March 28, 2011**. Appellants received written notice of entry of this order on **April 19, 2011**.

Howell V. Bellamy, III
Howell V. Bellamy, III
Howell V. Bellamy, Jr.
Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.
1000 29th Ave. N.
Myrtle Beach, S. C. 29577
843-282-5393 Telephone
843-448-3022 Fax
E-Mail: hbellamyiii@bellamylaw.com
Attorneys for the Appellants

Bradley Churdar, Esquire
DHEC/OCRM
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
843-953-0213 Telephone
843-722-6020 Fax
E-Mail: churdar@aol.com
Attorney for Respondent

May 16, 2011
Myrtle Beach, South Carolina 29577

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2010-CP-26-6091

SCDHEC/OCRM.....Respondent

v.

Tommy W. Berry, Sr. & Jo S. Berry.....Appellants

PROOF OF SERVICE

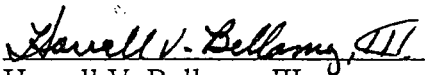
I Lynn Hearl, an employee of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., Counsel for the Appellants, in the above mentioned matter, certify that I have this day sent a copy of the Notice of Appeal by Certified Mail, Return Receipt Requested, with sufficient postage attached thereto as follows:

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Ms. Melanie Huggins
Horry County Clerk of Court
1301 2nd Ave.
Conway, S. C. 29526
843-915-5080

Davis Whitfield-Cargile, Esquire
General Counsel for DHEC/OCRM
1362 McMillan Ave., Suite 400
Charleston, South Carolina 29405

Bradley Churdar, Esquire
DHEC/OCRM
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

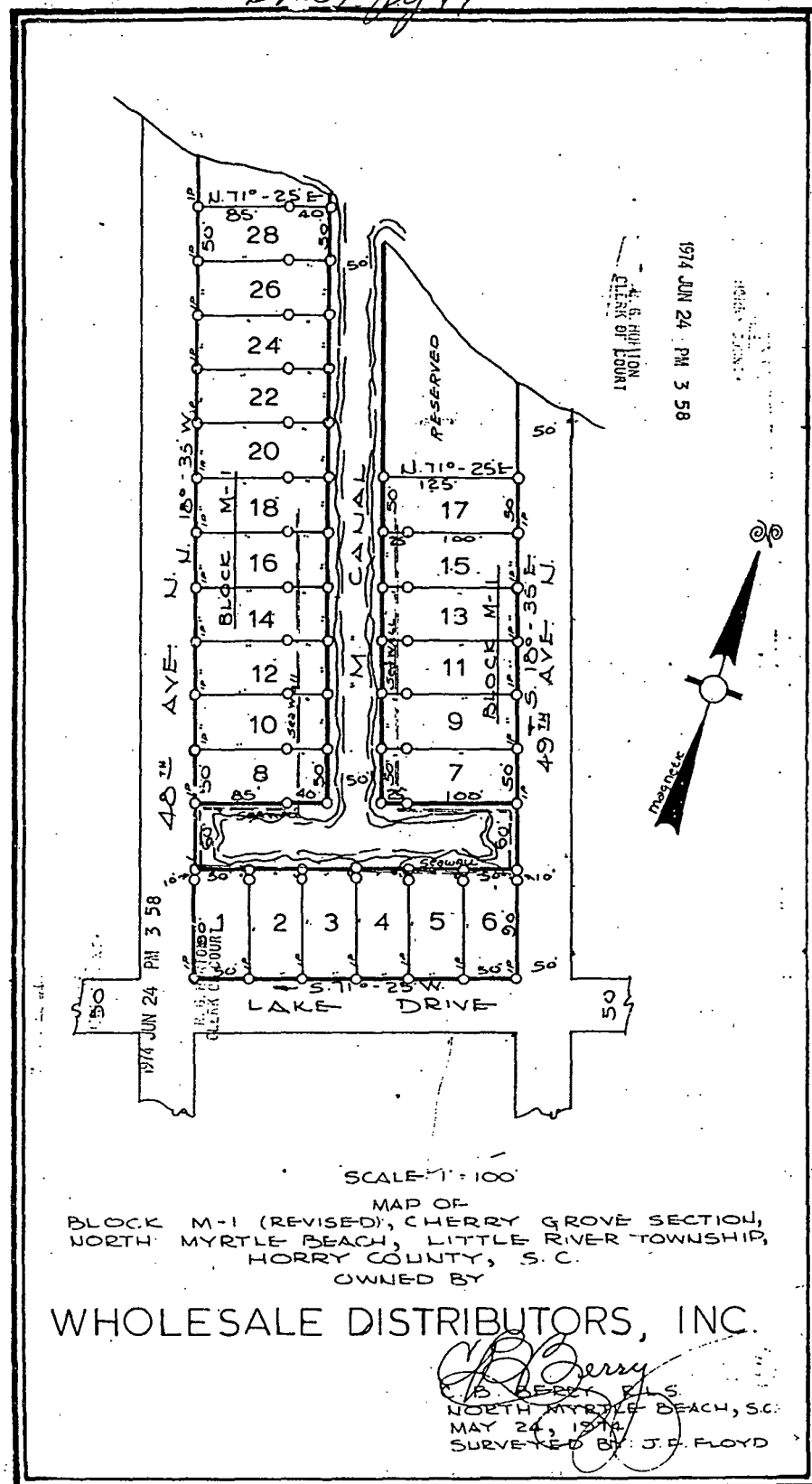

Howell V. Bellamy, III
Howell V. Bellamy, Jr.
Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.
1000 29th Ave. N.
Myrtle Beach, S. C. 29577
843-282-5393 Telephone
843-448-3022 Fax
E-Mail: hbellaamyiii@bellamylaw.com
Attorneys for the Appellants

May 23, 2011

Myrtle Beach, South Carolina 29577

Bk 57 pg 74

000323

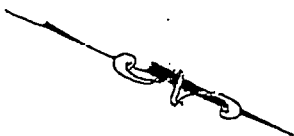


SITE PLAN

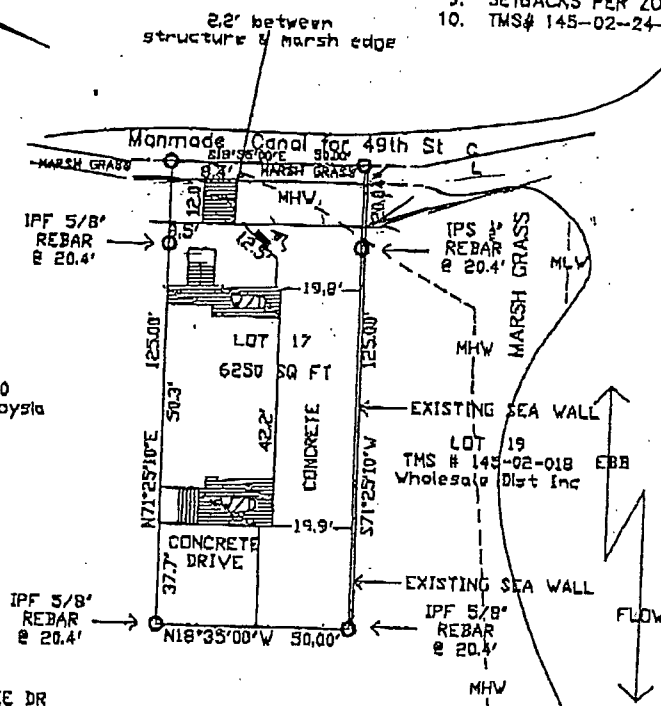
September 25, 2006

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.
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

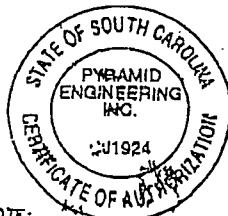
VICINITY MAP
NOT TO SCALE

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



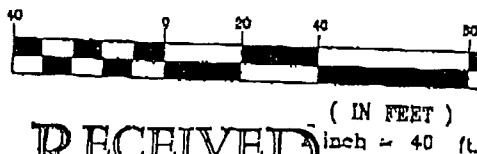
← 400' TO LAKE DR

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



RECEIVED

09/26/06



SEP 27 2006

PROPOSED SITE PLAN

DHEC-OCRM

OF

MYRTLE BEACH OFFICE 49th Ave N Heron Watch

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

SCALE 1"=40'

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

THE PROPERTY OF WALTER H & LINDA W KNOX

DEED REFERENCE IN BOOK 1998 PAGE 1272

PERMIT NUMBER: 55533 DATE: 9/25/06

SEE SPEC
CONDITION

TMS Number correct
1450224019

000325

Gts/th/KNOX/BERRY 9701
SAMAH LAW FIRM
291C HIGHWAY 90 EAST
LITTLE RIVER, SC 29566

STATE OF SOUTH CAROLINA	)	
	)	TITLE TO REAL ESTATE
COUNTY OF HORRY	)	

KNOW ALL MEN BY THESE PRESENTS, that WALTER H. KNOX, III AND LINDA W. KNOX, hereinafter referred to as Grantor, in consideration of FIVE HUNDRED FORTY THOUSAND AND NO/100 (\$540,000.00) DOLLARS, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents, does grant, bargain, sell and release unto TOMMY W. BERRY, SR. and JO S. BERRY, as joint tenants with right of survivorship, and not as tenants in common, hereinafter referred to as Grantees, their heirs, successors and assigns forever, in the following described property:

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

Grantee's Address: 311 29th Avenue North
North Myrtle Beach, SC 29582

Together with all and singular the rights, members, hereditaments, and appurtenances to said premises belonging or in any way incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), as joint tenants with right of survivorship, and not as tenants in common, and grantee's(s') heirs or successors and assigns, forever. And the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s), as joint tenants with right of survivorship, and not as tenants in common, and the grantee's(s') heirs or successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

000327

EXHIBIT "A"

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 is the same property conveyed to Walter H. Knox, III and Linda W. Knox by deed of A. William Moss and Faye L. Moss recorded in the office of the ROD for Horry County in Deed Book 1996 at Page 1272.

TMS#145-02-24-019

000328

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who, being duly sworn, says:

Property located at 317 49th Avenue North, North Myrtle Beach, Horry County, South Carolina, Horry County TMS#145-02-24-019 by transfer from Walter H. Knox, III and Linda W. Knox to Tommy W. Berry, Sr. and Jo S. Berry on February 5, 2007.

This transaction was (Check one):

XX an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$ 540,000.00 *.

_____ not an arm's length real property transaction and the fair market value of the property is \$ _____.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et. seq. Because the deed is _____.

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: SELLER.

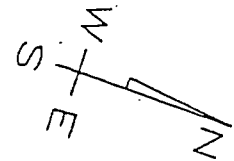
I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Walter H Knox III
WALTER H. KNOX, III
SELLER

SWORN to before me this 5th day of February, 2007.

Notary Public for the State of South Carolina
My Commission Expires: 8/18/2013

The fee is based on the property's real value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.



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

CANAL

EXISTING DOCK
REMOVE AND REINSTALL

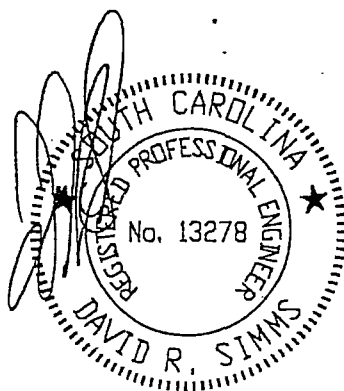
PROPERTY LINE

LOT 20
BOYSIA

EXISTING
RESIDENCE

LOT 18
WHOLESALE DIST.

LOT 19
TMS 145-02-24-019



FOR PERMITTING ONLY
NOT FOR CONSTRUCTION

49th AVENUE NORTH

SITE PLAN

0 10 20 40



1"=20'

APPLICANT:
TW Berry

ACTIVITY: Replace Existing
Bulkhead

LOCATION: Cherry Grove
North Myrtle Beach

COUNTY: Horry

DATE: 1/25/2007

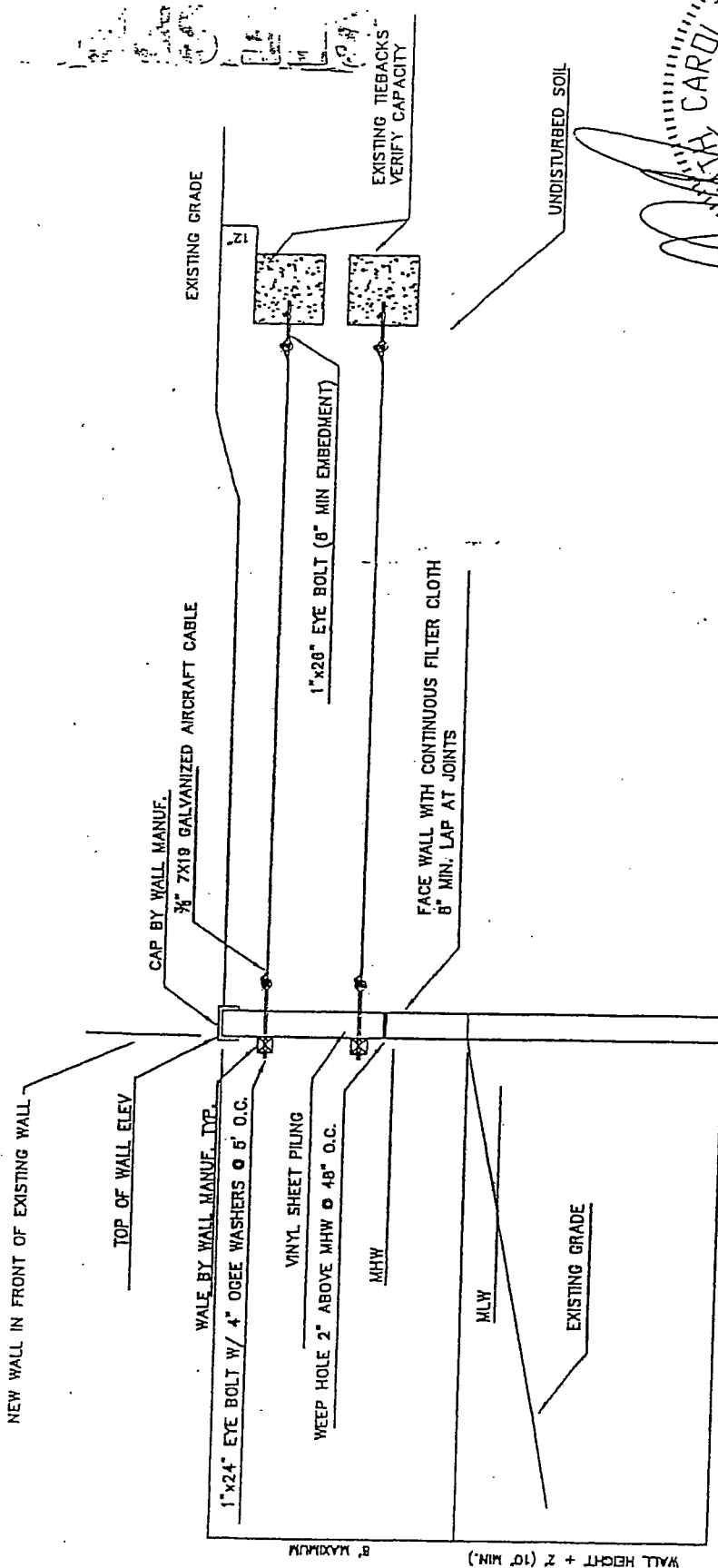
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DHEC-OCRM
MYRTLE BEACH OFFICE

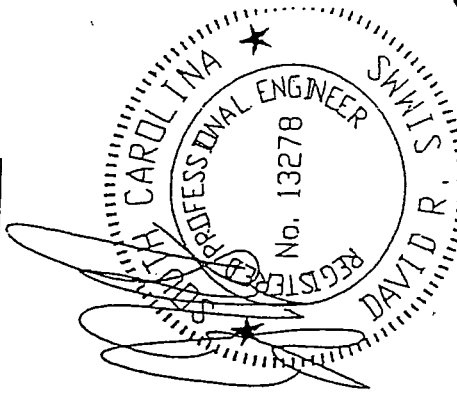
SHEET 2 OF 3

P/N#



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

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

HOWELL V. BELLAMY, JR.
JOHN K. RUTENBERG
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY**
EDWARD S. BOWERS, JR.
BRADLEY D. KING
M. EDWIN HINDS, JR.
JILL F. GRIFFITH
DAVID B. MILLER****

Writer's Direct Line: 843-282-5393
E-Mail: Lhearken@BellamyLaw.com

C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
JEFFREY W. KING***
MARTIN C. DAWSEY
ROBERT S. SHELTON****
HOWELL V. BELLAMY, III
ASHLEY P. MORRISON
GEORGE W. REDMAN, III
W. JOSEPH CUNNINGHAM***
BENJAMIN A. BAROODY***
PHILLIP H. ALBERGOTTI***

*CERTIFIED SPECIALIST IN TAXATION LAW
**FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
***ALSO MEMBER OF NORTH CAROLINA BAR
****CERTIFIED MEDIATOR

May 18, 2011

Jana E. Shealy
Clerk of Court
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S. C. 29201

Re: Administrative Order of Revocation
P/N# OCRM-07-509 (Permit), Tommy W. Berry

Dear Ms. Shealy:

We represent Tommy W. Berry Sr. and Jo S. Berry in the above referenced matter. We are requesting a Contested Case Hearing regarding the issuance of DHEC/OCRM's Administrative Order revoking the Berry's Critical Order Permit (OCRM-07-509) on May 20, 2010.

Enclosed please find the following relevant documents for your review:

1. Notice of Request for Contested Case Hearing, dated May 17, 2011;
2. DHEC/OCRM's Administrative Order of Revocation, P/N# OCRM-07-509 (Permit), revoking Berry's Critical Order Permit dated April 26, 2010;
3. Berrys' Appeal of the Administrative Order 07M-012S of SCDHEC/OCRM, filed on May 11, 2010;
4. Check Number 047028, dated May 18, 2011, made payable to SCALC in the amount of \$250.00; and
5. Certificate of Service.

Further, we are including for the Administrative Law Court's ("ALC") information the

FILED

MAY 18 2011

relevant procedural history in this matter as follows:

1. On or about April 20, 2010, DHEC/OCRM issued an Administrative Order revoking the Berrys' critical area permit (OCRM-07-509);
2. On May 11, 2010, the Berrys filed an Appeal of DHEC/OCRM's Administrative Order, 07M-012S;
3. On June 10, 2010, the South Carolina Board of Health and Environmental Control ("Board") denied Plaintiffs' request for a Final Review Conference;
4. On or about July 8, 2010, the Berrys filed a Petition for a Judicial Review with the Circuit Court regarding DHEC/OCRM's revocation of their critical area permit (OCRM-07-509);
5. On or about August 11, 2010, DHEC/OCRM filed a Motion to Dismiss the Berrys' Petition for Judicial Review under 12(B)(1) SCRCP for Lack of Subject Matter for Jurisdiction;
6. On March 28, 2011, Circuit Court Judge Benjamin H. Culbertson granted the Department's Motion to Dismiss Berrys' Petition for Judicial Review for Lack of Subject Matter for Jurisdiction;
7. On April 6, 2011, the Berrys filed a Motion to Reconsider Judge Benjamin H. Culbertson's Order Granting the DHEC/OCRM's Motion to Dismiss;
8. On April 18, 2011, Judge Benjamin H. Culbertson, Circuit Court Judge, denied the Berrys' Motion to Reconsider; and
9. On May 17, 2011, the Berrys filed a Notice of Appeal with the South Carolina Court of Appeals.

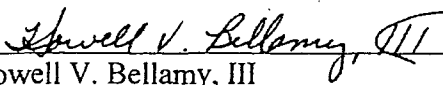
Further, the Berrys assert that their request for a contested case hearing before the ALC is timely filed based on the grounds of equitable tolling under South Carolina law.

Should you have any questions or concerns, please give us a call at 843-282-5393.

With kindest regards, I remain

Sincerely,

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


Howell V. Bellamy, III

HVBIII/lh
Enclosure

cc: Davis Whitfield-Cargile, Esquire
Bradley Churdar, Esquire

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

TOMMY W. BERRY AND JO S. BERRY)
 (Your name))
SOUTH CAROLINA DEPARTMENT OF HEALTH)
AND ENVIRONMENTAL CONTROL, BUREAU)
OF OCEAN & COASTAL RESOURCE MGMT.)
 (The name of the agency you are appealing))

NOTICE OF REQUEST FOR CONTESTED
CASE HEARING

DATE: _____

DOCKET NO. 11 -ALJ-07-0270-CC
(to be assigned by ALC)

Notice is hereby given that Tommy W. Berry & Jo S. Berry (your name) does hereby appeal the decision issued by the above named agency and received on April 28, 2010 (date), a copy of which is attached. (YOU MUST ATTACH A COPY OF THE DECISION OR DOCUMENT DESCRIBING THE AGENCY ACTION YOU ARE APPEALING IN ORDER TO HAVE YOUR CASE PROCESSED). Please provide a brief statement regarding the issue(s) for which the hearing is requested and the relief requested: Please see Appeal of the Administrative Order marked as Exhibit "A" and attached hereto and incorporated by reference.

Enclosed is a X check _____ money order _____ cash _____ in the amount of \$ _____ for the applicable filing fee in this matter.

Tommy W. Berry and Jo S. Berry
 Print your name
317 49th Ave. N.
 Mailing Address
North Myrtle Beach, S. C. 29582
 Telephone Number 704-996-9533 Cell

Sign your name _____

City, State, Zip Code _____

County of residence or of permit/license at issue _____

843-249-0464 Home
 Are you represented by an attorney? X Yes _____ No _____

Are you represented by a CPA? _____ Yes _____ No _____

Attorney's name
Howell V. Bellamy, Jr. & Howell V. Bellamy, III
 Mailing Address
1000 29th Ave. N.
 City, State, Zip code
Myrtle Beach, South Carolina 29577
 Telephone Number 843-282-5393

CPA's name _____

Mailing Address _____

City, State, Zip Code _____

Telephone Number _____

CERTIFICATE OF SERVICE

I hereby certify that I, Howell V. Bellamy, III (your name), on the _____ day of May, 2011, in Myrtle Beach (city), South Carolina, served a copy of the foregoing Request for Contested Case Hearing on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

Name of person/Agency served: Bradley Churdar, Esquire
 Address: 1362 McMillan Ave., Suite 400
 City, State, Zip Code: Charleston, S. C. 29405

Name of person/Agency served: Davis Whitfield-Cargil, Esq.
DHEC/OCRM
 Address: 1362 McMillan Ave., Suite 400
 City, State, Zip Code: Charleston, S. C. 29405

Print your name *Howell V. Bellamy, III*Sign your name *Howell V. Bellamy, III*

- 1) You must complete the **Request for Contested Case Hearing** on the reverse side of these instructions and mail it to the Administrative Law Court at the following address with the appropriate filing fee or Request for Waiver Form:

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

A copy of the Request must also be served on the agency from which you are appealing. If you do not know, you should contact the agency to determine the name of the person to be served with this document.

- 2) **In order for your case to be processed by the ALC, a copy of the decision or document that you are appealing must be attached to the Request for Contested Case Hearing.**

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Health and
Environmental Control,

Petitioner,

vs.

Tommy W. Berry and Jo S. Berry,

Respondents.

DOCKET NO. 11-ALJ-07-0270-CC

MOTION TO DISMISS

TO: Howell V. Bellamy III, Attorney for the Respondents (the Berrys):

YOU WILL PLEASE TAKE NOTICE that the South Carolina Department of Health and Environmental Control (the "Department"), in accordance with Rule 38 and Rule 62 of the South Carolina Administrative Court Rules and Rule 12(b)(1) of the South Carolina Rules of Civil Procedure, respectfully request that the Court dismiss this matter for lack of subject matter jurisdiction.

The grounds for this motion are as follows:

- (1) The Department's April 28, 2010 decision became final when the S.C. Board of Health and Environmental Control (the "Board") decided on June 10, 2010, not to conduct a Final Review Conference concerning the issuance of Administrative Order 07M-012S pertaining to the unauthorized fill and bulkhead installed in the tidelands critical area.
- (2) As required by S.C. Code Ann. 44-1-60(G), the Berrys failed to request a contested case hearing before this Court within thirty days after notice was mailed to them indicating that the board declined to hold a final review conference.¹ This failure is

¹ See attached letter dated June 14, 2010 sent to the Berrys informing them the Board declined to hear their RFR.

fatal to the jurisdiction of this Court. See generally, Mears v. Mears, 337 S.E.2d 206 (1985); Burnett v. S.C. Highway Dep't, 167 S.E.2d 571 (1969); Stroup v. Duke Power Co., 56 S.E.2d 745 (1949). If a petitioner does not timely file its petition with the Clerk for the Administrative Law Court (ALC), the ALC has no jurisdiction to provide any relief. See generally Little Mexico Rest. v. S.C. Dep't of Health & Env'tl. Control, 98-ALJ-07-0588-CC (Nov. 4, 1998); see also Bobby Loggins v. S.C. Dep't of Health & Env'tl. Control, 97-ALJ-07-0373-CC (Aug. 19, 1997), citing 86 C.J.S. Time § 13(1)(1954).

- (3) The Berrys' request for a contested hearing before the ALC was filed almost a year beyond the deadline (filed on May 11, 2011). Accordingly, because this request is untimely, this Court lacks jurisdiction and this matter should be dismissed.

WHEREFORE, for the reasons stated above, the Department respectfully requests that the Court issue an Order dismissing this contested case with prejudice.

Respectfully submitted,



Bradley D. Churdar
S.C. Bar No. 12829
Chief Counsel for DHEC/OCRM
South Carolina Department of Health and
Environmental Control
1362 McMillan Ave., Ste 400
North Charleston, SC 29405
Tel.: (843) 953-0213
Fax: (843) 953-0201
churdabd@dhec.sc.gov

Charleston, South Carolina
June 21, 2011

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:

Henry C. Scott

M. David Mitchell, MD

Glenn A. 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 3937 2126 9645

Howell V. Bellamy, III, Esq.
Bellamy, Rutenberg, Copeland, Epps,
Gravelly & 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."

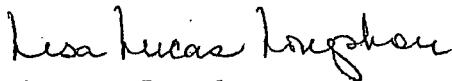
A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

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.scale.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.

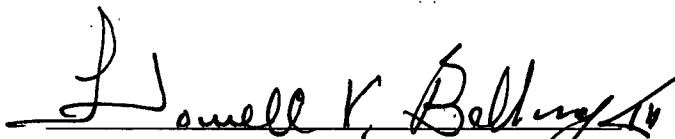
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CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Howell V. Bellamy, Jr., Esq., SCB # 00642

Howell V. Bellamy, III, Esq., SCB # 66575

BELLAMY, RUTENBERG, COPELAND,

EPPS, GRAVELY & BOWERS, P.A.

1000 29th Avenue North

Myrtle Beach, SC 29577

(843) 448-2400

Attorneys for Appellants

Myrtle Beach, South Carolina

February 16, 2012.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Presiding Court Judge

Case No. 2010-CP-26-6091

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 *Respondents.*

PROOF OF SERVICE

I certify that I have served copies of the **Record on Appeal** in the above-captioned appeal on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

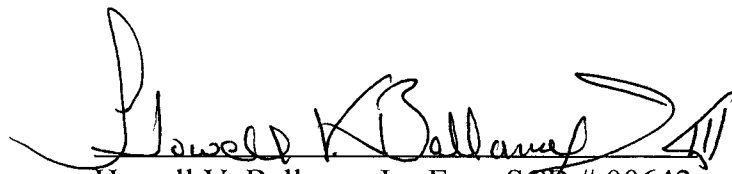
Carlisle Roberts, Jr., Esq., General Counsel
Davis Whitfield-Cargile, Esq.
Bradley Churdar, Esq., Chief Counsel OCRM
DHEC/OCRM
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405
Attorneys for Respondent

*** Signature Page Follows ***

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FEB 17 2012

SC Court of Appeals

A handwritten signature in black ink, appearing to read "Howell V. Bellamy, Jr.", with a stylized flourish at the end.

Howell V. Bellamy, Jr., Esq., SCB # 00642

Howell V. Bellamy, III, Esq., SCB # 66575

BELLAMY, RUTENBERG, COPELAND,

EPPS, GRAVELY & BOWERS, P.A.

1000 29th Avenue North

Myrtle Beach, SC 29577

(843) 448-2400

Attorneys for Appellants

Myrtle Beach, South Carolina

February 16, 2012