STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 09-ALC-07-0069-CC

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S.C. Supreme Court

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Jr., Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown, ... Petitioners,

vs.

South Carolina Department of Health and Environmental Control and Roper Pond, LLC, ... Respondents.

APPENDIX
VOL II OF III

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July 12, 2013

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RECORD ON APPEAL
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February 28, 2011

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D H E C

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South Carolina Department of Health and Environmental Control

www.scdhec.gov/water

South Carolina

NPDES GENERAL PERMIT FOR STORM WATER DISCHARGES FROM LARGE AND SMALL CONSTRUCTION ACTIVITIES

In compliance with the provisions of the SC Pollution Control Act (S.C. Code Sections 48-1-10 *et seq.*, 1976) and with the provisions of the Clean Water Act, 33 U.S.C. §1251 et. seq., (hereafter CWA or the Act), as amended by the Water Quality Act of 1987, P.L. 100-4, Operators of large and small construction activities that are described in Subpart 1.3 of this National Pollutant Discharge Elimination System (NPDES) general permit, except for those activities excluded from authorization of discharge in Subpart 1.3.C of this permit, are authorized to discharge pollutants to Surface Waters of the State in accordance with the conditions and requirements set forth herein. Permit coverage is required from the "commencement of construction activities" until "final stabilization" as defined in Appendix A.

M. Rheta Geddings, Assistant Chief

Bureau of Water

Permit No.: SCR100000 **Issued: August 1, 2006**

Effective: September 1, 2006 **Expires: August 31, 2011**

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NPDES General Permit for Storm Water Discharges From Construction Activities

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PART 1: COVERAGE UNDER THIS PERMIT

1.1 Introduction

This Construction General Permit (CGP) authorizes storm water discharges from large and small construction activities where those discharges enter Surface Waters of the State or a municipal separate storm sewer system (MS4) leading to Surface Waters of the State subject to the conditions set forth in this permit. This permit also authorizes storm water discharges from any other construction activity designated by DHEC where DHEC makes that designation based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to Surface Waters of the State. This permit replaces the storm water construction general permit (NPDES # SCR100000) issued January 15, 1998. Any references to the 1998 CGP in this permit refer to that permit.

This permit is presented in a reader-friendly, plain language format. This permit uses the terms "you" and "your" to identify the person(s) who owns or operates a "facility" or "activity" as defined in Appendix A and who must comply with the conditions of this permit. This format should allow you, the permittee and Operator of a large or small construction activity, to easily locate and understand applicable requirements. The goal of this permit is to reduce or eliminate storm water pollution from construction activity by requiring that you plan and implement appropriate pollution control practices to protect water quality.

1.2 Permit Area

This permit covers all areas of South Carolina including Indian lands.

1.3 Eligibility

Permit eligibility is limited to discharges from "large" and "small" construction activity as defined in Appendix A. This general permit contains eligibility restrictions, as well as permit conditions and requirements. You may have to take certain actions to be eligible for coverage under this permit. In such cases, you must continue to satisfy those eligibility provisions to maintain permit authorization. If you do not meet the requirements that are a pre-condition to eligibility, then resulting discharges constitute un-permitted discharges. By contrast, if you do not comply with the requirements of the general permit, you may be in violation of the general permit for your otherwise eligible discharges.

A. Allowable Storm Water Discharges

Subject to compliance with the terms and conditions of this permit, you are authorized to discharge pollutants in:

1. Storm water associated with large and small construction activity as defined in Appendix A;

2. Storm water discharges designated by DHEC as needing a storm water permit under §122.26(a)(1)(v) or §122.26(b)(15)(ii) of SC Regulation 61-9;

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3. Discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

   a. The support activity is directly related to the construction Site required to have NPDES permit coverage for discharges of storm water associated with construction activity;

   b. The support activity is not a commercial operation serving multiple unrelated construction Projects by different Operators, and does not operate beyond the completion of the construction activity at the last construction Project it supports; and

   c. Appropriate controls and measures are identified in a Storm Water Pollution Prevention Plan (SWPPP) covering the discharges from the support activity areas.

4. Discharges composed of allowable discharges listed in Subparts 1.3.A and 1.3.B commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.

B. Allowable Non-Storm Water Discharges

You are authorized for the following non-storm water discharges, provided the non-storm water component of the discharge is in compliance with Subpart 3.5 (Non-Storm Water Discharge Management):

1. Discharges from fire-fighting activities;

2. Fire hydrant flushings;

3. Waters used to wash vehicles where detergents are not used;

4. Water used to control dust in accordance with Subpart 3.4.J;

5. Potable water including uncontaminated water line flushings;

6. Routine external building wash down that does not use detergents;

7. Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;

8. Uncontaminated air conditioning or compressor condensate;

9. Uncontaminated ground water or spring water;

10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;

11. Uncontaminated excavation dewatering;

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12. Landscape irrigation.

C. Limitations on Coverage

1. This permit does not authorize post-construction discharges that originate from the Site after construction activities have been completed and the Site has achieved final stabilization, including any temporary support activity. Post-construction storm water discharges from industrial sites may need to be covered by a separate NPDES permit.

2. This permit does not authorize storm water discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit in accordance with Subpart 4.2.

3. This permit does not authorize discharges that DHEC, prior to authorization under this permit, determines will cause, have the reasonable potential to cause, or contribute to a violation of any applicable water quality standard. Where such a determination is made prior to authorization, DHEC may notify you that an individual permit application is necessary in accordance with Subpart 4.2. However, DHEC may authorize your coverage under this permit after you have included appropriate controls and implementation procedures in your SWPPP designed to bring your discharge into compliance with water quality standards.

4. Discharging into Receiving Waters With an Approved Total Maximum Daily Load Analysis

   a. You are not eligible for coverage under this permit for discharges of pollutants of concern to waters for which there is a total maximum daily load (TMDL) in effect that is applicable stormwater construction discharges unless you incorporate into your SWPPP measures or controls that are consistent with the assumptions and requirements of such TMDL. To be eligible for coverage under this general permit, you must incorporate into your SWPPP any conditions applicable to your discharges necessary for consistency with the assumptions and requirements of such TMDL. If a specific wasteload allocation has been established that would apply to your discharge, you must incorporate that allocation into your SWPPP and implement necessary steps to meet that allocation.

   b. In a situation where a TMDL has specified a general wasteload allocation applicable to construction storm water discharges, but no specific requirements for construction Sites have been identified in the TMDL, you should consult with the Department to confirm that adherence to a SWPPP that meets the requirements of the CGP will be consistent with the TMDL. Where a TMDL has not specified a wasteload allocation applicable to construction storm water discharges, but has not specifically excluded these discharges, adherence to a SWPPP that meets the requirements of the CGP will generally be assumed to be consistent with the approved TMDL. If the TMDL specifically precludes such discharges, the Operator is not eligible for coverage under the CGP.

1.4 Waivers for Certain Small Construction Activities

Three scenarios exist under which small construction activities (see definition in Appendix A) may be waived from the NPDES permitting requirements detailed in this CGP. These exemptions are predicated on certain criteria being met and proper notification procedures being followed. Details of the waiver options and procedures for requesting a waiver are provided in Appendix B.

PART 2: AUTHORIZATION FOR DISCHARGES OF STORM WATER FROM CONSTRUCTION ACTIVITY

Except for Projects that are located in Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort, or Jasper County and disturb 0.5 acres or less, to obtain coverage under this CGP, you, the Owner or Operator, must prepare and submit a complete and accurate Notice of Intent (NOI) and the other required information, as described in this Part. Discharges will not be authorized if your NOI is incomplete or inaccurate or if you are not eligible for permit coverage. Unless the Department specifically requests that an NOI be submitted, all Projects that are located in Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort, or Jasper County and disturb 0.5 acres or less are not required to submit an NOI, but are automatically granted coverage under this general permit provided the appropriate Best Management Practices are being used.

2.1 Authorization to Discharge Date

This permit is effective on September 1, 2006 and is effective for five years, expiring at midnight on August 31, 2011.

A. **For all Projects except for SC Department of Transportation Projects.**

1. When your SWPPP is reviewed and approved by an implementing entity under SC Regulation 72-300 (if applicable); another local government program acceptable to DHEC; or, when applicable, the owner of the municipal separate storm sewer system that receives your storm water discharges, and if DHEC does not send a letter within 7 business days of the receipt of a complete NOI authorizing coverage, denying coverage, requesting additional information or advising you that DHEC has decided to also review the SWPPP, coverage under this CGP is automatically granted.

2. When DHEC reviews your SWPPP, if DHEC does not send a letter authorizing coverage, denying coverage, or requesting additional information within 20 days of the receipt of the complete NOI, coverage under this CGP is automatically granted.

B. **For SC Department of Transportation Projects,** your SWPPP must be submitted to DHEC. DHEC may require review and approval of your SWPPP prior to granting you coverage under this CGP. If DHEC does not send a letter authorizing coverage, denying coverage, or advising that a review of the SWPPP will take place within 10 business days of receipt of the NOI, coverage will automatically be granted.

C. If a US Army Corps of Engineers' 404 Permit is required by Section 404 of the CWA Act for permanent or temporary storm water control structures, DHEC may not grant you coverage under this CGP until the 404 Permit has been issued and is effective.

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1. In situations where the 404 Permit decision will not affect the implementation of the SWPPP, the Department will issue approval of the SWPPP and grant coverage under this permit before the 404 Permit decision is effective.
2. In situations where the 404 Permit decision will affect only a portion of the "Project Area", the Department may grant the unaffected portion of the "Project Area" coverage under this permit. The remaining portion of the "Project Area" will be considered after the 404 Permit is issued and effective.

3. In situations where the entire "Project Area" is affected by the 404 Permit decision, the Department will not grant coverage under this general permit until the 404 Permit decision is issued and effective.

D. When permanent or temporary structures will be placed in State Navigable Waters, the Department will address any issues related to State Navigable Waters' Program under SC Regulation 19-450 during the review of the SWPPP rather than requiring a separate State Navigable Waters Permit.

E. DHEC may deny or delay your coverage based on eligibility considerations of Subpart 1.3 (e.g., TMDL concerns).

2.2 Notice of Intent Contents and Other Required Information

A. You must use the NOI form (or a photocopy thereof) provided by the Department. This form will be made available on our WEB site at:

http://www.scdhec.net/eqc/admin/html/eqforms.html#Water

If DHEC makes other NOI forms available (either directly, by public notice, or by making information available on the Internet), you may take advantage of any of those options to satisfy the NOI use requirements of this Subpart.

B. You must provide the following information on the NOI form:

1. Operator name, address, telephone number, and Employer Identification Number (EIN) as established by the U.S. Internal Revenue Service;

2. Project/Site name, address, county or similar governmental subdivision, and latitude/longitude of your construction Project or Site;

3. Whether your Site is located in Indian country and if so, the name of the Reservation, if applicable;

4. Whether the SWPPP has been prepared in accordance with this CGP;

5. Name of the Water(s) of the State into which your Site discharges;

6. Indication whether your discharge is consistent with the assumptions and requirements of applicable TMDLs;

7. Estimated dates of commencement of construction activity and final stabilization (i.e., Project start and completion dates);

8. Total acreage (to the nearest tenth acre) to be disturbed for which you are requesting permit coverage; and

9. A certification statement, signed and dated by an authorized representative as defined in §122.22 of SC Regulation 61-9 (see Appendix C of this permit), and the name and title of that authorized representative.

C. The following information must also be submitted with the NOI form for the NOI application to be complete:

1. The fee for coverage under this CGP. A check made payable to SC DHEC must be submitted. SC Regulation 61-30, Environmental Protection Fees, governs this fee. At the time of issuance of this CGP the fee was $125.

2. a. For Projects not owned or managed by the SC Department of Transportation:

i. If approval of the SWPPP is required under either SC Regulation 72-300 or an applicable MS4 Program or other local program acceptable to DHEC:

(1) A copy of the State, MS4, or local application;

(2) For non-linear Projects, a copy of the approved SWPPP with the supporting documents and calculations. For linear Projects, this is only applicable if specifically requested. This information is not required if there is a written agreement or memorandum of understanding between DHEC and the Operator of the applicable MS4 or other local program acceptable to DHEC that addresses the availability of the approved SWPPP to DHEC through the local entity that maintains a copy of the approved SWPPP;

(3) A copy of the approval of the SWPPP from the entity implementing SC Regulation 72-300 or an applicable MS4 Program or other local program acceptable to DHEC; and

(4) If DHEC's Bureau of Water also reviews your SWPPP prior to granting coverage under this CGP, the NPDES plan review fee of $100 per disturbed acre not to exceed $2,000.

ii. If approval of the SWPPP is not required under SC Regulation 72-300 or an applicable MS4 program or other local program acceptable to DHEC:

(1) Three copies of the SWPPP;

(2) For non-linear Projects, the supporting calculations and documents. Linear Projects must submit supporting calculations and documents when requested; and

(3) The plan review fee of $100 per disturbed acre not to exceed $2,000.

b. For SC Department of Transportation Projects:

i. The SWPPP;

ii. The supporting calculations and documents, when requested; and

iii. The plan review fee of $100 per disturbed acre not to exceed to $2000. The plan review fee is applicable only if DHEC reviews your SWPPP prior to granting coverage under this CGP.

3. For Projects located in Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort, or Jasper County, a copy of a letter from DHEC's Office of Ocean and Coastal Resource Management that states the proposed Project is consistent with the Coastal Zone Management Plan.

2.3 Submission Deadlines

A. New Projects: Except as given in the first paragraph of Part 2, to obtain coverage under this permit, you must submit a complete and accurate NOI with the other required information and be authorized consistent with Subpart 2.1 prior to your commencement of construction activities.

B. Permitted Ongoing Projects: If you previously received authorization to discharge for the current phase of your Project under the 1998 CGP, you are automatically covered under this permit without resubmitting an NOI.

1. You must comply with the terms and conditions of the 1998 CGP under which you were previously authorized.

2. Future phases of the Project must submit an NOI to be covered under this CGP.

C. Un-permitted Ongoing Projects (only applicable for first 90 days after this permit is issued): If you previously did not receive authorization to discharge for your Project under the 1998 CGP and you wish to obtain coverage under this permit:

1. Except as noted in 2.3.C.2, you must:

a. Submit an NOI with the required other information within 90 days of the issuance date of this permit; and

b. Until you are authorized under this permit consistent with Subpart 2.1, comply with an interim Storm Water Pollution Prevention Plan (SWPPP) consistent with the 1998 CGP.

2. If you meet the termination of coverage requirements in accordance with Subpart 5.1 within 90 days of the issuance date of this permit (e.g., construction will be finished and final stabilization achieved) you must comply with an interim Storm Water Pollution Prevention Plan (SWPPP) consistent with the 1998 CGP until permit coverage is no longer required.

D. *Late Notifications*: Operators are not prohibited from submitting NOIs after initiating clearing, grading, excavation activities, or other construction activities. When a late NOI is submitted, authorization for discharges occurs consistent with Subpart 2.1. DHEC may take enforcement for any unpermitted discharge or violations of laws or regulations that occur between the time construction commenced and discharge authorization.

2.4 Where to Submit

You must send your complete and accurate NOI application to DHEC at the following address:

Construction Storm Water Notice of Intent
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

PART 3: STORM WATER POLLUTION PREVENTION PLANS (SWPPPS)

3.1 Storm Water Pollution Prevention Plan Framework

A. A SWPPP must be prepared prior to submission of an NOI as required in Part 2. At least one SWPPP must be developed for each construction Project covered by this permit and a qualified individual in accordance with good engineering practices must prepare such SWPPP. For Projects that disturb more than 2 acres, the SWPPP must be prepared, amended when necessary, certified, and stamped by a qualified individual who is licensed as follows:

1. Registered professional engineers as described in Title 40, Chapter 22;

2. Registered landscape architects as described in Title 40, Chapter 28, Section 10, item (b);

3. Tier B land surveyors as described in Title 40, Chapter 22; or

4. Federal government employees as described by Title 40, Chapter 22, Section 280(A)(3).

B. The SWPPP must:

1. Identify all potential sources of pollution which may reasonably be expected to affect the

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quality of storm water discharges from the construction Site;

2. Describe practices to be used to reduce pollutants in storm water discharges from the construction Site; and

3. Assure compliance with the terms and conditions of this permit when properly implemented.

C. Once a definable area has been finally stabilized, you may mark this on your SWPPP and no further SWPPP or inspection requirements apply to that portion of the Site (e.g., earth-disturbing activities around one of three buildings in a complex are done and the area is finally stabilized, one mile of a roadway or pipeline Project is done and finally stabilized, etc).

D. You must implement the SWPPP as written from commencement of construction activity until final stabilization is complete.

3.2 Requirements for Different Types of Operators

You may meet one or both of the operational control components in the definition of Operator found in Appendix A. Subpart 3.2.C applies to all permittees having control over only a portion of a construction Site.

A. If you have "operational control over construction plans and specifications" as defined in the definition of "Operator" in Appendix A, you must ensure that:

1. The specifications for the BMPs meet the minimum requirements of this Subpart and all other applicable permit conditions;

2. The SWPPP indicates the areas of the Site where the Operator has operational control over specifications, including the ability to make modifications in specifications and plans including the SWPPP;

3. All other co-permittees implementing portions of the SWPPP (or their own SWPPP) who may be impacted by a change to the construction plan are notified of such changes in a timely manner;

4. The SWPPP indicates the name(s) of the Operator(s) with day-to-day operational control of those activities necessary to ensure compliance with the SWPPP or other permit conditions; and

5. For non-linear Projects that disturb 10 acres or more, you must conduct a pre-construction conference with each co-permittee and contractor who is not a co-permittee in person at the Site prior to that co-permittee or contractor performing construction related work intended to disturb soils at the Site that may affect the implementation of the SWPPP unless it is justified in the SWPPP and approved by the Department to conduct the conference off-site. This pre-construction conference can be with all contractors or the pre-conference may be conducted separately with one or more contractors present so that all contractors who perform land

disturbing activity or construction activity are aware of the requirements of the SWPPP before they start construction.

6. For linear construction of roads or utilities (such as roads built by the SC Department of Transportation and utility construction including electrical power lines, gas lines, main sewer trunk lines, and water distribution lines that are not part of a development) neither of which are a part of a subdivision of other type of development, the conferences with each co-permittee and contractors who are not co-permittees may be conducted off-site unless specifically required by the Department in writing to be conducted onsite. The purpose of the conference is for the preparer of the SWPPP, someone with a registration equivalent to that of the preparer of the SWPPP, or the person with operational control of the plans and specifications to explain the whole SWPPP to the co-permittees and contractors who are not co-permittees and to specifically go over the areas of the SWPPP that are related to the work to be performed by the co-permittee and contractor who is not a co-permittee.

B. If you have "operational control over day-to-day activities" as defined in the definition of "Operator" in Appendix A at the Project that are necessary to ensure compliance with the SWPPP or other Permit conditions, you must ensure that:

1. The SWPPP identifies the parties responsible for implementation of control measures identified in the plan;

2. The SWPPP indicates areas of the Project where you have operational control over day-to-day activities;

3. The SWPPP indicates the name of the party(ies) with operational control over Project specifications (including the ability to make modifications in specifications); and

4. All appropriate contractors have signed either the Co-permittee or non Co-permittee certification and copies of these certifications are in the SWPPP.

C. If you have operational control over only a portion of a larger Project (e.g., one of four homebuilders in a subdivision), you are responsible for compliance with all applicable terms and conditions of this permit as it relates to your activities on your portion of the construction Site, and implementation of best management practices (BMPs) and other controls required by the SWPPP. You must ensure either directly or through coordination with other permittees, that your activities do not render another party's pollution control ineffective. You must either implement your portion of a common SWPPP or develop and implement your own SWPPP.

For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different Operators at a Site to prepare and participate in a comprehensive SWPPP is encouraged. Individual Operators at a Site may, but are not required to, develop separate SWPPPs that cover only their portion of the Project provided reference is made to other Operators at the Site. In instances where there is more than one SWPPP for a Site, cooperation between the permittees is encouraged to ensure the storm water discharge controls and other measures are consistent with one another.

D. Contractor Certifications and Co-permittee Status.

1. The Owner of a Project, as the applicant for the NPDES permit, is responsible for compliance with all the terms and conditions of this permit and the SWPPP. The Owner may rely on other Persons to assist in compliance with this permit and the SWPPP. As such, the Project Owner and contractors and subcontractors who will conduct construction activities intended to disturb soils may elect to be Co-permittees. Further, all contractors who will conduct construction related work intended to disturb soils at the Site that may affect implementation of the SWPPP, regardless of whether or not they are Co-permittees, must be listed in the SWPPP and attend a pre-construction conference before they can conduct construction activity at the Site.

2. All contractors and subcontractors identified in the plan as Co-permittees must sign a copy of the certification statement given below:

   "I certify by my signature below that: a) for Sites that disturb 10 or more acres, I participated in a pre-construction conference onsite or, when allowed, offsite with the individual who is responsible for the operational control of the Storm Water Pollution Prevention Plan (SWPPP); and b) I accept the terms and conditions of SWPPP as required by the general National Pollutant Discharge Elimination System (NPDES permit number SCR100000) issued to the Owner/Operator of the construction activity for which I have been contracted to perform construction related professional services. Further, by my signature below, I understand that I am becoming a Co-permittee with the Owner/Operator and other contractors that have become Co-permittees to the general NPDES permit issued to the Owner/Operator of the facility for which I have been contracted to perform professional construction services. As a Co-permittee, I understand that I, and my company, as the case may be, am legally accountable to the SC Department of Health and Environmental Control (DHEC), under the authorities of the CWA and the SC Pollution Control Act, to ensure compliance with the terms and conditions of the SWPPP. I also understand that DHEC enforcement actions may be taken against any specific Co-permittee or combination of Co-permittees if the terms and conditions of the SWPPP are not met. Therefore, having understood the above information, I am signing this certification and am receiving Co-permittee status to the aforementioned general NPDES permit."

3. All contractors and subcontractors identified in the plan to perform construction related work intended to disturb soils at the Site that may affect the implementation of the SWPPP but who will not be Co-permittees must sign the certification statement given below:

   "I certify by my signature below that: a) for Sites that disturb 10 or more acres, I participated in a pre-construction conference onsite or, when allowed, offsite with the individual who is responsible for the operational control of the Storm Water Pollution Prevention Plan (SWPPP); and b) I understand the terms and conditions of SWPPP as required by the general National Pollutant Discharge Elimination System Permit (NPDES permit number SCR100000) issued to the Owner/Operator of the construction activity for which I have been contracted to perform construction related professional services. I understand that I, and my company, as the case may be, may be legally accountable to the SC Department of Health and Environmental Control (DHEC), under the authorities of the CWA and the SC Pollution Control Act, to ensure

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compliance with the terms and conditions of the SWPPP."

4. The date of the signature, the title of the Person providing the signature, and the name, address, and telephone number of the contracted firm, shall also be provided. In the event the owner amends the SWPPP, such amendments should be incorporated to the plan and the contractors and subcontractors should acknowledge by signature. Co-permittees who have completed their work prior to the amendments do not have to sign the amendments.

5. The signatory requirements of §122.22 of South Carolina Regulation 61-9 (see Appendix C of this permit) are applicable to each contracted entity that must sign one of the contractor's certification statements. Upon signing the Co-pemittee certification, the contractor is a Co-permittee and becomes accountable to DHEC to ensure the terms and conditions of this permit are implemented. All Co-permittees are subject to DHEC enforcement actions if permit conditions are not met. Enforcement actions may be taken against any specific Co-permittee or combination of Co-permittee, with consideration given to the party responsible for the violation. The Owner/Operator submitting the NOI shall retain all contractor certifications for at least three years after a contractor has completed work at the Site. Contractors who sign the certification for being a Co-permittee may be liable to DHEC enforcement actions related to their work at the Site. All certifications must be included in the storm water pollution prevention plan.

6. Copies of all contractor certifications and a copy of this permit shall be kept with the SWPPP. For construction Sites that disturb 10 acres or more, the first monthly report or copies of the first month's inspection forms (refer to Part 3.10.H) submitted by the Owner/Operator to the Department after construction begins on the facility must include the original and one copy of all Co-permittee and other contractor certifications. If additional Co-permittees or other contractors are added later on, the original and one copy of the additional Co-permittee or contractor certifications must be submitted along with the monthly reports or copies of the inspection forms submitted after the signing of the certification. For construction Sites that disturb less than 10 acres, the Owner/Operator of the facility covered by this permit shall make all contractor certifications available to DHEC upon request. The Department may on a case-by-case basis require the submittal of the Co-permittee and other contractor certifications.

3.3 Pollution Prevention Plan Contents: Site and Activity Description

A. The SWPPP must identify all Operators for the Project Site, and the areas of the Site over which each Operator has control.

B. The SWPPP must describe the nature of the construction activity, including:

1. The function of the Project (e.g., low density residential, shopping mall, highway, etc.);

2. The intended sequence and timing of planned major activities that disturb soils such as clearing and grubbing, initial and final grading, and cut and fill activities at the Site (except for SC Department of Transportation Projects, unless known at the time the SWPPP is prepared);

3. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities, including dedicated off-site borrow and fill areas; and

4. A general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) with enough detail to identify the location of the construction Site and Surface Waters of the State within one mile of the Site.

C. The SWPPP must contain a legible Site map, showing the entire Site, identifying:

1. Direction(s) of storm water flow and approximate slopes anticipated after major grading activities;

2. Areas of soil disturbance and areas that will not be disturbed;

3. Locations of structural and nonstructural BMPs identified in the SWPPP;

4. Locations where stabilization practices are expected to occur;

5. Locations of off-site material, waste, borrow or construction equipment storage areas, excluding rolloff containers (not applicable to SC Department of Transportation Projects);

6. Locations of all Surface Waters of the State (including wetlands);

7. Locations where storm water discharges to a surface water; and

8. Areas where final stabilization has been accomplished and no further construction-phase permit requirements apply.

D. The SWPPP must describe and identify the location and description of any storm water discharge associated with industrial activity other than construction at the Site. This includes storm water discharges from dedicated asphalt plants and dedicated concrete plants, that are covered by this permit.

3.4 Pollution Prevention Plan Contents: Controls to Reduce Pollutants

A. The SWPPP must include a description of all pollution control measures (i.e., BMPs) that will be implemented as part of the construction activity to control pollutants in storm water discharges. For each major activity identified in the Project description, the SWPPP must clearly describe control measures necessary to comply with this permit and applicable laws and regulations, the general sequence during the construction process in which the measures will be implemented, and which Operator is responsible for the control measure's implementation.

B. The SWPPP must include a description of interim and permanent stabilization practices for the Site, including a schedule of when the practices will be implemented. Site plans should ensure that existing vegetation is preserved where possible and that disturbed portions of the Site are stabilized. Use of impervious surfaces for stabilization should be avoided.

C. For Sites with storm water discharges to a receiving water that is listed as impaired in South Carolina's 303(d) List of Impaired Waters the following requirements apply:

1. If a TMDL that is applicable to stormwater construction discharges has been established and is in effect, the requirements of Part 1.3.C.4 must be met.

2. If a TMDL has not been established or is not in effect, you must ensure that your SWPPP does not allow storm water discharges that will contribute to the violations of the water quality standards. To accomplish this, you must:

   a. First determine whether or not your discharge may contain any pollutant that has caused the impairment.

   b. If your storm water discharges will not contain the pollutant(s) of concern, no additional requirements are necessary.

   c. If your discharge will contain the pollutant(s) of concern, you must carefully evaluate your selected BMPs and their performance to ensure that stormwater discharges will not contribute to or cause a violation of water quality standards. For Projects that disturb 25 acres or more, your SWPPP must contain a written quantitative and qualitative assessment that the BMPs selected will control your stormwater discharges so that they will not contribute to or cause a violation of water quality standards. For more information on this subject, please see the DHEC publication entitled "Antidegradation for Activities Contributing to NonPoint Source Pollution to Impaired Waters." This publication can be downloaded at the following DHEC WEB site:

      www.scdhec.gov/eqc/water/pubs/antidegnps.pdf

3. A copy of the most current 303(d) List of Impaired Waters can be obtained from:

   Water Quality Division
   Bureau of Water
   SC DHEC
   2600 Bull Street
   Columbia, SC 29201

   or it can be downloaded at the following DHEC WEB site:

   http://www.scdhec.gov/water/tmdl/

D. The following records must be maintained as part of the SWPPP:

1. Dates when major grading activities as identified in Part 3.3.B occur;

2. Dates when construction activities temporarily or permanently cease on a portion of the Site.

Notes: Temporarily ceasing construction means ceasing construction on a portion of the Site for more than 14 days. A portion of the Site, means but is not limited to, portions of the Site with dedicated controls (see also Subpart 3.13.D of this permit); and

3. Dates when stabilization measures are initiated.

Electronic storage of the above mentioned information is acceptable provided that it is referenced in the SWPPP and it is readily available.

E. The SWPPP must include a description of structural practices: to divert flows from exposed soils; to retain/detain flows; or to otherwise limit runoff and the discharge of pollutants from exposed areas of the Site. Placement of structural practices in floodplains must be in accordance with applicable regulations.

F. The SWPPP must include a description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges after construction operations have been completed.

G. Structural measures should be placed on upland soils to the degree practicable. Such measures must be designed and installed in compliance with applicable federal, local, state or tribal requirements.

1. Permanent structural controls can only be placed in Surface Waters of the State (including wetlands and ephemeral and intermittent streams) if the US Army Corps of Engineers issues a permit for the activity under Section 404 of the CWA. When State Navigable Waters may be affected, the SWPPP must include appropriate requirements applicable to State Navigable Waters under SC Regulation 19-450.

2. Temporary structural controls can only be placed in perennial Surface Waters of the State if the US Army Corps of Engineers issues a permit for the activity under Section 404 of the CWA. When State Navigable Waters may be affected, the SWPPP must include appropriate requirements applicable to State Navigable Waters under SC Regulation 19-450. All temporary structural controls placed in perennial streams must be removed after final stabilization has been accomplished.

3. Temporary structural controls may only be placed in ephemeral and intermittent streams when there is no other feasible alternative. All temporary structural controls placed in ephemeral and intermittent streams must be removed after final stabilization has been accomplished. After removal of the temporary structural controls, the ephemeral or intermittent stream must be restored to its original condition.

H. The SWPPP must describe measures to prevent the discharge of building or other similar materials to Surface Waters of the State, except as authorized by a permit issued under section 404 of the CWA.

I. The SWPPP must describe measures to minimize, to the extent practicable, off-site vehicle

tracking of sediments onto paved surfaces and the generation of dust.

J. The SWPPP must include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The SWPPP must also include a description of controls, including storage practices such as rolloff containers, to minimize exposure of the materials to storm water, and spill prevention and response practices.

K. The SWPPP must include a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those Sites to minimize pollutant discharges. If these areas are located off the construction area on property not owned by the owner of the Project, they can be either included in the SWPPP for the construction Site with the owner of the dedicated facility being a Co-permittee under the construction general permit or the owner of the dedicated facility can obtain: 1) his own construction general permit coverage to build the dedicated facility; and 2) his own coverage under the Stormwater General Permit for Industrial Activity, Permit # SCR000000 or other appropriate permit. The method(s) selected to deal with dedicated facility areas must be addressed in the SWPPP.

3.5 Management of Non-Storm Water Discharges Allowed Under Part 1.3.B

The SWPPP must identify all allowable sources of non-storm water discharges listed in Subpart 1.3.B of this permit, except for flows from fire fighting activities, that are combined with storm water discharges associated with construction activity at the Site. Non-storm water discharges should be eliminated or reduced to the extent feasible. The SWPPP must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge allowed under Part 1.3.B.

3.6 Maintenance of Controls

A. All erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition. If Site inspections required by Subpart 3.10 identify BMPs that are not operating effectively, maintenance must be performed as soon as practical or as reasonably possible and before the next storm event whenever practicable to maintain the continued effectiveness of storm water controls.

B. If existing BMPs need to be modified or if additional BMPs are necessary to comply with the requirements of this permit and/or SC's Water Quality Standards, implementation must be completed before the next storm event whenever practicable. If implementation before the next storm event is impracticable, the situation must be documented in the SWPPP and alternative BMPs must be implemented as soon as reasonably possible.

C. Sediment from sediment traps or sedimentation ponds must be removed as indicated in the SWPPP or when the design capacity has been reduced by 50 percent, which ever occurs first.

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3.8 Copy of Permit Requirements

Copies of this permit, the signed and certified NOI form that was submitted to DHEC, the Co-permittee certifications required by Subpart 3.2.D, and, if applicable, any local approval must be included in the SWPPP. Also, upon receipt, a copy of the letter from the DHEC authorizing your coverage under this CGP must also be included as a component of the SWPPP.

3.9 Applicable State, Tribal, or Local Programs

The SWPPP must be consistent with all applicable federal, state, tribal, or local requirements for soil and erosion control and storm water management, including updates to the SWPPP as necessary to reflect any revisions to applicable federal, state, tribal, or local requirements for soil and erosion control. Except for Projects exempted from the requirements of SC Regulation 72-300 by Section 72-302 of SC Regulation 72-300, all Projects located outside MS4s must after June 30, 2006 meet the minimum standards and criteria of South Carolina Regulation 72-300.

3.10 Inspections

A. After construction begins, inspections must be conducted at a minimum in accordance with one of the two schedules listed below and you must specify in your SWPPP which schedule you will be following.

   1. At least once every 7 calendar days, or

   2. At least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

B. Inspection frequency may be reduced to at least once every month if the entire Site is temporarily stabilized.

C. The Department on a case-by-case basis may require any permittee who has coverage under this CGP to conduct inspections on a more frequent basis than prescribed in this CGP. Examples include, but are not limited to, permittees who have compliance problems and permittees whose Site's stormwater discharges to environmental sensitive waters (such as waters classified as Trout Waters, Outstanding Resource Waters, Shellfish Harvesting Waters, etc.).

D. Inspections must be conducted by qualified personnel (provided by the Operator or cooperatively by multiple Operators). For Projects that disturb more than 2 acres, "Qualified personnel" means a person knowledgeable in the principles and practice of erosion and sediment controls who possesses the skills to assess conditions at the construction Site that could impact storm water quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of storm water discharges from the construction activity. After June 30, 2006, this person must be either the preparer of the SWPPP or an individual who is under the direct supervision of the preparer of the approved SWPPP and who meets the requirements in this paragraph or an individual who has been certified through a Construction Site Inspector Certification Course that has been approved by DHEC. Inspections may also be conducted by a

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person with a registration equivalent to the registration of the preparer of the SWPPP and who meets the qualifications of this paragraph or an individual who is under the direct supervision of the person with an equivalent registration and who meets the requirements in this paragraph. For Projects that disturb 2 acres or less, the permittee or his designee may perform these inspections provided the preparer of the SWPPP or someone with a registration equivalent to that of the preparer of the SWPPP explains the SWPPP including implementation along with the inspection requirements to the person who will be conducting the inspections.

E. Inspections must include all areas of the Site disturbed by construction activity and areas used for storage of materials that are exposed to precipitation. Inspectors must look for evidence of, or the potential for, pollutants entering the storm water conveyance system. Sedimentation and erosion control measures identified in the SWPPP must be observed to ensure proper operation. Discharge locations must be inspected to ascertain whether erosion control measures are effective in preventing violations to SC's Water Quality Standards, where accessible. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the Site must be inspected for evidence of off-site sediment tracking.

F. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described in Subpart 3.10.E above. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction Projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction Site for 0.25 mile above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction Site and allows access to the areas described above. The conditions of the controls along each inspected 0.25 mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25 mile segment to either the end of the next 0.25 mile inspected segment, or to the end of the Project, whichever occurs first. Representative inspections must include any areas where stormwater discharges to environmental sensitive waters (such as waters classified as Trout Waters, Outstanding Resource Waters, Shellfish Harvesting Waters, etc.).

G. For each inspection required above, you must complete an inspection report. At a minimum, the inspection report must include:

1. The inspection date;

2. Names, titles, and, if not previously given in an inspection report, the qualifications of personnel making the inspection, unless those qualifications change;

3. Weather information for the period since the last inspection (or since commencement of construction activity if the first inspection) including a best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether you know if any discharges occurred;

4. Weather information and a description of any discharges occurring at the time of the inspection;

5. Location(s) of discharges of sediment or other pollutants from the Site;

6. Location(s) of BMPs that need maintenance;

7. Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;

8. Location(s) where additional BMPs are needed that did not exist at the time of inspection; and

9. Corrective action required including any changes to the SWPPP necessary and implementation dates.

A record of each inspection and of any actions taken in accordance with this Part must be retained as part of the SWPPP for at least three years from the date that permit coverage expires or is terminated. The report must be signed in accordance with §122.22 of SC Regulation 61-9 (see Appendix C of this permit).

H. For construction Sites disturbing 10 acres or more, a monthly report must be submitted to DHEC and, if applicable, the appropriate MS4. The report must be signed in accordance with §122.22 of SC Regulation 61-9 (see Appendix C of this permit). In lieu of submitting monthly reports, the reports may be stored electronically in a manner in which DHEC personnel will have access to review this data, such as on a dedicated website that DHEC personnel will have unlimited access to. Other forms of electronic storage of monthly reports may be utilized once arrangements have been made with DHEC. For construction Sites that disturb less than 10 acres, DHEC may require monthly reports to be submitted on either a Project-by-Project basis or Operator-by-Operator basis. If the information required in this Subpart is already included on the inspection forms, only copies of the inspection forms need to be submitted to DHEC. If the information required in this Subpart is not included on the inspection form, then the monthly reports must include, at a minimum, the following additional information:

1. A summary of the results of the inspections conducted during the month;

2. A listing of all deficiencies noted during inspections with the date the deficiency was noted;

3. For each deficiency noted that required corrective action:

   a. A listing of the name(s), address(es), and telephone number(s) of the party or parties responsible; and

   b. A statement whether this deficiency was previously listed in a monthly report;

4. A listing of the corrective actions that were taken to remedy any deficiencies noted and the date

the corrective actions were completed;

5. A statement on whether or not the SWPPP was updated to deal with any deficiencies noted; and

6. A copy of each inspection conducted during the month attached in an appendix to the monthly report.

I. For construction Sites disturbing 10 acres or more, in addition to the information required in subpart 3.10.H above, the first monthly report submitted after construction has started must include the original and one copy of the Co-permittee and contractor certifications. Subsequent monthly reports on construction Sites that disturb 10 acres or more must include the original and a copy of the certification for the Co-permittees and contractors added after construction has started. For each Co-permittee and contractor certification submitted to the Department, the preparer of the SWPPP or someone with a registration equivalent to that of the preparer of the SWPPP must certify that either an on-site or, when applicable, off-site pre-construction conference was held with the Co-permittee or contractor in accordance with this permit. This certification must give the date of the conference and the responsibilities of each Co-permittee and contractor.

J. For construction Sites disturbing less than 10 acres, the Owners/Operators may be required to submit the Co-permittee and contractor certifications on a case-by-case basis. When the Owner/Operator is required to submit the Co-permittee and contractor certifications, the preparer of the SWPPP or someone with a registration equivalent to that of the preparer of the SWPPP must certify that either an on-site or off-site pre-construction conference was held with the Co-permittees and contractors in accordance with this permit. This certification must give the date of the conference and the responsibilities of each Co-permittee and contractor.

K. Each monthly report with one copy must be submitted to DHEC on or before the 28th day of the month following the reporting period. For example, the monthly report for July 2006 is due after July 31, 2006 and on or before August 28, 2006.

L. Until construction starts, the monthly report may just state that construction activity has not started.

M. Monthly reports, when required, must be submitted until the Notice of Termination is submitted to DHEC. When the Notice of Termination is submitted, it must contain a signed statement by the preparer of the SWPPP or a person with a registration equivalent to that of the preparer of the SWPPP that all work was completed to the best of his or her knowledge and belief in accordance with the approved SWPPP and this CGP. For Projects disturbing more than 2 acres, the certifying person's knowledge and belief must be based on the results of the periodic inspections conducted by the preparer of the SWPPP (or a person with an equivalent registration) or by a qualified individual under his or her direct supervision in accordance with this CGP or by an individual certified through a Construction Site Inspector Certification Course that has been approved by DHEC.

N. Copies of inspection forms and monthly reports (reports required only if information requested in Part 3.10.H is not included on the inspection form) must be submitted to DHEC at the following address:

Compliance Assurance Division
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

or to a designated DHEC email address, when available.

A copy of the inspection forms or monthly reports must be submitted to the MS4 that receives your stormwater discharges when requested in writing by the MS4.

3.11 Maintaining an Updated Plan

A. The SWPPP, including the Site map, must be amended whenever there is a change in design, construction, operation, or maintenance at the construction Site that will result in discharges that will cause, have the reasonable potential to cause, or contribute to violations to SC's Water Quality Standards.

B. The SWPPP must be amended if during inspections or investigations by Site staff, or by local, state, tribal or federal officials, it is determined that the SWPPP is ineffective in either eliminating, when reasonably possible, or significantly minimizing pollutants in storm water discharges from the construction Site.

C. Based on the results of an inspection, the SWPPP must be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP must be completed within seven (7) calendar days following the inspection. Implementation of these additional or modified BMPs must be accomplished as described in Subpart 3.6.B.

D. All design modifications of the SWPPP must be made in accordance with Subpart 3.1.A.

3.12 Signature, Plan Review and Making Plans Available

A. A copy of the SWPPP (including a copy of the permit), NOI, and CGP coverage letter from DHEC must be retained at the construction Site (or other location easily accessible during normal business hours to: DHEC, EPA, tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; and the Operator of a Municipal Separate Storm Sewer System (MS4) receiving discharges from the Site) from the date of commencement of construction activities to the date of final stabilization. If you have day-to-day operational control over SWPPP implementation, you must have a copy of the SWPPP available at a central location on-site for the use of all those identified as having responsibilities under the SWPPP whenever they are on the construction Site. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction Site. For linear construction of roads or utilities (such as roads built by the SC Department of Transportation and utility construction including electrical power lines, gas lines, main sewer trunk lines, and water distribution lines that are not part of a development)

neither of which are a part of a subdivision or other type of development Projects, the updated copies of the approved SWPPP must be sent to the appropriate EQC Regional Office in situations where it is not practical to have the approved SWPPP on location. For SC Department of Transportation Projects where there is no construction trailer on Site, the SWPPP may be kept in the office of the SC DOT resident engineer.

B. SWPPPs must be made available upon request by EPA; DHEC; a tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; and the Operator of a Municipal Separate Storm Sewer System (MS4) receiving discharges from the Site to the requestor. The copy of the SWPPP that is required to be kept on-site or locally available must be made available, in its entirety, to DHEC or the EPA staff for review and copying at the time of an on-site inspection.

C. All SWPPPs must be signed and certified in accordance with §122.22 of SC Regulation 61-9 (see Appendix C of this permit).

3.13 Management Practices

A. All control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the Operator must replace or modify the control for Site situations as soon as practicable.

B. If sediment escapes the construction Site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts unless: access to the off-site property cannot be reasonably obtained from the property owner and DHEC is also unable to get permission for you to access the off-site property; or DHEC agrees that it is appropriate to leave the off-site accumulations in place.

C. Litter, construction debris, oils, fuels, and building products with significant potential for impact (such as stockpiles of freshly treated lumber) and construction chemicals that could be exposed to storm water must be prevented from becoming a pollutant source in storm water discharges.

D. Except as provided below, stabilization measures must be initiated as soon as practicable in portions of the Site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the Site has temporarily or permanently ceased.

   1. Where stabilization by the 14th day is precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable.

   2. Where construction activity on a portion of the Site is temporarily ceased, and earth-disturbing activities will be resumed within 14 days, temporary stabilization measures do not have to be initiated on that portion of the Site.

E. A combination of sediment and erosion control measures is required to achieve maximum pollutant

removal.

1. Sediment Basins: For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from the drainage area from at least a 10-year, 24-hour storm, or equivalent control measures, must be provided where attainable until final stabilization of the Site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing at least 3,600 cubic feet of storage per acre drained, or equivalent control measures, must be provided where attainable until final stabilization of the Site. When computing the number of acres draining into a common location, it is not necessary to include flows from off-site areas and flows from on-site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is attainable, the Operator may consider factors such as Site soils, slope, available area on-site, etc. In any event, the Operator must consider public safety as a design factor for the sediment basin, and alternative sediment controls must be used where Site limitations would preclude a safe design.

2. For drainage locations that serve 10 or more disturbed acres at one time and where a temporary sediment basin or equivalent controls are not attainable, smaller sediment basins and/or sediment traps should be used. Silt fences, vegetative buffer strips, or a combination of sediment controls that are equivalent to sediment basins and/or sediment traps are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual Site conditions).

3. For drainage locations serving less than 10 acres, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual Site conditions) of the construction area unless a sediment basin providing storage for a calculated volume of runoff from at least a 10-year, 24-hour storm or at least 3,600 cubic feet of storage per acre drained is provided. If a basin is not provided, each structural control used must be designed to handle the entire drainage area it serves.

4. The Department may on a case-by-case or watershed-by-watershed basis require the use of a larger storm event and/or a larger storage volume when designing sediment basins.

F. Velocity dissipation devices must be placed at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

3.14 Documentation of Permit Eligibility Related to Total Maximum Daily Loads That Are Effective and Applicable to Stormwater Construction Discharges

The SWPPP must include documentation supporting a determination of permit eligibility with regard to waters that have a TMDL that is effective and applicable to stormwater construction discharges,

including:

A. Identification of whether your discharge (construction stormwater) is identified, either specifically or generally, in a TMDL and any associated allocations, requirements, and assumptions identified for your discharge;

B. Measures taken by you to ensure that your discharge of pollutants from the Site is consistent with the assumptions and requirements contained in the TMDL that is applicable to your stormwater discharge, including any specific wasteload allocation that has been established that would apply to your discharge.

See Subpart 1.3.C.4 for further information on determining permit eligibility related to TMDLs.

PART 4: SPECIAL CONDITIONS, MANAGEMENT PRACTICES AND OTHER NON-NUMERIC LIMITATIONS

4.1 Continuation of the Expired General Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the SC Administrative Procedures Act and SC Regulation 61-9 and remain in force and effect. If you were granted permit coverage prior to the expiration date, you will automatically remain covered by the continued permit until the earliest of:

A. Reissuance or replacement of this permit, at which time you must comply with the conditions of the new permit to maintain authorization to discharge; or

B. Your submittal of a Notice of Termination; or

C. Issuance of an individual permit for the Project's discharges; or

D. A formal permit decision by DHEC to not reissue this general permit, at which time you must seek coverage under an alternative general permit or an individual permit.

4.2 Requiring an Individual Permit or an Alternative General Permit

A. In accordance with Section 122.28(b)(3) of SC Regulation 61-9, DHEC may require you to apply for and/or obtain an individual NPDES permit. Any interested person may petition DHEC to take action under this paragraph. If DHEC requires you to apply for an individual NPDES permit, DHEC will notify you in writing that a permit application is required. This notification will include a brief statement of the reasons for this decision and an application form. In addition, if you are an existing permittee covered under this permit, the notice will set a deadline to file the application, and will include a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to you, coverage under this general permit will automatically terminate. Applications must be submitted to DHEC at the address given in Subpart 2.4. DHEC may grant additional time to submit the application upon your request. If you are covered under this permit and you fail to submit in a timely manner an individual NPDES

permit application as required by DHEC, then the applicability of this permit to you is automatically terminated at the end of the day specified by DHEC as the deadline for application submittal.

B. If an alternate general permit that is more appropriate for your construction activity is available, DHEC may grant you coverage under the alternate general permit in lieu of granting you coverage under this general permit. In accordance with applicable state law and regulation, you have a right to appeal the Department's decision.

C. You may request to be excluded from the coverage of this general permit by applying for an individual permit. In such a case, you must submit an individual application in accordance with the requirements of §122.26(c)(1)(ii) of SC Regulation 61-9, with reasons supporting the request, to:

Storm Water and Agricultural Section
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

The request may be granted by issuance of an individual permit or an alternative general permit if your reasons are adequate to support the request.

D. When an individual NPDES permit is issued to you, who are otherwise subject to this permit, or you are authorized to discharge under an alternative NPDES general permit, the applicability of this permit to you is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. If you, who are otherwise subject to this permit, are denied an individual NPDES permit or an alternative NPDES general permit, the applicability of this permit to you is automatically terminated on the date of such denial, unless otherwise specified by DHEC.

4.3 Releases in Excess of Reportable Quantities

A. You must prevent or minimize the discharge of hazardous substances or oil in storm water discharges from the construction Site in accordance with the SWPPP. This permit does not relieve you of the federal reporting requirements of 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 relating to spills or other releases of oils or hazardous substances.

B. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117 or 40 CFR Part 302, occurs during a 24-hour period:

1. You must notify the Department's Emergency Response Section at (803) 253-6488 and the National Response Center (NRC) (800) 424–8802 in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 as soon as Site staff have knowledge of the discharge; and

2. You must modify the SWPPP as required under Subpart 3.11 within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, you must review your SWPPP to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and you must modify your SWPPP where appropriate.

4.4 Attainment of Water Quality Standards After Authorization

You must select, install, implement and maintain BMPs at your construction Site that minimize pollutants in the discharge as necessary to meet applicable water quality standards. In general your SWPPP developed, implemented, and updated consistent with Part 3.0 is considered as stringent as necessary to ensure that your discharges do not cause or contribute to a violation of any applicable water quality standard.

All written responses required under this part must include a signed certification consistent with §122.22 of SC Regulation 61-9 (see Appendix C of this permit).

PART 5: TERMINATION OF COVERAGE

5.1 Requirements

You may only submit a Notice of Termination (NOT) after one or more of the following conditions have been met:

A. Final stabilization has been achieved on all portions of the Site for which you are responsible;

B. Another Operator has assumed control, according to §122.41(l)(3) of SC Regulation 61-9 (see Appendix C of this permit), over all areas of the Site that have not been finally stabilized;

C. Coverage under an individual or alternative general NPDES permit has been obtained; or

D. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

The NOT must be submitted within 30 days of one of the above conditions being met. Authorization to discharge terminates at midnight of the day the NOT is signed.

5.2 Submitting a Notice of Termination

It is your responsibility to submit a complete and accurate Notice of Termination (NOT), using the form (or a photocopy thereof) provided by the Department. The NOT will be made available at our WEB site at:

http://www.scdhec.net/eqc/admin/html/eqforms.html#Water

If DHEC notifies dischargers (either directly, by public notice, or by making information available on

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the Internet) of other NOT form options (e.g., electronic submission), you may take advantage of those options to satisfy the requirements of Part 5.

The Notice of Termination must include the following information:

1. Your CGP NPDES coverage number for the storm water discharge;

2. The basis for submission of the NOT, including: final stabilization has been achieved on all portions of the Site for which the permittee is responsible; another Operator/permittee has assumed control over all areas of the Site that have not been finally stabilized; coverage under an alternative NPDES permit has been obtained; or, for residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner;

3. You, the Operator's name, address, telephone number and your organization's Employer Identification Number (EIN) as established by the U.S. Internal Revenue Service;

4. The name of the Project and address (or a description of location if no street address is available) of the construction Site for which the notification is submitted; and

5. A certification statement, signed and dated by an authorized representative as defined in §122.22 of SC Regulation 61-9 (see Appendix C of this permit) and the name and title of that authorized representative.

6. For Projects disturbing more than 2 acres, a certification statement, signed and dated by the preparer of the SWPPP or other person with a registration equivalent to that of the preparer of the SWPPP, that to the best of his or her knowledge and belief all work was conducted and completed in accordance with the approved SWPPP and this CGP. This certification must be based on the inspections performed in accordance with this Subpart 3.10 of this CGP and must state that any deficiencies that were noted have been corrected.

5.3 Where to Submit

A. All original NOTs must be submitted to DHEC at the following address:

Storm Water and Agricultural Section
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

And a copy of the NOT to the MS4 that received your stormwater discharges when requested in writing by the MS4.

PART 6: RETENTION OF RECORDS

Copies of the SWPPP and all documentation required by this permit, including records of all data used

to complete the NOI to be covered by this permit, must be retained for at least three years from the date that permit coverage expires or is terminated. This period may be extended by request of DHEC at any time.

PART 7: REOPENER CLAUSE

7.1 Procedures for Modification or Revocation

Permit modification or revocation will be conducted according to §122.62, §122.63, §122.64, and §124.5 of SC Regulation 61-9.

7.2 Water Quality Protection

If there is evidence indicating that the storm water discharges authorized by this permit cause, have the reasonable potential to cause or contribute to a violation of any applicable water quality standard, you may be required to obtain an individual permit in accordance with Part 4.2 of this permit, the permit may be modified in accordance with Section 122.62 of SC Regulation 61-9 to include different limitations and/or requirements as addressed or your coverage may be terminated in accordance with Section 122.64 of SC Regulation 61-9.

7.3 Timing of Permit Modification

DHEC may elect to modify the permit prior to its expiration (rather than waiting for the new permit cycle) to comply with any new statutory or regulatory requirements, such as for effluent limitation guidelines that may be promulgated in the course of the current permit cycle.

PART 8: STANDARD PERMIT CONDITIONS

South Carolina regulations require that the Standard Conditions provisioned at §122.41 of SC Regulation 61-9 be applied to all NPDES permits. You are required to comply with those Standard Conditions, details of which are provided in Appendix C of this permit, that are applicable to storm water discharges.

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APPENDIX A - DEFINITIONS AND ACRONYMS DEFINITIONS

"Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to Surface Waters of the State. BMPs also include treatment requirements, operating procedures, and practice to control plant Site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Co-Permittee" means a permittee to an NPDES permit that is only responsible for permit conditions relating to the discharge for which it is Operator.

"Commencement of Construction Activities" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material).

"Control Measure" as used in this permit, refers to any BMP or other method used to prevent or reduce the discharge of pollutants to "Waters of the State".

"CWA" means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq.

"DHEC" means the South Carolina Department of Health and Environmental Control's Office of Environmental Quality Control.

"Discharge" when used without qualification means the ''discharge of a pollutant.''

"Discharge of Storm Water Associated with Construction Activity" as used in this permit, refers to a discharge of pollutants in storm water from areas where soil disturbing activities (e.g., clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Eligible" means qualified for authorization to discharge storm water under this general permit.

"Facility" or "Activity" means any "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Federal Facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned by, or constructed or manufactured for the purpose of leasing to, the Federal government.

"Final Stabilization" means that:

1. All soil disturbing activities at the Site have been completed and either of the two following criteria are met:

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a. A uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures; or

b. Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

2. When background native vegetation or other appropriate vegetation will cover less than 100 percent of the ground (e.g., arid areas, beaches), the 70 percent coverage criteria is adjusted as follows: if the native vegetation or other appropriate vegetation covers 50 percent of the ground, 70 percent of 50 percent (0.70 X 0.50 = 0.35) would require 35 percent total cover for final stabilization. On a beach with no natural vegetation, no stabilization is required.

3. For individual lots in residential construction, final stabilization means that either:

   a. The homebuilder has completed final stabilization as specified above; or

   b. The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization.

4. For construction Projects on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for highway construction, etc.), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to "Surface Waters of the State," and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) or (2) or (3) above.

"Indian country" is defined at §122.2 of SC Regulation 61-9 to mean:

1. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

2. All dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and

3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-ways running through the same.

"Large Construction Activity" is the construction industrial activity as defined at §122.26(b)(14)(x) of SC Regulation 61-9 and incorporated here by reference. A large construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than five acres of land or will disturb less than five acres of total land area but is part of a larger common plan of

development or sale that will ultimately disturb equal to or greater than five acres. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the Site.

"Municipal Separate Storm Sewer System" or "MS4" is defined at §122.26(b)(8) of SC Regulation 61-9 to mean a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to Surface Waters of the State;

2. Designed or used for collecting or conveying storm water;

3. Which is not a combined sewer; and

4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at §122.2 of SC Regulation 61-9.

"New Project" means the "commencement of construction activities" occurs after the effective date of this permit.

"Ongoing Project" means the "commencement of construction activities" occurs before the effective date of this permit.

"Operator" for the purpose of this permit and in the context of storm water associated with construction activity, means any party associated with a construction Project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications. Note: A party has "operational control over construction plans and specifications" if they have the authority to prepare or modify such plans and specifications under Subpart 3.1.A; or

2. The party has "operational control over day-to-day activities" at a Project that are necessary to ensure compliance with a SWPPP for the Site or other permit conditions (e.g., they are authorized to direct workers at a Site to carry out activities required by the SWPPP or comply with other permit conditions). This definition is provided to inform permittees of EPA's interpretation of how the regulatory definitions of ''Owner or Operator'' and ''facility or activity'' are applied to discharges of storm water associated with construction activity.

"Owner or Operator" means the owner or Operator of any ''facility or activity'' subject to regulation under the NPDES program. For purposes of this permit, when local governments (counties, cities,

etc.) construct or improve state roads, the owner of these road construction projects during the construction is the local government.

"Permitting Authority" means the United States Environmental Protection Agency, EPA, a Regional Administrator of the Environmental Protection Agency or an authorized representative.

"Person" means any individual, public or private corporation, political subdivision, association, partnership, corporation, municipality, State or Federal agency, industry, copartnership, firm, trust, estate, any other legal entity whatsoever, or an agent or employee thereof.

"Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Pollutant" is defined at §122.2 of SC Regulation 61-9. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

"Project" means an undertaking such as, but not limited to, construction of commercial development, residential development, industrial development, roadways, railways, and utility lines.

"Project Area" means:

1. The areas on the construction Site where storm water discharges originate and flow toward the point of discharge into the receiving waters (including areas where excavation, Site development, or other ground disturbance activities occur) and the immediate vicinity. (Example: 1. Where bald eagles nest in a tree that is on or bordering a construction Site and could be disturbed by the construction activity or where grading causes storm water to flow into a small wetland or other habitat that is on the Site that contains listed species.)

2. The areas where storm water discharges flow from the construction Site to the point of discharge into receiving waters. (Example: Where storm water flows into a ditch, swale, or gully that leads to receiving waters and where listed species (such as amphibians) are found in the ditch, swale, or gully.)

3. The areas where storm water from construction activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where storm water from construction activities discharges into a stream segment that is known to harbor listed aquatic species.)

4. The areas where storm water BMPs will be constructed and operated, including any areas where storm water flows to and from BMPs. (Example: Where a storm water retention pond would be built.)

5. The areas upstream and /or downstream from construction activities discharges into a stream segment that may be affected by the said discharges. (Example: Where sediment discharged to a receiving stream settles downstream and impacts a breeding area of a listed aquatic species.)

"Receiving water" means the "Waters of the State" as defined in §122.2 of SC Regulation 61-9 into which the regulated storm water discharges.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Small Construction Activity" is defined under the definition of "Stormwater discharge associated with small construction activity" at §122.26(b)(15) of SC Regulation 61-9 as follows: "Storm water discharge associated with small construction activity means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres and, in coastal counties within one-half (1/2) mile of a receiving water body (but not for single-family homes which are not part of a subdivision development), that result in any land disturbance less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Department may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

(A) The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket , 401 M Street S.W., Washington, DC. 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An Operator must certify to the Department that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

(B) Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction Sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream

concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The Operator must certify to the Department that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(ii) Any other construction activity designated by the Department, or in States with approved NPDES programs either the Department or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States."

"Storm Water" means storm water runoff, snowmelt runoff, and surface runoff and drainage.

"Storm Water Discharge-Related Activities" as used in this permit, include: activities that cause, contribute to, or result in storm water point source pollutant discharges, including but not limited to: excavation, Site development, grading and other surface disturbance activities; and measures to control storm water including the siting, construction and operation of BMPs to control, reduce or prevent storm water pollution.

"Surface Waters of the State" means "Waters of the State" as defined in §122.2 of SC Regulation 61-9 except for groundwater.

"Total Maximum Daily Load" or "TMDL" means the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

"Waters of the State" is defined in §122.2 of SC Regulation 61-9.

"Wetland" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

ACRONYMS

BMP - Best Management Practices

CGP - Construction General Permit

CFR - Code of Federal Regulations

CWA - Clean Water Act

EPA - United States Environmental Protection Agency

MS4 - Municipal Separate Storm Sewer System

NOI - Notice of Intent

NOT - Notice of Termination

NPDES - National Pollutant Discharge Elimination System

POTW - Publicly Owned Treatment Works

SWPPP - Storm Water Pollution Prevention Plan

TMDL - Total Maximum Daily Load

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APPENDIX B - SMALL CONSTRUCTION WAIVERS AND INSTRUCTIONS

These waivers are only available to storm water discharges associated with small construction activities (i.e., 1-5 acres). As the Operator of a small construction activity, you may be able to qualify for a waiver in lieu of needing to obtain coverage under this general permit based on: (A) a low rainfall erosivity factor, (B) a TMDL analysis, or (C) an equivalent analysis that determines allocations for small construction Sites are not needed. Each Operator, otherwise needing permit coverage, must notify DHEC of its intention for a waiver. It is the responsibility of those individuals wishing to obtain a waiver from coverage under this general permit to submit a complete and accurate waiver certification as described below. Where the Operator changes or another is added during the construction Project, the new Operator must also submit a waiver certification to be waived.

A. Rainfall Erosivity Waiver

Under this scenario the small construction Project's rainfall erosivity factor calculation ("R" in the Revised Universal Soil Loss Equation) is less than 5 during the period of construction activity. The Operator must certify to the Permitting Authority that construction activity will occur only when the rainfall erosivity factor is less than 5. The period of construction activity begins at initial earth disturbance and ends with final stabilization. Where vegetation will be used for final stabilization, the date of installation of a stabilization practice that will provide interim non-vegetative stabilization can be used for the end of the construction period, provided the Operator commits (as a condition of waiver eligibility) to periodically inspect and properly maintain the area until the criteria for final stabilization as defined in the construction general permit have been met. If use of this interim stabilization eligibility condition was relied on to qualify for the waiver, signature on the waiver with its certification statement constitutes acceptance of and commitment to complete the final stabilization process. The Operator must submit a waiver certification to DHEC prior to commencing construction activities.

> *Note: The rainfall erosivity factor "R" is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21–64, dated January 1997; United States Department of Agriculture (USDA), Agricultural Research Service.*

EPA funded a cooperative agreement with Texas A&M University to develop an online rainfall erosivity calculator. You can access the calculator from EPA's website at:

www.epa.gov/npdes/stormwater/cgp

Use of the calculator allows you to determine potential eligibility for the rainfall erosivity waiver. It may also be useful in determining the time periods during which construction activity could be waived from permit coverage. You may find that moving your construction activity by a few weeks or expediting Site stabilization will allow you to qualify for the waiver.

If you are the Operator of the construction activity and eligible for a waiver based on low erosivity potential, you must provide the following information on the waiver certification in order to be waived

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from permitting requirements:

1. Name, address and telephone number of the construction Site Operators;

2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction Project or Site;

3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest quarter acre) to be disturbed;

4. The rainfall erosivity factor calculation that applies to the active construction phase at your Project Site; and

5. A statement, signed and dated by an authorized representative, as provided in §122.22 of SC Regulation 61-9 (see Appendix C of this permit), that certifies that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five.

At the time of publication, a Low Erosivity Waiver Form is not available. If EPA or DHEC does create a form, it will be noticed (either directly, by public notice, or by making information available on the Internet at:

www.epa.gov/npdes/stormwater/cgp or http://www.scdhec.gov/stormwater

Note: If the R factor is 5 or greater, you cannot apply for the rainfall erosivity waiver, and must apply for permit coverage as per Subpart 2.1 of the construction general permit, unless you qualify for the Water Quality Waiver as described below.

If your small construction Project continues beyond the projected completion date given on the waiver certification, you must recalculate the rainfall erosivity factor for the new Project duration. If the R factor is below five (5), you must update all applicable information on the waiver certification and retain a copy of the revised waiver as part of the Site SWPPP. The new waiver certification must be submitted prior to the projected completion date listed on the original waiver form to assure your exemption from permitting requirements is uninterrupted. If the new R factor is five (5) or above, you must submit an NOI as per Part 2.

B. TMDL Waiver

This waiver is available if a TMDL that addresses the pollutant(s) of concern and has determined that controls on storm water discharges from small construction activity are not needed to protect water quality. The pollutant(s) of concern include sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. Information on TMDLs that have been established is available from EPA online at www.epa.gov/owow/tmdl/ and from DHEC at: www.scdhec.gov/water/tmdl/.

If you are the Operator of the construction activity and eligible for a waiver based on compliance with

a TMDL, you must provide the following information on the Waiver Certification form in order to be waived from permitting requirements:

1. Name, address and telephone number of the construction Site Operator(s);

2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction Project or Site;

3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest quarter acre) to be disturbed;

4. The name of the water body(s) that would be receiving storm water discharges from your construction Project;

5. The name and approval date of the TMDL; and

6. A statement, signed and dated by an authorized representative, as provided in §122.22 of SC Regulation 61-9 (see Appendix C of this permit), that certifies that the construction activity will take place and that the storm water discharges will occur, within the drainage area addressed by the TMDL.

C. Equivalent Analysis Waiver

This waiver is available for non-impaired waters only. The Operator can develop an equivalent analysis that determines allocations for his small construction Site for the pollutant(s) of concern or determines that such allocations are not needed to protect water quality. This waiver requires a small construction Operator to develop an equivalent analysis based on existing in-stream concentrations, expected growth in pollutant concentrations from all sources, and a margin of safety.

If you are a construction Operator who wants to use this waiver, you must develop your equivalent analysis and provide the following information to be waived from permitting requirements:

1. Name, address and telephone number of the construction Site Operator(s);

2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction Project or Site;

3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest quarter acre) to be disturbed;

4. The name of the water bodies that would be receiving storm water discharges from your construction Project;

5. Your equivalent analysis; and

6. A statement, signed and dated by an authorized representative, as provided in §122.22 of SC

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Regulation 61-9 (see Appendix C of this permit), that certifies that the construction activity will take place and that the storm water discharges will occur, within the drainage area addressed by the equivalent analysis.

D. Waiver Deadlines and Submissions

1. Waiver certifications must be submitted prior to commencement of construction activities.

2. If you submit a TMDL or equivalent analysis waiver request, you are not waived until DHEC approves your request. As such, you may not commence construction activities until receipt of approval from DHEC.

3. Late Notifications: Operators are not prohibited from submitting waiver certifications after initiating clearing, grading, excavation activities, or other construction activities. DHEC may take enforcement for any unpermitted discharge or violations of laws or regulations that occur between the time construction commenced and waiver authorization is granted.

Submittal of a waiver certification is an optional alternative to obtaining permit coverage for discharges of storm water associated with small construction activity, provided you qualify for the waiver. Any discharge of storm water associated with small construction activity not covered by either a permit or a waiver may be considered an unpermitted discharge under the Clean Water Act and the SC Pollution Control Act. As mentioned above, DHEC may take enforcement for any unpermitted discharge or violations of laws or regulations that occur between the time construction commenced and either discharge authorization is granted or a complete and accurate waiver certification is submitted. DHEC may notify any Operator covered by a waiver that they must apply for a permit. DHEC may notify any Operator who has been in non-compliance with a waiver that they may no longer use the waiver for future Projects. Any member of the public may petition DHEC to take action under this provision by submitting written notice along with supporting justification.

Complete and accurate Rainfall Erosivity waiver certifications must be sent to the following address:

Storm Water and Agricultural Permitting Section
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

Complete and accurate TMDL or equivalent analysis waiver requests must be sent to the following address:

Storm Water and Agricultural Permitting Section
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

APPENDIX C – SECTIONS 122.41 AND 122.22 OF SC REGULATION 61-9

Section 122.41 of SC Regulation 61-9.

122.41. Conditions applicable to all permits. The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in section 122.42. All conditions applicable to NPDES permit shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to the federal regulations (or the corresponding approved State regulations) must be given in the permit.

(a) Duty to comply. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Clean Water Act and the Pollution Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. The Department's approval of wastewater facility Plans and Specifications does not relieve the permittee of responsibility to meet permit limits.

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

(2) Failure to comply with permit conditions or the provisions of this regulation may subject the permittee to civil penalties under S.C. Code Section 48-1-330 or criminal sanctions under S.C. Code Section 48-1-320. Sanctions for violations of the Federal Clean Water Act may be imposed in accordance with the provisions of 40 CFR Part 122.41(a)(2) and (3).

(3) A person who violates any provision of this regulation, a term, condition or schedule of compliance contained within a valid NPDES permit, or the State law is subject to the actions defined in the State law.

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. (But see 122.4(g)(2)).

(c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(e) (1) Proper operation and maintenance. The permittee shall at all times properly operate and maintain in good working order and operate as efficiently as possible all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the

permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes effective performance based on design facility removals, adequate funding, adequate operator staffing and training and also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(2) The permittee shall develop and maintain at the facility a complete Operations and Maintenance Manual for the waste treatment facilities and/or land application system. The manual shall be made available for on-site review during normal working hours. The manual shall contain operation and maintenance instructions for all equipment and appurtenances associated with the waste treatment facilities and land application system. The manual shall contain a general description of: the treatment process(es), the operational procedures to meet the requirements of (e)(1) above, and the corrective action to be taken should operating difficulties be encountered.

(3)(i) Except as stated in (ii) below, the permittee shall provide for the performance of daily treatment facility inspections by a certified operator of the appropriate grade as defined in the permit for the facility. The inspections shall include, but should not necessarily be limited to, areas which require visual observation to determine efficient operation and for which immediate corrective measures can be taken using the O & M manual as a guide. All inspections shall be recorded and shall include the date, time, and name of the person making the inspection, corrective measures taken, and routine equipment maintenance, repair, or replacement performed. The permittee shall maintain all records of inspections at the permitted facility as required by the permit, and the records shall be made available for on-site review during normal working hours.

(ii) The Department may make exceptions to operating requirements, if stated in the permit, as follows:

(A) Attendance by the certified operator of the appropriate grade ("the operator") is normally required only on days when treatment or discharge occurs.

(B) For performance of daily inspections, permits may allow a reduced grade of operator for limited time periods under specific circumstances when justified by the permittee in a staffing plan and approved by the Department.

(C) Reduced inspection frequency, but in no case less than weekly, may be suitable when specified in the permit, if there is complete telemetry of operating data and there is either a simple treatment system with a low potential for toxicity but requiring pumps or other electrical functions or the ability to stop the discharge for an appropriate period when necessary.

(D) In other circumstances where the permittee demonstrates the capability to evaluate the facility in an alternative manner equivalent to the inspection requirements in subparagraph 3(i).

(E) Any exceptions allowed under (A), (B), (C), and (D) above may be subject to compliance with the permit conditions.

(4) (i) Purpose. This regulation establishes rules for governing the operation and maintenance of wastewater sewer systems, including gravity or pressure interceptor sewers. It is the purpose of this rule to establish standards for the management of sewer systems to prevent and/or minimize system failures that would lead to public health or environmental impacts.

(ii) Authority and applicability. Under Section 48-1-30 of the Code of Laws of South Carolina (1976 as amended), the Department is authorized to adopt such rules and regulations as may be necessary to implement the Pollution Control Act. This regulation applies to all sewer systems that have been or would be subject to a DHEC construction permit under Regulation 61-67 and whose owner owns or operates the wastewater treatment system to which the sewer discharges and which discharges under NPDES. Nothing in this regulation supersedes a more stringent requirement that may be imposed by sewer system owners that manage wastewater from satellite systems. This regulation (122.41(e)(4)) is effective when published in the State Register.

(iii) General requirements. The requirements to properly operate and maintain sewer systems are the responsibility of the system owner. General Standards. The sewer system owner must:

(A) Properly manage, operate, and maintain at all times all parts of its sewer system(s), to include maintaining contractual operation agreements to provide services, if appropriate;

(B) Provide adequate capacity to convey base flows and peak flows for all parts of the sewer system or, if capital improvements are necessary to meet this standard, develop a schedule of short and long term improvements;

(C) Take all reasonable steps to stop and mitigate the impact of releases of wastewater to the environment; and

(D) Notify the Department within 30 days of a proposed change in ownership of a sewer system.

(iv) [Reserved.]

(f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this

permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow the Department, or an authorized representative (including an authorized contractor acting as a representative of the Department), upon presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and Pollution Control Act, any substances or parameters at any location.

(j) Monitoring and records.

(1) (i) (A)Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(B) Samples shall be reasonably distributed in time, while maintaining representative sampling.

(C) No analysis, which is otherwise valid, shall be terminated for the purpose of preventing the analysis from showing a permit or water quality violation.

(ii) Flow Measurements.

(A) Where primary flow meters are required, appropriate flow measurement devices and methods consistent with accepted scientific practices shall be present and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of not greater than 10 percent from the true discharge rates throughout the range of expected discharge volumes. The primary flow device, where required, must be accessible to the use of a continuous flow recorder.

(B) Where permits require an estimate of flow, the permittee shall maintain at the permitted facility a record of the method(s) used in "estimating" the discharge flow (e.g., pump curves, production charts, water use records) for the outfall(s) designated on limits pages to monitor flow by an estimate.

(C) Records of any necessary calibrations must be kept.

(iii) The Department may designate a single, particular day of the month on which any group of parameters listed in the permit must be sampled. When this requirement is imposed in a permit, the Department may waive or alter compliance with the permit requirement for a specific sampling event for extenuating circumstances.

(iv) The Department may require that a permittee monitor parameters in the stream receiving his permitted discharge as necessary to evaluate the need for and to establish limits and conditions and to insure compliance with water quality standards (i.e., R.61-68).

(2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by R.61-9.503 or R.61-9.504); the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(4) Analyses for required monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or, in the case of sludge use or disposal, unless otherwise specified in R.61-9.503 or R.61-9.504.

(5) The PCA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $25,000 or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment provided by the Clean Water Act is also by imprisonment of not more than 4 years.

(k) Signatory requirement.

(1) All applications, reports, or information submitted to the Department shall be signed and certified (See section 122.22).

(2) The PCA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $25,000 per violation, or by imprisonment for not more than two years per violation, or by both.

(l) Reporting requirements.

(1) Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in section 122.29(b); or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under section 122.42(a)(l).

(iii) The alteration or addition results in a significant change in the permittee's sewage sludge or industrial sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan (included in the NPDES permit directly or by reference);

(2) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) Transfers. This permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit to change the name of permittee and incorporate such other requirements as may be necessary under the Pollution Control Act and the Clean Water Act. (See section 122.61; in some cases, modification or revocation and reissuance is mandatory.)

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report

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(DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in R.61-9.503 or R.61-9.504, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.

(iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.

(5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See section 122.44(g)).

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours (See section 122.44(g)).

(iii) The Department may waive the written report on a case-by-case basis for reports under paragraph (l)(6)(i) of this section if the oral report has been received within 24 hours.

(7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (l)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

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(8) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

(m) Bypass.

(1) Definitions.

(i) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraph (m)(3) and (m)(4) of this section.

(3) Notice.

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice).

(4) Prohibition of bypass

(i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (m)(3) of this section.

(ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

(n) Upset.

(1) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. A upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(3) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph (l)(6)(ii)(B) of this section (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph (d) of this section.

(4) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

(o) Misrepresentation of Information.

(1) Any person making application for a NPDES discharge permit or filing any record, report, or other document pursuant to a regulation of the Department, shall certify that all information contained in such document is true. All application facts certified to by the applicant shall be considered valid conditions of the permit issued pursuant to the application.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, or other documents filed with the Department pursuant

to the State law, and the rules and regulations pursuant to that law, shall be deemed to have violated a permit condition and shall be subject to the penalties provided for pursuant to 48-1-320 or 48-1-330.

Section 122.22 of SC Regulation 61-9.

122.22. Signatories to permit applications and reports.

(a) Applications. All permit applications shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency or public facility: By either a principal executive officer, mayor, or other duly authorized employee or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(i) The chief executive officer of the agency, or

(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator, Region IV, EPA).

(b) All reports required by permits, and other information requested by the Department, shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having

responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,

(3) The written authorization is submitted to the Department.

(c) Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. Any person signing a document under paragraph (a) or (b) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

WPC

ENGINEERING, ENVIRONMENTAL
& CONSTRUCTION SERVICES

MEMORANDUM

TO: Mr. Joe Walker
FROM: C. Lee Allen, III
DATE: February 7, 2005
RE: North Trenholm Road-Roper Property

Mr. Walker;

Please see the attached documents for your records. As indicated in the letter of verification dated January 26, 2005, the subject property contains 1.80-acres of federally defined jurisdictional wetlands. As such, please reference SAC No. 81-2004-1871 (J) for any future inquiries directed to the US Army Corps of Engineers. If any impacts including dredging or filling are required within the aforementioned wetlands please note your obligation to provide mitigation in the Nationwide Permit No. 39 process. I would appreciate the opportunity to provide you with the highest level of personal assistance in the permitting process. If I can be of additional assistance, please do not hesitate to contact me at 843.884.1234 or 843.200.5121.

With kindest regards,
WPC

Charles Lee Allen, III
Environmental Services Project Manager

EXHIBIT
2 Walker
8.20.09 SB
PENGAD 800-631-6989

RP 0083
000546

Regulatory Division - Charleston District - Corps of Engineers - P.O. Box 919 - Charleston, South Carolina 29402

REQUEST FOR WETLANDS DETERMINATION

Date: 10/04/04

County: Richland **Total Acreage of Tract:** Approx. 12.75 Acres

Project Name (if applicable): Roper Property-North Trenholm Road

Property Owner
(name, address, phone):
Estates Management, Inc.
Attn: Mr. Joe Walker
1401 Main Street, Suite 650
Columbia, South Carolina 29201

Agent/Developer/Engineer
(name, address, phone):
C. Lee Allen / WPC
1017 Chuck Dawley Boulevard
Mt. Pleasant South Carolina 29464
Ph. (843) 881-1234 FAX (843) 884-9234

Status of Project (check one):
- ☐ On-going site work for development purposes
- X Development in planning stages
- ☐ No specific development plans at this time

Project Type - Indicate the **proposed** use of the land in question or, if no specific work is planned at present, indicate the current zoning or land use at the site. (check one):

X Residential	☐ Commercial	☐ Mixed Use (Residential + Commercial)
☐ Industrial	☐ Agriculture	☐ Public Works
☐ Silviculture	☐ Aquaculture	Other:

Information Required to Accompany Request - Check the items submitted - forward as much information as is available. At a minimum, the first two items must be forwarded:

- X Accurate Location Map (from County Map, USGS Quad Sheet, etc.)
- ☐ Survey Plat or Tax Map of the Property in Question
- X Soil Survey Sheet (from USDA-NRCS) or Aerial Photo (from County Assessor's Office or other source). Property boundaries should be show on the soil survey / photo.
- ☐ Topographic Survey
- ☐ Conceptual Site Plan for the Overall Development

Endangered Species Evaluation:
Has the site been evaluated for the presence of federally protected (endangered, threatened or proposed) species and/or any proposed or designated critical habitat for such species? YES (NO)
If Yes, has this evaluation been coordinated with the US Fish and Wildlife Service (FWS)? YES (NO)
If coordination has occurred, please provide the FWS Log number and enclose a copy of the report:
FWS Log Number: _____ Copy of Report enclosed? YES (NO)
If the evaluation has not been coordinated with the US FWS, enclose a copy of your report of findings.

IMPORTANT NOTE: Legible printed name and signature required. The person signing this form must be the Present property owner or have the specific authority of the property owner to authorize Corps of Engineers Employees or their agents to enter onto the property for on-site investigations if such is deemed necessary. Do not sign this form unless you are the owner, or have the specific authority of the property owner.

PRINTED NAME of person signing this form, below: C. Lee Allen /WPC, Inc (Agent)

Signature of Property Owner or Authorized Agent: _____ RP 0084

Copies of this form maybe obtained from the Charleston District web site at: http://www.sac.usace.army.mil/permits/form-JDRequest.pdf

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DATA FORM
ROUTINE WETLAND DETERMINA' 'ION
(1987 CE Wetlands Delineation Man al) 4W-1

Project/Site:	Roper Property-N. Trenholm Road	Date:	1('4/2004
Applicant/Owner:		County:	I ichland
Investigator:	WPC, Inc. (Lee Allen)	State:	S uth Carolina
Do normal circumstances exist on the site?	☑ Yes ☐ No	Community Il):	Forested seepage area
Is the site significantly disturbed (atypical situation)?	☐ Yes ☑ No	Transect ID:	NA
Is the area a potential problem area (If needed, explain)? ☐ Yes ☑ No		Data Point #:	4 continued
			downhill from flag No A-47
		Latitude:	
		Longitude:	

VEGETATION

DOMINANT PLANT SPECIES	STRATUM	INDICATOR	DOMINANT PLANT SPECIES	STRATUM	INDICATOR
1. red maple *Acer rubrum*	tree	FAC	7. torpedo grass *Panicum repe ns*	herb	FACW-
2. sweetgum *Liquidambar styraciflua*	tree	FAC+	8. slash pine *Pinus elliotti*	tree	FACW
3. elm *Ulmus spp.*	tree	FAC	9. longleaf pine *Pinus palusir is*	tree	FACU+
4. Tuliptree *Liriodendron tulipifera*	tree	FAC	10. magnolia *Magnolia gr ndiflora*	tree	FAC+
5. witchgrass *Dichanthelium spp.*	herb	FAC	11. netted cahinf rn *Woodwardia reolata*	herb	OBL
6. cinnamon fern *Osmunda cinnamomea*	herb	FACW	12. *#N/A*	#N/A	#N/A

Percent of dominant species that are OBL, FACW, or FAC (Excluding FAC-): 90.91%

Remarks The hydrophytic vegetation criterion has been met.

HYDROLOGY

☐ RECORDED DATA (DESCRIBE IN REMARKS):

- ☐ Stream, Lake, or Tide Gage
- ☑ Aerial Photographs
- ☐ Other

☑ NO RECORDED DATA AVAILABLE

FIELD OBSERVATIONS

Depth of Surface Water: 0"

Depth to Free Water in Pit: 12+"

Depth to Saturated Soil: 4-6"

WETLAND HYDROLOGY INDICATORS

Primary Indi ators:

- ☐ Inu dated
- ☑ Sat rated in Upper 12 Inches
- ☑ Wa er Marks
- ☐ Dri t Lines
- ☑ Sec iment Deposits
- ☑ Dr inage Patterns in Wetlands

Secondary In dicators (2 or more required):

- ☑ Ox dized Root Channels in Upper 12 Inches
- ☑ Wa er-Stained Leaves
- ☐ Lo al Soil Survey Data
- ☐ FA C-Neutral Test
- ☐ Ot er (Explain in Remarks)

Remarks: The hydrologic criterion has been met.

SOILS 4W-2

MAP UNIT NAME (Series and Phase): Mapped as Pclion Series loamy sand	DRAINAGE CLASS: moderately poorly drained Perched water table
TAXONOMY (SUBGROUP): thermic Aaquic Hapludults	FIELD OSERVATIONS: Confirm Mapped Type? ☑ Yes ☐ No

PROFILE DESCRIPTION

Depth (inches)	Horizon	Matrix Color (Munsell Moist)	Mottle Color (Munsell Moist)	Mottle Abundance/Contrast	Texture, Concretions, Structure, etc.
1-8"	Ao	10 YR 3-2			loamy sand
8-12+"	C1	10 YR 4/2			loamy fine sand

HYDRIC SOIL INDICATORS:

- ☐ Histosol
- ☐ Concretions
- ☐ Histic Epipedon
- ☑ High Organic Content in Surface Layer in Sandy Soils
- ☑ Reducing Conditions
- ☐ Aquic Moisture Regime
- ☐ Sulfidic Odor
- ☐ Organic S:eaking in Sandy Soils
- ☐ Listing on National Hydric Soils List
- ☐ Listed on .tate or Local Hydric Soils List
- ☑ Gleyed or Low Chroma
- ☐ Color
- ☐ Other (Explain in Remarks)

Remarks:

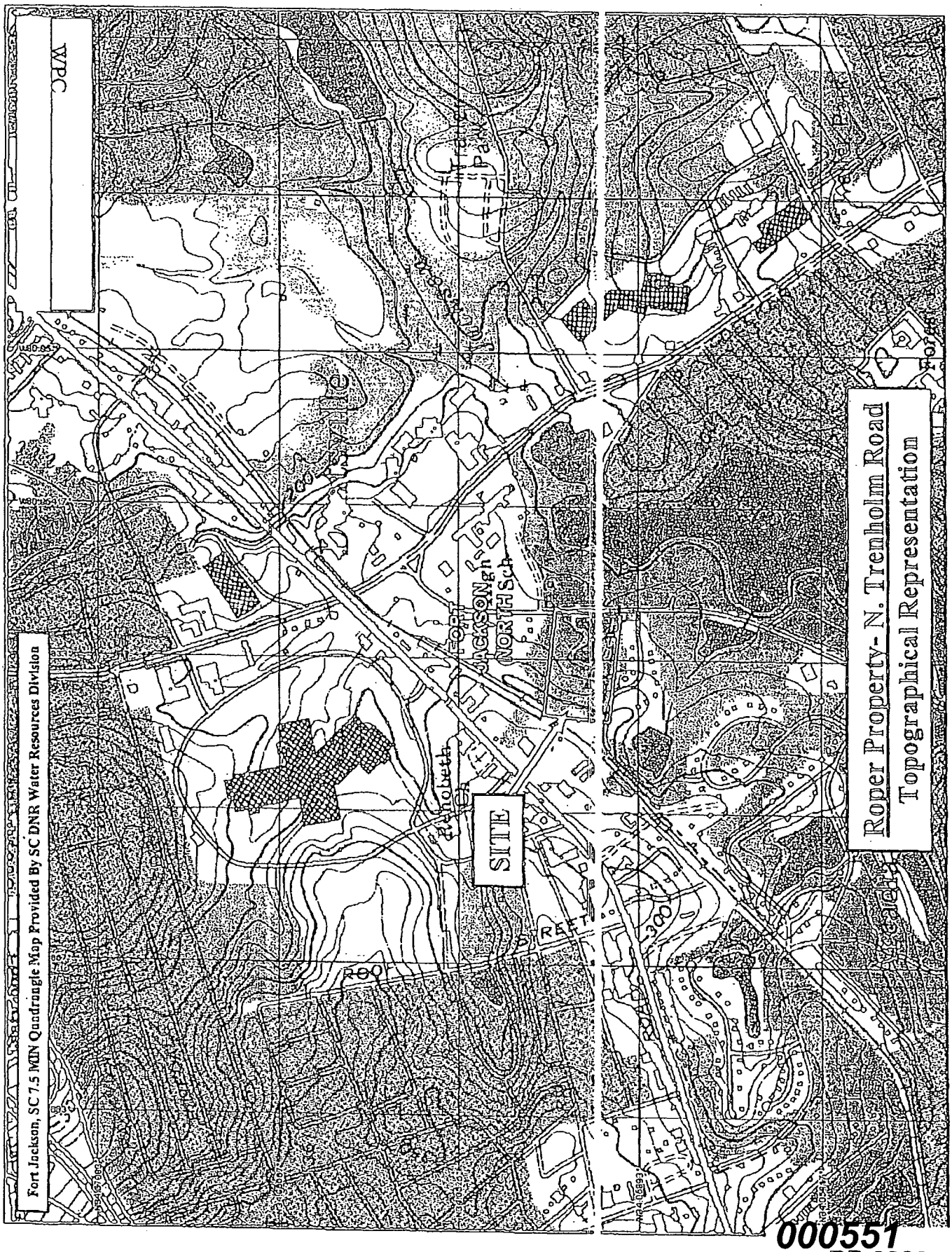
WETLAND DETERMINATION

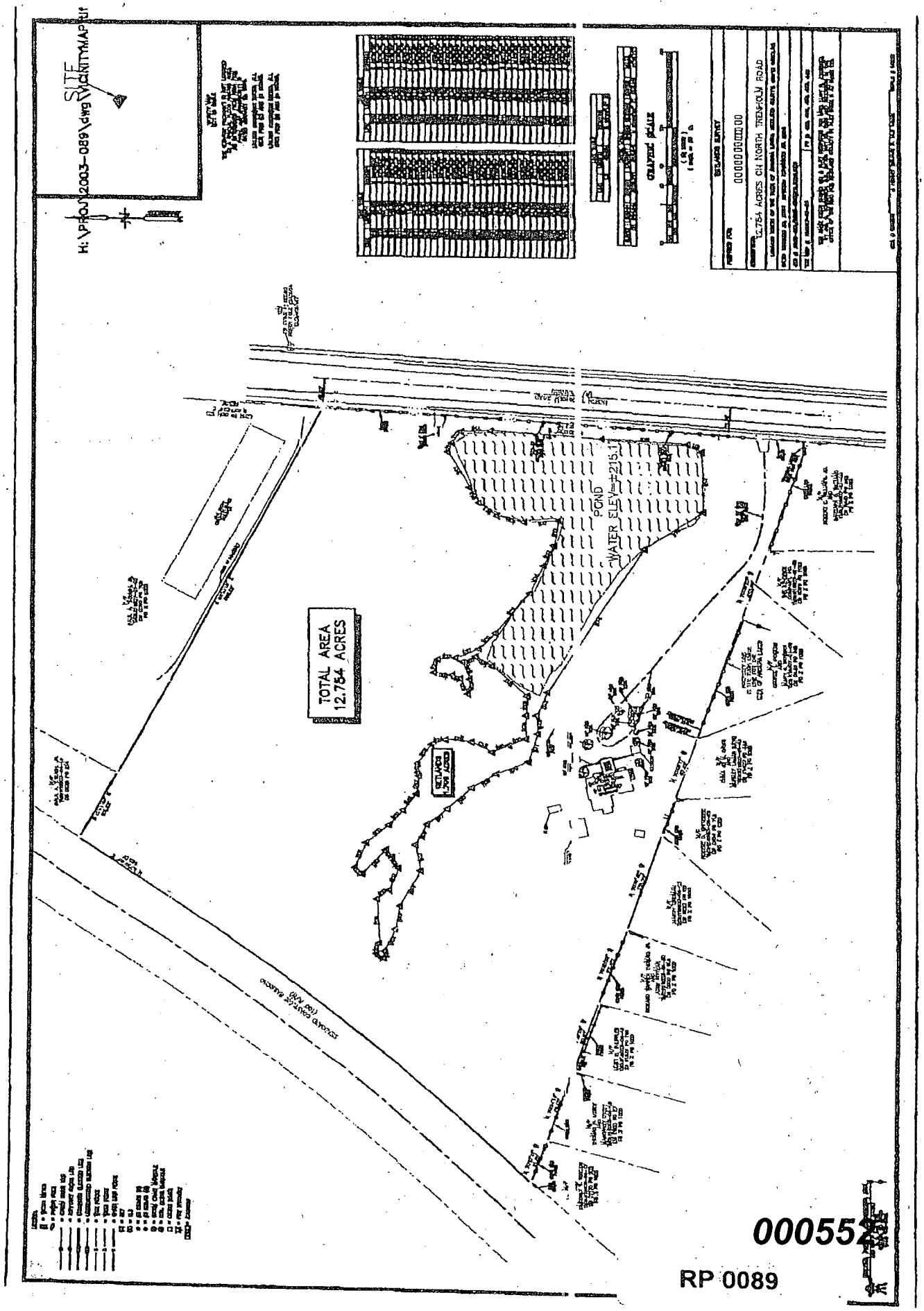
Hydrophytic Vegetation Present?	☑ Yes	☐ No	Is this Sampling Point Within a Wetland?	☑ Yes ☐ No
Wetland Hydrology Present?	☑ Yes	☐ No		
Hydric Soil Present?	☑ Yes	☐ No		

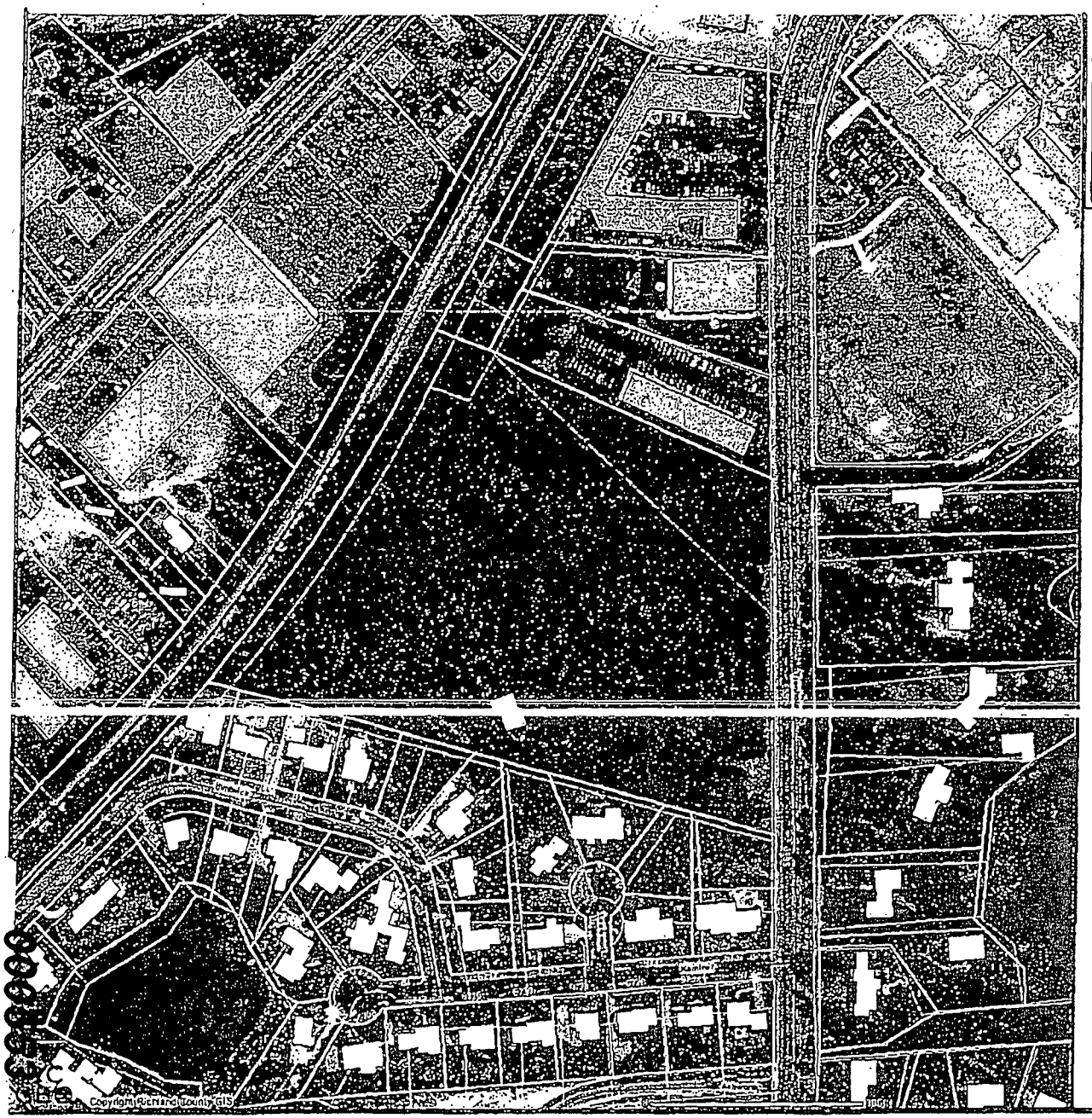
Remarks: Data point is located within a seepage area located north of the pond.

Site Soil Classifications:
PeB, Pe, and PnC (Pelion Series)- Moderately well drained; moderately slowly permeable

000530
RP 0087


Roper Property- N. Trenholm Road
Topographical Representation
SITE
Fort Jackson, SC 7.5 MIN Quadrangle Map Provided By SC DNR Water Resources Division
WPC
JACKSON
NORTH
Trenholm
STREET
ROAD
200
300


SITE
H:\PROJ\2003-089\dwg\VICINITYMAP.dwg
TOTAL AREA
12.754 ACRES
POND
WATER ELEV.=215.1'
12.754 ACRES ON NORTH TREMPOLI ROAD
GRAPHIC SCALE
SCALE: 1" = 200'
SURVEY
000552
RP 0089



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Richland County GIS
2020 Hampton St.
Columbia, SC 29204

02/09/05 16:14 FAX 8037659427 ESTATES MGMT CO 009

RP 0090

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69A Hagood Avenue
CHARLESTON, SOUTH CAROLINA 29403-5107

REPLY TO
ATTENTION OF

January 26, 2005

Regulatory Division

Mr. Lee Allen, III
WPC Engineering and Construction Services
1017 Chuck Dawley Blvd.
Mt. Pleasant, South Carolina 29464

Re: SAC 81-2004-1871 (J)
Richland County

Dear Mr. Allen:

This is in response to your October 4, 2004, request for a wetland determination, on behalf of Estates Management, Inc., for a 12.75-acre tract located at 6837 North Trenholm Road in the Town of Arcadia Lakes, Richland County, South Carolina. The project area is depicted on the survey plat you submitted, which was prepared by J. Henry Walker, III, (SCPLS # 14532), dated October 28, 2004, revised November 22, 2004, and entitled "Wetlands Survey Prepared for Estates, Inc.".

This plat depicts surveyed boundaries of wetlands or other waters of the United States as established by your office. You have requested that this office verify the accuracy of this mapping as a true representation of wetlands or other waters of the United States within the regulatory authority of this office. The property in question contains 1.80-acres of federally defined jurisdictional freshwater wetlands or other waters of the United States subject to the jurisdiction of this office. The location and configuration of these areas are reflected on the plat referenced above.

Based on an on-site inspection and a review of aerial photography and soil survey information, it has been determined that the surveyed jurisdictional boundaries shown on the referenced plat are an accurate representation of jurisdictional areas within our regulatory authority. This office should be contacted prior to performing any work in these areas. Enclosed is a form describing the basis of jurisdiction for the areas in question. You should also be aware that these areas may be subject to restrictions or requirements of other state or local governmental entities.

If a permit application is forthcoming as a result of this delineation, a copy of this letter, as well as the verified survey plat, should be submitted as part of the application. Otherwise, a delay could occur in confirming that a delineation was performed for the permit project area.

Please be advised that this determination is valid for five (5) years from the date of this letter unless new information warrants revision of the delineation before the expiration date. All actions concerning this determination must be complete within this time frame, or an additional delineation must be conducted. This **approved** jurisdictional determination is an appealable action under the Corps of Engineers administrative appeal procedures defined at 33 CFR 331. The administrative appeal options, process and appeals request form is attached for your convenience and use.

EXHIBIT
3 Walker
8.20.09 SB
PENGAD 800-631-6989

000554
RP 0092

In future correspondence concerning this matter, please refer to SAC 81-2004-1871 (J). You may still need state or local assent. Prior to performing any work, you should contact the South Carolina Department of Health and Environmental Control, Bureau of Water. A copy of this letter is being forwarded to them for their information.

If you have any questions concerning this matter, please contact Colt Bowles at 803-253-3400.

Respectfully,

Fred Veal
Project Manager

Enclosures:
Basis for Jurisdiction
Notification of Appeal Options

Copy Furnished:
Mr. Quinton Epps
S.C. Department of Health
and Environmental Control
Bureau of Water
2600 Bull Street
Columbia, South Carolina 29201

000555
RP 0093

JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers

Revised 8/13/04

DISTRICT OFFICE: Charleston
FILE NUMBER: SAC 81-2004-1871 (J)

PROJECT LOCATION INFORMATION:
State: South Carolina
County: Richland
Center coordinates of site (latitude/longitude): 34.059571/80.957718
Approximate size of area (parcel) reviewed, including uplands: 12.75 acres.
Name of nearest waterway: Arcadia Lakes
Name of watershed: Saluda

JURISDICTIONAL DETERMINATION
Completed: Desktop determination ☐ Date:
Site visit(s) ☒ Date(s): 12-01-2004

Jurisdictional Determination (JD):

☐ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD – An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:

☐ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 1.8 acres.

☐ *There are "isolated, non-navigable, intra-state* waters or wetlands" within the reviewed area.
☐ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":
☐ The presence of waters that are subject to the ebb and flow of the tide and or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":
☐ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
☒ (2) The presence of interstate waters including interstate wetlands[1].
☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
☐ (4) Impoundments of waters otherwise defined as waters of the US.
☐ (5) The presence of a tributary to a water identified in (1) – (4) above.
☐ (6) The presence of territorial seas.
☐ (7) The presence of wetlands adjacent[2] to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)

☐ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
- ☐ the presence of litter and debris
- ☐ changes in the character of soil
- ☐ destruction of terrestrial vegetation
- ☐ shelving
- ☐ other:

☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tide gages
- ☐ other:

☐ Mean High Water Mark indicated by:
☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by: Walker, Parr & Associates, Inc.

Basis For Not Asserting Jurisdiction:

☐ The reviewed area consists entirely of uplands.
☐ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
☐ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
☐ **The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:**
- ☐ **Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.**
- ☐ **Artificially irrigated areas, which would revert to upland if the irrigation ceased.**
- ☐ **Artificial lakes and ponds, created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.**
- ☐ **Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.**
- ☐ **Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).**
- ☐ **Isolated, intrastate wetland with no nexus to interstate commerce.**
- ☐ **Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:**
- ☐ **Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:**
- ☐ **Other (explain):**

DATA REVIEWED FOR JURSIDICTIONAL DETERMINATION (mark all that apply):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☒ This office concurs with the delineation report, dated 10/04/02, prepared by (company): Walker, Parr & Associates, Inc.
- ☐ This office does not concur with the delineation report, dated , prepared by (company):

☒ Data sheets prepared by the Corps.
☒ Corps' navigable waters' studies:
☒ U.S. Geological Survey Hydrologic Atlas:
☒ U.S. Geological Survey 7.5 Minute Topographic maps:
☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
☒ U.S. Geological Survey 15 Minute Historic quadrangles:
☒ USDA Natural Resources Conservation Service Soil Survey:
☒ National wetlands inventory maps:
☒ State/Local wetland inventory maps:
☒ FEMA/FIRM maps (Map Name & Date):
☒ 100-year Floodplain Elevation is: (NGVD)
☒ Aerial Photographs (Name & Date):
☒ Other photographs (Date):
☒ Advanced Identification Wetland maps:
☒ Site visit/determination conducted on:
☒ Applicable/supporting case law:
☒ Other information (please specify):

Colton Bowles

[1]Wetlands are identified and delineated using the methods and criteria established in the Corp : Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).[2]The term "adjace t" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural rive berms, beach dunes, and the like are also adjacent.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant:	File Number:	Date:
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	**APPROVED JURISDICTIONAL DETERMINATION**	**D**
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I: The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer, South Atlantic Division, 60 Forsyth St, SW, Atlanta, GA 30308-8801. This form must be received by the Division Engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD **is not appealable**. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II: REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact the Corps biologist who signed the letter to which this notification is attached. The name and telephone number of this person is given at the end of the letter.	If you only have questions regarding the appeal process you may also contact the Coordinator for Appeals in our South Atlantic Division Office in Atlanta, Georgia at (404) 562-5136. 60 Forsyth St, SW Atlanta, GA 30308-8801

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number:

EXHIBIT
4 Walker
8.20.09 SB
PENGAD 800-631-6989

D H E C
PROMOTE PROTECT PROSPER

Notice of Intent (NOI) for Stormwater Discharges from Large and Small Construction Activities, NPDES General Permit SCR100000

For official use only

File number: ___-_____-_____

Permit number: SCR10_____

Submittal package complete: _____

Public Notice Start Date (OCRM only): _____

For official use only

Submission of an NOI constitutes notice that the entity identified in Section I intends to be authorized under SCR100000. Instructions on page 5.

Date: 09/24/2008

Project/ Site Name: Roper Pond Apartments **County:** Richland

Do you want this project to be considered for the Expedited Review Program (ERP)? ☐Yes ☐No (See instructions.)

If yes, is the design of this project above regulatory requirements or Low Impact Development? ☐Yes ☐No

I. Project Information

Project Owner/ Operator (Company or person): Roper Pond LLC

Company EIN: 20-0806299 Phone: 803-779-1400 Fax: 803-765-9427

Mailing Address: 1407 Main St., Suite 650 City: Columbia State: SC Zip: 29201

Permit Contact (if owner is company): Bob Mundy Phone:

Mailing Address: City: State: Zip:

Email address (optional):

II. Property Information

A. Site Location (street address, nearest intersection, etc.): 6837 North Trenholm Rd.

City/ Town (if in limits): Columbia Latitude: 34 ° 3 ' 35 " N Longitude: -80 ° 57 ' 30 " W

Tax map # (list all): R16907-01-04

B. Property Owner: Phone:

Mailing Address: City: State: Zip:

III. Site Information

A. Disturbed area (to the nearest tenth of an acre): 9.9 acres Total area: 12.8 acres

B. Is this project part of a Larger Common Plan for Development or Sale (LCP)? ☐Yes ☒No

LCP/ Overall Development Name: Check here if this is the first phase. ☐

Previous state permit/ file number: Previous NPDES coverage number: SCR10☐☐☐☐

C. Start Date (MM/DD/YYYY): 07/28/2008 Completion Date: 07/28/2009

D. Is this site located on Indian Lands? ☐Yes ☒No If yes, name of reservation.

E. Type of Activity (check one):

☐ Commercial ☐ Industrial

☐ Institutional ☐ Residential: Single-family ☐ Multi-use (Commercial & Residential) ☐ Other:

☐ Linear ☒ Residential: Multi-family ☐ Site Preparation (No new impervious)

F. Are there any flooding problems downstream of or adjacent to this site? ☐Yes ☒No

G. Has S.C. DHEC issued a Notice to Comply or Notice of Violation for this site or LCP? ☐Yes ☒No

H. Is any part of the property located inside an MS4 or urbanized area? ☒Yes ☐No

If yes, list the MS4 operator or urbanized area name. Richland County

I. List all state and federal environmental permits or approvals applied for or obtained for this site (e.g., RCRA).

IV. Waterbody Information

A. Nearest receiving waterbody(s)[RWB]: Cary's Lake Distance to nearest RWB (feet): 550

Classification of nearest RWB: FW Next/Nearest named RWB: Jackson Creek

B. 1. Waters of the U.S./ State	On the site?	Delineated/ Identified?	Impacts?	Amount of impacts
a. Jurisdictional wetlands	☒Yes ☐No	☒Yes ☐No	☒Yes ☐No	0.075 Ac
b. Non-jurisdictional wetlands	☐Yes ☒No	☐Yes ☐No	☐Yes ☐No	____ Ac
c. Other Water(s) List: Pond	☒Yes ☐No	☒Yes ☐No	☐Yes ☐No	____ Ac ____ Feet

2. If yes for impacts in B.1, describe each impact and activity, and list all permits (e.g., USACOE Nationwide permit, DHEC General Permit) and certifications that have been applied for or obtained for each impact.

USACOE Nationwide Permit

000561

RP 0554

C. **Impaired Waterbodies** (See instructions.)
List the nearest DHEC water quality monitoring station(s) [WQMS(s)] to which construction stormwater (SW) discharges will drain and the corresponding waterbody(s). SC-C0068 Waterbody(s): Forest Lake

1. Is this WQMS(s) listed on the most current 303(d) List for Impaired Waters? ☒Yes ☐No
   a. If yes for 1, list the impairment(s). zinc
   b. If yes for 1, will the site's construction SW discharges contain any pollutant(s) causing the impairment(s)? ☐Yes ☒No
   c. If yes for b, list the impairment(s) affected by the pollutant(s) referenced in b.
   d. If yes for b, will use of the proposed BMPs ensure that the site's discharges will not contribute to or cause further water quality standard violations for the impairment(s) listed in c? ☐Yes ☐No
2. Has a TMDL(s) been developed for this WQMS(s)? ☐Yes ☒No
   a. If yes for 2, list the impairment(s).
   b. If yes for 2, has the standard been attained for all impairment(s)? ☐Yes ☐No
   c. If no for b, will the site's construction SW discharges contain any pollutant(s) causing the impairment(s)? ☐Yes ☐No
   d. If yes for c, are your discharges consistent with the assumptions and requirements of the TMDL(s)? ☐Yes ☐No

D. 1. **Are S.C. Navigable Waters (SCNW) on the site? ☐Yes ☒No**
   a. If yes for 1, list the name of the SCNW:
   b. If yes for 1, will any construction activities cross over or occur in, under, or through the SCNW? ☐Yes ☐No
   c. If yes for b, then describe activities.
   d. If yes for b, are the activities in SCNW covered under a DHEC General Permit or other DHEC permit? ☐Yes ☐No
   e. If no for d, has an SCNW permit been applied for or issued for the site? ☐Yes, for all activities ☐Yes, for some activities ☐No
   f. If yes for d or e, list permit number(s) and corresponding activities.

V. Operator Information

A. SWPPP Preparer: James M. Futter S.C. Registration #: 8367
Company/ Firm: BP Barber S.C. COA #:
Mailing Address: P.O. Box 1116 City: Columbia State: SC Zip: 29203
Phone: (Day) 803-254-4400 (Mobile) (Fax)
Email address (optional): jfutter@bpbarber.com

B. Operator of Day-to-Day Site Activities [ODSA] (Company or person):
Mailing Address: City: State: Zip:
Phone: Fax:
Site Contact (if ODSA is company): Phone:

VI. Signatures and Certifications: DO NOT SIGN IN BLACK INK!

A. One copy of the SWPPP, all specifications and supporting calculations, forms, and reports are herewith submitted and made a part of this application. I have placed my signature and seal on the design documents submitted signifying that I accept responsibility for the design of the system. Further, I certify to the best of my knowledge and belief that the design is consistent with the requirements of Title 48, Chapter 14 of the Code of Laws of SC, 1976 as amended, pursuant to Regulation 72-300 et seq., and in accordance with the terms and conditions of SCR100000. (This should be person identified in Section V.A.)
Check one ☒Engineer ☐Tier B Surveyor ☐Landscape Architect

James M. Futter	James M. Futter	8367
Printed name of SWPPP Preparer	**Signature of SWPPP Preparer**	**S.C. Registration #**

B. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I hereby certify that all land-disturbing construction and associated activity pertaining to this site shall be accomplished pursuant to and in keeping with the terms and conditions of the approved plans and SCR100000. I also certify that a responsible person will be assigned to the project for day-to-day control. I hereby grant authorization to the to S. C. Department of Health and Environmental Control (DHEC) and/or the local implementing agency the right of access to the site at all times for the purpose of on site inspections during the course of construction and to perform maintenance inspections following the completion of the land-disturbing activity. (See Section 122.22 of S.C. Reg. 61-9 for signatory authority information.)

Bob Mundy		9/24/08
Printed name of Project Owner/Operator	**Signature of Project Owner/ Operator**	**Date**

EXHIBIT
6 Walker
8.20.09 SB
PENGAD 800-631-6989

Matt Mundy

From: John Stephens [jstephens@BPBarber.com]
Sent: Wednesday, November 19, 2008 4:49 PM
To: Jill C. Stewart
Cc: Jim Futter; Ann Clark; bmundy@estatesinc.com; jwalker@estatesinc.com; mmundy@estatesinc.com; BradyJ@schouse.org; jbl@scsenate.org
Subject: RE: Roper Pond
Attachments: Stormceptor Report (JB#23).pdf; Stormceptor Report (CB#2).pdf; Stormceptor Report (CB#14).pdf; Stormceptor Report (DI#21).pdf

Jill-

1. The elevations were obtained from the area inside the existing pond "boundary" where we are removing the accumulated sediment that has accrued over time. Please look at the Storm Drainage Plan and the hidden lines inside the existing pond "boundary" represent the proposed slope that will be created during the removal of the sediment.

2. We talked to our wetlands consultant and he has stated that the lowering of the water surface elevation is included and covered under the Nationwide Permit 39.

3. Attached please find the detailed Stormceptor report and calculations.

I plan on bringing you the revised submittal package tomorrow shortly after lunch. Will you be around during the afternoon?

Thanks,
John Stephens

-----Original Message-----
From: Jill C. Stewart [mailto:STEWARJC@dhec.sc.gov]
Sent: Monday, November 17, 2008 12:11 PM
To: Jim Futter; John Stephens
Cc: Ann Clark; bmundy@estatesinc.com; jwalker@estatesinc.com; mmundy@estatesinc.com; BradyJ@schouse.org; jbl@scsenate.org
Subject: Roper Pond

Jim,

We only had a couple of items/questions brought up at our meeting on Friday afternoon.

1. The proposed plans include the lowering of the water surface elevation of the existing pond to allow for detention of post-development runoff. How were the elevations obtained for what is currently below the existing water surface?

2. Is dropping the water surface elevation taken into account when determining if a site is eligible for coverage under Nationwide Permit 39?

3. The third issue raised concerned the sizing of in-line treatment devices, such as Stormceptors, based on our regulations. The problem I am grappling with is that our regulations do not touch on this issue. I want to talk to a couple of current and former staff to get their take on this. I have no problem with the devices and think they will do a good job at pollutant removal, I just need a sounding board. I may need additional information on the sizing of the units, I will let you know.
It will be tomorrow before I can talk to these individuals.

000563
RP 0599

I did note a couple of items in the construction sequence on the plans I would like you to modify:

a. In the Intermediate Phase, move preliminary grading to a new line after the installation of basins and diversions.
b. In the Final Phase, move the installation of the base course to before the removal of the sediment basins. Base course will remove a large potential of sediment discharge.

In the interim, please let me know if you have any additional questions.

Thanks,

Jill C. Stewart, P.E.
Manager, Stormwater Permitting Section
Bureau of Water
(803)898-0439

000564
RP 0600

Joint Federal and State Application Form
For Activities Affecting Waters of the United States
or Critical Areas of the State of South Carolina

This Space for Official Use Only

Application #: _____

Date Received: SEP 11 2008

Project Manager: _____ BUREAU OF WATER WATER QUALITY DIVISION

Authorities: 33 USC 401, 33 USC 403, 33 USC 407, 33 USC 408, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 48-39-10 et. seq of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both the Federal and/or State permit(s).

Drawings and Supplemental Information Requirements: In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See the attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information.

1. Applicant's Name.
Estates, Inc.

2. Applicant's Address.
PO Box 11739
Columbia, SC 29250

3. Applicant's Contact Number (include area code).
Residence:
Business: (803) 765-9318
FAX: (803) 795-9427

4. Agent's Name (an agent is not required).
BP Barber, ATTN: George Whatley

5. Agent's Address.
P.O. Box 1116
Columbia, SC 29202-1116

6. Agent's Contact Number (include area code).
Residence:
Business: (803) 254-4400
FAX: (803) 771-6676

7. Project Title.
Site improvements to Roper property on Trenholm Road

8. Nearest Waterbody to project site (if known).
Roper Pond

9. Project Location. West side of Trenholm Road, 0.30 South of Decker Blvd.
Street Address:
County: Richland
Latitude: 34°-03'-37" N
Longitude: 80°-57'-33" W

10. Directions to the Site (attach additional sheets if needed).

From Columbia Northwest Branch, follow Assembly Street for 0.22 miles South to Taylor Street. Follow Taylor Street East for 3.92 miles to Trenholm Road. Follow Trenholm Road North for 2.94 miles. The site is on the West side of the roadway.

11. Description of the Overall Project and of Each Activity In or Affecting U. S. Waters or State critical areas (attach additional sheets if needed).

The overall project consists of a new multi-family housing development (apartments) on a 12.75 acre tract of land. Activities include fill of Jurisdictional areas for buildings and sidewalks.

12. Overall Project Purpose and the Basic Purpose of Each Activity In or Affecting U. S. Waters (attach additional sheets if needed).

The overall project purpose is to provide housing in the area. There are 2 activities impacting U.S. waters as follows:

1) Construction of a retaining wall and fill for a sidewalk.
2) Fill for an apartment building and sidewalk.

...to be Discharged.		14. Type and Quantity of Impacts to U. S. Waters (including wetlands).			
Dirt or Topsoil:	260 cy	Filling:	0.075 ☑ acres ☐ sq. ft.	287 cy
Clean Sand:	____ cy	Backfill & Bedding:	____ ☐ acres ☐ sq. ft.	____ cy
Mud:	____ cy	Landclearing:	____ ☐ acres ☐ sq. ft.	____ cy
Clay:	____ cy	Dredging or Excavation:	____ ☐ acres ☐ sq. ft.	____ cy
Gravel, Rock, or Stone:	____ cy	Flooding:	____ ☐ acres ☐ sq. ft.	____ cy
Concrete:	27 cy	Draining:	____ ☐ acres ☐ sq. ft.	____ cy
Other (describe):	____ cy	Shading:	____ ☐ acres ☐ sq. ft.	____ cy
TOTAL:	287 cy	TOTALS	0.075 ☑ acres ☐ sq. ft.	287 cy

15. Names and Addresses of All Adjoining Property Owners (attach additional sheets if needed).

See Attached

16. Has any portion of the work already commenced? If yes, describe all work that has been done and the dates of the work.

No

17. List all Certifications, Approvals, and Denials received from Federal, State, or Local Agencies for work described in this application.

None

18. Authorization of Agent. I hereby authorize the agent whose name is given in block number 4 of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application.

Applicant's Signature — Date: 4-30-08

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

Applicant's Signature — Date: 4-30-08

Agent's Signature — Date: 4-30-08

e application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the horization statement in blocks 4 and 18 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within e jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a erial fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same ontain any false, ficticious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

bmit the completed application form with the required drawings and all supporting information as indicated below.

Send all original application materials to:
U. S. Army Corps of Engineers
Charleston District, Regulatory Branch
P. O. Box 919, Attn: CESAC-CO-P
Charleston, South Carolina 29402
(803) 727-4330

Send one complete copy to:
S. C. Dept of Health & Environmental Control
Office of Ocean and Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405
(803) 744-5838

Send one complete copy to:
S. C. Dept. of Health & Environmental Control
Office of Environmental Quality Control
2600 Bull Street
Columbia, South Carolina 29201
(803) 734-5300

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69-A Hagood Avenue
CHARLESTON, SOUTH CAROLINA 29403-5107

REPLY TO
ATTENTION OF

COPY

September 9, 2008

Regulatory Division

RECEIVED
SEP 11 2008
BUREAU OF WATER
WATER QUALITY DIVISION

Mr. George O. Whatley
B.P. Barber & Associates, Inc.
101 Research Drive
P.O. Box 1116
Columbia, South Carolina 29202-1116

Dear Mr. Whatley:

This letter is in response to a Pre-Construction Notification (PCN) dated May 5, 2008, which was received on May 13, 2008. By submittal of the PCN, you requested verification that the proposed project is authorized by a Department of the Army Nationwide Permit.

The PCN contains the following identifying information for this project. The work affecting waters of the United States is part of an overall project known as Site Improvements of Roper Property on Trenholm Road. The project involves impacts to not more than 0.075 acre of waters of the United States, including wetlands. The project is located on the west side of Trenholm Road, in Richland County, South Carolina. The PCN also includes the following supplemental information:

a. Drawing sheets 1-6 of 6 and titled "Site Improvements of Roper Property on Trenholm Road" and dated September 8, 2008.

b. A delineation of special aquatic sites (SAC-81-2004-1871-J).

Based on a review of the PCN, including the supplemental information indicated above, it has been determined that the proposed activity will result in minimal individual and cumulative adverse environmental effects and is not contrary to the public interest. Furthermore, the activity meets the terms and conditions of Department of the Army Nationwide Permit(s) #39.

For this authorization to remain valid, the project must comply with the enclosed Nationwide Permit General Conditions, Charleston District Regional Conditions, and the following special conditions:

1. That prior to beginning the authorized work the permittee must obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations (i.e. 401 Water Quality Certification, Coastal Zone Management Consistency Determination, State Navigable Waters Permit). If the permittee fails to obtain the necessary state certifications and/or authorizations prior to beginning work, this will be considered a willful and knowing violation of the Clean Water Act and appropriate enforcement action will be taken.

2. That impacts to aquatic areas do not exceed those specified in the above mentioned PCN, including any supplemental information or revised permit drawings that were submitted to the Corps by the permittee;

3. That the construction, use, and maintenance of the authorized activity is in accordance with the information given in the PCN, including the supplemental information listed above, and is subject to any conditions or restrictions imposed by this letter;

4. That the permittee shall submit the attached signed compliance certification to the Corps within 30 days following completion of the authorized work and any required mitigation.

5. That all conditions given in the enclosed certification from the S.C. Department of Health and Environmental Control are hereby incorporated as special conditions to this authorization.

This verification is valid until the Nationwide Permits (NWP) expire or for two (2) years, whichever comes first. The time specified for this authorization will remain valid if the Nationwide Permit(s) is reissued without modification, or the activity complies with any subsequent modification; however, the provisions of 33 CFR 330.6(b) will apply if the Nationwide Permit expires, is suspended or revoked, or is modified such that the activity no longer complies with the original terms and conditions. In general, these provisions provide that if the work authorized by this letter has commenced in accordance with the requisite terms and conditions or you, acting in reliance of this Nationwide Permit, have entered into a contract to have the work performed prior to such date, this authorization will remain in effect if the work can be completed within twelve months of the date of the Nationwide Permit's expiration, modification or revocation unless discretionary authority has been exercised in accordance with 33 CFR 330.4(c) or (d).

Your cooperation in the protection and preservation of our navigable waters and natural resources is appreciated. In all future correspondence concerning this matter, please refer to our file number SAC-2004-35601-6NO. A copy of this letter is being forwarded to certain State and/or Federal agencies for their information. If you have any questions concerning this matter, please contact Chip Ridgeway at 803-253-3906.

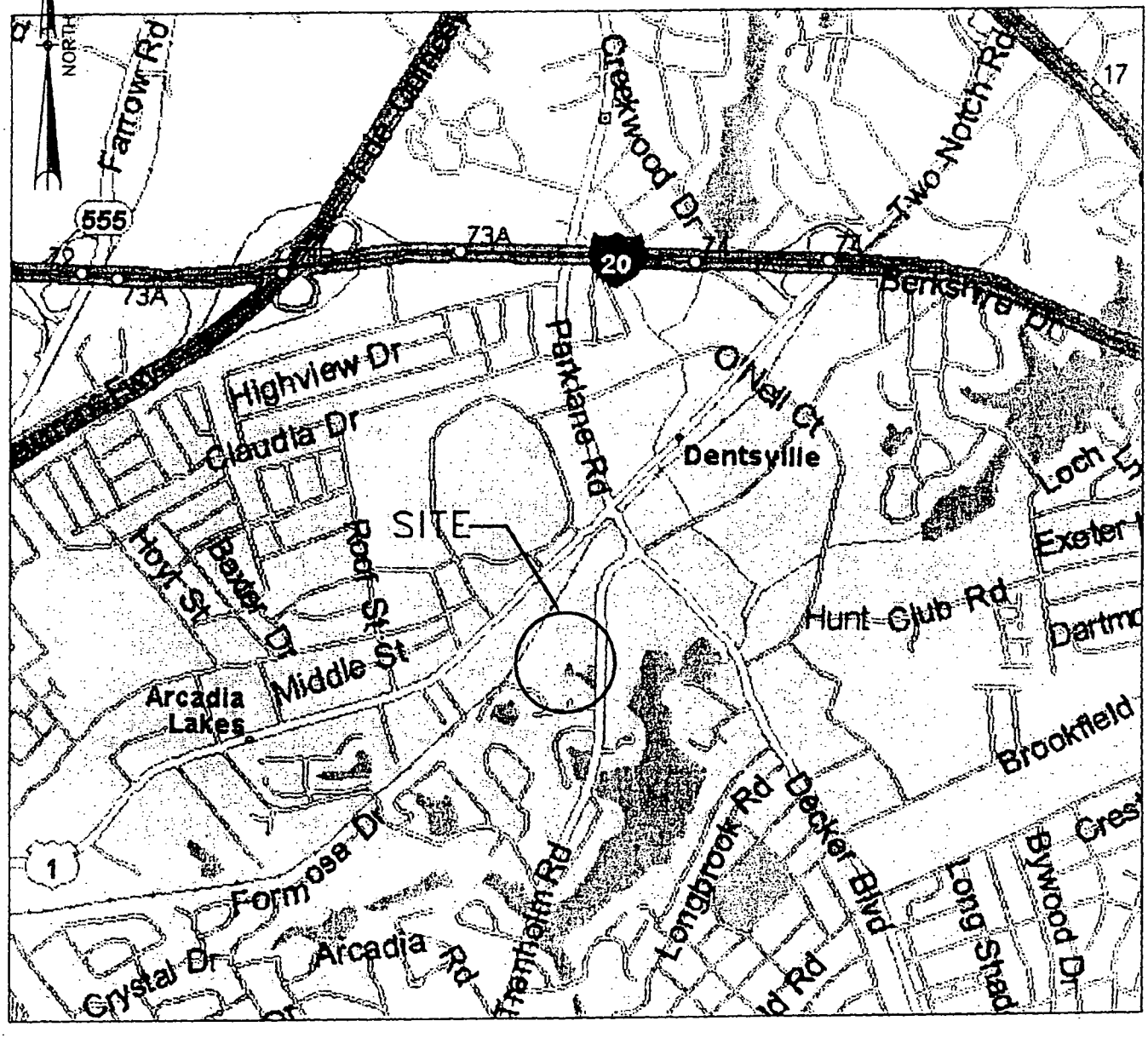
Respectfully,

Tina B. Hadden
Chief, Regulatory Division

Enclosures:

Permit Drawings
Charleston District Regional Conditions
Nationwide Permit General Conditions
Compliance Certification Form
Customer Service Survey

000568



LOCATION MAP

NOT TO SCALE

PERMITTED PLANS

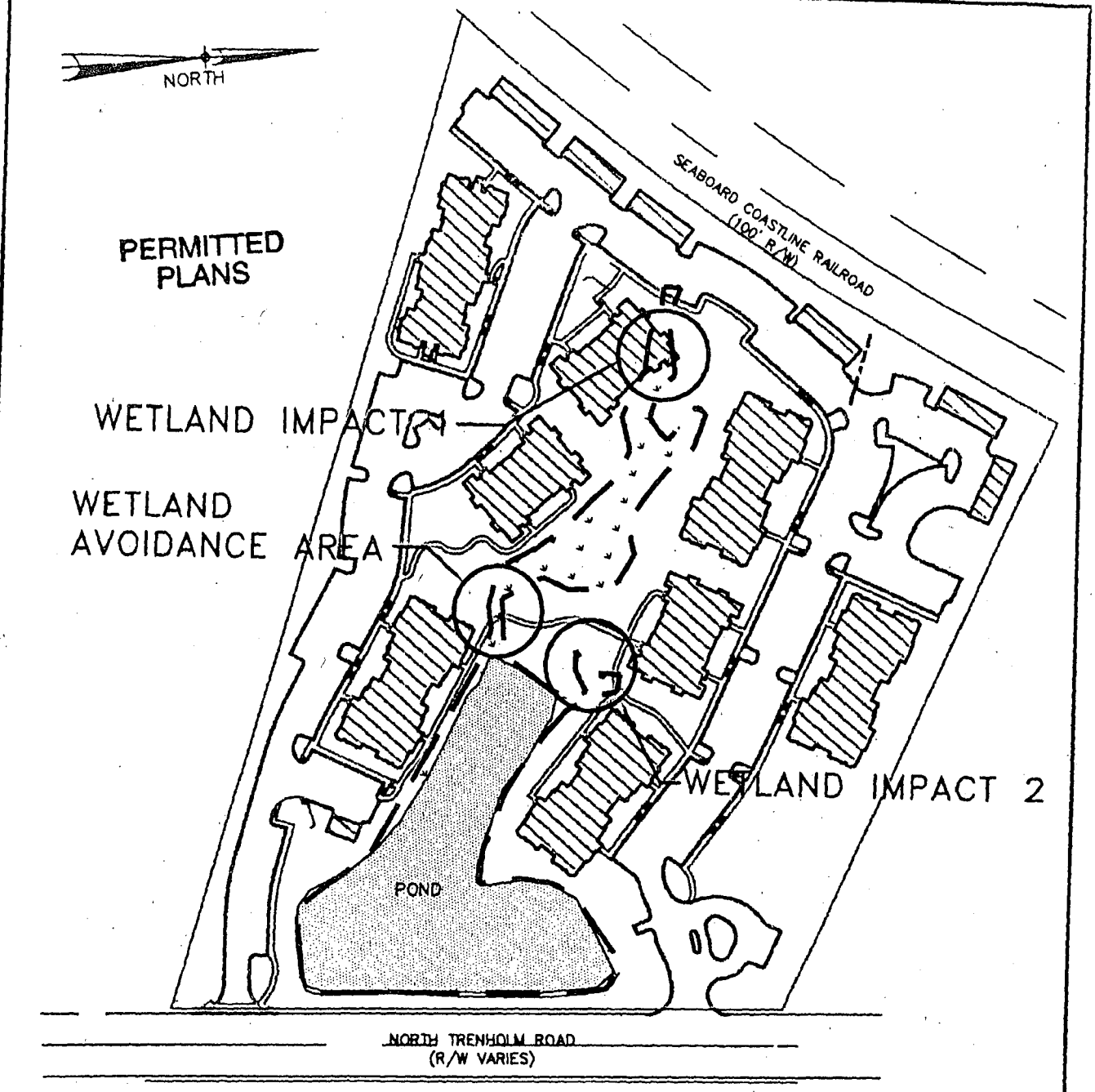
Project Title: SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
Project Location: RICHLAND COUNTY, S.C.
Applicant: ESTATES, INC.

BPB Project #05216

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

000569

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OVERALL SITE PLAN

1" = 150'

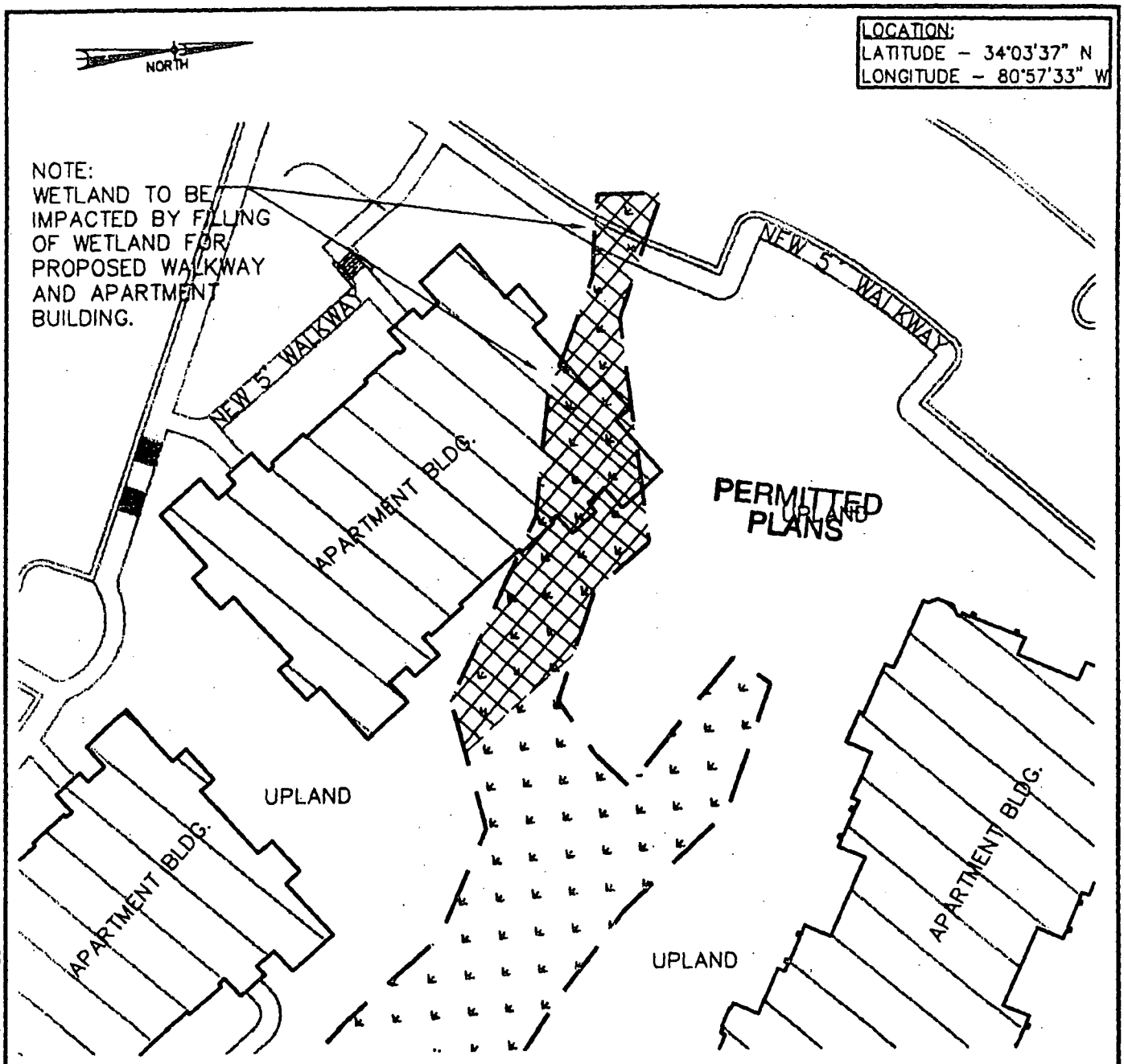
Project Title:	SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
Project Location:	RICHLAND COUNTY, S.C.
Applicant:	ESTATES, INC.

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BPB Project #05216

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

000570



WETLAND IMPACT #1

1" = 40'

TOTAL WETLAND IMPACT = 0.071 ACRES

LEGEND

IMPACTED WETLAND

WETLAND (NOT IMPACTED)

WETLAND BOUNDARY WB

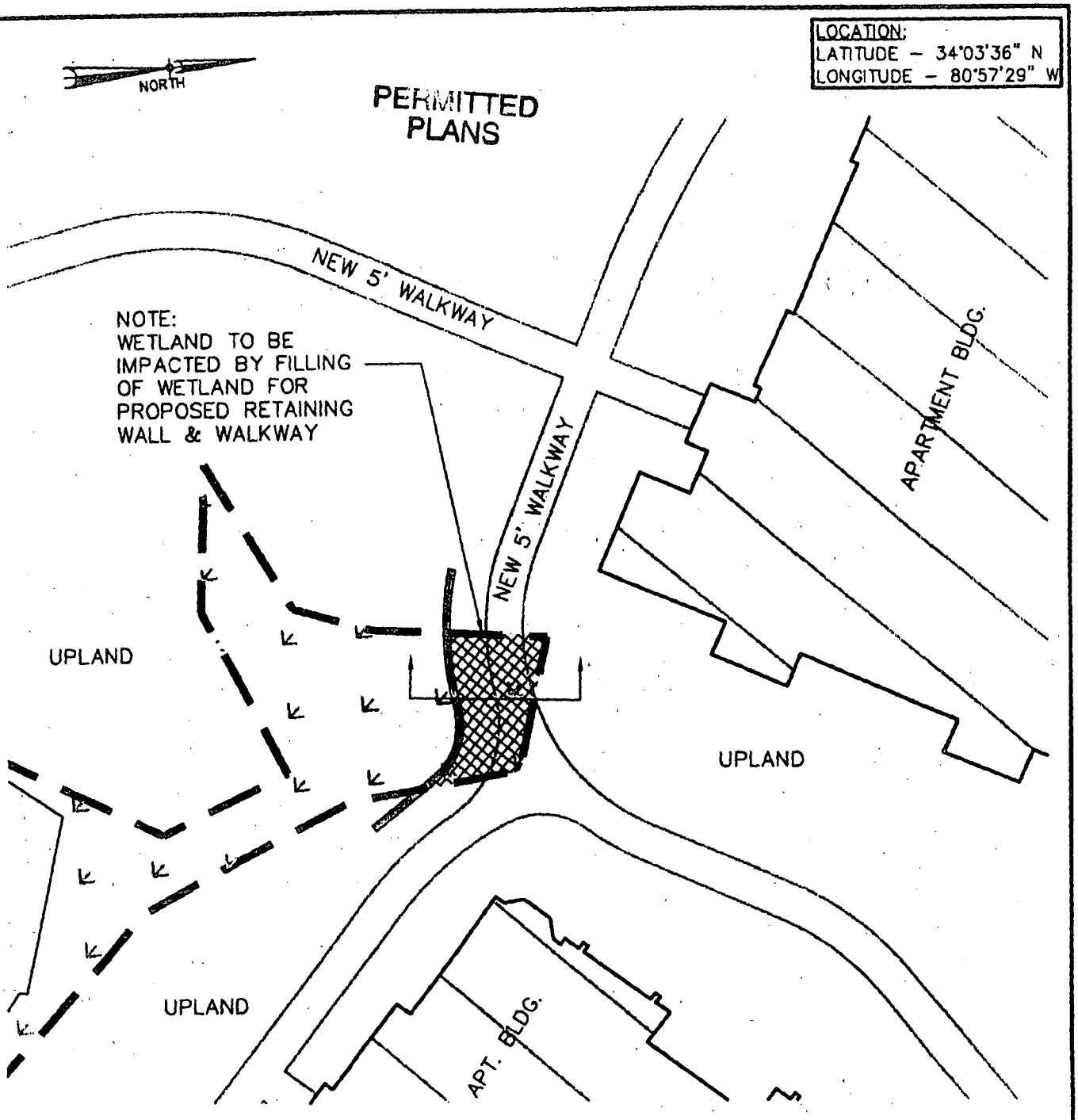
Project Title:	SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
Project Location:	RICHLAND COUNTY, S.C.
Applicant:	ESTATES, INC.

BPB Project #05216

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

000571

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WETLAND IMPACT #2

1" = 20'

TOTAL WETLAND IMPACT = 0.004 ACRES

LEGEND

IMPACTED WETLAND

WETLAND (NOT IMPACTED)

WETLAND BOUNDARY

BPB Project #05216

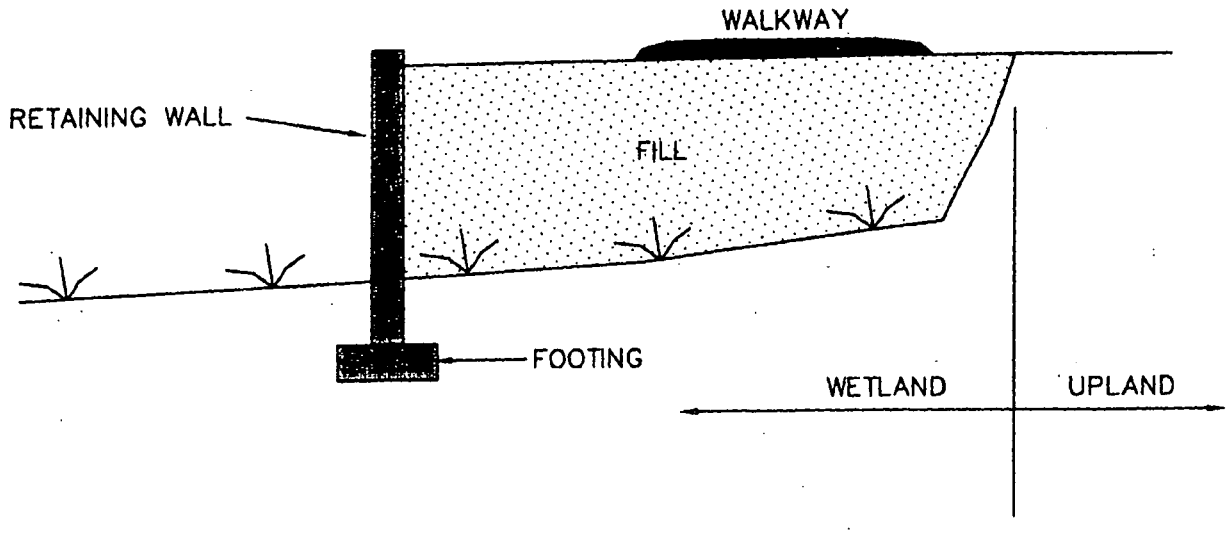
Project Title: **SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD**
Project Location: **RICHLAND COUNTY, S.C.**
Applicant: **ESTATES, INC.**

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

000572

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PERMITTED
PLANS



CROSS SECTION
WETLAND IMPACT #2

NOT TO SCALE

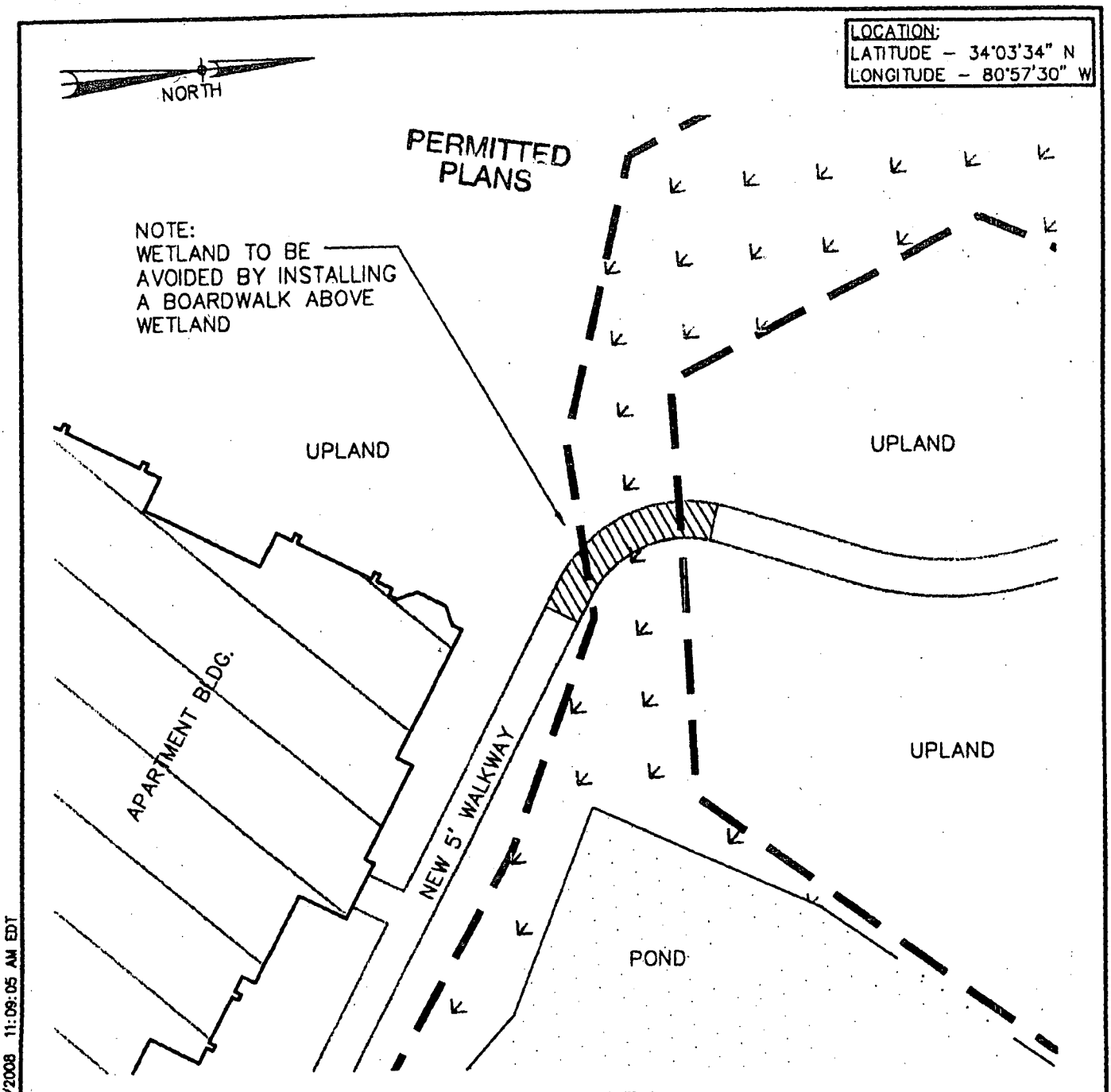
Project Title:	SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
Project Location:	RICHLAND COUNTY, S.C.
Applicant:	ESTATES INC

BPB Project #05216

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

000573

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WETLAND AVOIDANCE AREA

1" = 20'

TOTAL WETLAND IMPACT = 0.000 ACRES

LEGEND

BOARDWALK

WETLAND (NOT IMPACTED)

WETLAND BOUNDARY WB

BPB Project #05216

Project Title:	SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
Project Location:	RICHLAND COUNTY, S.C.
Applicant:	ESTATES, INC.

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

000574

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BOARD:
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Chairman
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Steven G. Kisner
Secretary

D H E C

PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

BOARD:
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Promoting and protecting the health of the public and the environment

October 2, 2008

RECEIVED
OCT - 6 2008
B. P. BARBER & ASSOCIATES
COLUMBIA, S. C.

B.P. Barber
Attn: Mr. George O. Whatley
P.O. Box 1116
Columbia, South Carolina 29202-1116

Re: 401 Certification for Authorization to Impact No More Than 0.075-Acre of Waters of the U.S. Pursuant to Nationwide Permit 39 (Commercial and Institutional Developments)

Applicant Permit ID No.: SAC 2004-35601-6NO

Applicant: B.P. Barber for Estates, Inc.

County: Richland

Dear Mr. Whatley:

The South Carolina Department of Health and Environmental Control (SCDHEC) has reviewed the above-referenced project and determined that the impacts to water quality will be minimal, and existing and classified uses will be maintained. The proposed work is consistent with the 401 Water Quality Certification issued for Nationwide Permit Number 39 on May 11, 2007, provided the applicant adheres to all the conditions of that certification (see attached).

Sincerely,

Alicia M. Rowe

Alicia M. Rowe
Project Manager
Water Quality Certification and Wetlands Section

cc: USACOE Charleston District Office
USACOE Columbia Field Office
SCDHEC EQC Regional Office
Estates, Inc.

This document serves as guidance to the South Carolina General Permit For Storm Water Discharges From Large and Small Construction Activities, SCR100000 (CGP). The purpose of this document is to clarify questions and further explain the language in the permit. This is presented in a question and answer format, which includes actual questions that we have received from external parties. This will be a living document, and we anticipate that questions will be generated and added as the implementation of the permit progresses. If you have additional questions that you would like addressed and added, please send those to stormwatercgp@dhec.sc.gov.

The coastal counties or the coastal zone as referred to in this document includes the following counties: Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper.

1. What are the major changes in this permit?

Following is an outline of the major changes in the permit. This list is not all-inclusive but highlights the major modifications from the 1998 permit.

A. Permit advises permittees about US Army Corps of Engineers 404 permit requirement. This requirement is not new, but this is the first time the permit has stated this permit must be obtained prior to issuance of coverage under this permit under certain circumstances. This is an informational item to help the permittee understand what other permits may be required before coverage can be granted.

B. Permit advises permittees about the State Navigable Waters permit requirement. This is the first time that the State Navigable Waters permit has been issued concurrently with coverage under this permit.

C. Permit requires the fee to be paid. This is not a new requirement but it is the first time this has been addressed in the permit. It is an informational item to advise the permittee there is a fee under SC Regulation 61-30 for coverage under the permit. The fee is not new. The appropriate fees must be submitted for the Notice of Intent (NOI) to be considered complete.

D. Permit requires a proposed project in the coastal zone to be consistent with the Coastal Zone Management Plan. This is not a new requirement, but it is being addressed since local governments will be issuing permits for construction activity under their local Stormwater Program implemented to comply with Municipal Separate Storm Sewer System (MS4) NPDES Permit requirements. (See FAQ #6 for additional information)

E. A pre-construction conference must be performed onsite for non-linear projects disturbing 10 acres or more (off-site must be approved by DHEC) with each co-permittee and contractor who will be performing land-disturbing activities prior to the beginning of those land-disturbing activities to ensure the co-permittees and contractors know their responsibilities under the permit.

F. Owners of projects disturbing 10 acres or more must submit monthly reports summarizing their inspections and compliance with the general permit. The first monthly report must include all co-permittee and contractor certification statements. Sites disturbing less than 10 acres may be required to submit monthly reports on a case-by-case basis.

G. Requirements for compliance with Total Maximum Daily Loads (TMDLs) have been added. These are not new requirements, but it is the first time these requirements have been addressed in the permit. This is based on the requirements under SC Regulation 61-68, Water Classifications and Standards and SC Regulation 61-9, Water Pollution Control Permits.

H. Permit clarifies when temporary structural controls (i.e., sediment ponds) may be placed in ephemeral and intermittent streams. This is not a new requirement, but it is the first time it has been addressed in the permit.

I. Permittee inspection frequency has been modified to allow more flexibility. Previous permittee inspection frequency was once every 7 days and within 24-hours of the end a 0.5 inch or greater rainfall event. Permittees may now choose between: a) once every 7 days, or b) once every 14 days and within 24-hours of the end of a 0.5 inch or greater rainfall event. The chosen option must be designated prior to approval of and designated in the SWPPP.

J. Permit specifies the minimum qualifications for personnel conducting the above-referenced inspections on behalf of the permittee.

K. Permit allows owners of long, narrow linear construction projects (e.g., utility lines, pipelines or road construction) to perform representative inspections along the project length for ¼ mile above and below each access point where a road or other similar feature intersects the construction and allows access.

L. Permit specifies that all projects must meet the minimum requirements of SC Regulation 72-300 et seq. beginning July 1, 2005. (It was anticipated that the permit would be effective prior to that date; therefore, this requirement is effective on the effective date of September 1, 2006.) The permit has always required projects to meet all local and state requirements. This requirement just acknowledges the requirements of 72-300 et seq. and eliminates the permit duplication between the State Sediment and Erosion Control Program and the Construction Stormwater NPDES Program. With the implementation of this permit, the Department will be issuing NPDES coverage under this permit to address both regulations.

M. The time frames for review have been changed. For projects reviewed by delegated entities, MS4, etc., DHEC will have 7 business days from receipt of complete NOI to issue a letter granting coverage, denying coverage, or requesting additional information. For projects that are reviewed solely by DHEC (except SCDOT projects), DHEC will have 20 calendar days from receipt of **complete** NOI to issue a letter granting coverage, denying coverage, or requesting additional information.

N. When submitting a Notice of Termination for a permit for a project disturbing more than 2 acres, a certification statement, signed and dated by the SWPPP preparer or someone with registration equivalent to the SWPPP preparer, that, to the best of their knowledge and belief, all work was conducted and completed in accordance with the approved SWPPP and the CGP, must be included. Must also state that deficiencies that were noted in monthly reports have been corrected.

2. What types of projects require coverage under the CGP?

This is covered in section 1.3 and by the definition of large and small construction activities in Appendix A, which is the definition from 61-9.

Coverage under this permit is required for land-disturbing activities (including but not limited to clearing, grading, excavation, placement of fill, and any other construction that results in land disturbance) equal to or greater than one acre or any amount of land disturbance within one-half mile of a receiving water body in the coastal counties (please see # 3 for more on the coastal counties).

3. **Can you provide clarification on the intent under part two for the Coastal counties?**

We recognize that in the coastal areas the definition of within ½ mile of a waterbody applies to almost all projects. For very small projects (land disturbance of 0.5 acres or less), it is not required that an NOI be submitted for review, and automatic coverage is granted under this permit. These projects are still required to meet the conditions of this permit. If it is determined that the project is not in compliance, the Department can request that an NOI be submitted.

(The first sentence just reinforces that, for projects not in the coastal counties as stated above, an NOI must be submitted for projects disturbing one acre or greater to obtain coverage under this permit)

4. **What are the turnaround times under this new permit for reviews?**

This is addressed in Section 2.1.

For all projects that are initially reviewed by a program that has been delegated plan review authority under 72-300 et seq. or has an approved program as an MS4, the Department has 7 business days to provide comment on these projects, or they are automatically granted coverage. A list of delegated and DHEC-approved programs may be found at: http://www.scdhec.net/water/html/erfdelglist.html

For projects (except SCDOT) that are reviewed solely by DHEC, we have 20 calendar days to provide comment, or coverage is automatically granted.

5. **If I receive comments back on my project, how does that affect my review time?**

As stated in Section 2.1, the timeframes are based on receipt of a **complete** NOI. If you receive comments on your NOI review package, it is considered to be incomplete. Upon the Department's receipt of your response to those comments, the time clock is restarted as stated above. We will make every effort to expedite those, especially if there are minor comments.

6. **For projects in the coastal counties, how does this permitting process interface with the OCRM Coastal Zone Consistency process?**

For projects located in the coastal counties, the NOI review package should first be sent to SCDHEC-OCRM for review for consistency with the Coastal Zone Management Plan. Your

complete package must include payment of fees. These should be sent to the following addresses:

Beaufort, Jasper and Dorchester Counties:
S.C. DHEC-OCRM
104 Parker Drive
Beaufort, S.C. 29906

Charleston, Colleton, Berkeley and Georgetown Counties:
S.C. DHEC-OCRM
1362 McMillan Ave., Suite 400
Charleston, S.C. 29405

Horry County:
S.C. DHEC-OCRM
927 Shine Ave.
Myrtle Beach, S.C. 29577

Upon completion of that review, OCRM will forward their letter stating that the project is consistent with the Coastal Zone Management Plan to the Construction Stormwater Permitting office located in Columbia to issue the NPDES permit. For the coastal counties, this is required as specified in 2.2.C.3 in order for the NOI application to be considered complete. Once the NOI is considered to be complete, the Department will have 20 days to issue a letter granting coverage, denying coverage, or requesting additional information.

Note: Currently, there are no coastal counties that have delegated review authority under 72-300 et seq. or MS4 construction review programs. However, with the implementation of the SMS4 programs, there will be several within the next 18 months. When those programs are operational, the NOI review package should be sent to both the designated review entity (city/county) and to OCRM for coastal zone consistency review, prior to being sent to the Columbia office for issuance of the NPDES permit. This section will be fully updated as this process progresses.

7. **How does this new permit affect previously permitted projects?**

This is addressed in section 2.3. If you received coverage under the 1998 permit, you will be required to comply with the terms of that permit. (You will not be required to start the new inspection requirements in Section 3.10). However, please note that, if there are any future phases of or major modifications to a previously permitted project, an NOI must be submitted and will be reviewed according to the new CGP, and those phases and modifications will be required to comply with all conditions of this permit. Minor modifications to projects permitted under the 1998 permit will be allowed. Please contact the Department to determine if the modification is considered minor.

8. **For projects currently under review by DHEC before the effective date of the permit, how will you determine under which CGP these will be granted coverage?**

A copy of the document that explains the deadlines for coverage under the 1998 General Permit has been inserted below. This document was sent to engineers who had submitted applications for state land disturbance permits and NOI's for coverage under SCR100000 to the Department since 1/1/2004.

"Deadlines for Coverage under the 1998 NPDES Construction General Permit SCR100000, (1998 CGP)

New Projects for Review by S.C. DHEC Stormwater Permitting Section

- For new projects disturbing at least 1 acre and less than or equal to 2 acres that are not part of a larger common plan for development or sale, the application package must be received* by the Department on or before **8/10/06** (22 calendar days before 9/1/06),

and the application and supporting documentation must be technically and administratively complete** as determined by the Department.

• For new projects disturbing more than 2 acres and less than 5 acres that are not part of a larger common plan for development or sale, the application package must be received* by the Department on or before **8/18/06** (10 business days before 9/1/06), and the application and supporting plans and calculations must be technically and administratively complete** as determined by the Department.

• For new projects disturbing 5 acres or more, the application package must be received* by the Department on or before **8/4/06** (20 business days before 9/1/06), and the application and supporting plans and calculations must be technically and administratively complete** as determined by the Department.

• For new projects that are presently exempt from the requirements of S.C. Reg. 72-300 et seq., specifically 72-302, the Notice of Intent (NOI) must be postmarked to the Department on or before **8/10/06** (22 calendar days before 9/1/06), and the NOI and supporting documentation must be technically and administratively complete** as determined by the Department. [Examples—transmission lines, agricultural activities, except buildings]

• For projects of either SCDOT or agents acting on behalf of SCDOT, the NOI, NPDES coverage fee ($125), and supporting documentation must be postmarked on or before **8/29/06**, and the application and supporting plans and calculations must be technically and administratively complete** as determined by the Department.

If the application package is not technically and administratively complete for new projects received* by the above-referenced deadlines, then the project will not be eligible for coverage under the 1998 CGP. The revisions (in response to review comments issued by DHEC) will be reviewed according to the new CGP. The revision package should include a new, completed application form, and supporting plans and documentation must be prepared in accordance with the NPDES Construction General Permit, SCR100000, with an effective date of 09/01/2006 (new CGP).**

Applications for land disturbing activities and/or NPDES coverage received* after the above-referenced deadlines will not be eligible for coverage under the 1998 CGP. The new application form must be completed, and supporting plans and calculations must be submitted and prepared in accordance with new CGP. The Department will not review projects submitted with the old application forms (DHEC3306 and DHEC2612). These packages will be returned to the engineer as incomplete.

Projects under Review by S.C. DHEC Stormwater Permitting Section

• The revisions (in response to review comments issued by DHEC) must be received* by the Department on or before **8/18/06** and must be technically and administratively complete** as determined by the Department.

• If the revisions are not administratively and technically complete for projects under review by DHEC and received* by the above-referenced deadline, the project will not be eligible for coverage under the 1998 CGP. The revisions (in response to review comments issued by DHEC) will be reviewed according to the new CGP. The revision package should include a new, completed application form, and supporting plans and documentation must be prepared in accordance with the new CGP.

• If the revisions are not received* on or before **8/18/06**, then the project may no longer be eligible for coverage under the 1998 CGP. If the Department is able to review the revisions on or before 8/31/06 and the revisions are technically and administratively complete**, then the project can be granted coverage under the 1998 CGP. If the Department is not able to review the revisions on or before 8/31/06, then the Department will notify you that your project is not eligible for coverage under the 1998 CGP. The new application form must be completed, and supporting plans and calculations must be submitted and prepared in accordance with new CGP.

Projects under Review by S.C. DHEC Office of Ocean and Coastal Resource Management (OCRM)

• For projects under review by OCRM, the approval or exemption letter from OCRM, application, NPDES coverage fee ($125), and supporting documentation must be dated on or before **8/29/06**.

• If OCRM's approval or exemption is not dated by the above-referenced deadline, then the project will not be eligible for coverage under the 1998 CGP. A new, completed application form must be submitted to OCRM, and supporting plans and documentation must be prepared in accordance with the new CGP for OCRM's review.

Projects under Review by Entities Delegated under S.C. Regulation 72-300 et seq.

• For projects that are currently in review by a delegated entity, the delegated entity's approval letter, application, and NPDES coverage fee ($125) must be postmarked to the Department on or before **8/29/06**.

• If the delegated entity's approval is not postmarked by the above-referenced deadline, then the project will not be eligible for coverage under the 1998 CGP. A new, completed application form must be submitted, and supporting plans and documentation must be prepared in accordance with the new CGP for review by the delegated entity.

**Please note that "received" corresponds to the day the application package is delivered to S.C. DHEC Bureau of Water office at 2600 Bull Street.*

***Please note that "technically and administratively complete" means that the Department does not need any additional information for a complete project review, required corrections have been made to the application package (plans, calculations, and other supporting documentation), all requirements in the applicable regulations (S.C. Regulation 72-300 et seq. and/or the 1998 CGP) have been addressed in the application package, and all fees have been paid."*

9. I am the owner of the permit and expect to have several contractors on the site. How does the permit address this?

This is addressed in Section 3.2. It is your discretion as the owner of the permit to determine which of your contractor(s) will become a co-permittee or will remain covered under your permit as a contractor or subcontractor who is not a co-permittee. The primary difference between co-permittees and contractors who are not co-permittees is that an enforcement action can be taken directly by the Department against a co-permittee for any violations. All persons performing land-disturbing activities at the site are required to sign one of the statements provided in 3.2.D—either 3.2.D1 or 3.2.D.2.

There is a new requirement in 3.2 .A.5 that requires a pre-construction conference be held onsite for non-linear projects that disturb 10 acres or more. All co-permittees and contractors who are not co-permittees are required to attend a pre-construction conference prior to performing land-disturbing activities on the site. Co-permittees and contractors who are not co-permittees must be identified in the SWPPP. As stated in 3.10.I, copies of all co-permittee and contractor certifications must be provided to the Department with the submission of the first monthly report to the Department (required for sites disturbing10 or more acres). As new co-permittees and contractors are added, their certifications should be added to the SWPPP and included with the next monthly report. We do recognize that as co-permittees complete their work, they may wish to terminate their co-permittee agreements. This should be documented in the SWPPP, which is required to be kept onsite, and, for sites disturbing 10 or more acres, will be sent to the Department through the submission of the monthly report.

10. What are the responsibilities of the preparer of the SWPPP?

A. As stated in 3.1.A, for sites disturbing more than 2 acres, the preparer of the SWPPP must sign and stamp the SWPPP as a registered P.E., registered Landscape Architect, Tier B land surveyor or a federal government employee.
B. Section 3.10.I and J require that the preparer of the SWPPP (or someone with a registration equivalent to the preparer of the SWPPP) certify that a pre-construction conference was held with each co-permittee or contractor prior to him performing land-disturbing activities on the site for Non-linear projects disturbing 10 or more acres.
C. Section 5.2. Item 6 requires that the preparer of the SWPPP (or someone with registration equivalent to the preparer of the SWPPP) sign a certification statement as part of the NOT. (More information on this is also provided in section 3.10.M.)
D. Section 3.10.D requires that inspections be performed by qualified personnel. Qualified personnel is defined as the preparer of the SWPPP (or person with the registration equivalent to the preparer of the SWPPP), a person under the direct supervision of the SWPPP preparer (or person with the registration equivalent of the SWPPP preparer), or an individual who has been certified through a construction site inspector certification course that has been approved by DHEC. If the inspections are performed by someone under the direct supervision of the SWPPP preparer or person with the registration equivalent to the SWPPP preparer, the inspection reports must still be signed by the SWPPP preparer (or person with registration equivalent to the SWPPP preparer).

[Please note that having the inspector certification only qualifies an individual to perform inspections. An individual with that certification (who is not a registered P.E., registered Landscape Architect, Tier B land surveyor or federal government employee) is not authorized to sign and certify items A, B and C listed above.]

11. Please provide an explanation of section 3.9.

Section 72-302.A.5 of the S.C. Stormwater Management and Sediment Reduction Regulations (72-300 et seq.) allows the Department to exempt a site from obtaining a permit if another state or federal permit, license or certification is conditioned on compliance with the minimum standards and criteria of 72-300 et seq. The Department plans to use this exemption for all projects under review by the Department. For projects reviewed solely by

the Department, on and after September 1, 2006, you will no longer be issued a state permit for land disturbing activities and NPDES coverage under SCR100000 for the same project.

For projects under review by an entity with delegated review authority under 72-300 et seq., that entity will continue to issue state permits under 72-300 et seq. Once the delegated entity issues the state permit for land disturbing activities, they will forward a copy of their approval letter, the application form (NOI), and fee ($125 for NPDES coverage) to the Department to issue NPDES coverage under the CGP.

Also be advised that coverage may be required under an MS4 program (or other local requirements). This provision in no way waives the applicant of the responsibility of obtaining those permits.

12. What are the new inspection requirements?

These are fully explained in Section 3.10. I will highlight a few of the most significant changes.

Inspection Frequency

There has been a change in the required frequency of inspections. This new permit allows a choice:

A. Inspections must be performed at least every 7 calendar days **or**
B. Every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

(Please note that you must specify in your SWPPP which inspection frequency you will be performing.) This is fully explained in 3.10.A, B and C.

Qualified Inspector

Inspections must be performed by qualified personnel as outlined in 3.10.D. There is a provision that an individual who has been certified through a construction site inspector certification course that has been approved by DHEC can perform these. Currently, only Clemson University has applied for and received the approval to provide this certification. Information about their program can be obtained at the following website: http://www.ces.clemson.edu/t3s/cepsci/workshops/workshops.htm. This program is administered by Clemson University, and questions about registration, course dates, issuance of cards, etc. should be directed to Clemson.

Monthly Reports

For sites that disturb 10 acres or more, there is a requirement to submit monthly reports. These requirements are outlined in 3.10.H, I, K, L, M, and N. For sites that are part of a larger common plan for development or sale (LCP), when the cumulative disturbed area for all of the phases or sites is equal to or greater than 10 acres, then monthly reports are required for all subsequent phases or projects that are part of that LCP.

13. What has changed in the Notice of Termination NOT process?

This process is fully covered in Section 5.

When the permit should be terminated is addressed in Section 5.1—when final stabilization has occurred over the entire site, when another operator has assumed control, coverage under another individual or alternative general NPDES permit has been obtained, or, for residential projects, when temporary stabilization has occurred and the property is transferred to the homeowner. If another operator has assumed control (e.g., a homebuilder has bought the lot), the NOT will not be accepted until that operator has submitted an NOI. This will be accomplished on the Transfer of Ownership/ Coverage form that is being developed—this form will be posted on the website as soon as it is finalized.

Note that 5.2. Items 5 and 6 require that the NOT be certified by both the authorized representative (as defined in Section 122.22 of S.C. Reg. 61-9, included in Appendix C) **and** the preparer of the SWPPP (or a person with registration equivalent to the SWPPP preparer).

Please be aware that 3.10.M requires that the monthly reports for sites disturbing 10 acres or greater (or sites disturbing less than 10 acres on a case-by-case basis) be submitted until an NOT is submitted.

14. If you have two lots remaining on a site (or very few), and they are stabilized, can you do an NOT? How about under the co-permittee?

The Department will accept an NOT if a subdivision is 90% complete and there are not more than 10 lots remaining to be developed, providing that those areas are stabilized and the disturbed area on each lot will be less than 1 acre.

Please note that we are developing guidance for subdivisions and will post it on our website as soon as we have additional information.

15. Assume that I'm going to inspect a project every seven days, and I decide to do it the same day every week. At some point, my standard day falls on a holiday. If I inspect it the day before the holiday, and then on my regular day on the following week, I've violated the seven-day timeframe. If I inspect it the day after on the holiday, then I've exceeded the seven-day requirement from the previous inspection. The obvious answer is to do the inspection on the holiday, but that ends up creating a problem for a lot of people. (*This question was raised by a third party inspection company that tries to maintain regular schedules and would like to always complete their inspections on the same day. The question is "Is there any flexibility with respect to holidays?")*

Section 3.10 states that inspections must be conducted at a minimum in accordance with one of the two schedules listed below (listed on the SWPPP) – at least once every 7 calendar days or at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

The Department does not require that these inspections be spaced at seven-day intervals but that they must be conducted at a minimum of every seven days.

Nationwide Permit 401 and CZC General Conditions
Certified May 11, 2007

EXPLANATION, EVALUATION, AND PROPOSED ACTION OF THE NATIONWIDE PERMITS

General Conditions: These conditions apply to all of the nationwide permits (NWPs) unless otherwise noted. A project proposed for authorization under a NWP should not be considered unless it meets all of the following general conditions plus any special conditions listed for each NWP.

1. SCDHEC considers a "single and complete project" to mean the overall project proposed or accomplished by a single owner/developer and it includes all land within the project boundary under single ownership. It is not interpreted to mean only the land area directly impacted by each NWP request. Impacts to Geographical Areas of Particular Concern (GAPC) sites or adjacent waterbodies or wetlands resulting from an activity will be considered during the review of these actions.

2. Activities in Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), Trout Waters (as defined in R. 61-68), springheads or aquatic sites located adjacent to those areas, are not certified.

3. Activities in areas identified by SCDHEC as having impaired uses (as defined by 303(d) of the Clean Water Act) are not certified.

4. All NWP applications must be accompanied by a Corps verified wetland delineation identifying **all** wetlands (jurisdictional and nonjurisdictional), depressional areas or other special aquatic sites within the project area.

5. For projects requiring fill in wetlands, the applicant must demonstrate that impacts to wetlands have been avoided; unavoidable impacts to wetland areas have been minimized, and provide suitable compensation for any unavoidable wetland impacts. This sequencing should be presented in all permit applications. Additional sequencing regarding appropriate compensation (onsite, within watershed, outside watershed, etc.) must also be demonstrated. Where compensatory mitigation is required, on-site compensatory mitigation, in accordance with the provisions of the S. C. Coastal Zone Management Program in the Coastal Zone, must be pursued if at all possible. Compensatory mitigation must be determined using the Corps Standard Operating Procedure (SOP), where required by the Corps or in a Specific Condition of the 401 or CZC Certification. Compensatory mitigation plans must be included in the application submitted to the Corps by the applicant and in the package copy furnished to SCDHEC by the Corps. Proof of purchase of compensatory mitigation credits or execution of the deed restriction, restrictive covenant, or conservation easement document, if part of the submitted compensatory mitigation plan, must be submitted to both the Corps and SCDHEC prior to commencement of the activity authorized by the permit issued by the Corps. Although the permit may be issued pending resolution of a compensatory mitigation plan, the work authorized by that permit may not commence until the compensatory mitigation plan is approved and finalized, as described above.

6. Activities in the Critical Areas (as defined in 48-39-10, R 30.1(D) and R 30.10) require a direct permit from SCDHEC-OCRM. SCDHEC OCRM's action on direct critical area permits will serve as the consistency determination for the critical area activity.

7. SCDHEC's Emergency Response Team must be contacted immediately in the case of a spill.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

FILE NO.: 09-ALC-07-0069-CC

TOWN OF ARCADIA LAKES, ROBERT L. JACKSON, LINDA Z. JACKSON, ROBERT E. WILLIAMS, JR., BARBARA S. WILLIAMS, ELIZABETH M. WALKER, LOUIS E. SPRADLIN, MARY HELEN SPRADLIN, THOMAS HUTTO UTSEY, TONY SINCLAIR, AARON SMALL, BETTE SMALL, GENE F. STARR, M.D., ELAINE J. STARR, SANFORD T. MARCUS, RUTH L. MARCUS, AND STEVEN BROWN, PETITIONERS, VS. SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND ROPER POND, LLC, RESPONDENTS.	30(b)(6) DEPOSITION OF SC DHEC BY **JILL C. STEWART**

Deposition of Jill C. Stewart, taken pursuant to the South Carolina Rules of Civil Procedure, commencing at the hour of 2:07 p.m., Wednesday, May 13th, 2009, at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina.

COPY

Reported by

Michelle D. Wright

Appearances

For the Petitioner:	James Stuart Chandler, Jr., Esquire South Carolina Environmental Law Project P.O. Box 1380 Pawleys Island, SC 29585
For the Petitioner Town of Arcadia Lakes:	Charles H. Cook, Esquire Elliott & Elliott, PA 721 Olive Street Columbia, SC 29205
For the Respondent SCDHEC:	Stephen P. Hightower, Esquire South Carolina Department of Health and Environmental Control 2600 Bull Street Columbia, SC 29201-1708
For the Respondent Roper Pond, LLC:	Joan W. Hartley, Esquire Nexsen Pruet Adams Kleemeier 1230 Main Street, Suite 700 P.O. Drawer 2426 Columbia, SC 29202
Reported By:	Michelle D. Wright
Also Present:	Linda Z. Jackson Joseph Walker, II

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Exhibits

Marked as Plaintiff's Exhibit Three; Deposition of Jill C. Stewart; document entitled NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities; 54 pages 9

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken.

Stipulations

The reading and signing of this deposition is reserved by the deponent and counsel for the respective parties.

Whereupon,

Jill C. Stewart, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

Examination

By Mr. Chandler:

Q Would you please give us your name.

A My name is Jill Cauthen Stewart.

Q Okay. And, Ms. Stewart, where do you work?

A I work for DHEC.

Q All right. Do you live here in Columbia?

A I do.

Q And what is your position with DHEC?

A I am the manager of the storm water permitting section.

Q And what are your duties and responsibilities in that job?

A I oversee the staff that issues storm water permits for construction sites, for industrial facilities or fire storm water permits and the local

governments and what we call MS4s, or municipals separate storm sewer systems, that are required to have storm water permits, overseeing the day-to-day operation of those.

Q Okay. Have you ever had your deposition taken before?

A No, I have not.

Q All right. Essentially, I'll just be asking you questions, --

A Okay.

Q -- and if you know the answer, then I'll want an answer. If you don't, you can just tell me that.

A Okay.

Q And if you don't understand my question, -- which as you've heard already, I sometimes can ask a question that a witness doesn't understand -- you just let me know, and --

A I'll do that.

Q -- I'll try to ask a better question. So, do you have any questions about the --

A No.

Q -- process before we begin? Okay. How long have you been the manager of the storm water permitting?

A Since November of 2006.

Q And how many people do you have working on your

staff?

A Right now I have nine.

Q All right. And what do the various staff members do on a day-to-day basis for you?

A I have one full-time staff and one part-time staff member that run the MS4 program. There is one staff working on industrial storm water, and the remainder work on the construction storm water permitting program.

Q All right. Now, the MS4 program, that's the program that's run by counties and municipalities under the delegated authority, I suppose. Is that the correct term?

A No, not delegated authority. It is a requirement essentially through the NPDES regulations, that cities or counties or any entity that owns or operates or maintains a storm sewer system is required to get a permit and implement a plan.

Q Okay. Now, what's your educational background and work history?

A Okay. I have a bachelor's of science in civil engineering from the University of South Carolina. I worked for about three and a half years as -- or with a design engineer and came to work in -- with DHEC in October of '03. I graduated in May of 2000

from USC.

Q Okay. Who was the engineer you worked for?

A Worked -- Was Donna Hagins. It's DH Hagins and Associates in Lancaster, South Carolina.

Q When you came to DHEC, what kind of position did you have?

A I became a plan reviewer with the storm water permitting section.

Q All right. And did you hold any other position before becoming the manager of this section?

A No, just the plan reviewer, and went straight from that to manager.

Mr. Chandler: Now, do we have the deposition notice that we had marked --

Ms. Hartley: Not one marked. This is my copy.

Mr. Chandler: -- as an exhibit to Mr. Hightower's deposition?

[Off the record briefly at 2:14 p.m.]

Mr. Chandler: Why don't we do this. I've got another notice of deposition that was issued in this case, and we've already attached the same thing as Exhibit One --

The Deponent: Okay.

Mr. Chandler: -- to that earlier deposition of Mr. Hightower.

The Deponent: Mm-hmm.

Examination Continues

By Mr. Chandler:

Q Have you seen this notice before?

A I saw the other one. I think this one looks very - -

The Deponent: Oh. Here it comes.

(Mr. Charles Hightower enters.)

Mr. Hightower: It was just three pages, right?

Mr. Chandler: That's it.

Mr. Hightower: Okay.

Mr. Chandler: Thanks.

The Deponent: We'll trade.

Mr. Chandler: All right.

Q So, we've marked it as Exhibit One --

A Yes.

Q -- to Mr. Hightower's deposition.

A Yeah.

Q That's the one you've seen?

A That's correct.

Q Okay. And is it your understanding that you've been authorized to testify on behalf of the

Department to at least some of the items that are listed on here?

A That is correct.

Q And can you tell me which ones?

A Primarily seven, five, six, eight, nine, ten, eleven, and that is it. So, I guess, it would be five through eleven.

Q Okay. All right. As this notice of deposition indicates, we're here today to talk about this project that's been applied for -- a permit that's been applied for by Roper Pond, LLC, and it's my understanding that the Department issued approval of the Roper Pond project under the NPDES general permit for construction projects.

A That's right. Correct. We issued a coverage.

Q Okay. And who on your staff did the review of that project?

A I actually did the review.

Q Okay. And when was the application submitted?

A I don't recall the actual date. I would have to look at the notice of intent form to determine that. It was sometime last fall, I believe.

Q Okay. I don't know that it's all that important for my purposes here today.

Marked as Plaintiff's Exhibit

Three; Deposition of Jill Stewart; document entitled NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities; 54 pages.

Q Now, I've got a bunch of pages here that I have had marked as Exhibit Number Three.

A Mm-hmm.

Q Is this the NPDES general permit that Roper Pond has received authorization under?

A That's correct.

Q And am I correct, this is basically a general permit that been authorized under the authority of the Clean Water Act, the federal Clean Water Act, and DHEC has approved it under its delegated authority?

A That's correct.

Q All right. Now, -- And this general permit covers, as it says, large and small construction activities?

A Mm-hmm.

Q Okay. Now, do you know whether the pond on the Roper Pond, LLC property is considered a water of the state?

A I believe the application indicated it was a water of the state.
Q Okay. And is it your understanding that there will any alteration -- that there will be alteration of this pond as part of this project?
A Yes.
Q Okay. And what type of alteration is proposed?
A I haven't reviewed the plans recently, but I believe they were dropping the water level in order to utilize it for detention.
Q Okay. Now, the NPDES general permit that we've marked as Exhibit Number Three, --
A Mm-hmm.
Q -- it includes a lot of sections that mention waters of the state --
A Mm-hmm.
Q -- and allowable discharges --
A Mm-hmm.
Q -- to waters of the state, and --
A Mm-hmm.
Q Can you tell me in general terms, what are the primary requirements that a construction project has to meet in terms of dealing with storm water before they are discharged to a water of the state?
A Okay. That's -- It outlines and requires them to

first submit a notice of intent to the Department and be granted coverage. They are required to prepare a storm water pollution prevention plan that outlines what's taking place at the site, gives an idea of the topography of the site, and that will show what control measures or BMPs, such as silt fence, your sediment basins or stabilization measures, are being utilized in order to prevent the discharge of sediment into waters of the state. That's it in a nutshell.

Q Okay. Now, does this permit require any sort of detention of waters before discharge?

A Under NPDES, very loosely. Under -- The only place it is mentioned is in section -- I think it's 3.4, one just brief mention that post- -- post-development runoff rates should be less than pre-development runoff rates. It's something very fleeting like that. That's all it says.

Q Okay. Does the storm water permit authorize the lowering of the level of this pond through excavation?

A That's not anything that's typically covered because we're permitting the storm water discharges. It doesn't go into any impacts to -- or anything to do with the actual where you're

discharging.

Q Okay. Is there any Department permitting process that you're aware of that actually either assesses the impacts of excavating the pond, lowering the level, and issues any kind of Department approval for that work?

A I'm not aware of any.

Q In connection with the issuance of the approval of the storm water general permit for this project, does your section take into account the impacts that lowering the water level of this pond might have on aquatic life within the pond?

A When we issued the general permit itself?

Q Right.

A No, because it's basically covering thousands of activities statewide, so it's just generally that if you meet the requirements of this permit, then you're assuming to be protective of water quality.

Q Now, when you issue the specific approval for Roper Pond, LLC, --

A Mm-hmm.

Q -- do you assess the impacts of lowering that pond on the aquatic life in the pond?

A No.

Q Do you assess the impacts that lowering the pond

could have on wetlands associated with the pond?
A No.
Q All right. Are you aware of any Department approval that assesses the impacts on aquatic life in the pond or the wetlands associated with the pond?
A No.
Q Would it make any difference at all if this pond were not surrounded on three sides by the Roper Pond, LLC property?
A Be a little more specific.
Q Well, if Roper Pond owned some property --
A Mm-hmm.
Q -- bordering a pond but didn't own all the way around it except for what fronted on Trenholm Road, would that make any difference in your analysis?
A In the degree of treatment we would require, --
Q Right.
A -- no.
Q All right. Are you familiar with the requirements that are set forth in DHEC regulation 61-68 of water quality standards?
A Some of it.
Q Okay. And those requirements include an anti-degradation clause, don't they?

A I believe so.
Q Okay. And those standards require the protection of the maintenance and propagation of a balanced indigenous aquatic community of flora and fauna, don't they?
A Mm-hmm.
Q Okay. And do you know whether the excavation of this pond and the lowering of its surface level will have an impact on the classified and existing uses of the waters of this pond?
A That's nothing that I have the -- the scope of my background to determine.
Q And the same would be true as to whether it would allow for the maintenance of propagation of a balanced indigenous aquatic community?
A That's true.

Mr. Chandler: Let me take a little bit of a break. We may be short.

The Deponent: Okay.

[Off the record at 2:28 p.m.; back on the record at 2:39 p.m.]

Mr. Chandler: Just a couple of other brief questions, and then I think we'll be done.

The Deponent: Okay.

Examination Continues

By Mr. Chandler:

Q Would you agree with me that the basic purpose of the NPDES system, National Pollutant Discharge Elimination System, is to make sure that projects that include discharges to waters of the United States meet the water quality standards under the Clean Water Act and the state Pollution Control Act?

A I think that's the basic premise of it.

Mr. Chandler: Okay. That's all the questions I've got.

Ms. Hartley: I don't have anything.

Mr. Chandler: And I don't think I have any follow-up questions.

Examination

By Mr. Hightower:

Q Mrs. Stewart, when you were asked about your educational requirements, --

A Mm-hmm.

Q -- do you have any other education or certifications that are relevant to your job?

A Yeah. I forgot that one. I'm a licensed professional engineer for the State of South

Carolina.

Q Okay. And --

A And certified plan reviewer and certified storm water -- certified erosion prevention and storm water control and sediment erosion control inspector.

Q Okay. And those are -- You had to take some type of course --

A Training --

Q -- or training --

A -- for the plan reviewer and the inspectors. It's a training course.

Mr. Hightower: Okay. No further questions.

Mr. Chandler: Let me just ask a little bit of follow-up here.

The Deponent: Mm-hmm.

Re-examination

By Mr. Chandler:

Q In the review of the Roper Pond, LLC project, did you or anybody else in your section assess the overall project to determine whether or not this project would have any biological impacts on the pond at this site?

A Not biological, no, sir.

Q Okay. Did you look at to -- or anybody in your section look at it to determine whether it would any impacts on any wetlands on the property?

A No.

Mr. Chandler: Okay. Thank you. That's all I've got.

(Whereupon the deposition was concluded at 2:41 p.m.)

(Deponent will read and sign her deposition transcript.)

State of South Carolina)
) Certificate
County of Lexington)

Be it known that the foregoing deposition of Jill C. Stewart was taken before me;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the deponent reserved her right to read and sign the deposition transcript, and Review by Deponent and Errata sheets were provided to the deponent with instructions that they were to be returned within thirty (30) days with any changes/corrections to said deposition transcript.

The foregoing transcript of 18 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Witness my hand and seal this 27th day of May, 2009.

Michelle D. Wright

Michelle D. Wright

Notary Public for South Carolina
My commission expires April 7, 2018.

Note: Recordings are retained for twelve (12) months from date of certification.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

FILE NO.: 09-ALC-07-0069-CC

TOWN OF ARCADIA LAKES, ROBERT L. JACKSON, LINDA Z. JACKSON, ROBERT E. WILLIAMS, JR., BARBARA S. WILLIAMS, ELIZABETH M. WALKER, LOUIS E. SPRADLIN, MARY HELEN SPRADLIN, THOMAS HUTTO UTSEY, TONY SINCLAIR, AARON SMALL, BETTE SMALL, GENE F. STARR, M.D., ELAINE J. STARR, SANFORD T. MARCUS, RUTH L. MARCUS, AND STEVEN BROWN, PETITIONERS, VS. SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND ROPER POND, LLC, RESPONDENTS.	30(b)(6) DEPOSITION OF SC DHEC BY **CHARLES HIGHTOWER**

Deposition of Charles Hightower, taken pursuant to the South Carolina Rules of Civil Procedure, commencing at the hour of 2:07 p.m., Wednesday, May 13th, 2009, at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina.

COPY

Reported by

Michelle D. Wright

Appearances

For the Petitioner:	James Stuart Chandler, Jr., Esquire South Carolina Environmental Law Project P.O. Box 1380 Pawleys Island, SC 29585
For the Petitioner Town of Arcadia Lakes:	Charles H. Cook, Esquire Elliott & Elliott, PA 721 Olive Street Columbia, SC 29205
For the Respondent SCDHEC:	Stephen P. Hightower, Esquire South Carolina Department of Health and Environmental Control 2600 Bull Street Columbia, SC 29201-1708
For the Respondent Roper Pond, LLC:	Joan W. Hartley, Esquire Nexsen Pruet Adams Kleemeier 1230 Main Street, Suite 700 P.O. Drawer 2426 Columbia, SC 29202
Reported By:	Michelle D. Wright
Also Present:	Linda Z. Jackson Jill Stewart Joseph Walker, II

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Exhibits

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Marked as Plaintiff's Exhibit Two; Deposition of Chuck Hightower; copy of a letter dated September 24, 2008; one page 12

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken.

Stipulations

The reading and signing of this deposition is reserved by the deponent and counsel for the respective parties.

Whereupon,

Charles Hightower, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

Examination

By Mr. Chandler:

Q Please give us your full name.

A Charles Wesley Hightower, III.

Q Okay. And, Mr. Hightower, where do you live?

A I live in Sandy Run, South Carolina.

Q Okay. And by whom are you employed?

A By South Carolina Department of Health and Environmental Control.

Q And what's your position?

A I am the section manager for the 401 Water Quality section.

Q Okay. Can you describe for me what is the 401 Water Quality section and what it does?

A Sure. 401 Water Quality section has two functions. We actually operate under two separate regulations.

One is the 401 Water Quality certification regs and also the state navigable waters Regulations. In essence, under 401 we certify federal 404 projects.

Q All right. And you mentioned 61-101. That's DHEC regulation 61-101?

A Yes, sir.

Q Okay. And am I correct that the 401 and the title of the section, the first of section 401, is the Clean Water Act?

A Yes, sir.

Q And that's the federal law that authorizes the state to certify federal permits?

A Yes, sir.

Q Okay. And the Navigable Waters Permit Program is the program that's done under regulations codified as regulation 19-450?

A That's right.

Q Okay. Now, how long have you been in this position?

A Been in the current position for a little over two years now.

Q Okay. How many people work under your supervision?

A I have eight people under my supervision.

Q Okay. And can you give me a rundown on who they are and what their function is within your section?

A I can -- You mean by name, every single person, or -- I can tell you seven -- seven work strictly -- I mean, everybody has the same job duties. Seven out of the eight have the same job duties. They all certify the 401 certifications in navigable waters permitting, --

Q Okay.

A -- and I have one person who is a liaison for the South Carolina Department of Transportation.

Q All right. I think that's enough of what I need. How about giving me a little bit of your background, sort of a short version of your education and employment history before you came to be the section manager.

A Okay. I have a BS in biology from the University of South Carolina. Started with DHEC in February of '96 in the underground storage tank program. I worked in that program -- That's in the Bureau Land of Waste Management. Worked there for ten years. I came to the Bureau of Water in May of 2006 in the 401 Water Quality section and became section manager in November of '07.

Q All right. What kind of position did you hold between May of '06 and November of '07 within -- You were within the 401 certification section at

that time?

A Right. I was the 401 section manager -- I mean 401 project manager.

Q Okay. And, so, you were one of the people who reviewed the permits and --

A Yes, sir.

Q Okay. Have you done any other postgraduate work after getting your degree in biology from USC?

A No, sir.

Q Now, have you ever had your deposition taken before?

A Yes, sir.

Q All right. So, I mean, you know the routine. I don't think we've got to go through -- I will ask you questions. If you don't understand my questions, just let me know. If you answer, I'll assume, you know, you understand the question.

A Okay.

Mr. Chandler: (to the court reporter) Did you mark that notice?

Marked as Plaintiff's Exhibit One; Deposition of Chuck Hightower; document entitled Notice of Deposition; three pages.

Q I want to hand you a document that I have. I had it marked as Exhibit Number One. It's the notice of deposition issued in this case involving DHEC and Roper Pond, LLC. Have you seen that notice of deposition before?

A Yes, sir. I believe I have a copy of it right here, as a matter of fact.

Q Okay. And do you understand that your deposition is being taken today? I mean, the notice was a notice of deposition of the Department, and is it your understanding you've been designated to testify on behalf of the Department in this proceeding?

A Yes, sir.

Q Okay. And are you going to give testimony on all of the areas that have been specified in this notice?

A No, sir.

Q Okay. Could you run down which of the sections in this notice that you're going to be addressing.

A I will be addressing one through four and also twelve.

Q All right. Now, the matter that we're dealing with today involving the application of Roper Pond, LLC, how familiar are you, personally, with that

project?

A I'm fairly familiar with it.

Q Were you involved in the review when it was -- after the application had been received by the Department?

A On nationwide permits, if they meet our specific conditions for authorization under 401, I typically don't get into a review at that time, but I've since reviewed the file.

Q Okay. Who in your office was actually responsible for making the review and issuing the Department decision?

A That would -- Project manager was Alicia Rowe.

Q And is she still in the section?

A Yes, sir, she is.

Q Okay. Can you tell me what the application was for.

A The application -- The application is for fill-in wetlands, and it is my understanding was covered under a nationwide permit.

Q All right. Now, in undertaking a review of an application that comes in, does the 401 section look at the overall impacts of a project?

A In a sense. It depends on how -- When you say application, in this case -- We get applications

two ways from the Corps of the Engineers, or mainly -- mainly two ways. One is under an individual public notice, and one is under a nationwide permit for the 404. When we received copy of application for this project, it was accompanied with preconstruction notification that they were authorizing the 404 -- Actually, we received it under 39, Mr. Chandler, but they re-authorized in February under nationwide 29.

Q Okay. Now, did you receive plans for the overall development that was to occur at this site?

A Yes, sir, we did.

Q And where was this site located?

A I believe it was in the Arcadia Lakes area.

Q Just outside Columbia, here in Richland County?

A Yes, sir.

Q All right. And, specifically, what kind of impacts were going to occur in the wetlands?

A I believe it was fill for an apartment building structure and fill for some sidewalk and a walking cross and trail crossings.

Q Okay. Did your section identify any other impacts on wetlands or waters of the state in your review?

A I don't know that we did. As a matter of fact, we -- under 61-101, in our regulatory authority, we

only have regulatory authority for impacts that the Army Corps of Engineers asserts jurisdiction over.

Q Okay. Now, -- And the Army Corps of Engineers did assert jurisdiction over the wetlands at issue in this case; isn't that correct?

A That's right. Yes, sir.

Q Okay. And, so, did -- The wetlands involved, were they isolated wetlands or were they part of the system?

A Mr. Chandler, I'm -- to be honest with you, I don't make those jurisdictional determinations. The Army Corps of Engineers does. I'm assuming -- I would only be assuming that if they considered them jurisdictional wetlands, they would be considered to be part of the system and not isolated.

Q Okay. And are you aware -- Have you been aware that the wetlands that were to be filled were adjacent to a pond?

A I believe they were. Yes, sir.

Q Okay. And -- Do you recognize this letter as something that's part of the Department's file?

Ms. Hartley: Jimmy, --

Mr. Chandler: Mm-hmm.

Mr. Cook: Do you have copies for us?

Mr. Chandler: I'm going to mark this.

Mr. Cook: Okay.

Mr. Chandler: We can make some copies.

Ms. Hartley: May we look at it before you question?

Mr. Chandler: Yeah. I thought I was going to be deposing somebody really more familiar with the direct impacts of the project, or I would've made copies. If you could mark this letter.

Marked as Plaintiff's Exhibit Two; Deposition of Chuck Hightower; copy of a letter dated September 24, 2008; one page.

Q Now, this letter that I've just handed to you a minute ago that we've marked as Exhibit Number Two, this is a transmittal letter under which Mr. George Whatley -- Whatley from BP Barber and Associates sent over to your section a set of construction drawings for the development; is that correct?

A Yes, sir.

Q Okay. So, is it correct that y'all have a set of construction drawings that are part of the Department's file?

A I believe we do. Yes, sir.

Q Okay. And did the Department examine those construction drawings to determine whether there were going to be any other alterations of wetlands or aquatic sites in this area?

A Again, I need -- I guess I need to clarify. The only regulatory authority that I have is if the Army Corps of Engineers says that I have -- They have to assert jurisdiction in order for me to have regulatory authority over impacts of those wetlands.

Q Okay. Well, let me talk about your regulations just a minute.

A Okay.

Q Every time that the 401 section gets involved, does the Corps of Engineers -- or, actually, it can be -- Well, the Corps of Engineers has gotten an application through the Section 404 permit or Section 10 permit?

A Yes, sir.

Q And they've come to you and asked for a 401 certification, and the 401 certification is a designation of whether or not the project is going to comply with state water quality standards; is that correct?

A Yes, sir.

Q All right. And in assessing that project, you look to Regulation 61-101, don't you?
A Yes, sir.
Q And 61-101 indicates that the Department is to look at all of the potential water quality impacts of the project; isn't that correct?
A In certain cases, yes. Well, yes sir.
Q All right. Is there any cases in which you don't look at it?
A Let's go to my role in this particular -- Can we go to my role in this particular instance?
Q Yes, sir.
A This was covered under a nationwide -- again, covered under nationwide general permit from the Army Corps of Engineers. We have certified those nation -- most of those nationwide 404 Permits. We've put those on public notice in 2007. So, if the Army Corps of Engineers says we're asserting jurisdiction over these impacts and we are covering it under this particular nationwide, in this case a Nationwide 29, if it meets our specific conditions that -- that we public noticed in 2007, it is -- the project is certified and given 401 certification. It's already certified. Once it meets those conditions, it's certified.

Q Let me just go back to your regulations.
A Okay.
Q Your regulations require you to look at all potential water quality impacts of the project, both indirect -- over the life of the project?
A And I'm -- And my answer to that would be, in this case, because the 401 was certified under a nationwide, it's certified. I don't really have another opportunity if that certification is out. If they -- If the Army Corps of Engineers issues a 404, if it meets the specific conditions that we public noticed in 2007, certification is issued. It's already been issued.
Q All right. Now, specifically, what is authorized under this particular nationwide permit, either 29 or 39?
A It would be specific on a nationwide, but it's pretty much fill in jurisdictional wetlands, --
Q Okay. Now, --
A -- or possibly streams.
Q And the nationwide permit only covers those specific alternations that are listed in the permit; isn't that correct?
A That's right.
Q And if there are other alterations within the

wetlands or adjacent waters, those are not authorized under that permit, are they?

A No, sir.

Q And if you receive information indicating that a project is going to have additional impacts on those waters or wetlands, what do you do with that information?

A I'd have to refer to the Army Corps of Engineers to make a jurisdictional determination.

Q Okay. And in this case, you received a set of plans for this project. All right. Now, did anybody within the Department examine those plans to determine whether there were going to be any impacts to aquatic sites, wetlands or waters of the United States or waters of the State of South Carolina besides the small amount of wetland fill for -- that were specifically listed in some of the documents?

A Can you repeat -- Can you repeat the question?

Q I'm not sure I can.

Mr. Chandler: (to the court reporter) Would you read back the question I just asked him.

(Court reporter reads back question.)

A I would think -- I would think they would look at

the plans, but, again, we only have regulatory authority in this case for what the Corps has ruled as jurisdictional wetlands. I have no other regulatory authority over impacts other than ones that the Corps asserts jurisdiction over.

Q All right. Let me take you outside nationwide permit section, and let's say you get an individual 404 permit application that's been submitted for review under the 401 certification program. In that case, do you apply the scope of review that's specified in section 61-101 F3?

A Do you mind if I pull out my regulations?

Q Not a bit.

A Yes, sir.

Q Okay. And that particular section requires that the Department to address and consider a number of factors, including -- and I'm not going to read them all, but you have to look at whether they're feasible alternatives; isn't that correct?

A For which projects are you --

Q For a project -- any project that comes in for an individual 404 Permit and 401 certification.

A Yes, sir.

Q You have to look at feasible alternatives, right?

A Yes, sir.

Q Okay. And you have to look at all potential water quality impacts of the project both, indirect -- direct and indirect over the life of the project. You have to do that, don't you?
A Yes, sir.
Q And you have to look at the impact on existing and classified water uses, don't you?
A Yes, sir.
Q And you have to look at physical, chemical and biological impacts, including cumulative impacts, don't you?
A Yes, sir.
Q All right. And you have to look at effects on circulation patterns and water movement, don't you?
A Yes, sir.
Q And you have to look at the cumulative impacts of the proposed activity and the reasonably foreseeable similar activities of the applicant and others, don't you?
A Yes, sir.
Q All right. Now, in issuing a certification of nationwide permit number 29 or nationwide permit number 39, did the Department consider anything other than the limits of fill that are specifically listed in those nationwide permit descriptions by

the Corps of Engineers?

A Again, I won't say we didn't look at it, but I will tell you that the only regulatory -- again, the only regulatory authority that we have are for impacts that the Corps considers jurisdictional, and, in this case, -- and that there are conditions for a 404 under nationwide 29, and there are specific conditions that we public notice, which means they automatically receive 401 certification for the project.

Q All right. Mr. Hightower, obviously we -- we may have a little disagreement over what the Department's authority is, and I think you've made that clear. What I -- What I really want to make sure is I want to make sure I understand what the Department did rather than what its authority is. Stephen and I can argue about that, and Ms. Hartley, when we get to court on this thing. But is it true that when the Department issued a certification, a general conditional certification of a nationwide 29 and a nationwide 39, there was a basic assumption that the impacts were going to be limited to the specific impacts that are listed in that general permit?

A Are you -- You're asking me if we made assumptions

when we certified -- Can you repeat the question? I'm sorry.

Q All right. Let me do this. Do you know what's allowed under nationwide 29?

A Sure.

Q Tell me what it is.

A For 401 certification?

Q Yeah.

A Specific conditions for 401 water quality certification --

Q Well, -- No. No. What I want to know is, what did the Corps of Engineers authorize when the Corps issued those nationwide permits?

A The preconstruction notifications I have authorize .075 acres of water in the United States including wetlands.

Q Okay. Now, when a conditional certification was issued -- Let me back up. Let me start over. Under what circumstances does the Corps issue a nationwide permit? Do you know?

A No, sir. I don't know their -- I don't know their process.

Q Okay. Are you familiar with language that the Corps of Engineers has issued in which they indicate that nationwide permits are issued for

projects that are limited in scope so that the individual cumulative impacts are not significant? Does that sound familiar to you?

A It sounds familiar but, again, that's -- that's their language, not -- I mean, that's not something I'd -- Well, yeah, that's the intent of a nationwide, is just that.

Q Okay. And, so, if a project is going to have impacts that are outside that scope, they're not necessarily covered by that nationwide permit, are they?

A I'm not sure I understand the question.

Q Well, let's say a project is, for example, going to fill a little bit of wetlands, and it also calls for excavating other aquatic areas, including areas that might be waters of the United States or waters of the State of South Carolina. Is that excavation authorized under the nationwide Permit?

A That's hypothetical. In this particular case, I'm not sure what you're asking.

Q Well, are you aware that the plans and specifications that -- or at least the plan sheets that were sent to the Department by BP Barber show an indication of intent to excavate the pond that these wetlands are connected to?

A Yes, sir.
Q Okay. And that's an additional impact to a water of the state or waters of the -- waters of the state, isn't it?
A That's not for me to determine. Again, I only have jurisdiction over -- I only have regulatory authority to issue 401 water quality certifications for impacts that the Army Corps of Engineers has asserted 404 jurisdiction over and requires a 401.
Q All right. Tell me this. where does the Department get the authority to look at all potential water quality impacts of the project, both direct and indirect, including the accumulative impacts of the projects, consumer activities of the applicant and others? Where does the Department get that authority?
A That would be the Clean Water Act.
Q Okay. And it comes from Pollution Control Act, comes from Regulation 61-101, doesn't it?
A Yes, sir.
Q And when the Department issues an approval under 61-101, it's an indication that the Department has complied with its own regulations in that review, isn't it?
A Yes, sir.

Q And, so, did the Department in approving nationwide 29 in 2007 or in approving this particular project in 2008 or 2009 -- did it look at the impacts, all of the direct or indirect impacts of this project, on the waters of the state or waters of the United States?

A To the best of our ability, I believe I did.

Q Okay. Did you look at the impacts to the pond from excavation?

A Again, I can look at it all day long, but under my regulation, I don't believe that I have any regulatory authority unless the Army Corps of Engineers asserts jurisdiction over it.

Q Okay. So, what is the purpose of looking at it if you can't do anything about it?

A Good question. Like I said before, under -- under nationwide 29, if the Corps puts out a preconstruction notification like they did, if it already meets -- if it meets the specific conditions of our nationwide 29, then that 401 certification is issued.

Q All right. So, if you got a notice from the Corps that they were going to fill a minute amount of wetlands, and you received other evidence that they were planning on filling more wetlands, would you

go ahead and issue the approval and ignore that other fill?

A I can't answer something -- a hypothetical question -- I don't -- I don't even know how to respond to that or answer that question.

Q Okay.

A That's really hypothetical.

Q Well, tell me this. Has the Department reviewed and approved in any way, shape or fashion the excavation of the pond on the site owned by Roper Pond, LLC?

A Please repeat the question, please, sir.

Q Has the Department of Health and Environmental control reviewed and approved in any shape or fashion the excavation of the pond located at the Roper Pond, LLC site?

A Mr. Chandler, as far as my certification is concerned, my certification certified the fill of those jurisdictional wetlands.

Q Okay. And, so, from your perspective, you have not given any approval to the excavation of that pond; is that correct?

A I don't know that I -- I wasn't -- as for approval, have any regulatory authority to deny or give approval.

Q Okay. Now, if the Department had issued a certification of the nationwide permit in 2007, can you explain for me why the Department needed to review it again in 2008 or 2009 for this specific project?

A In order to ensure that it met our specific conditions for coverage under nationwide 29 for 401 certification.

Q Okay. And, so, the Department had to make a specific determination in order to issue the letter that it did; isn't that correct?

A Yes, sir.

Q Now, one of the conditions of the project involves a limitation on the number of linear feet that are going to have impacts; isn't that correct?

A Yes, sir.

Q And did you determine what the linear footage of impacts of this projects was going to be?

A The linear feet in this -- in the nationwide is specifically referring to streams -- stream -- linear feet of stream impact. Here we're dealing with wetland impacts, so we're dealing with it on a -- on a size basis.

Q Okay. The third condition doesn't say -- have the word stream in it, does it?

A I understand that. No, sir.
Q It just talks about impacts exceeding a tenth of an acre or 300 linear feet, --
A That's right.
Q -- correct? Okay. So, I mean, what is your source of saying that it's limited to streams?
A In other nationwide -- I guess the word stream was really left out. If you look at all the other nationwide numbers where it talks about linear feet, it's always talking about stream impacts.
Q All right, but it's not in this one, is it?
A It's not in this one.
Q Okay. But number five in the conditions actually does mention both intermittent and ephemeral streams, doesn't it?
A That's right.
Q Okay. And, so, the word stream could easily have been put in number four, but it wasn't, was it?
A No, sir.
Q And those things were put out on public notices, drafts, they went through a comment process for months, and then they were published in final form, weren't they?
A Yes, sir.
Q All right. In reviewing and issuing the letter of

approval, did the Department look at the number of linear feet of this pond that were going to be disturbed?

A The number of linear feet of pond?

Q Yes, sir.

A Again, we looked at what the Army Corps of Engineers was -- We looked at certification in order to what the Army Corps of Engineers was asserting jurisdiction and issuing their 404 form.

Q Okay. Did you look at the BP Barber plans that were given to you by -- with the transmittal letter of September 24th, 2008?

A Yes, sir.

Q And did you notice that it called for excavation of the pond?

A Yes, sir.

Q All right. And you considered that outside the scope of your review?

Mr. Hightower: I'm going to make an objection to the form of the question. When you say you, are you referring to Mr. Hightower specifically or the Department?

Mr. Chandler: The Department.

Mr. Hightower: Okay.

Q Did the Department consider that outside the scope

of its review?
A For the certification under nationwide 29, yes, sir.
Q Okay. And are you aware of any Department review and approval of that alteration of the pond?
A I can only speak to -- I'm not sure, Mr. Chandler. I can only speak to what my section does under 61-101.
Q Okay. And as to your section and to your knowledge, the Department has not approved the excavation of that pond; is that correct?
A Again, I think -- I think I answered this before, is unless the Corps takes jurisdiction over it, I don't have regulatory authority to -- to approve or -- or deny.
Q I'm not asking about authority. I'm just asking whether you have any knowledge of any approval given by the Department of the excavation of the pond.
A I don't have any -- I mean, I don't have any knowledge of that.
Q Thank you. When the Department gave an approval to the work at Roper Pond, or the Roper Pond property, was the matter placed on public notice?
A For 401 certification?

Q Right.
A No, sir.
Q All right. And was there any opportunity for public comment?
A Yes, sir. There was opportunity for public comment in '07 when we certified the nationwide permit. It says they met with -- that the Corps had jurisdictional impacts and met this nationwide -- if they met these specific conditions, it was put public notice, then the project would be certified.
Q Okay. And that public notice didn't say anything about impacts other than minor amounts of fill, at least for permits number 29 and 39; is that correct?
A Yes, sir.
Q And the public was told that you're not going to approve anything with linear impacts greater than 300 feet; isn't that correct?
A Again, I believe that refers to streams as indicated by five when it says a 300 linear feet limitation when impacts intermittent and ephemeral streams authorize may not exceed 500 linear foot -- feet. I think five clearly indicates that four was -- the intent was 300 linear feet of stream.
Q Well, we can argue about the --

A Sure.
Q -- intent of the section, but did -- Let me ask you this. Was impacts to more than 300 linear feet to ponds approved under either one of these nationwide permits?
A No, sir.
Q Okay. Do you know whether the pond on the Roper Pond, LLC site is a water of the state?
A In -- I'm not sure what -- From my perspective, whether it's water of the state, it only -- from my regulatory authority, it only matters if -- if -- The only regulatory hook I have is if the Army Corps of Engineers asserts jurisdiction over 404 -- for a 404 permit for that activity. If they do, that requires a 401 certification from us. If the Army Corps of Engineers does not assert 404 jurisdiction over that activity, then I have no regulatory authority to assert 401.
Q My question was do you know whether this pond is a water of the state.
A I don't make those determinations.
Q Okay. Do you know what the definition of a water of the state is?
A I'm familiar with it. I can't quote it to you.
Q Okay. Are ponds included in waters of the state,

the definition?

A Again, I can't remember the definition specifically.

Mr. Chandler: Let me take just a little short break --

Mr. Hightower: Okay.

Mr. Chandler: -- and talk to Linda and Charlie a minute, and we'll see if I'm done.

Mr. Hightower: Okay.

[Off the record at 1:46 p.m.; back on the record at 1:59 p.m.]

Examination Continues

By Mr. Chandler:

Q Mr. Hightower, just a couple of things to follow up. Now, when the Department issued the certification of its -- of the Corps' nationwide permits in 2007, are you familiar with the document that was issued on April 25th of 2007 by DHEC that accompanied that approval?

A Yes, sir. I mean, I'm not -- I don't know it verbatim, but I know that there was a document that accompanied that.

Q Okay. And that document states that South Carolina DHEC considers a "single and complete project" to

mean the overall project proposed or accomplished by single owner/developer and includes all land within the project boundary under single ownership; isn't that correct?

A Yes, sir.

Q And it goes on to say it is not interpreted to mean only the land area directly impacted by each NWP request?

A Right.

Q Okay. And, so, -- It goes on from that to say that impacts to geographic area of particular concern sites or adjacent water bodies or wetlands where developing from an activity will be considered during the review of these actions. Doesn't it say that?

A If -- If -- Let me take a look at that. (Reviews document.) Okay. Yes, sir.

Q All right, sir. And that statement was in the approval of the nationwide permit, wasn't it?

A Right.

Q Okay. But in this particular case, you only looked at the fill and not other impacts to adjacent water bodies?

A Again, that was all reissued a certification on was the -- the .075 acres of wetland fill is what was

certified under nationwide 29.

Q All right. And, so, any other impacts that might have occurred on the project site or within adjacent water bodies were not part of your decision-making process. Is that what you're saying?

A I only have -- What I'm saying is I only have regulatory authority to -- to issue formal certification for what the Corps has asserted 404 jurisdiction over, and that would be the .075 acres of wetlands impact authorized under SAC 81 -- let's see -- under this PCN dated September 9th, 2008.

Q Okay. That's your legal conclusion, but in terms of matter of fact, any impacts to adjacent water bodies were not part of your decision-making process; is that correct?

A They were -- Again, I'll just say they were not certified under nationwide 29.

Q Now, I want to make sure I've got this thing covered. Am I correct that no public notice was issued for approval under either nationwide 39 or 29?

A In 2007 it was, for the --

Q Right, but for the specific approval of the Roper Pond project, there was no public notice at any

time by the 401 section, was there?
A No.
Q Do you know what -- Let me start over. The wetlands that were to be filled, they were wetlands that were adjacent to the pond on site; isn't that correct?
A Yes, sir. They were -- They were on that project site, yes, sir.
Q All right. And do you know what would happen to the wetlands around the edge of that pond if the surface water elevation of the pond was lowered by a couple of feet?
A I can't answer that. I don't -- No, sir. I don't -- I don't know the answer to that question.
Q Okay. And do I take it that the 401 section did not address or analyze the impacts that that might have on the adjacent wetlands as part of the decision in this case?
A Again, the nationwide 29 certification was of the .075 acres of jurisdictional wetland impact that the Corps issued under nationwide 29 for 404.
Q Okay. Does that mean that your answer is no, you did not analyze the impact on wetlands of lowering the surface water of the pond?
A Again, I'll just say -- My answer to that question

remains the same. We issued a certification of .075 acres of wetland impact authorized by the Corps of Engineers. We were asked to do a 401 if it met our conditions for the certification, and it did.

Q Okay. And if the pond was lowered, and if that had any effect on wetlands, was that part of your decision at all?

A Not for covered under the nationwide 29 that was issued by the Corps of Engineers for .075 acres of wetland impact. That's what was certified.

Mr. Chandler: Okay. That's all the questions I've got right now. Since this is a 30(b)(6) deposition and we've got another witness of the Department, I want to reserve the right to ask additional questions if things come up during the deposition of the other witness, but, with that, I'm done for now with this witness.

Mr. Hightower: I think that's fine.

Mr. Cook: That's fine.

Ms. Hartley: I just have one question.

Examination

By Ms. Hartley:

Q I'm Joan Hartley. I represent Roper Pond, LLC.

Has your section received a request from the Corps for a 401 certification for excavation of the pond in association with an individual permit for that?

A No, ma'am.

Ms. Hartley: That's all I've got.

Mr. Hightower: No questions.

(Whereupon the deposition was adjourned at 2:06 p.m.)

(Deponent will read and sign his deposition transcript.)

State of South Carolina)
) Certificate
County of Lexington)

Be it known that the foregoing deposition of Charles Hightower was taken before me;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the deponent reserved his right to read and sign the deposition transcript, and Review by Deponent and Errata sheets were provided to the deponent with instructions that they were to be returned within thirty (30) days with any changes/corrections to said deposition transcript.

The foregoing transcript of 36 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Witness my hand and seal this 27th day of May, 2009.

Michelle D. Wright

Michelle D. Wright

Notary Public for South Carolina
My commission expires April 7, 2018.

Note: Recordings are retained for twelve (12) months from date of certification.

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Jr., Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown, Petitioners, vs. South Carolina Department of Health and Environmental Control and Roper Pond, LLC, Respondents.	Docket No. 09-ALC-07-0069-CC **NOTICE OF DEPOSITION**

PLEASE TAKE NOTICE that the Petitioners, pursuant to ALC Rule 21 and SCRCP Rule 30, will take the deposition of the following for all uses permitted by the SCRCP:

SC Department of Health and Environmental Control

at 2:00 P.M. on Wednesday, May 13, 2009, at the offices of the SC Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC.

Pursuant to SCRCP 30(b)(6), the Petitioners give notice to the South Carolina Department of Health and Environmental Control to designate one or more officers, directors or managing agents to testify on its behalf at such deposition in connection with the following matters:

1. Procedures followed by the Department, including any public notice and opportunity for public comment, in connection with the Department's approval of the request of Roper Pond,



LLC, for certification approval under Nationwide Permit No. 39 of the U.S. Army Corps of Engineers.

2. Evidence and information available to and utilized by the Department in making the decision to approve the Roper Pond, LLC, project for certification approval under NWP 39.

3. Environmental impacts of the alteration of waters of the United States or waters of the State as approved under NWP 39.

4. The specific alterations of waters of the United States or waters of the State that were approved by certification of the Roper Pond, LLC, project under NWP 39.

5. Evidence and information available to and utilized by the Department in making the decision to approve the Roper Pond, LLC, project for coverage under the general NPDES permit No. SCR100000.

6. The Department's analysis of the proposal to lower the surface level of the pond on the Roper Pond, LLC, property in order to utilize the pond for storm water detention, including, but not limited to, the specific offices and personnel involved in this decision, the evidence available and utilized by the Department in making this decision, the findings and conclusions reached by the Department, and the basis for the Department's decision.

7. The Department's analysis of the stormwater application, including but not limited to: (a) analysis of the construction and post construction portions of the SWPPP; (b) placement of silt fences; (c) roadway widths; (d) buffer areas; (e) potential zinc discharges; (f) Richland County's compliance with its Stormwater Management Plan; (g) trapping efficiency for post construction water quality devices.

8. Whether the pond on the 12.75 acre site proposed for development by Roper Pond,

LLC is a "water of the State."

9. Whether "waters of the State" can be utilized for stormwater detention.

10. The circumstances under which "waters of the State" can be converted into stormwater detention ponds.

11. The circumstances under which "waters of the State" cannot be used as storm water detention ponds or facilities.

12. The division of activities and alterations approved under the 401 water quality certification and the NPDES general permit; i.e., which activities and alterations were approved under which decision.

James S. Chandler, Jr.
Amy E. Armstrong
SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT
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Attorneys for the Petitioners

Georgetown, South Carolina

May 4, 2009

000644

BP Barber
Engineering • Experience • Excellence

September 24, 2008

Ms. Alisha Rowe
S.C. Dept. of Health & Environmental Control
401 Water Quality Section
2600 Bull Street
Columbia, SC 29201

Re: Roper Pond Apartments
401Certification
BP Barber Project No. 05216

Dear Alisha:

Per our telephone conversation today, it is my understanding that the corps sent information relating to this project to you. Attached are construction drawings for this development. We respectfully request that you issue your certification at your earliest convenience. If you have questions or comments, please do not hesitate to contact me.

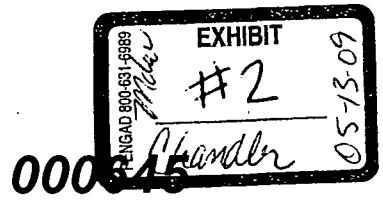
Very truly yours,

BP Barber

George O. Whatley
Senior Design Associate

GOW/ls

Enclosures



P.O. Box 1116, Columbia, SC 29202-1116 | 101 Research Drive (29203-9389) | Phone: (803) 254-4400 | Fax: (803) 771-6676 | www.bpbarber.com

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

TOWN OF ARCADIA LAKES, ROBERT L. JACKSON, LINDA Z. JACKSON, ROBERT E. WILLIAMS, JR., BARBARA S. WILLIAMS, ELIZABETH M. WALKER, LOUIS E. SPRADLIN, MARY HELEN SPRADLIN, THOMAS HUTTO UTSEY, TONY SINCLAIR, AARON SMALL, BETTE SMALL, GENE F. STARR, M.D., ELAINE J. STARR, SANFORD T. MARCUS, RUTH L. MARCUS, AND STEVEN BROWN,

Petitioner(s),

vs. Docket No: 09-ALC-07-0069-CC

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND ROPER POND, LLC,

Respondent(s).

COPY

D E P O S I T I O N

WITNESS: BOB MUNDY

DATE: Thursday, August 20, 2009

TIME: 3:43 p.m.

LOCATION: Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, South Carolina

TAKEN BY: Attorneys for the Respondents

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

- -

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Columbia, South Carolina 29201

ALSO PRESENT:

CHARLES H. COOK

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION: It is stipulated by and between counsel that this deposition is being taken in accordance with the South Carolina Administrative Law Court Rules, and that the deponent reserves the right to read and sign the deposition transcript.

- - - - - - - - - - - - - - - - - -

BOB MUNDY, being first duly sworn, testified as follows:

EXAMINATION

BY MR. CHANDLER:

Q. Would you give us your full name and address, please.

A. Robert M. Mundy Jr., 50 Avian Trail, Columbia, 29206.

Q. Okay. Mr. Mundy, we just met. My name is Jimmy Chandler, and I represent the Town of Arcadia Lakes and all the other petitioners in this case.

Have you ever had your deposition taken before?

A. Yes.

Q. Okay. So you know how it works. I ask questions and you provide answers. If you don't know the answer, just tell me that. The attorney sitting with you is under instructions from our Supreme Court not to object unless it's privileged or form of the

question, and so there's not much she can do. But I don't think you're going to feel like you need help from anything I ask you here today.

A. Okay.

Q. But if you don't understand a question I ask, let me know.

A. Okay.

Q. And I'll try to answer it in a way that it will be clear.

We've asked to take your deposition here in this case involving a company called Roper Pond, LLC, and the development that it proposes to do out on Trenholm Road here in Richland County near the Town of Arcadia Lakes.

Were you involved in the formation of the company known as Roper Pond, LLC?

A. Yes.

Q. Okay. And when was it formed?

A. When we bought the property, which was about '04. There's a document.

Q. Okay.

A. The time we purchased the property from Ms. Roper.

Q. Okay. And the company was basically formed to own and develop that property?

A. Yes.

Q. Were you the only member of the LLC at that time?

A. No.

Q. Who were the original members?

A. Ed Strom and Wendel Nixon.

Q. And did the membership of the LLC change at some time?

A. Uh-huh.

Q. And when was that?

A. I believe it was January of last year, of '08. It was the entirety of the membership was sold to Charlie Mickel.

Q. Okay. And Mr. Mickel, where does he live?

A. Greenville.

Q. Okay. And is he an old friend of yours or how do you know Mr. Mickel?

A. He is. He and I were at Clemson, fraternity brothers years ago. His family have been partners that -- in a few deals.

Q. Okay. So rather than a transfer by deed to the property, it was a transfer of ownership of Roper Pond, LLC?

A. That's correct.

Q. Does Roper Pond, LLC, own any other property

than this site on Trenholm Road?

A. It didn't when we sold it.

Q. Okay. Does it own any other properties now?

A. I don't think so, but I don't know.

Q. Okay. We just took the deposition of Mr. Walker --

MR. CHANDLER: Jack Walker?

MS. HARTLEY: Joe.

BY MR. CHANDLER:

Q. -- Joe Walker, who is designated as a witness on behalf of Roper Pond, LLC. And it appeared to me from the answers he's given that another company that you are involved in the ownership and management of has really been doing the development work on this property; is that accurate?

A. We've been working on behalf of the owner to try to get a job.

Q. All right. And what's the nature of the agreement -- what's the name of your company?

A. Estates Management Company.

Q. Okay. And so is there a formal agreement between Estates Management and Roper Pond, LLC?

A. No.

Q. All right. Is there sort of an informal agreement?

A. Not at this time. It's just if he can get it permitted, then we would like to be the development entity for him.

Q. Okay. But the people associated with Estates Management have been handling what has happened so far in terms of design and approvals from the various governmental entities?

A. We're acting as agent, yes.

Q. Okay. Has there been any payment from Roper Pond or is that all premised on --

A. We're handling a couple other deals with Mr. Mickel that we're trying to finish up, and I think out of good faith right now. He bought the property from us and in this economic environment, we're thankful of that. But we're trying to help him get positioned. He's been a good investor in the past of doing deals that we got business from.

Q. All right. How involved has Mr. Mickel been in the permitting and planning for this development?

A. I think we certainly keep him abreast of everything.

Q. Okay. It's basically he's more of a -- in a passive role at this point, just being kept informed by what you all are doing?

A. Probably more than passive. Yes, he would be

more than passive.

Q. Let me ask you about a couple of things that Mr. Walker was a little unsure of. We got a couple of documents that we marked as exhibits number 2 and 3 to Mr. Walker's deposition --

A. Okay.

Q. -- which are some correspondence and other documents related to a wetland delineation on the Roper Pond property. Do you know whether those documents reflect the current wetland delineation for this property?

A. I do not. I'll presume they do. I think Mr. Walker was the lead entity or person on this project from the day it was purchased originally by Roper Pond and sold, and he has been intimately involved with probably all communication with parties. Well, at one time we did several developments. We were doing about seven, and it keeps our company extremely busy. It's slowed down quite a bit now.

Q. So if there's any one person that would have an overall knowledge of things like the wetland delineation and studies done and permits obtained, it would be Mr. Walker?

A. That or the entities of which were -- the professionals of which did studies. I would probably

look back to BP Barber. WPC and BP Barber both have done a fair share of work for us over the years.

Q. Okay. All right. I think you've sort of already answered this, but you were -- were you personally involved in the acquisition of this property?

A. Personally involved? Give me a little more than just involved or --

Q. Well, I mean --

A. I was one of the partners to purchase it, yes, with the other two, Ed Strom and Wendel Nixon.

Q. Okay. Did you go visit the property, walk the property before the purchase was made?

A. Absolutely.

Q. Okay. And can you describe the property for me? How would you describe it?

A. It's a nice piece of property.

Q. And does it have waters and wetlands on the property?

A. It does.

Q. Can you describe those?

A. There's a center area through the property that appears to have drained down into a pond.

Q. And is this pond known as Roper Pond?

A. As we know it.

Q. All right. Some people know it as the lily pad pond?

A. Some people know it as the lily pad pond.

Q. Okay. And I guess it was a year or so ago that you attended a meeting of the town of Arcadia Lakes Town Council --

A. That's correct.

Q. -- to talk about this piece of property. You said correct?

A. Yes.

Q. Okay.

A. I presume. I mean, we did come to a meeting, I'm not sure when it was but within the last year.

Q. All right. And during that meeting, is it accurate to say that you describe that property as a beautiful lily pad pond?

A. Probably so.

Q. And do you recall making other statements about working to save the trees, save the wetlands, to work with the pond, save the pond and work with buffers?

A. If it's in there, but that's typically what we try to do.

Q. Okay. Now, have consultants or other professionals been hired to work out a way to protect

the pond?

A. We've hired, as best we know, experienced professionals that have the credentials to engineer a pond or wetlands to facilitate a development.

Q. Have you hired any biologists or ecologists to be involved in the engineering of the pond?

A. I'm not sure on that. I'm not sure what the -- who all's been -- it was a contract under BP Barber, their ecologists, biologists. I'm not sure exactly what their certification would be.

Q. Okay. Have you ever seen any studies of specifically the pond and whether there will be any impacts on the pond from the plans that have been put together by BP Barber?

A. Have I seen the studies? I've been in conversation, but I don't believe I've actually seen the studies.

Q. Okay. Do you have any information about whether there are any studies about specific impacts to the pond?

A. No. I'm sure there are as they had to meet all the DHEC approvals and everything that goes within the legal aspects of getting approvals to develop a piece of property.

Q. Okay. Has anybody ever told you that DHEC's

designated witnesses have said that they didn't do any study about the impacts of the pond?

A. Not that I know of. I think they've -- we received a permit from them. I think the permit, I do know it was challenged by some of the petitioners at times. And I thought they went through it with a fine-tooth comb.

Q. Okay. Can you tell me other than turning this over to BP Barber to do the work, can you tell me anything else that you or anybody associated with Roper Pond, LLC, has specifically done to work with the pond to save the pond?

A. Can you repeat that question?

Q. Other than whatever work has been done by BP Barber --

A. Okay.

Q. -- can you tell me, do you know of anything else that's been done by Roper Pond or any of its consultants to work with the pond, save the pond, keep the pond in a good condition?

A. I think our whole intention was to save the pond, make it a working pond, and make it better as it silted in. But they were given directions that -- I think even the conversations were that to go over and beyond to make this an amenity for the community

Arcadia Lakes as well as the developed community that would go in there.

Q. Okay. Have you seen or are you aware of any studies that have specifically looked at the pond and how it could be preserved as an amenity?

A. Studies, how it could -- BP Barber has done that. I mean, we've looked at saving the lily pads because we enjoy those. We've looked at a landscaping plan to make sure that the sustainable grasses and all are landscaped in. I mean, it's the entrance to the property. It is -- I think all properties want a calling card that makes a beautiful entrance, and there's no way around it. That is the entrance.

Q. What do you know about the history of this pond?

A. Know or been told or --

Q. Either one.

A. Yeah. Bits and pieces. I guess I've been in Columbia since 1980s, 28 years. I live over off Forest Drive. I go by the pond. It's a very pretty pond. I understand from some records that have been talked about, that it was a smaller pond and it was expanded and man-built or man -- was that correct? Man-made, man-built, expanded. But I'm not sure when that was. I don't guess I know much more than that.

Q. Okay. You mentioned a while ago about the pond silting in. Do you know of any studies that have looked at the question of the original depth of the pond and confirmed that, in fact, siltation has taken place?

A. No, I was just -- I've been told that it's silted in. We sent a couple of young men out there and had them stick a pole down in there, and they measured the depth. And it seems to be two to three feet average depth throughout that pond.

Q. Okay. But you don't know what it might -- what the depth might have been, say --

A. Originally.

Q. -- 20 years, 30 years ago?

A. I don't know.

Q. Okay. Do you know how far the watershed extends out from that pond, where it -- what areas drain into that pond?

A. No.

Q. All right. Do you know whether any properties other than the parcel that's owned by Roper Pond drain into the pond?

A. I do not.

Q. Okay. And that property is fairly heavily wooded right now?

A. It is.

Q. Do you know how long it's been since any timber was cut or whether it was ever something other than a heavily wooded piece of property?

A. I'm not sure.

Q. Okay. Do you have any information about if there was any siltation, where the siltation would have come from?

A. I don't know.

Q. Do you have any information about whether there's any ongoing silt being washed into the pond?

A. I don't know that.

Q. Do you understand that the plans for this project call for lowering the bottom elevation of the pond?

A. I do understand that.

Q. Okay. Have you seen any studies that indicate what impact lowering of the surface elevation of -- well, let me ask this first.

If you're lowering the bottom level, do you plan to also lower the surface elevation of the pond?

A. You'd have to talk to BP Barber. What we asked them to do is keep the aesthetics of the pond, that it remains an amenity.

Q. Okay. Is it going to serve to store storm

waters on the site?

A. Retain or detain, I'm not sure, but I believe yes. It would use as a partial storm water, is my understanding.

Q. If you dig it out deeper but keep the same water level, is it going to add any storage capacity?

A. That's an engineering question. I don't know.

Q. Okay. All right. Are there going to be any other storm water detention areas on the property besides the plan to use this pond?

A. I'm not sure what you would refer to as storm water detention areas.

Q. Is any of the high ground going to be dug out to store storm waters?

A. Dug out? I mean, is that -- are there pockets or is it wetlands? I don't know. Where that would be, I think that would be -- I know it's been calculated by the engineers to accommodate the storm waters at that site. How they're going to do it, that's not my expertise.

Q. Okay. Now, do you know how many units the current zoning of that property allows?

A. Exactly, no. I think there are 204 units planned.

Q. Okay. Are you familiar with any documents that indicate that 204 is the maximum density allowed under the Richland County zoning ordinance?

A. I haven't done a calculation on that. I know it was approved by Richland County planning.

MR. CHANDLER: Let me take just a little short break.

(A recess transpired.)

BY MR. CHANDLER:

Q. I've just got a few things, and we'll wrap up on this.

A. Okay.

Q. Mr. Mundy, one of the documents that we had in Mr. Walker's deposition we've marked as Exhibit Number 4 to that deposition. It's the storm water application.

A. Yeah.

Q. Is this your signature at the bottom of the second page?

A. I believe so. It looks like it's been copied several times, which -- but it's close.

Q. Okay. Do you know why this table on the first page about waters of the U.S. and state, why the section on impacts of the pond was just left blank?

A. No. This is one of the submittals that I

guess I had to sign which, to be honest with you, I looked at, and I don't know what it means.

Q. Okay. Do you know whether BP Barber or people associated with Roper Pond, LLC, or any of your companies, whether you went through any process of looking to see whether this project could be built while avoiding any impacts to the pond?

A. I think this project was one of those that hung around about five years and, you know, we, during the ownership of Bobby and Wendel, looked at several different ways to develop this property, townhouses. And we never could make it work. We looked at all different things. It was sold. It had the density of zoning. But our understanding is that we would always make that pond work.

Q. Okay.

A. We would beautify it. We would use -- I mean, that's a great feature to find a pond on a piece of property.

Q. That's an interesting statement as someone who's already described that pond as a beautiful pond.

A. Yeah.

Q. Why does it need to be beautified?

A. Beautified? Well, I guess we're going to have to work on it to work for the property. That's

what engineers tell us.

Q. Okay.

A. That's the stuff we need to do.

Q. Are you talking about figuring a way to go in and alter it while maintaining the beauty of the pond?

A. Let me see, how to alter -- alter and beautify. I believe -- doesn't that sound correct? Can you do both?

Q. Well, I think that's the big question here, isn't it?

A. We think we can. Your petitioners, I guess, are saying we can't.

Q. Okay. Now, and I understand that a company in the -- down in the Low Country has been hired to work on that idea. Is that your understanding?

A. I think there's all different -- one of the things I've been greatly involved with was a -- I was the founding vice chair for ULI when we organized it into the state of South Carolina, and we try to be responsible developers and use best practices. And, yeah, we've talked about rain gardens and green space, which "green" is the new word.

We've been developing since 1988, and we did 42 Magnolia here in town. And even when we did it, we emphasized landscaping. We didn't have a pond. We had

gardens and green and vegetable areas. I think we've always been conscientious developers.

So to answer the question, I think we always are looking for ways to make developments better. We have been a -- 42 Magnolia we developed almost 20 years ago. I think 17 years it's been open. 15 of the 17 it has been the Best of Columbia. It's a beautiful property. I think it's still one of the best looking properties in Columbia, if not maybe -- probably the Southeast.

Q. Can you give any example of any specific thing that is planned to help maintain the beauty of the pond?

A. The beauty of the pond. We've been working on, I guess, sustainable -- talking to landscape designers about sustainable grasses and -- and all the stormceptors, you have to clean those out. We've done properties all over the Southeast. I would invite any one of -- any of you to tour those properties. These are fine properties. That's what we do.

Q. Can you give me an example of another property that you've developed or been involved in the development of that involved a pond that was excavated and at the same time protected?

A. That I've been involved with?

Q. Yeah.

A. My roommate from college did one out here and done a very good job with it. Let me see. I think we had one in Jacksonville, Florida. Let's see. We had some -- I'm not sure we had a pond. We did one in North Charleston at the Audubon Park Apartments. Involved with a pond on -- okay. It's over on Patriot's Point. We did Renaissance on Charleston Harbor. There's a pond there. It's right beside the Ness Motley Law Firm building. If you're facing the harbor, we're to the left of it. It's a beautiful little pond there. We got coy fish in it now and some ducks. I mean, it's a clean, great little pond.

We did some at the beach. Okay. We did one up at Woods Lake Apartments up in Greenville, South Carolina. It was the old swimming hole there. We developed it. Woods Lake Apartments over by the municipal airport.

Q. And did you do any excavation or dredging in any of these ponds?

A. I don't remember what we did on those.

Q. Okay.

A. I'm sure we had to do something to work with those ponds. That's pretty typical.

Q. Now, other than Estates Management, are you

involved in the ownership and management of any other companies?

A. Estates Management companies. We have several LLCs. We have a property management company.

Q. What's the name of the property management company?

A. Well, it's part of Estates Management. We also we manage about -- we were managing about 3,000 units. We've sold off several in the last few years. We're probably down to 1,500 to 2,000. We got an HOA regime management company.

Q. What's the name of the property management company?

A. Estates Management Company.

Q. Okay. And the same with the HOA management?

A. The HOA is Estates Regime Management.

Q. It's a separate corporate entity?

A. It's an LLC. I'm not sure it's a corporate entity. I'm not sure how it's set up.

Q. Do you know whether Roper Pond, LLC, or Mr. Mickel is -- has any plans to pursue annexation of this site into the Town of Arcadia Lakes?

A. He was at one time. I'm not sure -- I'm not sure how those feelings are right now.

Q. Okay. In terms of just the overall

day-to-day management of the activities leading up to the proposed development of this property, did I understand you correctly to say that Mr. Walker is the person who would have the best knowledge of what all is going on?

A. He's kind of been the lead associate.

Q. Okay. Would it surprise you to know that he told us in his deposition that he's not sure what government approvals or what studies have been done for this property.

A. Would it surprise me? I don't know. We've got -- I don't know. But like he said, we've done -- worked on seven properties this year, of new development this past year.

Q. Has a company been hired to specifically look at working with the pond to try to either mitigate the impacts of digging it out or to plan for protecting the pond while doing work on it?

A. BP Barber has been overseeing that.

Q. Okay. You're not aware of any other entity that's been retained?

A. No, not to my knowledge.

Q. Okay. The storm water system that is planned at this site, that is something called stormceptors. How familiar are you with that system?

A. I'm not very familiar with that system.

Q. All right. So I would take it you don't know how much maintenance they require or what's going to be -- have to be done in terms of properly sizing them and putting in the right number of units and keep them in working order?

A. I think BP Barber has handled all that, and they will have a maintenance manual that comes with it.

Q. Do you know who's going to have ultimate maintenance responsibility for this project if it's built?

A. I would hope that Mr. Mickel would allow Estates Management Company to manage it. Of course, if it becomes this litigious, we may not want to.

Q. Do you know what kind of rents are going to be proposed for the units in the proposed apartment complex?

A. They will be premium rents.

Q. Okay. What kind of figures would you call premium rents?

A. A thousand dollars or higher a month.

Q. Is that about what's charged at that -- what is it, 42 Magnolia?

A. We would like to think it would be a premium over 42 Magnolia. 42 Magnolia is kind of a mythical

property in Columbia. I was talking to an appraiser the other day that it gets these premium rents, and they can't figure it out. And we think with the new property such as this, it would demand higher rents than 42 Magnolia.

We've been trying to do hardwood floors, granite countertops, that these may be converted to ownership when this market changes. We've talked to Arcadia Lakes and the petitioners and asked them to meet us and talk to us about how we make this the best property. So far they've decided to not talk with us and -- but we've had -- you know, as we spend more money in courtrooms and lawyers, Mr. Mickels will have less money to spend on the project. It's a financial balance sheet that makes properties work. And in today's market, it's a -- everybody's got their challenges, not just real estate.

Q. If the citizens wanted to talk to somebody about that, who should they talk to?

A. About?

Q. About making this a better project and resolving this.

A. We've invited them to the table for a year.

Q. I understand. But who's going to make the decisions on that?

A. On -- I think ultimately it will be Mr. Mickel.

MR. CHANDLER: That's all I've got. Thank you.

MS. HARTLEY: I don't have anything.

MR. HALL: Nothing.

(The deposition concluded at 4:44 p.m.)

SIGNATURE OF DEPONENT

I, the undersigned, BOB MUNDY, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

BOB MUNDY DATE

CERTIFICATE OF REPORTER

I, Sheri L. Byers, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 25th day of August, 2009, at Columbia, Richland County, South Carolina.

Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
January 5, 2014

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BY MR. CHANDLER	3
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E X H I B I T S

(None was proffered.)

STORMWATER POLLUTION PREVENTION PLAN

FOR

ROPER POND APARTMENTS

IN

RICHLAND COUNTY, SOUTH CAROLINA

Prepared for:

Roper Pond, LLC

1401 Main St., Suite 650

Columbia, SC 29201

Prepared by:

B.P. Barber & Associates, Inc.

Post Office Box 1116

Columbia, South Carolina 29202-1116

BP Barber Project No. 05216

June 26, 2008

bpb

BP Barber

Engineering • Experience • Excellence

000675

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APPENDICES

Appendix	Title
A	NPDES General Permit for Stormwater Discharges from Large and Small Construction Activities (NPDES General Permit No. SCR100000)
B	Contractor/Subcontractor Certification Statements
C	Permanent Pond Maintenance Agreement
D	Inspection Form
E	Construction Activity Form
F	Notice of Intent (NOI) for Stormwater Discharges
G	Construction General Permit (CGP) Coverage Letter from DHEC

ENGINEER CERTIFICATION

I hereby certify that I have examined this Stormwater Pollution Prevention Plan and, being familiar with the provisions of NPDES General Permit for Stormwater Discharges from Large and Small Construction Activities (NPDES General Permit No. SCR100000), Part 3; attest that the stormwater pollution prevention plan has been prepared in accordance with best professional judgment.



James M. Futter, P.E.
S.C. Registration No. 8367



B.P. Barber & Associates, Inc.
S.C. CoA No. C00020

000679

PLAN CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry or the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

SIGNATURE: _____

Bob Mundy
Roper Pond, LLC

000680

1.0 INTRODUCTION

Roper Pond, LLC is planning to develop and build a 204 unit apartment complex on the subject property in Columbia, SC. The subject site is noted as TMS No. R16907-01-04 in Richland County and is 12.75 acres. The site is located on Trenholm Road, approximately 0.2 miles south of Decker Blvd. The proposed site improvements include the necessary demolition, clearing, grading, paving, and storm drainage. The disturbed area for these improvements is ±9.9 acres.

The existing surface conditions for the site consists primarily of wooded areas. The site contains an existing ±1.3 acre pond and ±0.3 acres of impervious area. Topography at the site ranges from approximately 255 feet (MSL) at the northeasternmost corner to 215 feet at the existing retention pond. The runoff from the site primarily drains to the east to an existing catch basin via overland flow, the retention pond, and an existing storm drainage system located along North Trenholm Road. A portion of the site drains to the west to the existing railroad right of way via overland flow.

According to the SCS Soil Survey for Richland County, the type of soils located within the overall watersheds are Pelion (PeB and PeD), which is classified under Hydrologic Group B, and Lakeland (LkB), which is classified under Hydrologic Group A.

The construction of the proposed improvements will consist of demolition, clearing, grading, paving, and storm drainage. Approximately 9.9 acres will be disturbed by the construction operations. The proposed runoff from the site primarily drains to the existing catch basin, which is part of the existing roadway storm drainage system along North Trenholm Road, via proposed storm drainage systems. Included in the proposed storm drainage system is an existing retention pond located upstream of the existing catch basin. The existing retention pond is designed to detain the 2 and 10-year storm events per Richland County and SCDHEC requirements. Improvements to the outlet structure and emergency spillway are necessary to detain the 2 and 10-year storm events and meet Richland County and SCDHEC requirements. A portion of the runoff from the site drains to the existing railroad right of way via overland flow.

A Storm Water Pollution Prevention Plan (SWP3) is required for each facility covered by the NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities (NPDES General Permit No. SCR100000). This SWP3 addresses requirements of this permit and has been prepared in accordance with current engineering practices and standards. The Plan identifies potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges associated with construction activity from the site. In addition, the plan describes and ensures the implementation of practices at the site, which are used to reduce the pollutants in storm water discharges from construction activities and to assure compliance with the terms and conditions of the general permit. A copy of General Permit No. SCR100000 is included in Appendix A.

This SWP3 and accompanying records will be maintained at the on-site offices of the Contractor. The SWP3 must be implemented as written from commencement of construction activity until final stabilization is complete. A pre-construction conference will be conducted prior to beginning construction activities with contractors to inform them of the requirements of the SWP3 before construction begins.

000682

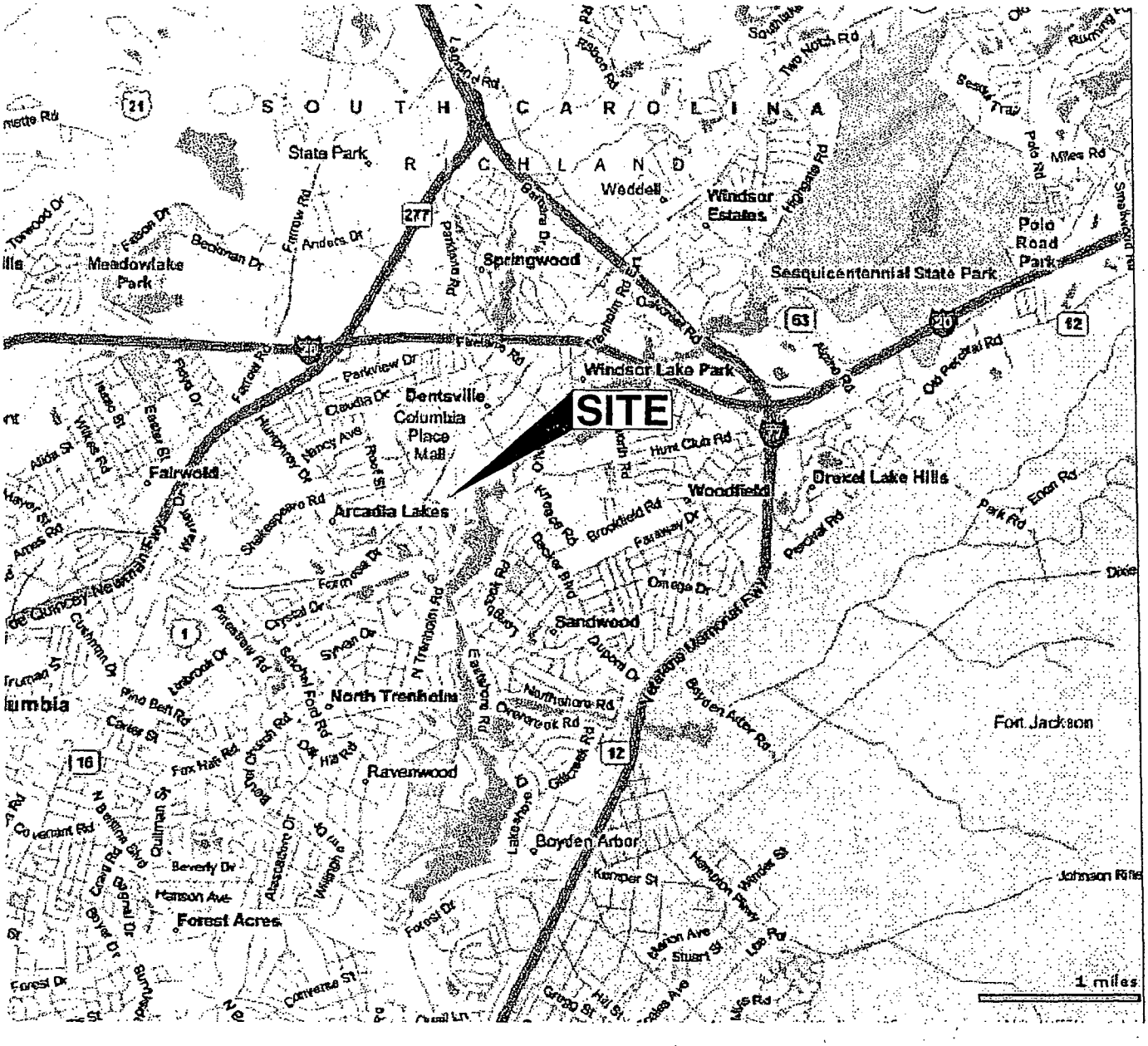


EXHIBIT A

LOCATION MAP
RICHLAND, S.C.

NORTH

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GRAPHIC SCALE
(MILES)

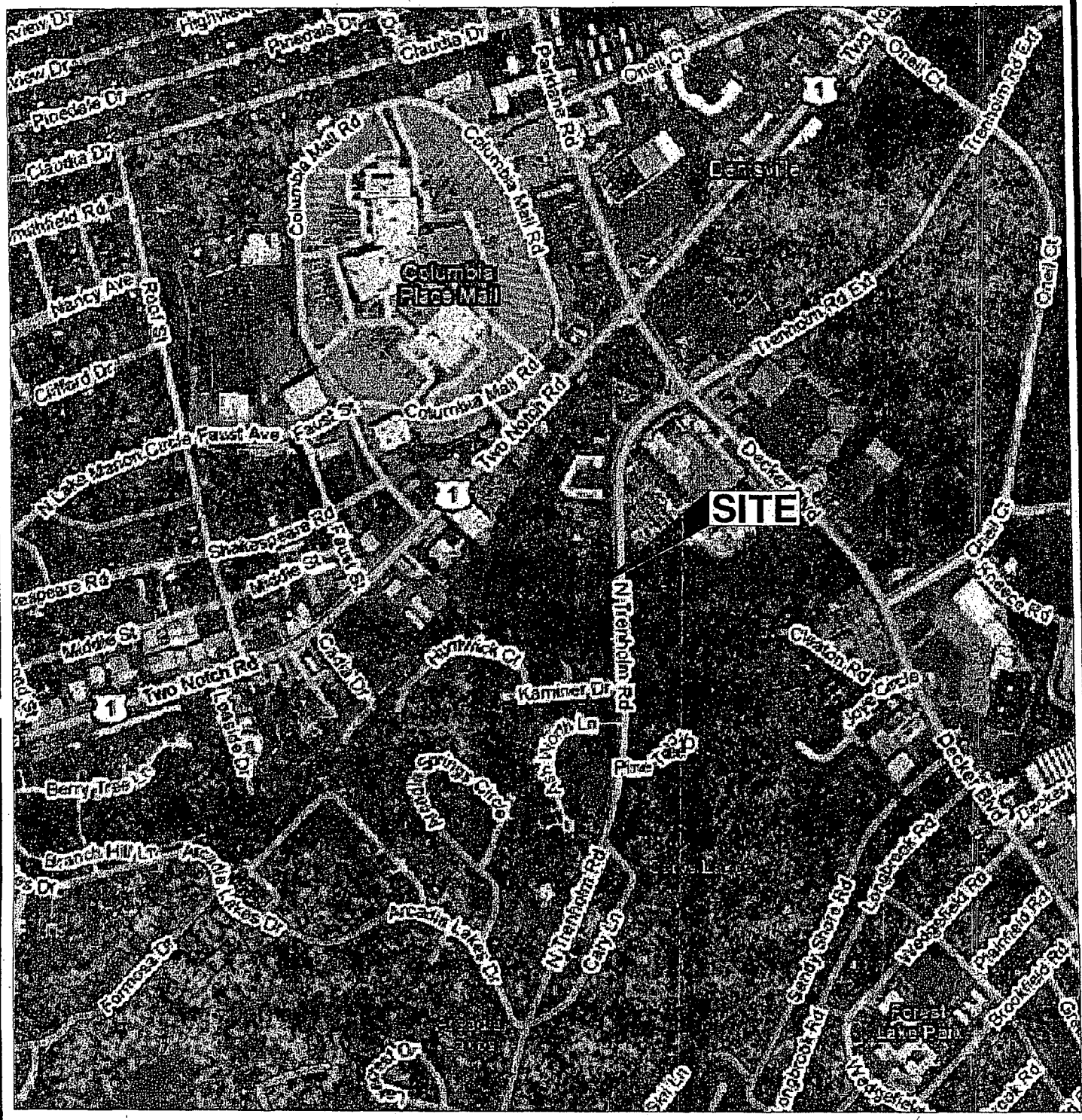


EXHIBIT B

AERIAL MAP
RICHLAND, S.C.

0 500 1000
(FEET)

2.0 SITE AND ACTIVITY DESCRIPTION

The NPDES General Permit for Stormwater Discharges from Construction Activities requires that the site and activities be described. Before commencing with the design of the project, it is necessary to collect information about the existing conditions at the construction site, develop a site plan, describe the construction activity and prepare a pollution prevention site map.

The existing surface conditions for the site consist primarily of wooded areas, which cover the majority of the total parcel area. The site contains an existing ±1.3 acre pond and ±0.3 acres of impervious area. According to the SCS Soil Survey for Richland County, the type of soils located within the overall watersheds are Pelion (PeB and PeD), which is classified under Hydrologic Group B, and Lakeland (LkB), which is classified under Hydrologic Group A. The proposed development will consist of new apartment homes, new asphalt roadways and parking areas and landscaped areas. Stormwater will be directed through the retention pond and into an existing storm drainage system located along North Trenholm Road.

The Operator for the project site is the contractor who will have control over the entire project site. Any and all subcontractors must also comply with all terms and conditions of the permits and plans. It is the responsibility of the contractor to ensure that all subcontractors also understand these terms and conditions and comply with anything applicable to their portion of the work. Construction activity will include clearing and grubbing, grading, installation of storm drainage and other utilities, paving, landscaping and installation of all of the required sediment and erosion control measures. The required sediment and erosion control measures include anything shown on the plans in addition to any other measures mandated by the engineer during construction operations. Although the construction activities are expected to progress quickly, they are expected to take place over a period of twelve to eighteen months. The intended sequence of the major construction activities are illustrated in Table 1.

Approximately 10 acres will be disturbed by the construction of the project. All borrow material taken from the newly constructed areas will be used as fill within the project area. Additional fill from off-site will be required.

000685

Table 1: Sequence of Construction Activities

Activity
1. Coordinate Pre-Construction Meeting On-Site
2. Install Construction Entrance/Exit
3. Install Perimeter Silt Fencing
4. Begin Clearing and Grubbing Operations
5. Modifications to the existing Storm Water Retention Area
6. Begin Grading Operations of Entire Site
7. Install Storm Drainage, and Curb & Gutter
8. Complete Grading Operations
9. Initiate Vegetative Stabilization Measures
10. Complete Paving Operations
11. Remove accumulated sediment from Retention Basin
12. Maintain Sediment Trapping Devices until Site is Stabilized

Note: Any of these activities may be conducted concurrently provided the proper erosion control measures/BMPs or other required control measures have been implemented to receive drainage from the construction area.

Clearing and grubbing will be initiated in all areas to be graded, such as fill areas, parking areas and roadways. Clearing and grubbing of the site includes the removal of trees, underbrush, undesirable growth, stumps, roots, etc., from the area to the limits shown in the Construction Plans. It also includes the removal of top soil containing organic material which is unsuitable for engineered fill and compacted subbase and must be removed prior to construction of the project.

Grading of the site will begin once the site has been cleared and grubbed. Ideally this will begin with the modification to the existing retention basin. Grading involves the cutting, filling, excavation, backfilling, and compaction of earthwork to bring the site to the appropriate grades illustrated on the Construction Plans. Modifications to the outlet structure will need to be constructed during this time, along with installation of storm drainage piping. The entire site and areas around the existing retention basin and wetlands will be bordered with silt fence. All areas

immediately adjacent to the property boundary and near the perimeter of the retention basin shall be stabilized with grassing. Any slopes that are steeper than 2'H:1'V will require stabilization with erosion control matting at this time.

Pollution Prevention Site Map

The Stormwater Pollution Prevention Site Map, Exhibit C, illustrates the overall site construction activities, i.e. areas to be disturbed including locations of stormwater/sediment retention basins, surface water drainage directions, discharge points for the retention basin and erosion control measures to reduce pollutants in stormwater runoff. The site map also illustrates the approximate slopes anticipated after major grading activities have taken place on the site. The non-structural BMPs to be utilized at the construction site include inspections and preventive maintenance on equipment, which will be the responsibility of the contractor. Structural controls are illustrated on the site map and include the retention pond, silt fencing, inlet protection, rip rap, erosion control matting, temporary stabilization and permanent stabilization. The site will operate under the NPDES General Permit for Stormwater Discharges from Large and Small Construction Activities. Areas where no further construction permit requirements apply will be noted and dated on the site map. The locations of material stockpile areas, waste, borrow or construction equipment storage areas are unknown at this time, but will be determined as construction on the project begins. The site map will be updated as the locations become known. The locations of Surface Waters of the State and the locations where the site will discharge to these waters have been noted on Exhibit C.

As noted on the Stormwater Pollution Prevention Site Map, stormwater discharges associated with the construction activities will discharge to Cary's Lake, approximately 550 feet from the project site.

Include plan sleeve for Exhibit C - Stormwater Pollution Prevention Plan Site Map

000688

3.0 CONTROLS TO REDUCE POLLUTANTS

Planning for the site must consider limiting the amount of pollution in stormwater runoff from the construction site. During the construction, no surface waters will be disturbed; also, no unstable slopes will be constructed on this site. Any steep slopes (2H:1V or greater) that are constructed on the site will be stabilized with erosion control matting and grassing upon completion. The site plan submitted illustrates all stormwater will either be detained on-site within the retention basin or be routed as sheet flow through one or more rows of silt fencing. The required 80% trapping efficiency for the construction site will be maintained throughout construction.

The Contractor will employ a variety of management practices to prevent or reduce pollutants from entering the stormwater. Management practices to be employed by the Contractor include preventive maintenance, visual inspections, and mitigative practices. No chemicals such as oils, greases, or coolant are stored on site; however these items are used in the operating equipment on-site.

The construction of the facilities described in Section 1.0 will include clearing and grubbing, grading, installation of storm drainage and other utilities, paving, and installation of all of the required sediment and erosion control measures. Trees and mature vegetation will be protected and preserved whenever possible, but shall not interfere with the installation of the proposed improvements. A sequence of construction activities has been provided in Table 1. The Owner, Roper Pond, LLC, will be responsible for control measures inspections around the site. The Contractor will be responsible for installation and maintenance of these controls.

All contractors/subcontractors performing construction work on the site must sign either the Co-Permittee or non Co-Permittee certification statement found in Appendix B.

3.1 Structural Controls

During construction, sediment will be controlled with silt fencing. When the existing retention basin is modified and storm drainage system has been constructed, some runoff from the site will drain to the retention basin prior to discharge. This runoff draining to the retention system will be routed through inlet protection before entering the underground storm drainage system. The construction of the stormwater system will be made as early as practical in the construction process. The sediment and erosion controls for the site have been designed according to SCDHEC regulations and provide an overall trapping efficiency of more than 80%. The permanent basin will continue to function and provide detention during the operation of the facility following completion of construction. Silt fences, or equivalent sediment controls, are required for all side slopes and down slope boundaries of the construction area. Drainage patterns are shown on Exhibit C.

3.2 Other Controls

Additional controls that will be utilized include, but are not limited to:

1. Silt fencing, or equivalent sediment controls, should prevent solid materials, including building materials to be discharged to waters of South Carolina.
2. Any construction waste generated will be disposed of at the proper facility.

3.3 Location of Existing Surface Waters On-Site/Nearest Receiving Water Body

As shown on the USGS Topographic Map, stormwater from the site currently flows offsite in one primary direction and flows to Cary's Lake, approximately 550 feet from the project site. Stormwater from the site flows to Station SC-C-068 Forest Lake, which is listed on the 303d List for Impaired Waters for zinc impairment. This station is located directly downstream of the proposed site. The stormwater discharge from construction activity should not contain any pollutants which would contribute to the zinc impairment on the receiving water body.

000690

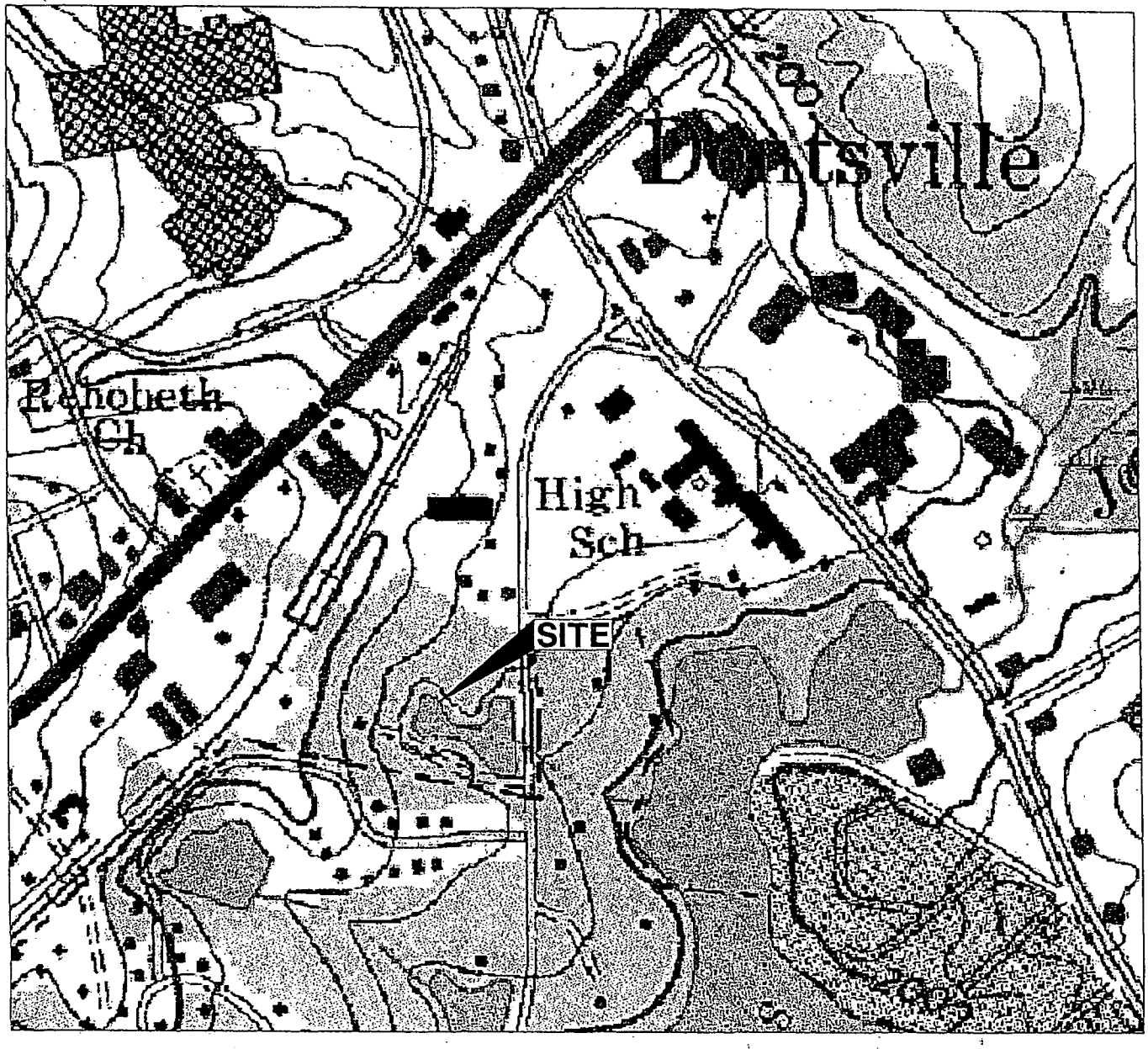


EXHIBIT D

NORTH

USGS QUAD MAP

RICHLAND, S.C.

0 300 600

GRAPHIC SCALE
(FEET)

000691

bnb

3.4 Construction and Waste Materials

The locations for construction and waste materials storage on-site are unknown at this time, but will be determined as construction on the project begins. The site map will be updated as the locations become known. Roll-off containers, or equivalent storage containers, for waste material storage will be utilized in order to minimize exposure to stormwater. Any spills will be reported to the on-site Contractor. Absorbent material will be stored on-site to aid in the event a spill occurs. This will enable the spill to be contained and cleaned up minimizing the potential for materials to enter the stormwater.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs, the following entities must be notified in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 as soon as the Site staff has knowledge of the discharge:

1. SCDHEC Emergency Response
   (803) 253-6488

2. National Response Center
   1-800-424-8802

The SWP3 must be modified within fourteen (14) calendar days of knowledge of the release. The modified SWP3 must provide a description of the release, circumstances leading to the release, and date of the release. The SWP3 must also be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases and the SWP3 must be modified where appropriate.

000692

3.5 Pollutant Sources from Construction Activities

The pollutant sources are from the construction activities associated with the project. In order to minimize pollutant discharges, the following structural controls will be utilized:

- Silt fencing
- Inlet protection
- Retention pond
- Erosion Control Matting
- Rip-Rap
- Temporary and Permanent Grassing

Non-structural management practices will also be employed which include good housekeeping, preventive maintenance, visual inspections, spill prevention and response, training, and mitigative practices.

000693

4.0 NON-STORMWATER DISCHARGES

There will not be any allowable sources of non-stormwater discharges that will be combined with stormwater discharges associated with construction activity at the site. A visual inspection will be made during dry weather to determine if there are any non-stormwater discharges. Inspections shall be performed once every fourteen calendar days, and after every storm event greater than ½".

000694

5.0 MAINTENANCE OF CONTROLS

All erosion and sediment control measures and other protective measures outlined in Section 3.0 must be maintained in effective operating condition at all times. In the event a site inspection identifies a BMP that is not operating effectively, maintenance must be performed as soon as practical or as reasonably possible and before the next storm event, whenever practicable, to maintain the continued effectiveness of the stormwater controls.

If existing BMPs need to be modified or if additional BMPs are necessary in order to comply with the NPDES General Permit for Stormwater Discharges from Large and Small Construction Activities and/or South Carolina's Water Quality Standards, implementation must be completed prior to the next storm event, whenever practicable. If implementation prior to the next storm event is impracticable, the situation must be documented in the SWP3 and alternative BMPs must be implemented as soon as reasonably possible. Sediment from stormwater/sediment retention basin must be removed when silt elevation reaches 1.5' above the proposed bottom of the retention basin.

Permanent Pond Maintenance Plan

- Inspect pond for trees, trash, debris, and accumulation of sediment every thirty (30) days. Trees, trash, and debris are to be removed as soon as they are discovered. Accumulated sediment shall be removed when sediment elevation reaches 1.5' from the proposed bottom of the pond.
- Inspect the outlet structure, outlet pipe, rip-rap, energy dissipater, and emergency spillway every ninety (90) days and repair as often as necessary.
- Inspect pond for potential problems every ninety (90) days. Maintain positive drainage across the bottom of the pond. This may require regrading of the bottom of the pond.

6.0 INSPECTIONS

The contractor will maintain an active inspection program to detect potential problems that may lead to a stormwater pollution incident. Bi-weekly visual inspections are to be conducted by responsible personnel over the site including the stormwater/sediment retention basin, and drainage ditches to identify leaks, seepage or signs of significant deterioration. In the event the entire site is temporarily stabilized, the inspections may be reduced to once a month. Inspections must be completed by either the preparer of the SWP3 or an individual who is under the direct supervision of the preparer of the approved SWP3 or who has been certified through a Construction Site Inspector Certification Course that has been approved by DHEC. Inspections may also be conducted by a person with a registration equivalent to the registration of the preparer of the SWP3 or an individual who is under the direct supervision of the person with equivalent registration.

Inspections are to include, on a form approved by DHEC, the inspector's name, date, time, observation notes and corrective actions noted. The inspection form is included in Appendix D. Completed inspection forms will be kept on site with the SWP3. Records of inspections shall be kept for at least three (3) years from the date that permit coverage expires or is terminated. Potential problems shall be reported to the Contractor. Where inspections reveal defects in site equipment that may be potentially threatening to pollution of surface water, appropriate correction measures shall be taken.

Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWP3 shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing violations to the South Carolina Water Quality Standards. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

Once a definable area has been finally stabilized, this may be marked in the SWP3 and no future SWP3 or inspection requirements apply to that portion of the site.

6.1 Monthly Reports

Each inspection form and one report for the calendar month will be submitted together as the monthly report to DHEC by the engineer and, if applicable, to the appropriate MS4 on or before the 28th day of the month following the reporting period. For example, the monthly report for July 2008 is due after July 31, 2008 and on or before August 28, 2008. The report must be signed in accordance with 122.22 of South Carolina Regulation 61-9. In lieu of submitting monthly reports, reports may be stored electronically in a manner in which DHEC personnel will have access to review the data, such as on a dedicated website that DHEC personnel will have unlimited access to.

The first monthly report submitted after construction has begun must include the original and one copy of the Co-permittee and contractor certifications. Subsequent monthly reports must include the original and a copy of the certification for the Co-permittees and contractors added after construction has started. Until construction starts, the monthly report may just state that construction activity has not started. Monthly reports must be submitted until the Notice of Termination is submitted to DHEC. The Notice of Termination must contain a signed statement by the preparer of the SWP3 or a person with a registration equivalent to that of the preparer of the SWP3 that all work was completed to the best of his or her knowledge and believe in accordance with the approved SWP3 and this NPDES General Permit for Stormwater Discharges from Large and Small Construction Activities. The certifying person's knowledge and belief must be based on the results of the periodic inspections.

Copies of monthly reports must be submitted to DHEC at the following address:

Compliance Assurance Division
Bureau of Water
SCDHEC
2600 Bull Street
Columbia, SC 29201

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or to a designated DHEC e-mail address, when available. A copy of the monthly reports must be submitted to the MS4 that receives the stormwater discharges when requested in writing by the MS4.

6.2 Maintaining an Updated Plan

The SWP3, including the Site Map, shall be amended whenever there is a change in design, construction, operation, or maintenance at the construction site that will result in discharges that will cause, have the reasonable potential to cause, or contribute to violations to South Carolina Water Quality Standards.

The SWP3 shall also be amended if the SWP3 proves to be ineffective in eliminating, when reasonably possible, or significantly minimizing pollutants in stormwater discharges from the construction site. Based on the results of an inspection, the SWP3 must be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWP3 must be completed within seven (7) calendar days following the inspection. Implementation of these additional or modified BMPs must be accomplished as described in Section 5, Maintenance of Controls.

The following dates must be maintained as part of the SWP3 and should be recorded on forms included in Appendix E:

- When major grading activities occur;
- When construction activities temporarily or permanently cease on a portion of the site;
- When stabilization measures are initiated.

7.0 MANAGEMENT PRACTICES

BMPs and inspections help by eliminating or minimizing the possibility of stormwater coming into contact with pollutants. By minimizing the possibility of stormwater coming into contact with pollutants, personnel can eliminate or minimize the contamination of stormwater discharges associated with their construction activities. All control measures will be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and current engineering practices and standards. If periodic inspections or other information indicates a control has been used inappropriately or incorrectly, the Contractor must replace or modify the control as soon as practicable.

In the event sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts unless access to the off-site property cannot be reasonably obtained from the property owner, and DHEC is also unable to get permission for access to the off-site property or if DHEC agrees that it is appropriate to leave the off-site accumulations in place. Litter, construction debris, oils, fuels, and building products with significant potential for impact and construction chemicals that could be exposed to stormwater must be prevented from becoming a pollutant source in stormwater discharges.

Disturbed areas will be stabilized as soon as practical, except for the exceptions provided below. Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. The two (2) exceptions are:

1. Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently ceases is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable;
2. Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will resume within 14 days, temporary stabilization measures do not have to be initiated on that portion of the site.

APPENDIX A

NPDES General Permit

For Stormwater Discharges

From Large and Small Construction Activities

(NPDES General Permit No. SCR100000)

D H E C

PROMOTE PROTECT PROSPER

South Carolina Department of Health and Environmental Control

www.scdhec.gov/water

South Carolina

NPDES GENERAL PERMIT FOR STORM WATER DISCHARGES FROM LARGE AND SMALL CONSTRUCTION ACTIVITIES

In compliance with the provisions of the SC Pollution Control Act (S.C. Code Sections 48-1-10 *et seq.*, 1976) and with the provisions of the Clean Water Act, 33 U.S.C. §1251 et. seq., (hereafter CWA or the Act), as amended by the Water Quality Act of 1987, P.L. 100-4, Operators of large and small construction activities that are described in Subpart 1.3 of this National Pollutant Discharge Elimination System (NPDES) general permit, except for those activities excluded from authorization of discharge in Subpart 1.3.C of this permit, are authorized to discharge pollutants to Surface Waters of the State in accordance with the conditions and requirements set forth herein. Permit coverage is required from the "commencement of construction activities" until "final stabilization" as defined in Appendix A.

M. Rheta Geddings, Assistant Chief

Bureau of Water

Permit No.: SCR100000 **Issued: August 1, 2006**

Effective: September 1, 2006 **Expires: August 31, 2011**

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NPDES General Permit for Storm Water Discharges From Construction Activities

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PART 1: COVERAGE UNDER THIS PERMIT

1.1 Introduction

This Construction General Permit (CGP) authorizes storm water discharges from large and small construction activities where those discharges enter Surface Waters of the State or a municipal separate storm sewer system (MS4) leading to Surface Waters of the State subject to the conditions set forth in this permit. This permit also authorizes storm water discharges from any other construction activity designated by DHEC where DHEC makes that designation based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to Surface Waters of the State. This permit replaces the storm water construction general permit (NPDES # SCR100000) issued January 15, 1998. Any references to the 1998 CGP in this permit refer to that permit.

This permit is presented in a reader-friendly, plain language format. This permit uses the terms "you" and "your" to identify the person(s) who owns or operates a "facility" or "activity" as defined in Appendix A and who must comply with the conditions of this permit. This format should allow you, the permittee and Operator of a large or small construction activity, to easily locate and understand applicable requirements. The goal of this permit is to reduce or eliminate storm water pollution from construction activity by requiring that you plan and implement appropriate pollution control practices to protect water quality.

1.2 Permit Area

This permit covers all areas of South Carolina including Indian lands.

1.3 Eligibility

Permit eligibility is limited to discharges from "large" and "small" construction activity as defined in Appendix A. This general permit contains eligibility restrictions, as well as permit conditions and requirements. You may have to take certain actions to be eligible for coverage under this permit. In such cases, you must continue to satisfy those eligibility provisions to maintain permit authorization. If you do not meet the requirements that are a pre-condition to eligibility, then resulting discharges constitute un-permitted discharges. By contrast, if you do not comply with the requirements of the general permit, you may be in violation of the general permit for your otherwise eligible discharges.

A. Allowable Storm Water Discharges

Subject to compliance with the terms and conditions of this permit, you are authorized to discharge pollutants in:

1. Storm water associated with large and small construction activity as defined in Appendix A;

2. Storm water discharges designated by DHEC as needing a storm water permit under §122.26(a)(1)(v) or §122.26(b)(15)(ii) of SC Regulation 61-9;

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3. Discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

   a. The support activity is directly related to the construction Site required to have NPDES permit coverage for discharges of storm water associated with construction activity;

   b. The support activity is not a commercial operation serving multiple unrelated construction Projects by different Operators, and does not operate beyond the completion of the construction activity at the last construction Project it supports; and

   c. Appropriate controls and measures are identified in a Storm Water Pollution Prevention Plan (SWPPP) covering the discharges from the support activity areas.

4. Discharges composed of allowable discharges listed in Subparts 1.3.A and 1.3.B commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.

B. Allowable Non-Storm Water Discharges

You are authorized for the following non-storm water discharges, provided the non-storm water component of the discharge is in compliance with Subpart 3.5 (Non-Storm Water Discharge Management):

1. Discharges from fire-fighting activities;

2. Fire hydrant flushings;

3. Waters used to wash vehicles where detergents are not used;

4. Water used to control dust in accordance with Subpart 3.4.J;

5. Potable water including uncontaminated water line flushings;

6. Routine external building wash down that does not use detergents;

7. Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;

8. Uncontaminated air conditioning or compressor condensate;

9. Uncontaminated ground water or spring water;

10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;

11. Uncontaminated excavation dewatering;

12. Landscape irrigation.

C. Limitations on Coverage

1. This permit does not authorize post-construction discharges that originate from the Site after construction activities have been completed and the Site has achieved final stabilization, including any temporary support activity. Post-construction storm water discharges from industrial sites may need to be covered by a separate NPDES permit.

2. This permit does not authorize storm water discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit in accordance with Subpart 4.2.

3. This permit does not authorize discharges that DHEC, prior to authorization under this permit, determines will cause, have the reasonable potential to cause, or contribute to a violation of any applicable water quality standard. Where such a determination is made prior to authorization, DHEC may notify you that an individual permit application is necessary in accordance with Subpart 4.2. However, DHEC may authorize your coverage under this permit after you have included appropriate controls and implementation procedures in your SWPPP designed to bring your discharge into compliance with water quality standards.

4. Discharging into Receiving Waters With an Approved Total Maximum Daily Load Analysis

   a. You are not eligible for coverage under this permit for discharges of pollutants of concern to waters for which there is a total maximum daily load (TMDL) in effect that is applicable stormwater construction discharges unless you incorporate into your SWPPP measures or controls that are consistent with the assumptions and requirements of such TMDL. To be eligible for coverage under this general permit, you must incorporate into your SWPPP any conditions applicable to your discharges necessary for consistency with the assumptions and requirements of such TMDL. If a specific wasteload allocation has been established that would apply to your discharge, you must incorporate that allocation into your SWPPP and implement necessary steps to meet that allocation.

   b. In a situation where a TMDL has specified a general wasteload allocation applicable to construction storm water discharges, but no specific requirements for construction Sites have been identified in the TMDL, you should consult with the Department to confirm that adherence to a SWPPP that meets the requirements of the CGP will be consistent with the TMDL. Where a TMDL has not specified a wasteload allocation applicable to construction storm water discharges, but has not specifically excluded these discharges, adherence to a SWPPP that meets the requirements of the CGP will generally be assumed to be consistent with the approved TMDL. If the TMDL specifically precludes such discharges, the Operator is not eligible for coverage under the CGP.

1.4 Waivers for Certain Small Construction Activities

Three scenarios exist under which small construction activities (see definition in Appendix A) may be waived from the NPDES permitting requirements detailed in this CGP. These exemptions are predicated on certain criteria being met and proper notification procedures being followed. Details of the waiver options and procedures for requesting a waiver are provided in Appendix B.

PART 2: AUTHORIZATION FOR DISCHARGES OF STORM WATER FROM CONSTRUCTION ACTIVITY

Except for Projects that are located in Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort, or Jasper County and disturb 0.5 acres or less, to obtain coverage under this CGP, you, the Owner or Operator, must prepare and submit a complete and accurate Notice of Intent (NOI) and the other required information, as described in this Part. Discharges will not be authorized if your NOI is incomplete or inaccurate or if you are not eligible for permit coverage. Unless the Department specifically requests that an NOI be submitted, all Projects that are located in Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort, or Jasper County and disturb 0.5 acres or less are not required to submit an NOI, but are automatically granted coverage under this general permit provided the appropriate Best Management Practices are being used.

2.1 Authorization to Discharge Date

This permit is effective on September 1, 2006 and is effective for five years, expiring at midnight on August 31, 2011.

A. **For all Projects except for SC Department of Transportation Projects.**

1. When your SWPPP is reviewed and approved by an implementing entity under SC Regulation 72-300 (if applicable); another local government program acceptable to DHEC; or, when applicable, the owner of the municipal separate storm sewer system that receives your storm water discharges, and if DHEC does not send a letter within 7 business days of the receipt of a complete NOI authorizing coverage, denying coverage, requesting additional information or advising you that DHEC has decided to also review the SWPPP, coverage under this CGP is automatically granted.

2. When DHEC reviews your SWPPP, if DHEC does not send a letter authorizing coverage, denying coverage, or requesting additional information within 20 days of the receipt of the complete NOI, coverage under this CGP is automatically granted.

B. **For SC Department of Transportation Projects,** your SWPPP must be submitted to DHEC. DHEC may require review and approval of your SWPPP prior to granting you coverage under this CGP. If DHEC does not send a letter authorizing coverage, denying coverage, or advising that a review of the SWPPP will take place within 10 business days of receipt of the NOI, coverage will automatically be granted.

C. If a US Army Corps of Engineers' 404 Permit is required by Section 404 of the CWA Act for permanent or temporary storm water control structures, DHEC may not grant you coverage under this CGP until the 404 Permit has been issued and is effective.

1. In situations where the 404 Permit decision will not affect the implementation of the SWPPP, the Department will issue approval of the SWPPP and grant coverage under this permit before the 404 Permit decision is effective.
2. In situations where the 404 Permit decision will affect only a portion of the "Project Area", the Department may grant the unaffected portion of the "Project Area" coverage under this permit. The remaining portion of the "Project Area" will be considered after the 404 Permit is issued and effective.

3. In situations where the entire "Project Area" is affected by the 404 Permit decision, the Department will not grant coverage under this general permit until the 404 Permit decision is issued and effective.

D. When permanent or temporary structures will be placed in State Navigable Waters, the Department will address any issues related to State Navigable Waters' Program under SC Regulation 19-450 during the review of the SWPPP rather than requiring a separate State Navigable Waters Permit.

E. DHEC may deny or delay your coverage based on eligibility considerations of Subpart 1.3 (e.g., TMDL concerns).

2.2 Notice of Intent Contents and Other Required Information

A. You must use the NOI form (or a photocopy thereof) provided by the Department. This form will be made available on our WEB site at:

http://www.scdhec.net/eqc/admin/html/eqforms.html#Water

If DHEC makes other NOI forms available (either directly, by public notice, or by making information available on the Internet), you may take advantage of any of those options to satisfy the NOI use requirements of this Subpart.

B. You must provide the following information on the NOI form:

1. Operator name, address, telephone number, and Employer Identification Number (EIN) as established by the U.S. Internal Revenue Service;

2. Project/Site name, address, county or similar governmental subdivision, and latitude/longitude of your construction Project or Site;

3. Whether your Site is located in Indian country and if so, the name of the Reservation, if applicable;

4. Whether the SWPPP has been prepared in accordance with this CGP;

5. Name of the Water(s) of the State into which your Site discharges;

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6. Indication whether your discharge is consistent with the assumptions and requirements of applicable TMDLs;

7. Estimated dates of commencement of construction activity and final stabilization (i.e., Project start and completion dates);

8. Total acreage (to the nearest tenth acre) to be disturbed for which you are requesting permit coverage; and

9. A certification statement, signed and dated by an authorized representative as defined in §122.22 of SC Regulation 61-9 (see Appendix C of this permit), and the name and title of that authorized representative.

C. The following information must also be submitted with the NOI form for the NOI application to be complete:

1. The fee for coverage under this CGP. A check made payable to SC DHEC must be submitted. SC Regulation 61-30, Environmental Protection Fees, governs this fee. At the time of issuance of this CGP the fee was $125.

2. a. For Projects not owned or managed by the SC Department of Transportation:

i. If approval of the SWPPP is required under either SC Regulation 72-300 or an applicable MS4 Program or other local program acceptable to DHEC:

(1) A copy of the State, MS4, or local application;

(2) For non-linear Projects, a copy of the approved SWPPP with the supporting documents and calculations. For linear Projects, this is only applicable if specifically requested. This information is not required if there is a written agreement or memorandum of understanding between DHEC and the Operator of the applicable MS4 or other local program acceptable to DHEC that addresses the availability of the approved SWPPP to DHEC through the local entity that maintains a copy of the approved SWPPP;

(3) A copy of the approval of the SWPPP from the entity implementing SC Regulation 72-300 or an applicable MS4 Program or other local program acceptable to DHEC; and

(4) If DHEC's Bureau of Water also reviews your SWPPP prior to granting coverage under this CGP, the NPDES plan review fee of $100 per disturbed acre not to exceed $2,000.

ii. If approval of the SWPPP is not required under SC Regulation 72-300 or an applicable MS4 program or other local program acceptable to DHEC:

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(1) Three copies of the SWPPP;

(2) For non-linear Projects, the supporting calculations and documents. Linear Projects must submit supporting calculations and documents when requested; and

(3) The plan review fee of $100 per disturbed acre not to exceed $2,000.

b. For SC Department of Transportation Projects:

i. The SWPPP;

ii. The supporting calculations and documents, when requested; and

iii. The plan review fee of $100 per disturbed acre not to exceed to $2000. The plan review fee is applicable only if DHEC reviews your SWPPP prior to granting coverage under this CGP.

3. For Projects located in Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort, or Jasper County, a copy of a letter from DHEC's Office of Ocean and Coastal Resource Management that states the proposed Project is consistent with the Coastal Zone Management Plan.

2.3 Submission Deadlines

A. New Projects: Except as given in the first paragraph of Part 2, to obtain coverage under this permit, you must submit a complete and accurate NOI with the other required information and be authorized consistent with Subpart 2.1 prior to your commencement of construction activities.

B. Permitted Ongoing Projects: If you previously received authorization to discharge for the current phase of your Project under the 1998 CGP, you are automatically covered under this permit without resubmitting an NOI.

1. You must comply with the terms and conditions of the 1998 CGP under which you were previously authorized.

2. Future phases of the Project must submit an NOI to be covered under this CGP.

C. Un-permitted Ongoing Projects (only applicable for first 90 days after this permit is issued): If you previously did not receive authorization to discharge for your Project under the 1998 CGP and you wish to obtain coverage under this permit:

1. Except as noted in 2.3.C.2, you must:

a. Submit an NOI with the required other information within 90 days of the issuance date of this permit; and

b. Until you are authorized under this permit consistent with Subpart 2.1, comply with an interim Storm Water Pollution Prevention Plan (SWPPP) consistent with the 1998 CGP.

2. If you meet the termination of coverage requirements in accordance with Subpart 5.1 within 90 days of the issuance date of this permit (e.g., construction will be finished and final stabilization achieved) you must comply with an interim Storm Water Pollution Prevention Plan (SWPPP) consistent with the 1998 CGP until permit coverage is no longer required.

D. *Late Notifications*: Operators are not prohibited from submitting NOIs after initiating clearing, grading, excavation activities, or other construction activities. When a late NOI is submitted, authorization for discharges occurs consistent with Subpart 2.1. DHEC may take enforcement for any unpermitted discharge or violations of laws or regulations that occur between the time construction commenced and discharge authorization.

2.4 Where to Submit

You must send your complete and accurate NOI application to DHEC at the following address:

Construction Storm Water Notice of Intent
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

PART 3: STORM WATER POLLUTION PREVENTION PLANS (SWPPPS)

3.1 Storm Water Pollution Prevention Plan Framework

A. A SWPPP must be prepared prior to submission of an NOI as required in Part 2. At least one SWPPP must be developed for each construction Project covered by this permit and a qualified individual in accordance with good engineering practices must prepare such SWPPP. For Projects that disturb more than 2 acres, the SWPPP must be prepared, amended when necessary, certified, and stamped by a qualified individual who is licensed as follows:

1. Registered professional engineers as described in Title 40, Chapter 22;

2. Registered landscape architects as described in Title 40, Chapter 28, Section 10, item (b);

3. Tier B land surveyors as described in Title 40, Chapter 22; or

4. Federal government employees as described by Title 40, Chapter 22, Section 280(A)(3).

B. The SWPPP must:

1. Identify all potential sources of pollution which may reasonably be expected to affect the

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quality of storm water discharges from the construction Site;

2. Describe practices to be used to reduce pollutants in storm water discharges from the construction Site; and

3. Assure compliance with the terms and conditions of this permit when properly implemented.

C. Once a definable area has been finally stabilized, you may mark this on your SWPPP and no further SWPPP or inspection requirements apply to that portion of the Site (e.g., earth-disturbing activities around one of three buildings in a complex are done and the area is finally stabilized, one mile of a roadway or pipeline Project is done and finally stabilized, etc).

D. You must implement the SWPPP as written from commencement of construction activity until final stabilization is complete.

3.2 Requirements for Different Types of Operators

You may meet one or both of the operational control components in the definition of Operator found in Appendix A. Subpart 3.2.C applies to all permittees having control over only a portion of a construction Site.

A. If you have "operational control over construction plans and specifications" as defined in the definition of "Operator" in Appendix A, you must ensure that:

1. The specifications for the BMPs meet the minimum requirements of this Subpart and all other applicable permit conditions;

2. The SWPPP indicates the areas of the Site where the Operator has operational control over specifications, including the ability to make modifications in specifications and plans including the SWPPP;

3. All other co-permittees implementing portions of the SWPPP (or their own SWPPP) who may be impacted by a change to the construction plan are notified of such changes in a timely manner;

4. The SWPPP indicates the name(s) of the Operator(s) with day-to-day operational control of those activities necessary to ensure compliance with the SWPPP or other permit conditions; and

5. For non-linear Projects that disturb 10 acres or more, you must conduct a pre-construction conference with each co-permittee and contractor who is not a co-permittee in person at the Site prior to that co-permittee or contractor performing construction related work intended to disturb soils at the Site that may affect the implementation of the SWPPP unless it is justified in the SWPPP and approved by the Department to conduct the conference off-site. This pre-construction conference can be with all contractors or the pre-conference may be conducted separately with one or more contractors present so that all contractors who perform land

disturbing activity or construction activity are aware of the requirements of the SWPPP before they start construction.

6. For linear construction of roads or utilities (such as roads built by the SC Department of Transportation and utility construction including electrical power lines, gas lines, main sewer trunk lines, and water distribution lines that are not part of a development) neither of which are a part of a subdivision of other type of development, the conferences with each co-permittee and contractors who are not co-permittees may be conducted off-site unless specifically required by the Department in writing to be conducted onsite. The purpose of the conference is for the preparer of the SWPPP, someone with a registration equivalent to that of the preparer of the SWPPP, or the person with operational control of the plans and specifications to explain the whole SWPPP to the co-permittees and contractors who are not co-permittees and to specifically go over the areas of the SWPPP that are related to the work to be performed by the co-permittee and contractor who is not a co-permittee.

B. If you have "operational control over day-to-day activities" as defined in the definition of "Operator" in Appendix A at the Project that are necessary to ensure compliance with the SWPPP or other Permit conditions, you must ensure that:

1. The SWPPP identifies the parties responsible for implementation of control measures identified in the plan;

2. The SWPPP indicates areas of the Project where you have operational control over day-to-day activities;

3. The SWPPP indicates the name of the party(ies) with operational control over Project specifications (including the ability to make modifications in specifications); and

4. All appropriate contractors have signed either the Co-permittee or non Co-permittee certification and copies of these certifications are in the SWPPP.

C. If you have operational control over only a portion of a larger Project (e.g., one of four homebuilders in a subdivision), you are responsible for compliance with all applicable terms and conditions of this permit as it relates to your activities on your portion of the construction Site, and implementation of best management practices (BMPs) and other controls required by the SWPPP. You must ensure either directly or through coordination with other permittees, that your activities do not render another party's pollution control ineffective. You must either implement your portion of a common SWPPP or develop and implement your own SWPPP.

For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different Operators at a Site to prepare and participate in a comprehensive SWPPP is encouraged. Individual Operators at a Site may, but are not required to, develop separate SWPPPs that cover only their portion of the Project provided reference is made to other Operators at the Site. In instances where there is more than one SWPPP for a Site, cooperation between the permittees is encouraged to ensure the storm water discharge controls and other measures are consistent with one another.

D. Contractor Certifications and Co-permittee Status.

1. The Owner of a Project, as the applicant for the NPDES permit, is responsible for compliance with all the terms and conditions of this permit and the SWPPP. The Owner may rely on other Persons to assist in compliance with this permit and the SWPPP. As such, the Project Owner and contractors and subcontractors who will conduct construction activities intended to disturb soils may elect to be Co-permittees. Further, all contractors who will conduct construction related work intended to disturb soils at the Site that may affect implementation of the SWPPP, regardless of whether or not they are Co-permittees, must be listed in the SWPPP and attend a pre-construction conference before they can conduct construction activity at the Site.

2. All contractors and subcontractors identified in the plan as Co-permittees must sign a copy of the certification statement given below:

   "I certify by my signature below that: a) for Sites that disturb 10 or more acres, I participated in a pre-construction conference onsite or, when allowed, offsite with the individual who is responsible for the operational control of the Storm Water Pollution Prevention Plan (SWPPP); and b) I accept the terms and conditions of SWPPP as required by the general National Pollutant Discharge Elimination System (NPDES permit number SCR100000) issued to the Owner/Operator of the construction activity for which I have been contracted to perform construction related professional services. Further, by my signature below, I understand that I am becoming a Co-permittee with the Owner/Operator and other contractors that have become Co-permittees to the general NPDES permit issued to the Owner/Operator of the facility for which I have been contracted to perform professional construction services. As a Co-permittee, I understand that I, and my company, as the case may be, am legally accountable to the SC Department of Health and Environmental Control (DHEC), under the authorities of the CWA and the SC Pollution Control Act, to ensure compliance with the terms and conditions of the SWPPP. I also understand that DHEC enforcement actions may be taken against any specific Co-permittee or combination of Co-permittees if the terms and conditions of the SWPPP are not met. Therefore, having understood the above information, I am signing this certification and am receiving Co-permittee status to the aforementioned general NPDES permit."

3. All contractors and subcontractors identified in the plan to perform construction related work intended to disturb soils at the Site that may affect the implementation of the SWPPP but who will not be Co-permittees must sign the certification statement given below:

   "I certify by my signature below that: a) for Sites that disturb 10 or more acres, I participated in a pre-construction conference onsite or, when allowed, offsite with the individual who is responsible for the operational control of the Storm Water Pollution Prevention Plan (SWPPP); and b) I understand the terms and conditions of SWPPP as required by the general National Pollutant Discharge Elimination System Permit (NPDES permit number SCR100000) issued to the Owner/Operator of the construction activity for which I have been contracted to perform construction related professional services. I understand that I, and my company, as the case may be, may be legally accountable to the SC Department of Health and Environmental Control (DHEC), under the authorities of the CWA and the SC Pollution Control Act, to ensure

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compliance with the terms and conditions of the SWPPP."

4. The date of the signature, the title of the Person providing the signature, and the name, address, and telephone number of the contracted firm, shall also be provided. In the event the owner amends the SWPPP, such amendments should be incorporated to the plan and the contractors and subcontractors should acknowledge by signature. Co-permittees who have completed their work prior to the amendments do not have to sign the amendments.

5. The signatory requirements of §122.22 of South Carolina Regulation 61-9 (see Appendix C of this permit) are applicable to each contracted entity that must sign one of the contractor's certification statements. Upon signing the Co-pemittee certification, the contractor is a Co-permittee and becomes accountable to DHEC to ensure the terms and conditions of this permit are implemented. All Co-permittees are subject to DHEC enforcement actions if permit conditions are not met. Enforcement actions may be taken against any specific Co-permittee or combination of Co-permittee, with consideration given to the party responsible for the violation. The Owner/Operator submitting the NOI shall retain all contractor certifications for at least three years after a contractor has completed work at the Site. Contractors who sign the certification for being a Co-permittee may be liable to DHEC enforcement actions related to their work at the Site. All certifications must be included in the storm water pollution prevention plan.

6. Copies of all contractor certifications and a copy of this permit shall be kept with the SWPPP. For construction Sites that disturb 10 acres or more, the first monthly report or copies of the first month's inspection forms (refer to Part 3.10.H) submitted by the Owner/Operator to the Department after construction begins on the facility must include the original and one copy of all Co-permittee and other contractor certifications. If additional Co-permittees or other contractors are added later on, the original and one copy of the additional Co-permittee or contractor certifications must be submitted along with the monthly reports or copies of the inspection forms submitted after the signing of the certification. For construction Sites that disturb less than 10 acres, the Owner/Operator of the facility covered by this permit shall make all contractor certifications available to DHEC upon request. The Department may on a case-by-case basis require the submittal of the Co-permittee and other contractor certifications.

3.3 Pollution Prevention Plan Contents: Site and Activity Description

A. The SWPPP must identify all Operators for the Project Site, and the areas of the Site over which each Operator has control.

B. The SWPPP must describe the nature of the construction activity, including:

1. The function of the Project (e.g., low density residential, shopping mall, highway, etc.);

2. The intended sequence and timing of planned major activities that disturb soils such as clearing and grubbing, initial and final grading, and cut and fill activities at the Site (except for SC Department of Transportation Projects, unless known at the time the SWPPP is prepared);

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3. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities, including dedicated off-site borrow and fill areas; and

4. A general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) with enough detail to identify the location of the construction Site and Surface Waters of the State within one mile of the Site.

C. The SWPPP must contain a legible Site map, showing the entire Site, identifying:

1. Direction(s) of storm water flow and approximate slopes anticipated after major grading activities;

2. Areas of soil disturbance and areas that will not be disturbed;

3. Locations of structural and nonstructural BMPs identified in the SWPPP;

4. Locations where stabilization practices are expected to occur;

5. Locations of off-site material, waste, borrow or construction equipment storage areas, excluding rolloff containers (not applicable to SC Department of Transportation Projects);

6. Locations of all Surface Waters of the State (including wetlands);

7. Locations where storm water discharges to a surface water; and

8. Areas where final stabilization has been accomplished and no further construction-phase permit requirements apply.

D. The SWPPP must describe and identify the location and description of any storm water discharge associated with industrial activity other than construction at the Site. This includes storm water discharges from dedicated asphalt plants and dedicated concrete plants, that are covered by this permit.

3.4 Pollution Prevention Plan Contents: Controls to Reduce Pollutants

A. The SWPPP must include a description of all pollution control measures (i.e., BMPs) that will be implemented as part of the construction activity to control pollutants in storm water discharges. For each major activity identified in the Project description, the SWPPP must clearly describe control measures necessary to comply with this permit and applicable laws and regulations, the general sequence during the construction process in which the measures will be implemented, and which Operator is responsible for the control measure's implementation.

B. The SWPPP must include a description of interim and permanent stabilization practices for the Site, including a schedule of when the practices will be implemented. Site plans should ensure that existing vegetation is preserved where possible and that disturbed portions of the Site are stabilized. Use of impervious surfaces for stabilization should be avoided.

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C. For Sites with storm water discharges to a receiving water that is listed as impaired in South Carolina's 303(d) List of Impaired Waters the following requirements apply:

1. If a TMDL that is applicable to stormwater construction discharges has been established and is in effect, the requirements of Part 1.3.C.4 must be met.

2. If a TMDL has not been established or is not in effect, you must ensure that your SWPPP does not allow storm water discharges that will contribute to the violations of the water quality standards. To accomplish this, you must:

   a. First determine whether or not your discharge may contain any pollutant that has caused the impairment.

   b. If your storm water discharges will not contain the pollutant(s) of concern, no additional requirements are necessary.

   c. If your discharge will contain the pollutant(s) of concern, you must carefully evaluate your selected BMPs and their performance to ensure that stormwater discharges will not contribute to or cause a violation of water quality standards. For Projects that disturb 25 acres or more, your SWPPP must contain a written quantitative and qualitative assessment that the BMPs selected will control your stormwater discharges so that they will not contribute to or cause a violation of water quality standards. For more information on this subject, please see the DHEC publication entitled "Antidegradation for Activities Contributing to NonPoint Source Pollution to Impaired Waters." This publication can be downloaded at the following DHEC WEB site:

   www.scdhec.gov/eqc/water/pubs/antidegnps.pdf

3. A copy of the most current 303(d) List of Impaired Waters can be obtained from:

   Water Quality Division
   Bureau of Water
   SC DHEC
   2600 Bull Street
   Columbia, SC 29201

   or it can be downloaded at the following DHEC WEB site:

   http://www.scdhec.gov/water/tmdl/

D. The following records must be maintained as part of the SWPPP:

1. Dates when major grading activities as identified in Part 3.3.B occur;

2. Dates when construction activities temporarily or permanently cease on a portion of the Site.

Notes: Temporarily ceasing construction means ceasing construction on a portion of the Site for more than 14 days. A portion of the Site, means but is not limited to, portions of the Site with dedicated controls (see also Subpart 3.13.D of this permit); and

3. Dates when stabilization measures are initiated.

Electronic storage of the above mentioned information is acceptable provided that it is referenced in the SWPPP and it is readily available.

E. The SWPPP must include a description of structural practices: to divert flows from exposed soils; to retain/detain flows; or to otherwise limit runoff and the discharge of pollutants from exposed areas of the Site. Placement of structural practices in floodplains must be in accordance with applicable regulations.

F. The SWPPP must include a description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges after construction operations have been completed.

G. Structural measures should be placed on upland soils to the degree practicable. Such measures must be designed and installed in compliance with applicable federal, local, state or tribal requirements.

1. Permanent structural controls can only be placed in Surface Waters of the State (including wetlands and ephemeral and intermittent streams) if the US Army Corps of Engineers issues a permit for the activity under Section 404 of the CWA. When State Navigable Waters may be affected, the SWPPP must include appropriate requirements applicable to State Navigable Waters under SC Regulation 19-450.

2. Temporary structural controls can only be placed in perennial Surface Waters of the State if the US Army Corps of Engineers issues a permit for the activity under Section 404 of the CWA. When State Navigable Waters may be affected, the SWPPP must include appropriate requirements applicable to State Navigable Waters under SC Regulation 19-450. All temporary structural controls placed in perennial streams must be removed after final stabilization has been accomplished.

3. Temporary structural controls may only be placed in ephemeral and intermittent streams when there is no other feasible alternative. All temporary structural controls placed in ephemeral and intermittent streams must be removed after final stabilization has been accomplished. After removal of the temporary structural controls, the ephemeral or intermittent stream must be restored to its original condition.

H. The SWPPP must describe measures to prevent the discharge of building or other similar materials to Surface Waters of the State, except as authorized by a permit issued under section 404 of the CWA.

I. The SWPPP must describe measures to minimize, to the extent practicable, off-site vehicle

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tracking of sediments onto paved surfaces and the generation of dust.

J. The SWPPP must include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The SWPPP must also include a description of controls, including storage practices such as rolloff containers, to minimize exposure of the materials to storm water, and spill prevention and response practices.

K. The SWPPP must include a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those Sites to minimize pollutant discharges. If these areas are located off the construction area on property not owned by the owner of the Project, they can be either included in the SWPPP for the construction Site with the owner of the dedicated facility being a Co-permittee under the construction general permit or the owner of the dedicated facility can obtain: 1) his own construction general permit coverage to build the dedicated facility; and 2) his own coverage under the Stormwater General Permit for Industrial Activity, Permit # SCR000000 or other appropriate permit. The method(s) selected to deal with dedicated facility areas must be addressed in the SWPPP.

3.5 Management of Non-Storm Water Discharges Allowed Under Part 1.3.B

The SWPPP must identify all allowable sources of non-storm water discharges listed in Subpart 1.3.B of this permit, except for flows from fire fighting activities, that are combined with storm water discharges associated with construction activity at the Site. Non-storm water discharges should be eliminated or reduced to the extent feasible. The SWPPP must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge allowed under Part 1.3.B.

3.6 Maintenance of Controls

A. All erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition. If Site inspections required by Subpart 3.10 identify BMPs that are not operating effectively, maintenance must be performed as soon as practical or as reasonably possible and before the next storm event whenever practicable to maintain the continued effectiveness of storm water controls.

B. If existing BMPs need to be modified or if additional BMPs are necessary to comply with the requirements of this permit and/or SC's Water Quality Standards, implementation must be completed before the next storm event whenever practicable. If implementation before the next storm event is impracticable, the situation must be documented in the SWPPP and alternative BMPs must be implemented as soon as reasonably possible.

C. Sediment from sediment traps or sedimentation ponds must be removed as indicated in the SWPPP or when the design capacity has been reduced by 50 percent, which ever occurs first.

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3.8 Copy of Permit Requirements

Copies of this permit, the signed and certified NOI form that was submitted to DHEC, the Co-permittee certifications required by Subpart 3.2.D, and, if applicable, any local approval must be included in the SWPPP. Also, upon receipt, a copy of the letter from the DHEC authorizing your coverage under this CGP must also be included as a component of the SWPPP.

3.9 Applicable State, Tribal, or Local Programs

The SWPPP must be consistent with all applicable federal, state, tribal, or local requirements for soil and erosion control and storm water management, including updates to the SWPPP as necessary to reflect any revisions to applicable federal, state, tribal, or local requirements for soil and erosion control. Except for Projects exempted from the requirements of SC Regulation 72-300 by Section 72-302 of SC Regulation 72-300, all Projects located outside MS4s must after June 30, 2006 meet the minimum standards and criteria of South Carolina Regulation 72-300.

3.10 Inspections

A. After construction begins, inspections must be conducted at a minimum in accordance with one of the two schedules listed below and you must specify in your SWPPP which schedule you will be following.

   1. At least once every 7 calendar days, or

   2. At least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

B. Inspection frequency may be reduced to at least once every month if the entire Site is temporarily stabilized.

C. The Department on a case-by-case basis may require any permittee who has coverage under this CGP to conduct inspections on a more frequent basis than prescribed in this CGP. Examples include, but are not limited to, permittees who have compliance problems and permittees whose Site's stormwater discharges to environmental sensitive waters (such as waters classified as Trout Waters, Outstanding Resource Waters, Shellfish Harvesting Waters, etc.).

D. Inspections must be conducted by qualified personnel (provided by the Operator or cooperatively by multiple Operators). For Projects that disturb more than 2 acres, "Qualified personnel" means a person knowledgeable in the principles and practice of erosion and sediment controls who possesses the skills to assess conditions at the construction Site that could impact storm water quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of storm water discharges from the construction activity. After June 30, 2006, this person must be either the preparer of the SWPPP or an individual who is under the direct supervision of the preparer of the approved SWPPP and who meets the requirements in this paragraph or an individual who has been certified through a Construction Site Inspector Certification Course that has been approved by DHEC. Inspections may also be conducted by a

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person with a registration equivalent to the registration of the preparer of the SWPPP and who meets the qualifications of this paragraph or an individual who is under the direct supervision of the person with an equivalent registration and who meets the requirements in this paragraph. For Projects that disturb 2 acres or less, the permittee or his designee may perform these inspections provided the preparer of the SWPPP or someone with a registration equivalent to that of the preparer of the SWPPP explains the SWPPP including implementation along with the inspection requirements to the person who will be conducting the inspections.

E. Inspections must include all areas of the Site disturbed by construction activity and areas used for storage of materials that are exposed to precipitation. Inspectors must look for evidence of, or the potential for, pollutants entering the storm water conveyance system. Sedimentation and erosion control measures identified in the SWPPP must be observed to ensure proper operation. Discharge locations must be inspected to ascertain whether erosion control measures are effective in preventing violations to SC's Water Quality Standards, where accessible. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the Site must be inspected for evidence of off-site sediment tracking.

F. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described in Subpart 3.10.E above. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction Projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction Site for 0.25 mile above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction Site and allows access to the areas described above. The conditions of the controls along each inspected 0.25 mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25 mile segment to either the end of the next 0.25 mile inspected segment, or to the end of the Project, whichever occurs first. Representative inspections must include any areas where stormwater discharges to environmental sensitive waters (such as waters classified as Trout Waters, Outstanding Resource Waters, Shellfish Harvesting Waters, etc.).

G. For each inspection required above, you must complete an inspection report. At a minimum, the inspection report must include:

1. The inspection date;

2. Names, titles, and, if not previously given in an inspection report, the qualifications of personnel making the inspection, unless those qualifications change;

3. Weather information for the period since the last inspection (or since commencement of construction activity if the first inspection) including a best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether you know if any discharges occurred;

4. Weather information and a description of any discharges occurring at the time of the inspection;

5. Location(s) of discharges of sediment or other pollutants from the Site;

6. Location(s) of BMPs that need maintenance;

7. Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;

8. Location(s) where additional BMPs are needed that did not exist at the time of inspection; and

9. Corrective action required including any changes to the SWPPP necessary and implementation dates.

A record of each inspection and of any actions taken in accordance with this Part must be retained as part of the SWPPP for at least three years from the date that permit coverage expires or is terminated. The report must be signed in accordance with §122.22 of SC Regulation 61-9 (see Appendix C of this permit).

H. For construction Sites disturbing 10 acres or more, a monthly report must be submitted to DHEC and, if applicable, the appropriate MS4. The report must be signed in accordance with §122.22 of SC Regulation 61-9 (see Appendix C of this permit). In lieu of submitting monthly reports, the reports may be stored electronically in a manner in which DHEC personnel will have access to review this data, such as on a dedicated website that DHEC personnel will have unlimited access to. Other forms of electronic storage of monthly reports may be utilized once arrangements have been made with DHEC. For construction Sites that disturb less than 10 acres, DHEC may require monthly reports to be submitted on either a Project-by-Project basis or Operator-by-Operator basis. If the information required in this Subpart is already included on the inspection forms, only copies of the inspection forms need to be submitted to DHEC. If the information required in this Subpart is not included on the inspection form, then the monthly reports must include, at a minimum, the following additional information:

1. A summary of the results of the inspections conducted during the month;

2. A listing of all deficiencies noted during inspections with the date the deficiency was noted;

3. For each deficiency noted that required corrective action:

   a. A listing of the name(s), address(es), and telephone number(s) of the party or parties responsible; and

   b. A statement whether this deficiency was previously listed in a monthly report;

4. A listing of the corrective actions that were taken to remedy any deficiencies noted and the date

the corrective actions were completed;

5. A statement on whether or not the SWPPP was updated to deal with any deficiencies noted; and

6. A copy of each inspection conducted during the month attached in an appendix to the monthly report.

I. For construction Sites disturbing 10 acres or more, in addition to the information required in subpart 3.10.H above, the first monthly report submitted after construction has started must include the original and one copy of the Co-permittee and contractor certifications. Subsequent monthly reports on construction Sites that disturb 10 acres or more must include the original and a copy of the certification for the Co-permittees and contractors added after construction has started. For each Co-permittee and contractor certification submitted to the Department, the preparer of the SWPPP or someone with a registration equivalent to that of the preparer of the SWPPP must certify that either an on-site or, when applicable, off-site pre-construction conference was held with the Co-permittee or contractor in accordance with this permit. This certification must give the date of the conference and the responsibilities of each Co-permittee and contractor.

J. For construction Sites disturbing less than 10 acres, the Owners/Operators may be required to submit the Co-permittee and contractor certifications on a case-by-case basis. When the Owner/Operator is required to submit the Co-permittee and contractor certifications, the preparer of the SWPPP or someone with a registration equivalent to that of the preparer of the SWPPP must certify that either an on-site or off-site pre-construction conference was held with the Co-permittees and contractors in accordance with this permit. This certification must give the date of the conference and the responsibilities of each Co-permittee and contractor.

K. Each monthly report with one copy must be submitted to DHEC on or before the 28th day of the month following the reporting period. For example, the monthly report for July 2006 is due after July 31, 2006 and on or before August 28, 2006.

L. Until construction starts, the monthly report may just state that construction activity has not started.

M. Monthly reports, when required, must be submitted until the Notice of Termination is submitted to DHEC. When the Notice of Termination is submitted, it must contain a signed statement by the preparer of the SWPPP or a person with a registration equivalent to that of the preparer of the SWPPP that all work was completed to the best of his or her knowledge and belief in accordance with the approved SWPPP and this CGP. For Projects disturbing more than 2 acres, the certifying person's knowledge and belief must be based on the results of the periodic inspections conducted by the preparer of the SWPPP (or a person with an equivalent registration) or by a qualified individual under his or her direct supervision in accordance with this CGP or by an individual certified through a Construction Site Inspector Certification Course that has been approved by DHEC.

N. Copies of inspection forms and monthly reports (reports required only if information requested in Part 3.10.H is not included on the inspection form) must be submitted to DHEC at the following address:

Compliance Assurance Division
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

or to a designated DHEC email address, when available.

A copy of the inspection forms or monthly reports must be submitted to the MS4 that receives your stormwater discharges when requested in writing by the MS4.

3.11 Maintaining an Updated Plan

A. The SWPPP, including the Site map, must be amended whenever there is a change in design, construction, operation, or maintenance at the construction Site that will result in discharges that will cause, have the reasonable potential to cause, or contribute to violations to SC's Water Quality Standards.

B. The SWPPP must be amended if during inspections or investigations by Site staff, or by local, state, tribal or federal officials, it is determined that the SWPPP is ineffective in either eliminating, when reasonably possible, or significantly minimizing pollutants in storm water discharges from the construction Site.

C. Based on the results of an inspection, the SWPPP must be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP must be completed within seven (7) calendar days following the inspection. Implementation of these additional or modified BMPs must be accomplished as described in Subpart 3.6.B.

D. All design modifications of the SWPPP must be made in accordance with Subpart 3.1.A.

3.12 Signature, Plan Review and Making Plans Available

A. A copy of the SWPPP (including a copy of the permit), NOI, and CGP coverage letter from DHEC must be retained at the construction Site (or other location easily accessible during normal business hours to: DHEC, EPA, tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; and the Operator of a Municipal Separate Storm Sewer System (MS4) receiving discharges from the Site) from the date of commencement of construction activities to the date of final stabilization. If you have day-to-day operational control over SWPPP implementation, you must have a copy of the SWPPP available at a central location on-site for the use of all those identified as having responsibilities under the SWPPP whenever they are on the construction Site. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction Site. For linear construction of roads or utilities (such as roads built by the SC Department of Transportation and utility construction including electrical power lines, gas lines, main sewer trunk lines, and water distribution lines that are not part of a development)

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neither of which are a part of a subdivision or other type of development Projects, the updated copies of the approved SWPPP must be sent to the appropriate EQC Regional Office in situations where it is not practical to have the approved SWPPP on location. For SC Department of Transportation Projects where there is no construction trailer on Site, the SWPPP may be kept in the office of the SC DOT resident engineer.

B. SWPPPs must be made available upon request by EPA; DHEC; a tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; and the Operator of a Municipal Separate Storm Sewer System (MS4) receiving discharges from the Site to the requestor. The copy of the SWPPP that is required to be kept on-site or locally available must be made available, in its entirety, to DHEC or the EPA staff for review and copying at the time of an on-site inspection.

C. All SWPPPs must be signed and certified in accordance with §122.22 of SC Regulation 61-9 (see Appendix C of this permit).

3.13 Management Practices

A. All control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the Operator must replace or modify the control for Site situations as soon as practicable.

B. If sediment escapes the construction Site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts unless: access to the off-site property cannot be reasonably obtained from the property owner and DHEC is also unable to get permission for you to access the off-site property; or DHEC agrees that it is appropriate to leave the off-site accumulations in place.

C. Litter, construction debris, oils, fuels, and building products with significant potential for impact (such as stockpiles of freshly treated lumber) and construction chemicals that could be exposed to storm water must be prevented from becoming a pollutant source in storm water discharges.

D. Except as provided below, stabilization measures must be initiated as soon as practicable in portions of the Site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the Site has temporarily or permanently ceased.

1. Where stabilization by the 14th day is precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable.

2. Where construction activity on a portion of the Site is temporarily ceased, and earth-disturbing activities will be resumed within 14 days, temporary stabilization measures do not have to be initiated on that portion of the Site.

E. A combination of sediment and erosion control measures is required to achieve maximum pollutant

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removal.

1. Sediment Basins: For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from the drainage area from at least a 10-year, 24-hour storm, or equivalent control measures, must be provided where attainable until final stabilization of the Site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing at least 3,600 cubic feet of storage per acre drained, or equivalent control measures, must be provided where attainable until final stabilization of the Site. When computing the number of acres draining into a common location, it is not necessary to include flows from off-site areas and flows from on-site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is attainable, the Operator may consider factors such as Site soils, slope, available area on-site, etc. In any event, the Operator must consider public safety as a design factor for the sediment basin, and alternative sediment controls must be used where Site limitations would preclude a safe design.

2. For drainage locations that serve 10 or more disturbed acres at one time and where a temporary sediment basin or equivalent controls are not attainable, smaller sediment basins and/or sediment traps should be used. Silt fences, vegetative buffer strips, or a combination of sediment controls that are equivalent to sediment basins and/or sediment traps are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual Site conditions).

3. For drainage locations serving less than 10 acres, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual Site conditions) of the construction area unless a sediment basin providing storage for a calculated volume of runoff from at least a 10-year, 24-hour storm or at least 3,600 cubic feet of storage per acre drained is provided. If a basin is not provided, each structural control used must be designed to handle the entire drainage area it serves.

4. The Department may on a case-by-case or watershed-by-watershed basis require the use of a larger storm event and/or a larger storage volume when designing sediment basins.

F. Velocity dissipation devices must be placed at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

3.14 Documentation of Permit Eligibility Related to Total Maximum Daily Loads That Are Effective and Applicable to Stormwater Construction Discharges

The SWPPP must include documentation supporting a determination of permit eligibility with regard to waters that have a TMDL that is effective and applicable to stormwater construction discharges,

including:

A. Identification of whether your discharge (construction stormwater) is identified, either specifically or generally, in a TMDL and any associated allocations, requirements, and assumptions identified for your discharge;

B. Measures taken by you to ensure that your discharge of pollutants from the Site is consistent with the assumptions and requirements contained in the TMDL that is applicable to your stormwater discharge, including any specific wasteload allocation that has been established that would apply to your discharge.

See Subpart 1.3.C.4 for further information on determining permit eligibility related to TMDLs.

PART 4: SPECIAL CONDITIONS, MANAGEMENT PRACTICES AND OTHER NON-NUMERIC LIMITATIONS

4.1 Continuation of the Expired General Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the SC Administrative Procedures Act and SC Regulation 61-9 and remain in force and effect. If you were granted permit coverage prior to the expiration date, you will automatically remain covered by the continued permit until the earliest of:

A. Reissuance or replacement of this permit, at which time you must comply with the conditions of the new permit to maintain authorization to discharge; or

B. Your submittal of a Notice of Termination; or

C. Issuance of an individual permit for the Project's discharges; or

D. A formal permit decision by DHEC to not reissue this general permit, at which time you must seek coverage under an alternative general permit or an individual permit.

4.2 Requiring an Individual Permit or an Alternative General Permit

A. In accordance with Section 122.28(b)(3) of SC Regulation 61-9, DHEC may require you to apply for and/or obtain an individual NPDES permit. Any interested person may petition DHEC to take action under this paragraph. If DHEC requires you to apply for an individual NPDES permit, DHEC will notify you in writing that a permit application is required. This notification will include a brief statement of the reasons for this decision and an application form. In addition, if you are an existing permittee covered under this permit, the notice will set a deadline to file the application, and will include a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to you, coverage under this general permit will automatically terminate. Applications must be submitted to DHEC at the address given in Subpart 2.4. DHEC may grant additional time to submit the application upon your request. If you are covered under this permit and you fail to submit in a timely manner an individual NPDES

permit application as required by DHEC, then the applicability of this permit to you is automatically terminated at the end of the day specified by DHEC as the deadline for application submittal.

B. If an alternate general permit that is more appropriate for your construction activity is available, DHEC may grant you coverage under the alternate general permit in lieu of granting you coverage under this general permit. In accordance with applicable state law and regulation, you have a right to appeal the Department's decision.

C. You may request to be excluded from the coverage of this general permit by applying for an individual permit. In such a case, you must submit an individual application in accordance with the requirements of §122.26(c)(1)(ii) of SC Regulation 61-9, with reasons supporting the request, to:

Storm Water and Agricultural Section
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

The request may be granted by issuance of an individual permit or an alternative general permit if your reasons are adequate to support the request.

D. When an individual NPDES permit is issued to you, who are otherwise subject to this permit, or you are authorized to discharge under an alternative NPDES general permit, the applicability of this permit to you is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. If you, who are otherwise subject to this permit, are denied an individual NPDES permit or an alternative NPDES general permit, the applicability of this permit to you is automatically terminated on the date of such denial, unless otherwise specified by DHEC.

4.3 Releases in Excess of Reportable Quantities

A. You must prevent or minimize the discharge of hazardous substances or oil in storm water discharges from the construction Site in accordance with the SWPPP. This permit does not relieve you of the federal reporting requirements of 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 relating to spills or other releases of oils or hazardous substances.

B. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117 or 40 CFR Part 302, occurs during a 24-hour period:

1. You must notify the Department's Emergency Response Section at (803) 253-6488 and the National Response Center (NRC) (800) 424–8802 in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 as soon as Site staff have knowledge of the discharge; and

2. You must modify the SWPPP as required under Subpart 3.11 within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, you must review your SWPPP to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and you must modify your SWPPP where appropriate.

4.4 Attainment of Water Quality Standards After Authorization

You must select, install, implement and maintain BMPs at your construction Site that minimize pollutants in the discharge as necessary to meet applicable water quality standards. In general your SWPPP developed, implemented, and updated consistent with Part 3.0 is considered as stringent as necessary to ensure that your discharges do not cause or contribute to a violation of any applicable water quality standard.

All written responses required under this part must include a signed certification consistent with §122.22 of SC Regulation 61-9 (see Appendix C of this permit).

PART 5: TERMINATION OF COVERAGE

5.1 Requirements

You may only submit a Notice of Termination (NOT) after one or more of the following conditions have been met:

A. Final stabilization has been achieved on all portions of the Site for which you are responsible;

B. Another Operator has assumed control, according to §122.41(l)(3) of SC Regulation 61-9 (see Appendix C of this permit), over all areas of the Site that have not been finally stabilized;

C. Coverage under an individual or alternative general NPDES permit has been obtained; or

D. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

The NOT must be submitted within 30 days of one of the above conditions being met. Authorization to discharge terminates at midnight of the day the NOT is signed.

5.2 Submitting a Notice of Termination

It is your responsibility to submit a complete and accurate Notice of Termination (NOT), using the form (or a photocopy thereof) provided by the Department. The NOT will be made available at our WEB site at:

http://www.scdhec.net/eqc/admin/html/eqforms.html#Water

If DHEC notifies dischargers (either directly, by public notice, or by making information available on

the Internet) of other NOT form options (e.g., electronic submission), you may take advantage of those options to satisfy the requirements of Part 5.

The Notice of Termination must include the following information:

1. Your CGP NPDES coverage number for the storm water discharge;

2. The basis for submission of the NOT, including: final stabilization has been achieved on all portions of the Site for which the permittee is responsible; another Operator/permittee has assumed control over all areas of the Site that have not been finally stabilized; coverage under an alternative NPDES permit has been obtained; or, for residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner;

3. You, the Operator's name, address, telephone number and your organization's Employer Identification Number (EIN) as established by the U.S. Internal Revenue Service;

4. The name of the Project and address (or a description of location if no street address is available) of the construction Site for which the notification is submitted; and

5. A certification statement, signed and dated by an authorized representative as defined in §122.22 of SC Regulation 61-9 (see Appendix C of this permit) and the name and title of that authorized representative.

6. For Projects disturbing more than 2 acres, a certification statement, signed and dated by the preparer of the SWPPP or other person with a registration equivalent to that of the preparer of the SWPPP, that to the best of his or her knowledge and belief all work was conducted and completed in accordance with the approved SWPPP and this CGP. This certification must be based on the inspections performed in accordance with this Subpart 3.10 of this CGP and must state that any deficiencies that were noted have been corrected.

5.3 Where to Submit

A. All original NOTs must be submitted to DHEC at the following address:

Storm Water and Agricultural Section
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

And a copy of the NOT to the MS4 that received your stormwater discharges when requested in writing by the MS4.

PART 6: RETENTION OF RECORDS

Copies of the SWPPP and all documentation required by this permit, including records of all data used

to complete the NOI to be covered by this permit, must be retained for at least three years from the date that permit coverage expires or is terminated. This period may be extended by request of DHEC at any time.

PART 7: REOPENER CLAUSE

7.1 Procedures for Modification or Revocation

Permit modification or revocation will be conducted according to §122.62, §122.63, §122.64, and §124.5 of SC Regulation 61-9.

7.2 Water Quality Protection

If there is evidence indicating that the storm water discharges authorized by this permit cause, have the reasonable potential to cause or contribute to a violation of any applicable water quality standard, you may be required to obtain an individual permit in accordance with Part 4.2 of this permit, the permit may be modified in accordance with Section 122.62 of SC Regulation 61-9 to include different limitations and/or requirements as addressed or your coverage may be terminated in accordance with Section 122.64 of SC Regulation 61-9.

7.3 Timing of Permit Modification

DHEC may elect to modify the permit prior to its expiration (rather than waiting for the new permit cycle) to comply with any new statutory or regulatory requirements, such as for effluent limitation guidelines that may be promulgated in the course of the current permit cycle.

PART 8: STANDARD PERMIT CONDITIONS

South Carolina regulations require that the Standard Conditions provisioned at §122.41 of SC Regulation 61-9 be applied to all NPDES permits. You are required to comply with those Standard Conditions, details of which are provided in Appendix C of this permit, that are applicable to storm water discharges.

APPENDIX A - DEFINITIONS AND ACRONYMS DEFINITIONS

"Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to Surface Waters of the State. BMPs also include treatment requirements, operating procedures, and practice to control plant Site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Co-Permittee" means a permittee to an NPDES permit that is only responsible for permit conditions relating to the discharge for which it is Operator.

"Commencement of Construction Activities" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material).

"Control Measure" as used in this permit, refers to any BMP or other method used to prevent or reduce the discharge of pollutants to "Waters of the State".

"CWA" means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq.

"DHEC" means the South Carolina Department of Health and Environmental Control's Office of Environmental Quality Control.

"Discharge" when used without qualification means the ''discharge of a pollutant.''

"Discharge of Storm Water Associated with Construction Activity" as used in this permit, refers to a discharge of pollutants in storm water from areas where soil disturbing activities (e.g., clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Eligible" means qualified for authorization to discharge storm water under this general permit.

"Facility" or "Activity" means any "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Federal Facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned by, or constructed or manufactured for the purpose of leasing to, the Federal government.

"Final Stabilization" means that:

1. All soil disturbing activities at the Site have been completed and either of the two following criteria are met:

a. A uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures; or

b. Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

2. When background native vegetation or other appropriate vegetation will cover less than 100 percent of the ground (e.g., arid areas, beaches), the 70 percent coverage criteria is adjusted as follows: if the native vegetation or other appropriate vegetation covers 50 percent of the ground, 70 percent of 50 percent (0.70 X 0.50 = 0.35) would require 35 percent total cover for final stabilization. On a beach with no natural vegetation, no stabilization is required.

3. For individual lots in residential construction, final stabilization means that either:

   a. The homebuilder has completed final stabilization as specified above; or

   b. The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization.

4. For construction Projects on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for highway construction, etc.), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to "Surface Waters of the State," and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) or (2) or (3) above.

"Indian country" is defined at §122.2 of SC Regulation 61-9 to mean:

1. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

2. All dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and

3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-ways running through the same.

"Large Construction Activity" is the construction industrial activity as defined at §122.26(b)(14)(x) of SC Regulation 61-9 and incorporated here by reference. A large construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than five acres of land or will disturb less than five acres of total land area but is part of a larger common plan of

development or sale that will ultimately disturb equal to or greater than five acres. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the Site.

"Municipal Separate Storm Sewer System" or "MS4" is defined at §122.26(b)(8) of SC Regulation 61-9 to mean a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to Surface Waters of the State;

2. Designed or used for collecting or conveying storm water;

3. Which is not a combined sewer; and

4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at §122.2 of SC Regulation 61-9.

"New Project" means the "commencement of construction activities" occurs after the effective date of this permit.

"Ongoing Project" means the "commencement of construction activities" occurs before the effective date of this permit.

"Operator" for the purpose of this permit and in the context of storm water associated with construction activity, means any party associated with a construction Project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications. Note: A party has "operational control over construction plans and specifications" if they have the authority to prepare or modify such plans and specifications under Subpart 3.1.A; or

2. The party has "operational control over day-to-day activities" at a Project that are necessary to ensure compliance with a SWPPP for the Site or other permit conditions (e.g., they are authorized to direct workers at a Site to carry out activities required by the SWPPP or comply with other permit conditions). This definition is provided to inform permittees of EPA's interpretation of how the regulatory definitions of "Owner or Operator" and "facility or activity" are applied to discharges of storm water associated with construction activity.

"Owner or Operator" means the owner or Operator of any "facility or activity" subject to regulation under the NPDES program. For purposes of this permit, when local governments (counties, cities,

etc.) construct or improve state roads, the owner of these road construction projects during the construction is the local government.

"Permitting Authority" means the United States Environmental Protection Agency, EPA, a Regional Administrator of the Environmental Protection Agency or an authorized representative.

"Person" means any individual, public or private corporation, political subdivision, association, partnership, corporation, municipality, State or Federal agency, industry, copartnership, firm, trust, estate, any other legal entity whatsoever, or an agent or employee thereof.

"Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Pollutant" is defined at §122.2 of SC Regulation 61-9. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

"Project" means an undertaking such as, but not limited to, construction of commercial development, residential development, industrial development, roadways, railways, and utility lines.

"Project Area" means:

1. The areas on the construction Site where storm water discharges originate and flow toward the point of discharge into the receiving waters (including areas where excavation, Site development, or other ground disturbance activities occur) and the immediate vicinity. (Example: 1. Where bald eagles nest in a tree that is on or bordering a construction Site and could be disturbed by the construction activity or where grading causes storm water to flow into a small wetland or other habitat that is on the Site that contains listed species.)

2. The areas where storm water discharges flow from the construction Site to the point of discharge into receiving waters. (Example: Where storm water flows into a ditch, swale, or gully that leads to receiving waters and where listed species (such as amphibians) are found in the ditch, swale, or gully.)

3. The areas where storm water from construction activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where storm water from construction activities discharges into a stream segment that is known to harbor listed aquatic species.)

4. The areas where storm water BMPs will be constructed and operated; including any areas where storm water flows to and from BMPs. (Example: Where a storm water retention pond would be built.)

5. The areas upstream and /or downstream from construction activities discharges into a stream segment that may be affected by the said discharges. (Example: Where sediment discharged to a receiving stream settles downstream and impacts a breeding area of a listed aquatic species.)

"Receiving water" means the "Waters of the State" as defined in §122.2 of SC Regulation 61-9 into which the regulated storm water discharges.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Small Construction Activity" is defined under the definition of "Stormwater discharge associated with small construction activity" at §122.26(b)(15) of SC Regulation 61-9 as follows: "Storm water discharge associated with small construction activity means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres and, in coastal counties within one-half (1/2) mile of a receiving water body (but not for single-family homes which are not part of a subdivision development), that result in any land disturbance less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Department may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

(A) The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket , 401 M Street S.W., Washington, DC. 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An Operator must certify to the Department that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

(B) Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction Sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream

concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The Operator must certify to the Department that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(ii) Any other construction activity designated by the Department, or in States with approved NPDES programs either the Department or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States."

"Storm Water" means storm water runoff, snowmelt runoff, and surface runoff and drainage.

"Storm Water Discharge-Related Activities" as used in this permit, include: activities that cause, contribute to, or result in storm water point source pollutant discharges, including but not limited to: excavation, Site development, grading and other surface disturbance activities; and measures to control storm water including the siting, construction and operation of BMPs to control, reduce or prevent storm water pollution.

"Surface Waters of the State" means "Waters of the State" as defined in §122.2 of SC Regulation 61-9 except for groundwater.

"Total Maximum Daily Load" or "TMDL" means the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

"Waters of the State" is defined in §122.2 of SC Regulation 61-9.

"Wetland" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

ACRONYMS

BMP - Best Management Practices

CGP - Construction General Permit

CFR - Code of Federal Regulations

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CWA - Clean Water Act

EPA - United States Environmental Protection Agency

MS4 - Municipal Separate Storm Sewer System

NOI - Notice of Intent

NOT - Notice of Termination

NPDES - National Pollutant Discharge Elimination System

POTW - Publicly Owned Treatment Works

SWPPP - Storm Water Pollution Prevention Plan

TMDL - Total Maximum Daily Load

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APPENDIX B - SMALL CONSTRUCTION WAIVERS AND INSTRUCTIONS

These waivers are only available to storm water discharges associated with small construction activities (i.e., 1-5 acres). As the Operator of a small construction activity, you may be able to qualify for a waiver in lieu of needing to obtain coverage under this general permit based on: (A) a low rainfall erosivity factor, (B) a TMDL analysis, or (C) an equivalent analysis that determines allocations for small construction Sites are not needed. Each Operator, otherwise needing permit coverage, must notify DHEC of its intention for a waiver. It is the responsibility of those individuals wishing to obtain a waiver from coverage under this general permit to submit a complete and accurate waiver certification as described below. Where the Operator changes or another is added during the construction Project, the new Operator must also submit a waiver certification to be waived.

A. Rainfall Erosivity Waiver

Under this scenario the small construction Project's rainfall erosivity factor calculation ("R" in the Revised Universal Soil Loss Equation) is less than 5 during the period of construction activity. The Operator must certify to the Permitting Authority that construction activity will occur only when the rainfall erosivity factor is less than 5. The period of construction activity begins at initial earth disturbance and ends with final stabilization. Where vegetation will be used for final stabilization, the date of installation of a stabilization practice that will provide interim non-vegetative stabilization can be used for the end of the construction period, provided the Operator commits (as a condition of waiver eligibility) to periodically inspect and properly maintain the area until the criteria for final stabilization as defined in the construction general permit have been met. If use of this interim stabilization eligibility condition was relied on to qualify for the waiver, signature on the waiver with its certification statement constitutes acceptance of and commitment to complete the final stabilization process. The Operator must submit a waiver certification to DHEC prior to commencing construction activities.

> *Note: The rainfall erosivity factor "R" is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21–64, dated January 1997; United States Department of Agriculture (USDA), Agricultural Research Service.*

EPA funded a cooperative agreement with Texas A&M University to develop an online rainfall erosivity calculator. You can access the calculator from EPA's website at:

www.epa.gov/npdes/stormwater/cgp

Use of the calculator allows you to determine potential eligibility for the rainfall erosivity waiver. It may also be useful in determining the time periods during which construction activity could be waived from permit coverage. You may find that moving your construction activity by a few weeks or expediting Site stabilization will allow you to qualify for the waiver.

If you are the Operator of the construction activity and eligible for a waiver based on low erosivity potential, you must provide the following information on the waiver certification in order to be waived

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from permitting requirements:

1. Name, address and telephone number of the construction Site Operators;

2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction Project or Site;

3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest quarter acre) to be disturbed;

4. The rainfall erosivity factor calculation that applies to the active construction phase at your Project Site; and

5. A statement, signed and dated by an authorized representative, as provided in §122.22 of SC Regulation 61-9 (see Appendix C of this permit), that certifies that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five.

At the time of publication, a Low Erosivity Waiver Form is not available. If EPA or DHEC does create a form, it will be noticed (either directly, by public notice, or by making information available on the Internet at:

www.epa.gov/npdes/stormwater/cgp or http://www.scdhec.gov/stormwater

Note: If the R factor is 5 or greater, you cannot apply for the rainfall erosivity waiver, and must apply for permit coverage as per Subpart 2.1 of the construction general permit, unless you qualify for the Water Quality Waiver as described below.

If your small construction Project continues beyond the projected completion date given on the waiver certification, you must recalculate the rainfall erosivity factor for the new Project duration. If the R factor is below five (5), you must update all applicable information on the waiver certification and retain a copy of the revised waiver as part of the Site SWPPP. The new waiver certification must be submitted prior to the projected completion date listed on the original waiver form to assure your exemption from permitting requirements is uninterrupted. If the new R factor is five (5) or above, you must submit an NOI as per Part 2.

B. TMDL Waiver

This waiver is available if a TMDL that addresses the pollutant(s) of concern and has determined that controls on storm water discharges from small construction activity are not needed to protect water quality. The pollutant(s) of concern include sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. Information on TMDLs that have been established is available from EPA online at www.epa.gov/owow/tmdl/ and from DHEC at: www.scdhec.gov/water/tmdl/.

If you are the Operator of the construction activity and eligible for a waiver based on compliance with

a TMDL, you must provide the following information on the Waiver Certification form in order to be waived from permitting requirements:

1. Name, address and telephone number of the construction Site Operator(s);

2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction Project or Site;

3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest quarter acre) to be disturbed;

4. The name of the water body(s) that would be receiving storm water discharges from your construction Project;

5. The name and approval date of the TMDL; and

6. A statement, signed and dated by an authorized representative, as provided in §122.22 of SC Regulation 61-9 (see Appendix C of this permit), that certifies that the construction activity will take place and that the storm water discharges will occur, within the drainage area addressed by the TMDL.

C. Equivalent Analysis Waiver

This waiver is available for non-impaired waters only. The Operator can develop an equivalent analysis that determines allocations for his small construction Site for the pollutant(s) of concern or determines that such allocations are not needed to protect water quality. This waiver requires a small construction Operator to develop an equivalent analysis based on existing in-stream concentrations, expected growth in pollutant concentrations from all sources, and a margin of safety.

If you are a construction Operator who wants to use this waiver, you must develop your equivalent analysis and provide the following information to be waived from permitting requirements:

1. Name, address and telephone number of the construction Site Operator(s);

2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction Project or Site;

3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest quarter acre) to be disturbed;

4. The name of the water bodies that would be receiving storm water discharges from your construction Project;

5. Your equivalent analysis; and

6. A statement, signed and dated by an authorized representative, as provided in §122.22 of SC

Regulation 61-9 (see Appendix C of this permit), that certifies that the construction activity will take place and that the storm water discharges will occur, within the drainage area addressed by the equivalent analysis.

D. Waiver Deadlines and Submissions

1. Waiver certifications must be submitted prior to commencement of construction activities.

2. If you submit a TMDL or equivalent analysis waiver request, you are not waived until DHEC approves your request. As such, you may not commence construction activities until receipt of approval from DHEC.

3. Late Notifications: Operators are not prohibited from submitting waiver certifications after initiating clearing, grading, excavation activities, or other construction activities. DHEC may take enforcement for any unpermitted discharge or violations of laws or regulations that occur between the time construction commenced and waiver authorization is granted.

Submittal of a waiver certification is an optional alternative to obtaining permit coverage for discharges of storm water associated with small construction activity, provided you qualify for the waiver. Any discharge of storm water associated with small construction activity not covered by either a permit or a waiver may be considered an unpermitted discharge under the Clean Water Act and the SC Pollution Control Act. As mentioned above, DHEC may take enforcement for any unpermitted discharge or violations of laws or regulations that occur between the time construction commenced and either discharge authorization is granted or a complete and accurate waiver certification is submitted. DHEC may notify any Operator covered by a waiver that they must apply for a permit. DHEC may notify any Operator who has been in non-compliance with a waiver that they may no longer use the waiver for future Projects. Any member of the public may petition DHEC to take action under this provision by submitting written notice along with supporting justification.

Complete and accurate Rainfall Erosivity waiver certifications must be sent to the following address:

Storm Water and Agricultural Permitting Section
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

Complete and accurate TMDL or equivalent analysis waiver requests must be sent to the following address:

Storm Water and Agricultural Permitting Section
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

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APPENDIX C – SECTIONS 122.41 AND 122.22 OF SC REGULATION 61-9

Section 122.41 of SC Regulation 61-9.

122.41. Conditions applicable to all permits. The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in section 122.42. All conditions applicable to NPDES permit shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to the federal regulations (or the corresponding approved State regulations) must be given in the permit.

(a) **Duty to comply**. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Clean Water Act and the Pollution Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. The Department's approval of wastewater facility Plans and Specifications does not relieve the permittee of responsibility to meet permit limits.

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

(2) Failure to comply with permit conditions or the provisions of this regulation may subject the permittee to civil penalties under S.C. Code Section 48-1-330 or criminal sanctions under S.C. Code Section 48-1-320. Sanctions for violations of the Federal Clean Water Act may be imposed in accordance with the provisions of 40 CFR Part 122.41(a)(2) and (3).

(3) A person who violates any provision of this regulation, a term, condition or schedule of compliance contained within a valid NPDES permit, or the State law is subject to the actions defined in the State law.

(b) **Duty to reapply**. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. (But see 122.4(g)(2)).

(c) **Need to halt or reduce activity not a defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) **Duty to mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(e) **(1) Proper operation and maintenance.** The permittee shall at all times properly operate and maintain in good working order and operate as efficiently as possible all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the

permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes effective performance based on design facility removals, adequate funding, adequate operator staffing and training and also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(2) The permittee shall develop and maintain at the facility a complete Operations and Maintenance Manual for the waste treatment facilities and/or land application system. The manual shall be made available for on-site review during normal working hours. The manual shall contain operation and maintenance instructions for all equipment and appurtenances associated with the waste treatment facilities and land application system. The manual shall contain a general description of: the treatment process(es), the operational procedures to meet the requirements of (e)(1) above, and the corrective action to be taken should operating difficulties be encountered.

(3)(i) Except as stated in (ii) below, the permittee shall provide for the performance of daily treatment facility inspections by a certified operator of the appropriate grade as defined in the permit for the facility. The inspections shall include, but should not necessarily be limited to, areas which require visual observation to determine efficient operation and for which immediate corrective measures can be taken using the O & M manual as a guide. All inspections shall be recorded and shall include the date, time, and name of the person making the inspection, corrective measures taken, and routine equipment maintenance, repair, or replacement performed. The permittee shall maintain all records of inspections at the permitted facility as required by the permit, and the records shall be made available for on-site review during normal working hours.

(ii) The Department may make exceptions to operating requirements, if stated in the permit, as follows:

(A) Attendance by the certified operator of the appropriate grade ("the operator") is normally required only on days when treatment or discharge occurs.

(B) For performance of daily inspections, permits may allow a reduced grade of operator for limited time periods under specific circumstances when justified by the permittee in a staffing plan and approved by the Department.

(C) Reduced inspection frequency, but in no case less than weekly, may be suitable when specified in the permit, if there is complete telemetry of operating data and there is either a simple treatment system with a low potential for toxicity but requiring pumps or other electrical functions or the ability to stop the discharge for an appropriate period when necessary.

(D) In other circumstances where the permittee demonstrates the capability to evaluate the facility in an alternative manner equivalent to the inspection requirements in subparagraph 3(i).

(E) Any exceptions allowed under (A), (B), (C), and (D) above may be subject to compliance with the permit conditions.

(4) (i) Purpose. This regulation establishes rules for governing the operation and maintenance of wastewater sewer systems, including gravity or pressure interceptor sewers. It is the purpose of this rule to establish standards for the management of sewer systems to prevent and/or minimize system failures that would lead to public health or environmental impacts.

(ii) Authority and applicability. Under Section 48-1-30 of the Code of Laws of South Carolina (1976 as amended), the Department is authorized to adopt such rules and regulations as may be necessary to implement the Pollution Control Act. This regulation applies to all sewer systems that have been or would be subject to a DHEC construction permit under Regulation 61-67 and whose owner owns or operates the wastewater treatment system to which the sewer discharges and which discharges under NPDES. Nothing in this regulation supersedes a more stringent requirement that may be imposed by sewer system owners that manage wastewater from satellite systems. This regulation (122.41(e)(4)) is effective when published in the State Register.

(iii) General requirements. The requirements to properly operate and maintain sewer systems are the responsibility of the system owner. General Standards. The sewer system owner must:

(A) Properly manage, operate, and maintain at all times all parts of its sewer system(s), to include maintaining contractual operation agreements to provide services, if appropriate;

(B) Provide adequate capacity to convey base flows and peak flows for all parts of the sewer system or, if capital improvements are necessary to meet this standard, develop a schedule of short and long term improvements;

(C) Take all reasonable steps to stop and mitigate the impact of releases of wastewater to the environment; and

(D) Notify the Department within 30 days of a proposed change in ownership of a sewer system.

(iv) [Reserved.]

(f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this

permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

(i) **Inspection and entry.** The permittee shall allow the Department, or an authorized representative (including an authorized contractor acting as a representative of the Department), upon presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and Pollution Control Act, any substances or parameters at any location.

(j) **Monitoring and records.**

(1) (i) (A)Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(B) Samples shall be reasonably distributed in time, while maintaining representative sampling.

(C) No analysis, which is otherwise valid, shall be terminated for the purpose of preventing the analysis from showing a permit or water quality violation.

(ii) Flow Measurements.

(A) Where primary flow meters are required, appropriate flow measurement devices and methods consistent with accepted scientific practices shall be present and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of not greater than 10 percent from the true discharge rates throughout the range of expected discharge volumes. The primary flow device, where required, must be accessible to the use of a continuous flow recorder.

(B) Where permits require an estimate of flow, the permittee shall maintain at the permitted facility a record of the method(s) used in "estimating" the discharge flow (e.g., pump curves, production charts, water use records) for the outfall(s) designated on limits pages to monitor flow by an estimate.

(C) Records of any necessary calibrations must be kept.

(iii) The Department may designate a single, particular day of the month on which any group of parameters listed in the permit must be sampled. When this requirement is imposed in a permit, the Department may waive or alter compliance with the permit requirement for a specific sampling event for extenuating circumstances.

(iv) The Department may require that a permittee monitor parameters in the stream receiving his permitted discharge as necessary to evaluate the need for and to establish limits and conditions and to insure compliance with water quality standards (i.e., R.61-68).

(2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by R.61-9.503 or R.61-9.504); the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(4) Analyses for required monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or, in the case of sludge use or disposal, unless otherwise specified in R.61-9.503 or R.61-9.504.

(5) The PCA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $25,000 or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment provided by the Clean Water Act is also by imprisonment of not more than 4 years.

(k) Signatory requirement.

(1) All applications, reports, or information submitted to the Department shall be signed and certified (See section 122.22).

(2) The PCA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $25,000 per violation, or by imprisonment for not more than two years per violation, or by both.

(l) Reporting requirements.

(1) Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in section 122.29(b); or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under section 122.42(a)(l).

(iii) The alteration or addition results in a significant change in the permittee's sewage sludge or industrial sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan (included in the NPDES permit directly or by reference);

(2) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) Transfers. This permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit to change the name of permittee and incorporate such other requirements as may be necessary under the Pollution Control Act and the Clean Water Act. (See section 122.61; in some cases, modification or revocation and reissuance is mandatory.)

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report

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(DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in R.61-9.503 or R.61-9.504, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.

(iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.

(5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See section 122.44(g)).

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours (See section 122.44(g)).

(iii) The Department may waive the written report on a case-by-case basis for reports under paragraph (l)(6)(i) of this section if the oral report has been received within 24 hours.

(7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (l)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

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(8) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

(m) Bypass.

(1) Definitions.

(i) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraph (m)(3) and (m)(4) of this section.

(3) Notice.

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice).

(4) Prohibition of bypass

(i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (m)(3) of this section.

(ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

(n) Upset.

(1) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. A upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(3) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph (l)(6)(ii)(B) of this section (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph (d) of this section.

(4) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

(o) Misrepresentation of Information.

(1) Any person making application for a NPDES discharge permit or filing any record, report, or other document pursuant to a regulation of the Department, shall certify that all information contained in such document is true. All application facts certified to by the applicant shall be considered valid conditions of the permit issued pursuant to the application.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, or other documents filed with the Department pursuant

to the State law, and the rules and regulations pursuant to that law, shall be deemed to have violated a permit condition and shall be subject to the penalties provided for pursuant to 48-1-320 or 48-1-330.

Section 122.22 of SC Regulation 61-9.

122.22. Signatories to permit applications and reports.

(a) Applications. All permit applications shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency or public facility: By either a principal executive officer, mayor, or other duly authorized employee or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(i) The chief executive officer of the agency, or

(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator, Region IV, EPA).

(b) All reports required by permits, and other information requested by the Department, shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having

responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,

(3) The written authorization is submitted to the Department.

(c) Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. Any person signing a document under paragraph (a) or (b) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

APPENDIX B

Contractor / Sub-Contractor Certification Statements

CONTRACTOR/SUBCONTRACTOR CERTIFICATION STATEMENT

All contractors and subcontractors identified in the plan to perform construction related work intended to disturb soils at the Site that may affect the implementation of the SWP3 but who will NOT be Co-permittees must sign a copy of the certification statement given below.

"I certify by my signature below that: a) for Sites that disturb 10 or more acres, I participated in a pre-construction conference onsite or, when allowed, offsite with the individual who is responsible for the operational control of the Stormwater Pollution Prevention Plan (SWP3); and b) I understand the terms and conditions of SWP3 as required by the general National Pollutant Discharge Elimination System Permit (NPDES permit number SCR100000) issued to the Owner/Operator of the construction activity for which I have been contracted to perform construction related professional services. I understand that I, and my company, as the case may be, may be legally accountable to the SC Department of Health and Environmental Control (DHEC), under the authorities of the CWA and the SC Pollution Control Act, to ensure compliance with the terms and conditions of the SWP3."

_____
Contracted Firm

_____
Address

_____
City State Zip

_____
Telephone

_____
Print Name

_____
Title

_____
Signature

_____
Date

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CONTRACTOR/SUBCONTRACTOR CERTIFICATION STATEMENT

All contractors and subcontractors identified in the plan as Co-Permittees must sign a copy of the certification statement given below.

"I certify by my signature below that: a) for Sites that disturb 10 or more acres, I participated in a pre-construction conference onsite or, when allowed, offsite with the individual who is responsible for the operational control of the Stormwater Pollution Prevention Plan (SWP3); and b) I accept the terms and conditions of SWP3 as required by the general National Pollutant Discharge Elimination System (NPDES permit number SCR100000) issued to the Owner/Operator of the construction activity for which I have been contracted to perform construction related professional services. Further, by my signature below, I understand that I am becoming a Co-permittee with the Owner/Operator and other contractors that have become Co-permittees to the general NPDES permit issued to the Owner/Operator of the facility for which I have been contracted to perform professional construction services. As a Co-permittee, I understand that I, and my company, as the case may be, am legally accountable to the SC Department of Health and Environmental Control (DHEC), under the authorities of the CWA and the SC Pollution Control Act, to ensure compliance with the terms and conditions of the SWP3. I also understand that DHEC enforcement actions may be taken against any specific Co-permittee or combination of Co-permittees if the terms and conditions of the SWP3 are not met. Therefore, having understood the above information, I am signing this certification and am receiving Co-permittee status to the aforementioned general NPDES permit."

_____
Contracted Firm

_____
Address

_____
City State Zip

_____
Telephone

_____
Print Name

_____
Title

_____
Signature

_____
Date

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APPENDIX C

Permanent Pond Maintenance Agreement

Permanent Stormwater System Maintenance and Responsibility Agreement

Under the South Carolina Stormwater Management and Sediment Reduction Act of 1991 (48-14-10, et. seq.), Regulation 72-308 requires the Landowner, its successors and assigns, including any homeowners association, shall adequately maintain the stormwater management/Best Management Practices (BMP) facilities. This includes all pipes and channels built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design functions.

The Department of Health and Control (DHEC)/Office of Ocean and Coastal Resource Management (OCRM) recommends that The Landowner, its successors and assigns, shall inspect the stormwater management/BMP facility regularly. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc.

The Landowner, its successors and assigns, hereby grant permission to the DHEC/OCRM, its authorized agents and employees, to enter upon the Property and to inspect the stormwater management/BMP facilities whenever DHEC/OCRM deems necessary. The purpose of inspection is to follow-up on reported deficiencies and/or to respond to citizen complaints. DHEC/OCRM shall provide the Landowner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary.

The Landowner, its successors and assigns, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the stormwater management/BMP facilities (including sediment removal) is outlined on the approved plans, the schedule will be followed.

This Agreement imposes no liability of any kind whatsoever on DHEC/OCRM and the Landowner agrees to hold DHEC/OCRM harmless from any liability in the event the stormwater management/BMP facilities fail to operate properly.

I accept responsibility for ownership and proper maintenance of the stormwater system (pond, swales, etc.) on the TMS No. R16907-01-04 **site per the approved maintenance plan. I will complete any necessary repairs and/or preventive maintenance procedures in a timely manner to ensure proper functioning as a stormwater management device(s).**

It is my understanding that the maintenance plan may be amended/revised at any time by DHEC/OCRM, and I will abide by any prescribed changes.

I will continue to own and maintain the pond until DHEC/OCRM is notified in writing of a transfer in ownership and maintenance responsibility. The notification will include a date for the transfer of responsibility and a letter of acceptance from the new owner.

I understand that failure to adhere to the signed maintenance agreement may result in fines of up to $1,000.00 per day, per violation and /or the institution of a court action.

Signature of Owner/Agent	Printed Name of Owner/Agent	Date
	Bob Mundy	6-26-2008

Mailing Address	City/State/Zip	Phone Number
1401 Main St. Suite 650	Columbia, SC 29201	803 765 9318

Notary Stamp/Signature/Date: 6-26-08

Expires 1-12-11

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APPENDIX D

Inspection Form

NPDES STORM WATER CONSTRUCTION COMPLIANCE INSPECTION REPORT FOR CONTRACTORS

NPDES PERMIT NO.: _____ **DATE OF INSPECTION:** _____
PROJECT NAME: _____ **COUNTY:** _____
PROJECT DESCRIPTION (check one): ___ **Residential** ___ **Commercial** ___ **Other:** _____

I. TYPE OF INSPECTION:

___ 1) At least once every 7 calendar days, or
___ 2) At least once every 14 calendar days and within 24 hrs of the end of a storm event of 0.5 inches or greater.

II. WEATHER CONDITIONS

1) Weather conditions during inspection: _____

2) Weather conditions since last inspection, including rainfall information: _____
_____

III. SITE AND PLAN REVIEW

Are the following required items available for regulatory review:

Y N 1) SWPPP
Y N 2) Copy of the General Permit
Y N 3) NOI
Y N 4) DHEC Coverage Letter
Y N 5) Co-permittee agreements or contractor certification statements
Y N 6) Weekly inspection forms
Y N 7) Richland County Grading Permit

IV. BEST MANAGEMENT PRACTICES

Y N 1) Is the Construction entrance/exit properly installed according to plans
Y N 2) Is the perimeter silt fence and/or other controls properly installed
Y N 3) Did any BMPs fail to operate as designed or prove inadequate? *If **Yes**, Identify BMPs and location(s):
_____
_____
_____
_____
_____

Y* N 4) Are additional BMPs needed? *If **Yes**, identify BMPs needed and which location(s): _____
_____
_____
_____
_____

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Y* N 5) Do any BMPs require maintenance? * If **Yes**, provide location(s) and description(s): _____
_____
_____

Y N 6) Is construction activity following the phasing and sequencing plan?
Y N 7) Has construction activity on the site ceased for 14 days or more?

Y N* 8) If activity has ceased, have temporary stabilization measures been installed within 14 days? *If **No**, identify location(s) needing stabilization: _____
_____

Y N* 9) Are litter, construction debris, oils, fuels, building products & construction chemicals being properly addressed and/ or removed? *If **No**, identify location(s): _____
_____
_____
_____

V. Final Stabilization

Y* N Have all land disturbing activities at the site permanently ceased? *If **Yes**, complete the following questions:

Y N 1) Are there any areas of active erosion evident? If **Yes**, location(s): _____
_____
_____

Y N 2) Does the permitted area have 70% permanent vegetative cover (i.e. grass or other cover) **OR** have equivalent measures such as riprap, or geotextiles been installed?

VI. Offsite Impacts from Project

1) Are there any offsite impacts? ___ **No** ___ **Yes**, where? ___ Public Right of Way ___ Adjoining Property Owner ___ Wetlands ___ Creek/River ___ Lake/Pond ___ Other (please specify): _____

2) If answering "**Yes**" to the previous question, indicate the location and describe the impact: _____
_____
_____
_____

VII. Deficiencies/ Corrective Actions

Were deficiencies noted in this inspection previously listed in a monthly report? ___Yes ___No
Corrective Action needed as a result of this inspection, including date to be completed: _____
_____
_____
_____

VIII. Storm Water Pollution Prevention Plan Updates

Y N 1) Does the SWPPP need to be modified as a result of the inspection?
Y N 2) Has the SWPPP been modified since the last inspection? If so, note the date(s): _____

IX. COMMENTS

_____

_____

_____

_____

_____

_____

_____

Inspector: _____ **Title/Qualifications:** _____

Note:

1. These documents must be maintained onsite along with the SWPPP, SCDHEC CGP and Richland County Grading Permit. Periodic inspections will be conducted by Richland County to ensure compliance.
2. If the Project disturbs more than 10 acres, these reports must be submitted attached to the monthly report to both DHEC (as required by CGP) and Richland County Department of Public Works (electronic submission required using County template available from Public Works or from County website).

NPDES STORM WATER CONSTRUCTION MONTHLY REPORT

NPDES PERMIT NO.: _____ STATE TRACKING NO.: _____

PERMIT OWNER: _____ PROJECT NAME: _____

COUNTY: _____ MONTH/YEAR: _____

SECTION I. INSPECTION SUMMARY

Provide a summary of results from inspections conducted this month.

SECTION II. DEFICIENCY LISTING

List and describe all deficiencies recorded during inspections conducted this month. Use the attached Deficiency Summary to provide all data. Use additional pages as necessary.

SECTION III. STORMWATER POLLUTION PREVENTION PLAN (SWPPP) UPDATE

Provide a statement regarding whether or not the SWPPP was updated to resolve listed deficiencies.

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SECTION IV. INSPECTION REPORTS

Attach a copy of each inspection report completed this month.

SECTION V. CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Responsible Authority* Printed Name	Title
Responsible Authority Signature	Date

Note: Per Section 122.22 of South Carolina Regulation 61-9, all reports must be signed by a person described in paragraph (a) of this section or a duly authorized representative.

The first monthly report must include the Co-permittee and contractor certifications. Subsequent monthly reports must include certifications for the Co-permittees and contractor added after construction has started. For each certification, the preparer of the SWPPP or someone with a registration equivalent to that of the preparer of the SWPPP must certify that either an on-site or, when applicable, off-site preconstruction conference was held with the Co-permittee or contractor in accordance with this permit.

SECTION VI. SUBMITTAL

Submit monthly reports and attachments on or before the 28th day of the month following the reporting period to both:

Compliance Assurance Division
Bureau of Water
SC DHEC 2600 Bull Street
Columbia, SC 29201

AND electronically to:

constructionreports@rcgov.us

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RICHLAND COUNTY
DEPARTMENT OF PUBLIC WORKS
NPDES STORM WATER CONSTRUCTION MONTHLY REPORT
DEFICIENCY SUMMARY

Deficiency No.	Deficiency Description	Date Deficiency Logged	Corrective Action Req'd? (Y/N)	Description of Corrective Action(s)	Corrective Action Section				
					Responsible Party(ies) Information			Deficiency Listed on Previous Monthly Report? Describe.	Date Corrective Action Completed
					Name	Address	Phone No.		

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Page _____ of _____

APPENDIX E

Construction Activity Form

Construction Activity Recordkeeping

Stabilization Initiated		
Type of Stabilization	Location on Site	Date(s) Occur

APPENDIX F

Notice of Intent (NOI) for Stormwater Discharges

To Be Included When Received

APPENDIX G

Construction General Permit (CGP) Coverage Letter from DHEC

To Be Included When Received

Roger Pond Ex 1

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69-A Hagood Avenue
CHARLESTON, SOUTH CAROLINA 29403-5107

REPLY TO
ATTENTION OF

RECEIVED
FEB 26 2009
B. P. BARBER & ASSOCIATES
COLUMBIA, S. C.

February 25, 2009

Regulatory Division

Mr. George O. Whatley
B.P. Barber & Associates, Inc.
101 Research Drive
P.O. Box 1116
Columbia, South Carolina 29202-1116

Dear Mr. Whatley:

This letter is in response to a Pre-Construction Notification (PCN) dated May 5, 2008, which was received on May 13, 2008. By submittal of the PCN, you requested verification that the proposed project is authorized by a Department of the Army Nationwide Permit.

The PCN contains the following identifying information for this project. The work affecting waters of the United States is part of an overall project known as Site Improvements of Roper Property on Trenholm Road. The project involves impacts to not more than 0.075 acre of waters of the United States, including wetlands. The project is located on the west side of Trenholm Road, in Richland County, South Carolina. The PCN also includes the following supplemental information:

a. Drawing sheets 1-6 of 6 and titled "Site Improvements of Roper Property on Trenholm Road" and dated September 8, 2008.

b. A delineation of special aquatic sites (SAC-81-2004-1871-J).

Based on a review of the PCN, including the supplemental information indicated above, it has been determined that the proposed activity will result in minimal individual and cumulative adverse environmental effects and is not contrary to the public interest. Furthermore, the activity meets the terms and conditions of Department of the Army Nationwide Permit(s) #29.

For this authorization to remain valid, the project must comply with the enclosed Nationwide Permit General Conditions, Charleston District Regional Conditions, and the following special conditions:

1. That prior to beginning the authorized work the permittee must obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations (i.e. 401 Water Quality Certification, Coastal Zone Management Consistency Determination, State Navigable Waters Permit). If the permittee fails to obtain the necessary state certifications and/or authorizations prior to beginning work, this will be considered a willful and knowing violation of the Clean Water Act and appropriate enforcement action will be taken.

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RP 0128

2. That impacts to aquatic areas do not exceed those specified in the above mentioned PCN, including any supplemental information or revised permit drawings that were submitted to the Corps by the permittee;

3. That the construction, use, and maintenance of the authorized activity is in accordance with the information given in the PCN, including the supplemental information listed above, and is subject to any conditions or restrictions imposed by this letter;

4. That the permittee shall submit the attached signed compliance certification to the Corps within 30 days following completion of the authorized work and any required mitigation.

5. That all conditions given in the enclosed certification from the S.C. Department of Health and Environmental Control are hereby incorporated as special conditions to this authorization.

This verification is valid until the Nationwide Permits (NWP) expire or for two (2) years, whichever comes first. The time specified for this authorization will remain valid if the Nationwide Permit(s) is reissued without modification, or the activity complies with any subsequent modification; however, the provisions of 33 CFR 330.6(b) will apply if the Nationwide Permit expires, is suspended or revoked, or is modified such that the activity no longer complies with the original terms and conditions. In general, these provisions provide that if the work authorized by this letter has commenced in accordance with the requisite terms and conditions or you, acting in reliance of this Nationwide Permit, have entered into a contract to have the work performed prior to such date, this authorization will remain in effect if the work can be completed within twelve months of the date of the Nationwide Permit's expiration, modification or revocation unless discretionary authority has been exercised in accordance with 33 CFR 330.4(c) or (d).

This letter supersedes the previous letter prepared by this office and dated September 8, 2008. Your cooperation in the protection and preservation of our navigable waters and natural resources is appreciated. In all future correspondence concerning this matter, please refer to our file number SAC-2004-35601-6NO. A copy of this letter is being forwarded to certain State and/or Federal agencies for their information. If you have any questions concerning this matter, please contact Chip Ridgeway at 803-253-3906.

Respectfully,

Tina B. Hadden
Chief, Regulatory Division

Enclosures:
Permit Drawings
Charleston District Regional Conditions
Nationwide Permit General Conditions
Compliance Certification Form
Customer Service Survey

000773
RP 0129

Roger Pond Ex 6

BP Barber
Engineering • Experience • Excellence

May 5, 2008

Mr. Colton Bowles, Watershed Manager
U.S. Army Corps of Engineers, Northwest Branch
865 Strom Thurmond Federal Building, Room B1
1835 Assembly Street
Columbia, SC 29201

RE: Site Improvements to the Roper Property on Trenholm Road
BP Barber Project No. 05216

Dear Mr. Bowles:

The referenced project is being submitted on behalf of Estates, Inc. for construction of a multifamily apartment development. This project was previously submitted to your office by WPC of Charleston, SC in August of 2007. The Owner elected to retain BP Barber to complete Engineering and Environmental services when WPC's project manager resigned. I contacted the Northwest Branch in March of 2008 to determine the status of the project. I was informed that WPC's submittal was incomplete and WPC had not answered requests from your office for additional information. I informed your office that Estates, Inc. had retained BP Barber and that we would resubmit this project. A Jurisdictional Determination was already issued for the site. I obtained the Jurisdictional determination from the Owner. A copy is attached for your use.

Avoidance and Minimization:

WPC's submittal was for total impacts of .099 acre. We have redesigned the project and were able to reduce impacts to .075 acre. This was accomplished by designing retaining walls, repositioning proposed buildings, reducing building size and designing a boardwalk which allows foot traffic to pass over a wetland area rather than impacting the wetland. The 0.075 acre of impacts are associated with fill for buildings and sidewalks where avoidance was not possible. The 0.075 acres of impacts represent less than one half of one percent of the 1.80 acres of wetlands or other Waters of the US that occur onsite. Best management practices will be implemented to ensure that construction activities do not impact those jurisdictional areas which lie outside of the permitted impact areas.

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P.O. Box 1116, Columbia, SC 29202-1116 | 101 Research Drive (29203-9389) | Phone: (803) 254-4400 | Fax: (803) 771-6676 | www.bpbarber.com

Endangered Species:

A Biological assessment is attached as a part of this submittal.

Cultural Resources:

BP Barber researched this property to determine if there are known onsite cultural resources. According to records at the SC Department of Archives & History and according to records at the SC Institute of Archaeology, there are no known eligible sites.

As agent for Estates, Inc., we request that you review this project for coverage under a Nationwide Permit. If you have questions or if you require additional information, please do not hesitate to contact me.

Very truly yours,

BP Barber

George O. Whatley
Senior Design Associate

GOW/mm

Enclosures

Joint Federal and State Application Form
For Activities Affecting Waters of the United States or Critical Areas of the State of South Carolina

This Space for Official Use Only.

Application #: _____

Date Received: _____

Project Manager: _____

Authorities: 33 USC 401, 33 USC 403, 33 USC 407, 33 USC 408, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 48-39-10 et. seq of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both the Federal and/or State permit(s).

Drawings and Supplemental Information Requirements: In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See the attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information.

1. Applicant's Name:
Estates, Inc.

2. Applicant's Address.
PO Box 11739
Columbia, SC 29250

3. Applicant's Contact Number (include area code).
Residence:
Business: (803) 765-9318
FAX: (803) 795-9427

4. Agent's Name (an agent is not required):
BP Barber, ATTN: George Whatley

5. Agent's Address.
P.O. Box 1116
Columbia, SC 29202-1116

6. Agent's Contact Number (include area code).
Residence:
Business: (803) 254-4400
FAX: (803) 771-6676

7. Project Title.
Site improvements to Roper property on Trenholm Road

8. Nearest Waterbody to project site (if known).
Roper Pond

9. Project Location. West side of Trenholm Road, 0.30 South of Decker Blvd.
Street Address:
County: Richland
Latitude: 34°-03'-37" N
Longitude: 80°-57'-33" W

10. Directions to the Site (attach additional sheets if needed).
From Columbia Northwest Branch, follow Assembly Street for 0.22 miles South to Taylor Street. Follow Taylor Street East for 3.92 miles to Trenholm Road. Follow Trenholm Road North for 2.94 miles. The site is on the West side of the roadway.

11. Description of the Overall Project and of Each Activity In or Affecting U. S. Waters or State critical areas (attach additional sheets if needed).
The overall project consists of a new multi-family housing development (apartments) on a 12.75 acre tract of land. Activities include fill of Jurisdictional areas for buildings and sidewalks.

12. Overall Project Purpose and the Basic Purpose of Each Activity In or Affecting U. S. Waters (attach additional sheets if needed).
The overall project purpose is to provide housing in the area. There are 2 activities impacting U.S. waters as follows:

1) Construction of a retaining wall and fill for a sidewalk.
2) Fill for an apartment building and sidewalk.

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13. Type and Quantity of Materials To Be Discharged.

Dirt or Topsoil:	260	cy
Clean Sand:		cy
Mud:		cy
Clay:		cy
Gravel, Rock, or Stone:		cy
Concrete:	27	cy
Other (describe):		cy
TOTAL:	287	cy

14. Type and Quantity of Impacts to U. S. Waters (including wetlands).

Filling:	0.075	☑ acres ☐ sq. ft.	287	cy
Backfill & Bedding:		☐ acres ☐ sq. ft.		cy
Landclearing:		☐ acres ☐ sq. ft.		cy
Dredging or Excavation:		☐ acres ☐ sq. ft.		cy
Flooding:		☐ acres ☐ sq. ft.		cy
Draining:		☐ acres ☐ sq. ft.		cy
Shading:		☐ acres ☐ sq. ft.		cy
TOTALS	0.075	☑ acres ☐ sq. ft.	287	cy

15. Names and Addresses of All Adjoining Property Owners (attach additional sheets if needed).

See Attached

16. Has any portion of the work already commenced? If yes, describe all work that has been done and the dates of the work.

No

17. List all Certifications, Approvals, and Denials received from Federal, State, or Local Agencies for work described in this application.

None

18. Authorization of Agent. I hereby authorize the agent whose name is given in block number 4 of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application.

Applicant's Signature — Date: 4-30-08

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

Applicant's Signature — Date: 4-30-08

Agent's Signature — Date: 4-30-08

The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 4 and 18 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

Submit the completed application form with the required drawings and all supporting information as indicated below.

Send all original application materials to:
U. S. Army Corps of Engineers
Charleston District, Regulatory Branch
P. O. Box 919, Attn: CESAC-CO-P
Charleston, South Carolina 29402
(803) 727-4330

Send one complete copy to:
S. C. Dept of Health & Environmental Control
Office of Ocean and Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405
(803) 744-5838

Send one complete copy to:
S. C. Dept. of Health & Environmental Control
Office of Environmental Quality Control
2600 Bull Street
Columbia, South Carolina 29201
(803) 734-5300

000777

ADJOINING PROPERTY OWNERS

Thomas H. & Margaret Utsey
35 Huntwick Ct
Columbia, SC 29206

Janet B. Shuffler
31 Huntwick Ct
Columbia, SC 29206

Larry & Sheila Brody Cooke
23 Huntwick Ct
Columbia, SC 29206

William A. & Jill B. Sinclair
19 Huntwick Ct
Columbia, SC 29206

Elizabeth M. Walker
40 Leawood Ct
Columbia, SC 29206

Robert E., Jr. & Barbara S. Williams
6737 Kaminer Dr.
Columbia, SC 29206

G. Carter Ellis & Joan T. Fraley
2309 Shull Fork Rd.
Gilbert, SC 29054

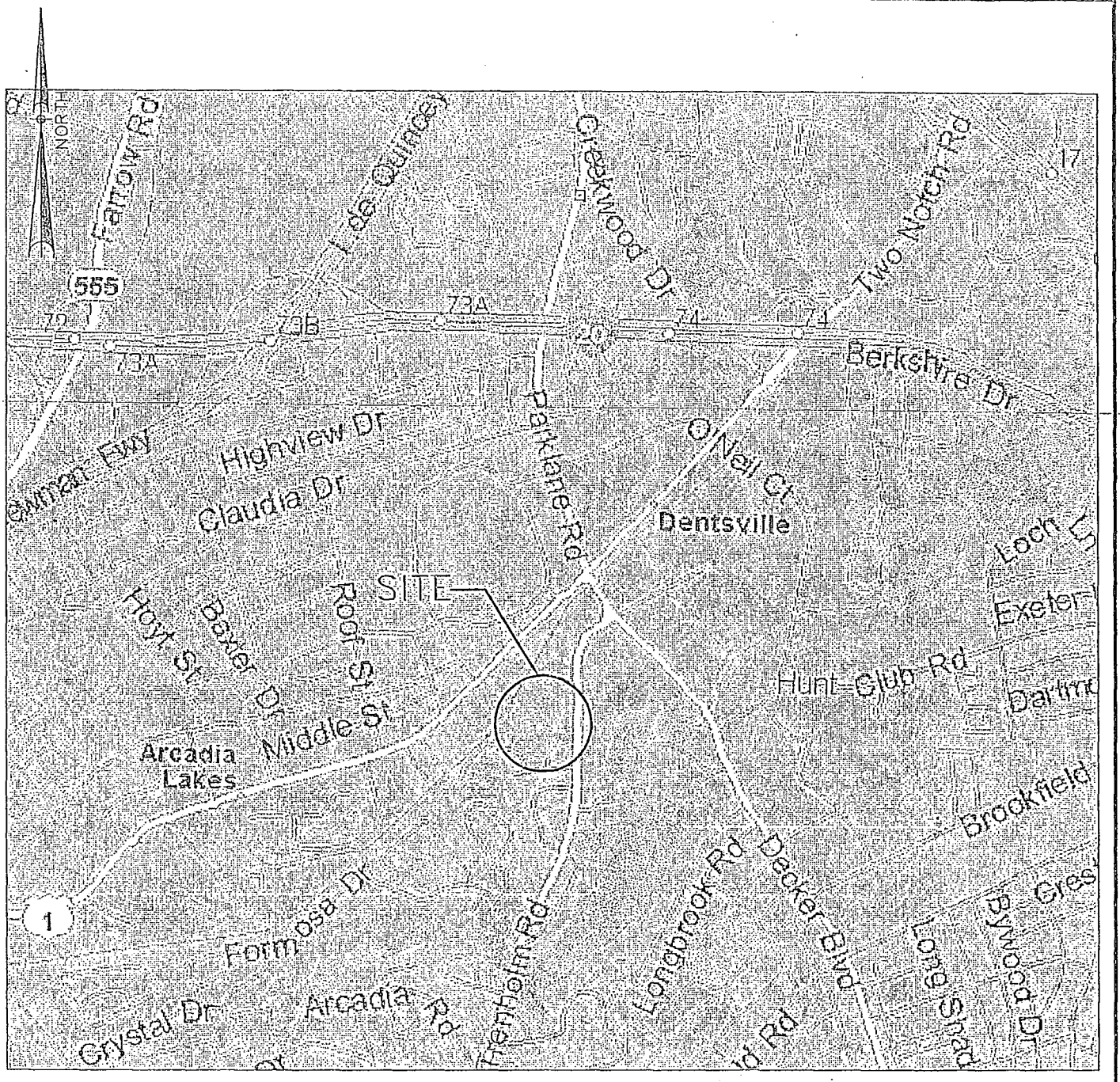
Thomas W. & Kimberly Shields
39 Huntwick Ct
Columbia, SC 29206

Aaron R. & Betty H. Small
33 Leawood Ct.
Columbia, SC 29206

Emma Jo & Murray Davis
20 Leawood Ct.
Columbia, SC 29206

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BPB Project # 05216



LOCATION MAP

NOT TO SCALE

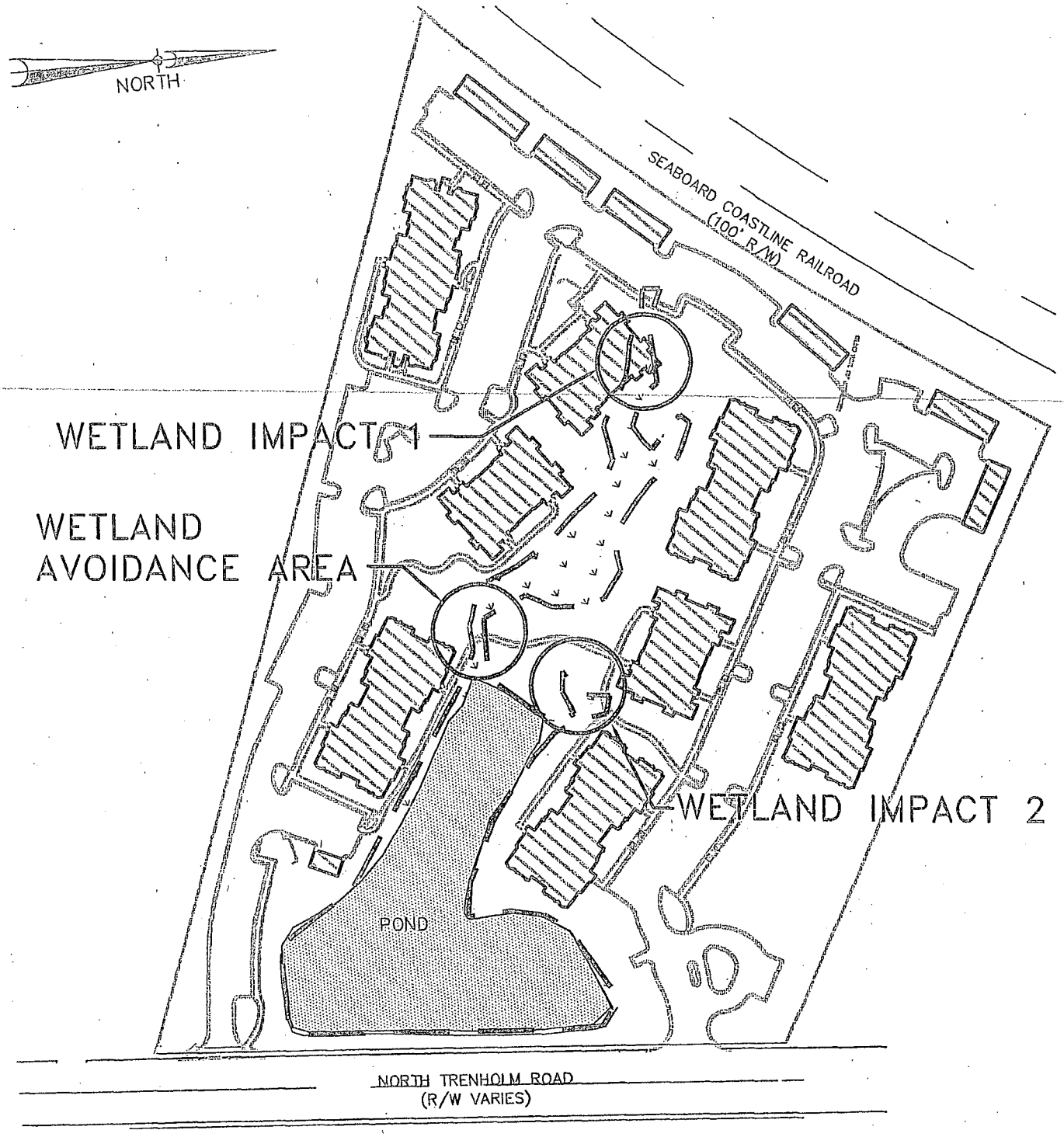
Project Title:	SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
Project Location:	RICHLAND COUNTY, S.C.
Applicant:	ESTATES, INC.
Authorized Agent:	BP BARBER Attn: George Whatley
Drawing Scale:	AS SHOWN
Date:	APRIL 2008
Application #:	000779
Sheet	of

Revisions

Date	Initials

BPB Project #05216

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OVERALL SITE PLAN

1" = 150'

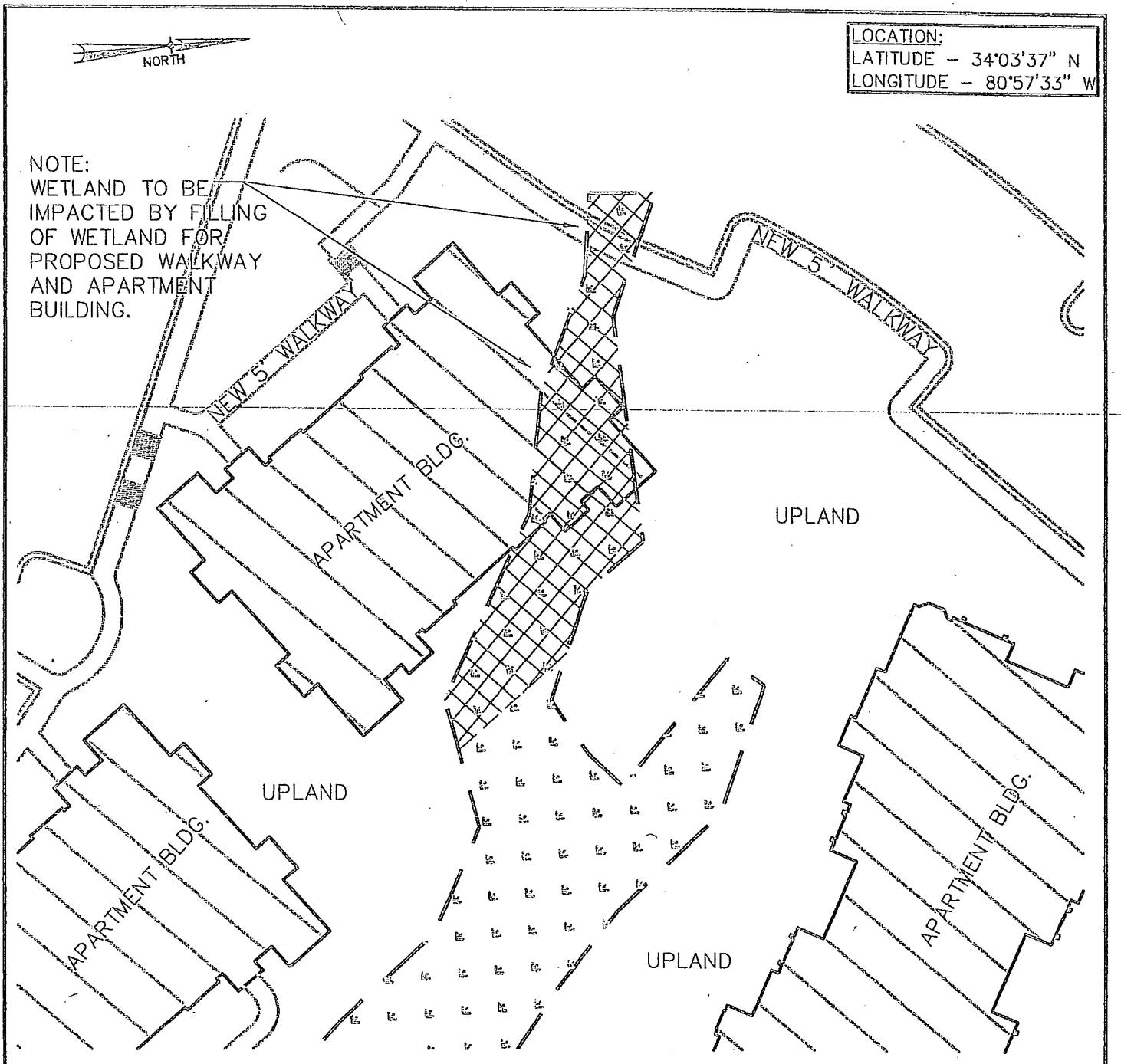
Project Title:	SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
Project Location:	RICHLAND COUNTY, S.C.
Applicant:	ESTATES, INC.
Authorized Agent:	BP BARBER Attn: George Whatley
Drawing Scale:	AS SHOWN
Date:	APRIL 2008
Application #:	000780
Sheet	of

Revisions

Date	Initials

BPB Project #05216

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WETLAND IMPACT #1

1" = 40'

TOTAL WETLAND IMPACT = 0.071 ACRES

LEGEND

IMPACTED WETLAND

WETLAND (NOT IMPACTED)

WETLAND BOUNDARY WB

Revisions

Date	Initials

BPB Project #05216

Project Title:
SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD

Project Location:
RICHLAND COUNTY, S.C.

Applicant:
ESTATES, INC.

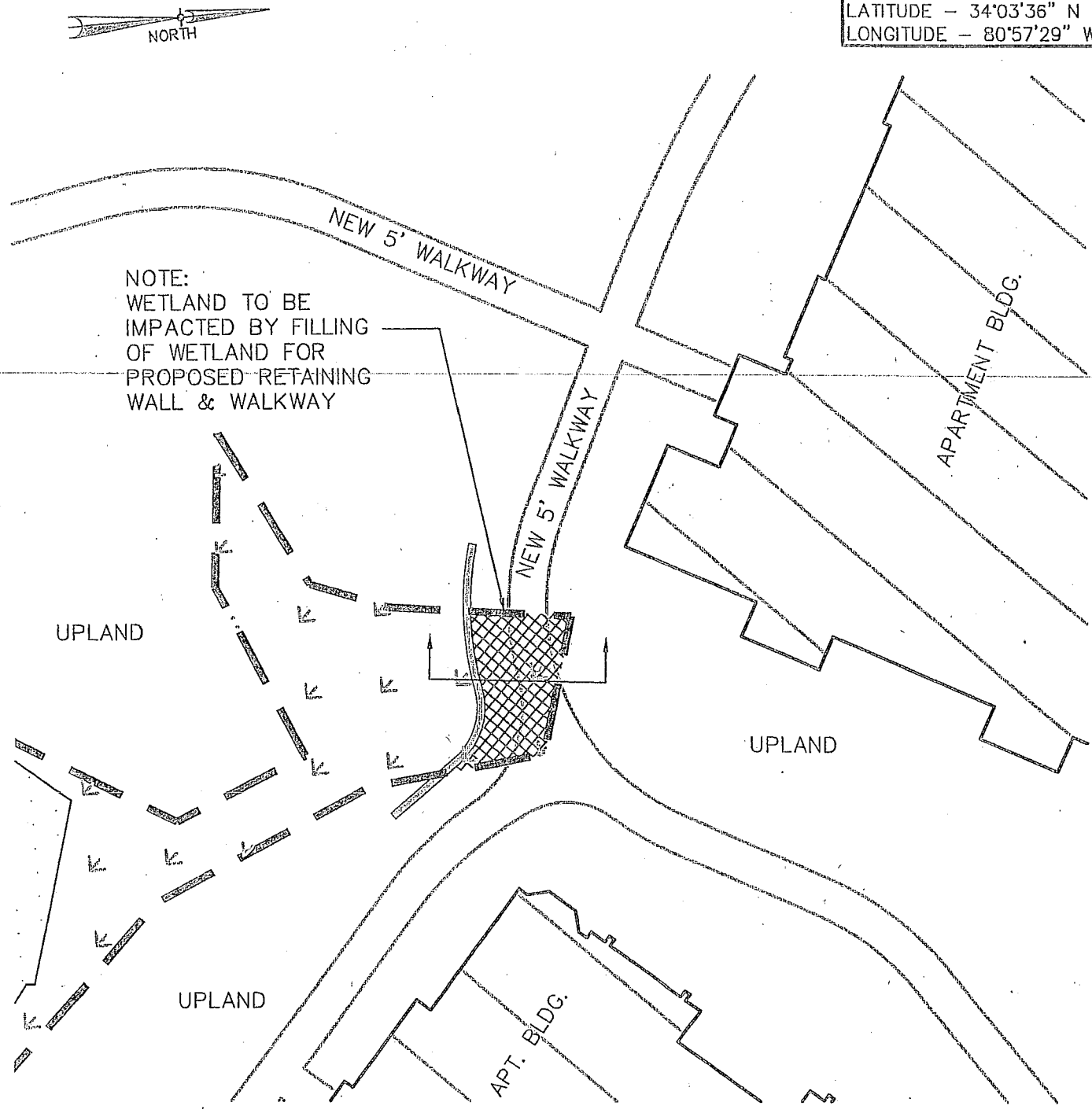
Authorized Agent: BP BARBER Attn: George Whatley

Drawing Scale: AS NOTED Date: APRIL 2008

Application #: 000781 Sheet of

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LOCATION:
LATITUDE – 34°03'36" N
LONGITUDE – 80°57'29" W



WETLAND IMPACT #2

1" = 20'

TOTAL WETLAND IMPACT = 0.004 ACRES

LEGEND

IMPACTED WETLAND

WETLAND (NOT IMPACTED)

WETLAND BOUNDARY: WB

BPB Project #05216

Revisions	
Date	Initials

Project Title:
SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD

Project Location:
RICHLAND COUNTY, S.C.

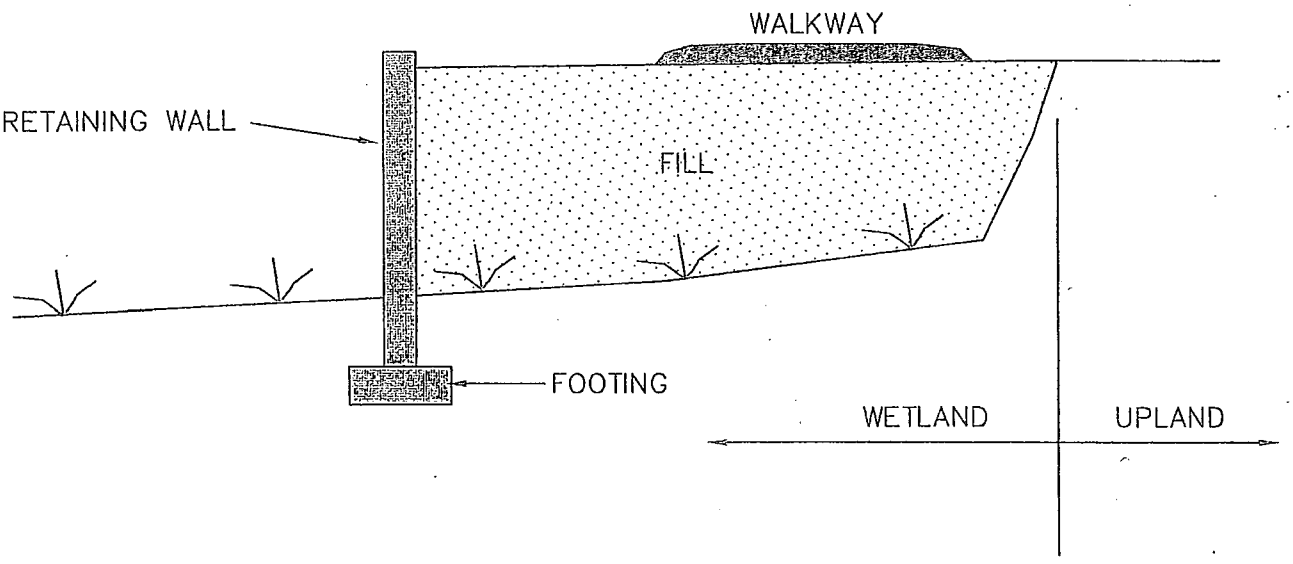
Applicant:
ESTATES, INC.

Authorized Agent: BP BARBER Attn: George Whatley

Drawing Scale: AS SHOWN Date: APRIL 2008

Application #: 000782 Sheet of

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CROSS SECTION
WETLAND IMPACT #2

NOT TO SCALE

Project Title: SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD	
Project Location: RICHLAND COUNTY, S.C.	
Applicant: ESTATES, INC.	
Authorized Agent: BP BARBER Attn: George Whatley	
Drawing Scale: AS SHOWN	Date: APRIL 2008
Application #: 000783	Sheet of

Revisions

Date	Initials

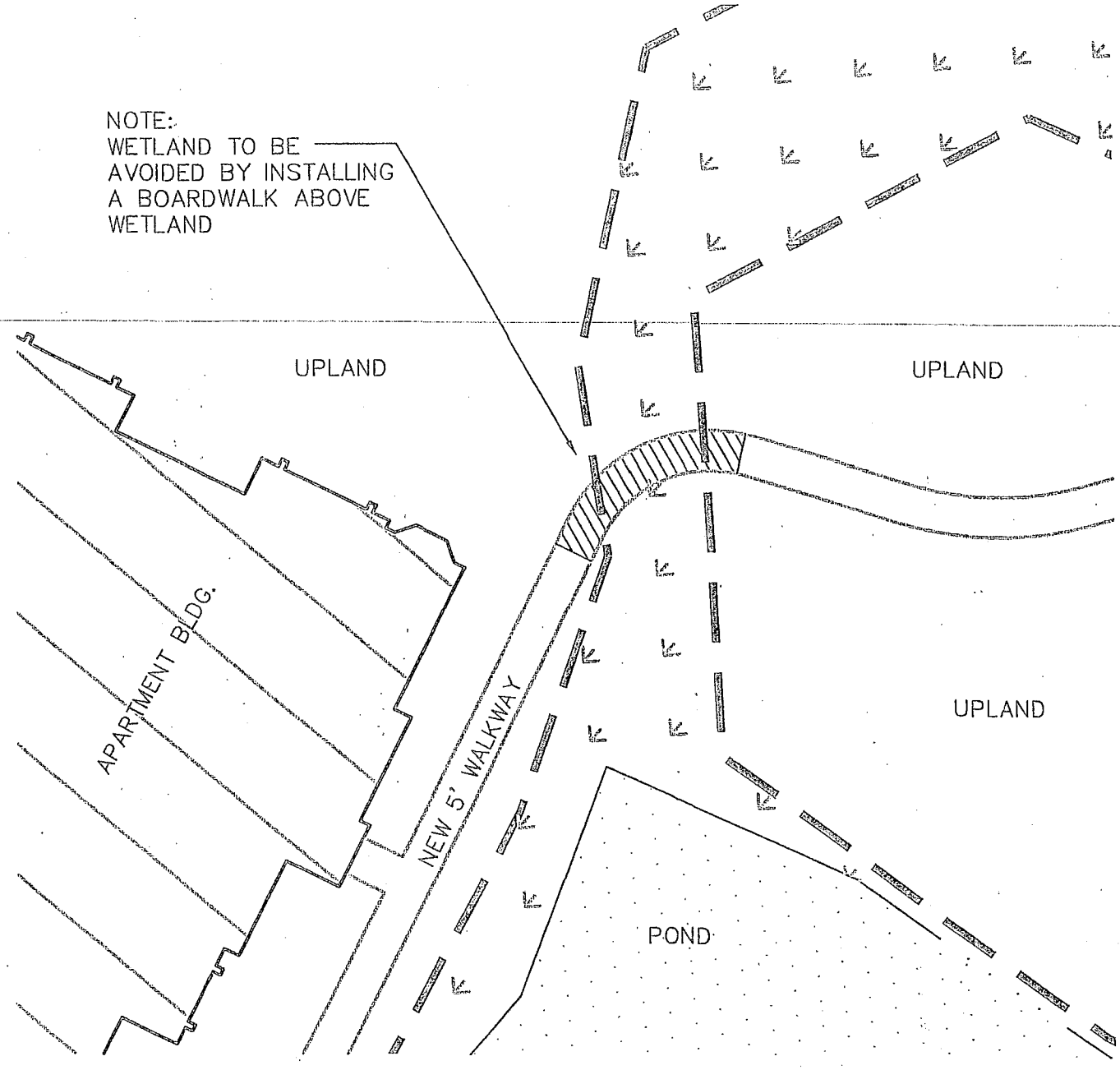
BPB Project #05216

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LOCATION:
LATITUDE – 34°03'34" N
LONGITUDE – 80°57'30" W

NORTH

NOTE:
WETLAND TO BE AVOIDED BY INSTALLING A BOARDWALK ABOVE WETLAND



WETLAND AVOIDANCE AREA

1" = 20'

TOTAL WETLAND IMPACT = 0.000 ACRES

LEGEND

BOARDWALK

WETLAND (NOT IMPACTED)

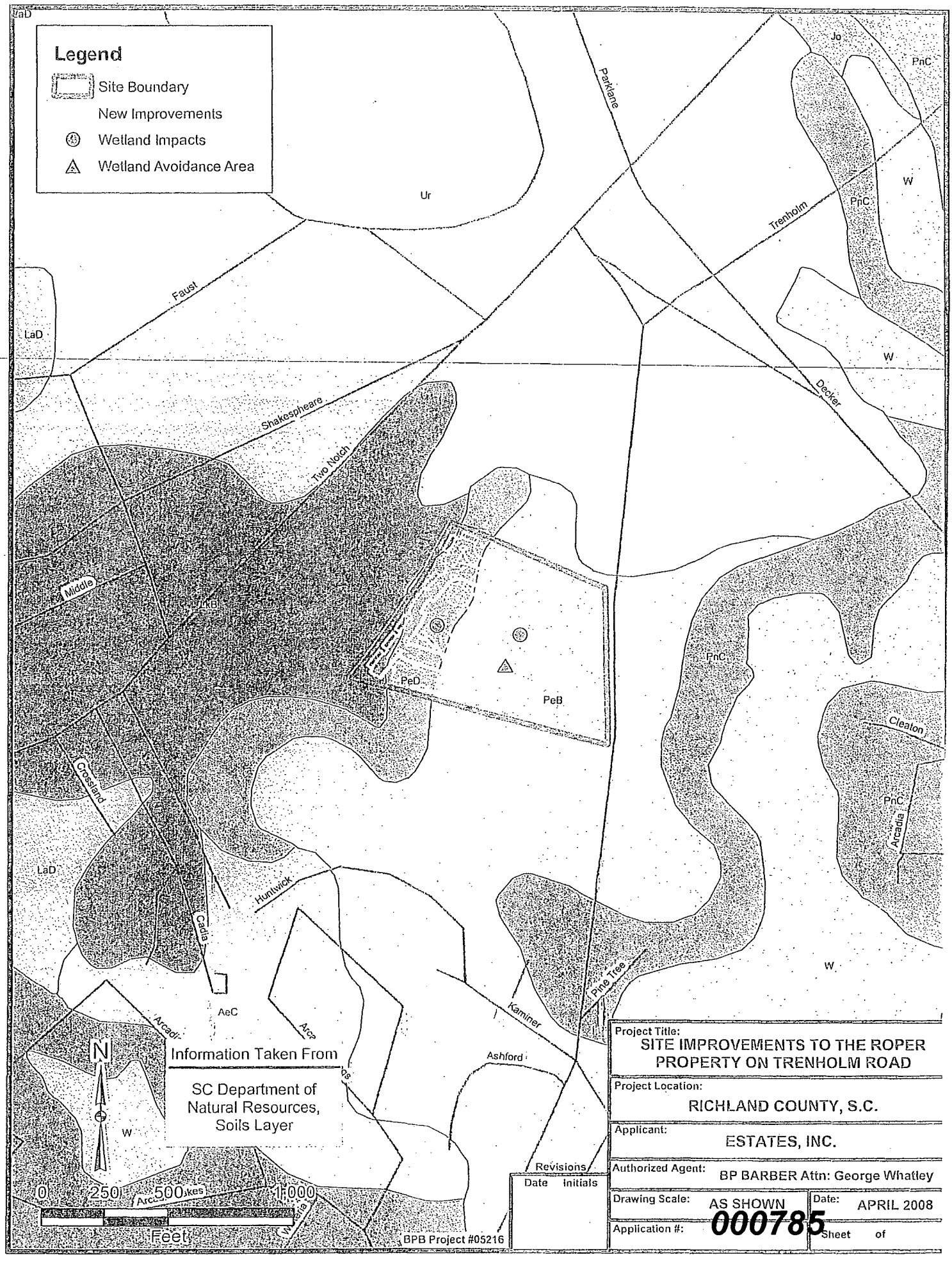
WETLAND BOUNDARY WB

BPB Project #05216

Revisions	
Date	Initials

Project Title: SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD	
Project Location: RICHLAND COUNTY, S.C.	
Applicant: ESTATES, INC.	
Authorized Agent: BP BARBER Attn: George Whatley	
Drawing Scale: AS SHOWN	Date: APRIL 2008
Application #: 000784	Sheet of

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Project Title:
SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD

Project Location:
RICHLAND COUNTY, S.C.

Applicant:
ESTATES, INC.

Authorized Agent:
BP BARBER Attn: George Whatley

Drawing Scale: AS SHOWN

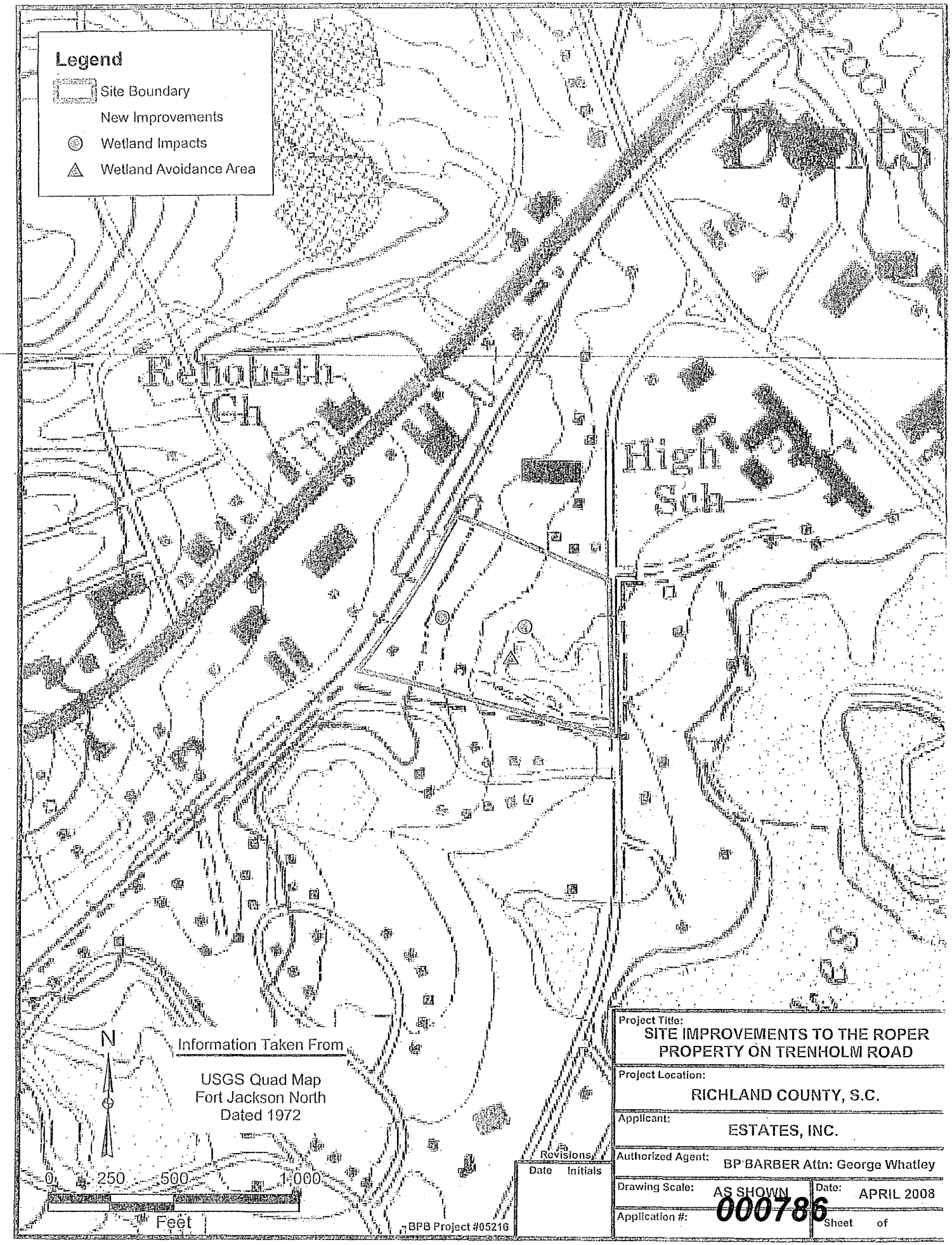
Date: APRIL 2008

Application #: 000785

Sheet of

Revisions
Date Initials

BPB Project #05216



BPB Project #05216

Revisions
Date Initials

Project Title:
SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD

Project Location:
RICHLAND COUNTY, S.C.

Applicant:
ESTATES, INC.

Authorized Agent:
BP BARBER Attn: George Whatley

Drawing Scale: AS SHOWN

Date: APRIL 2008

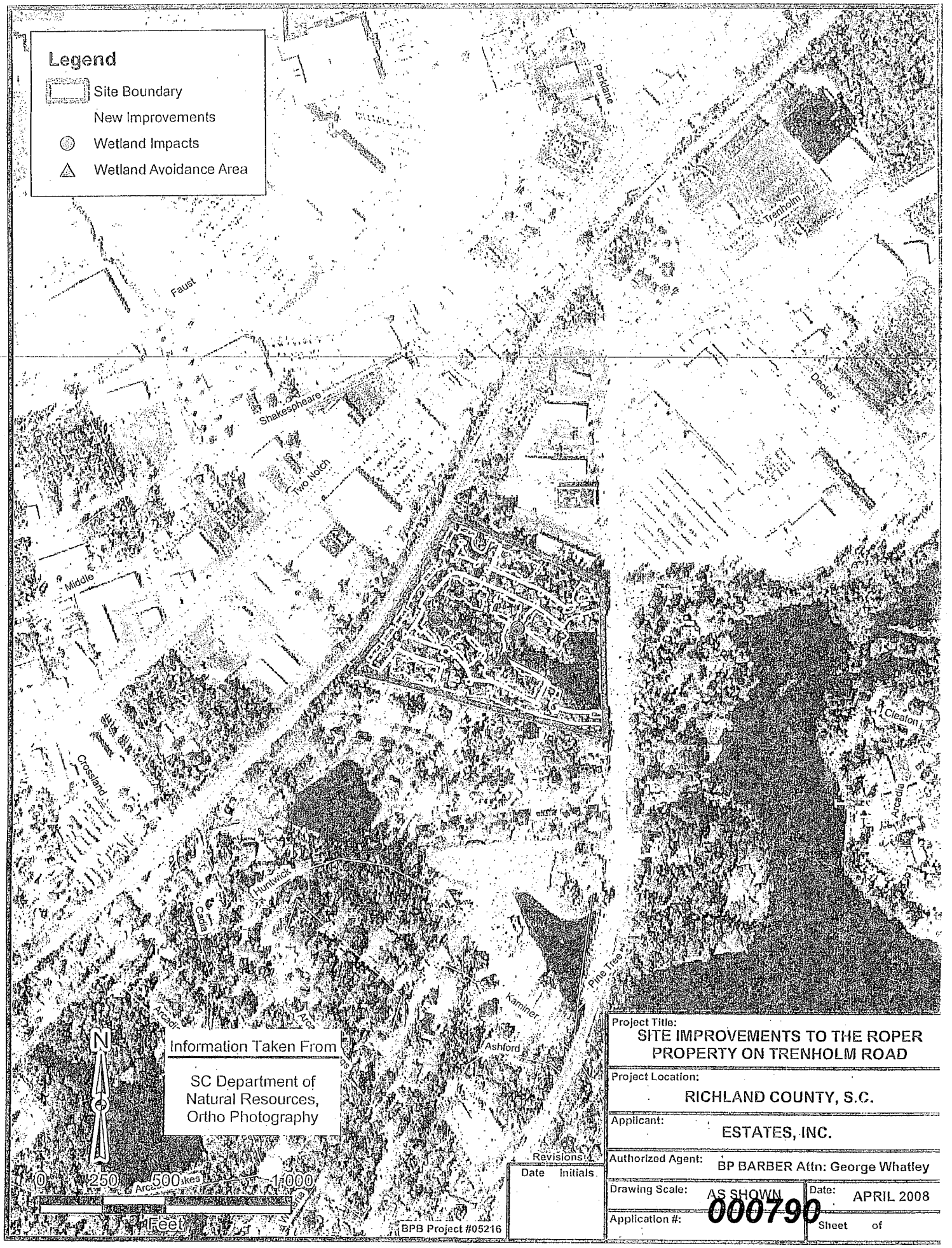
Application #: 000786

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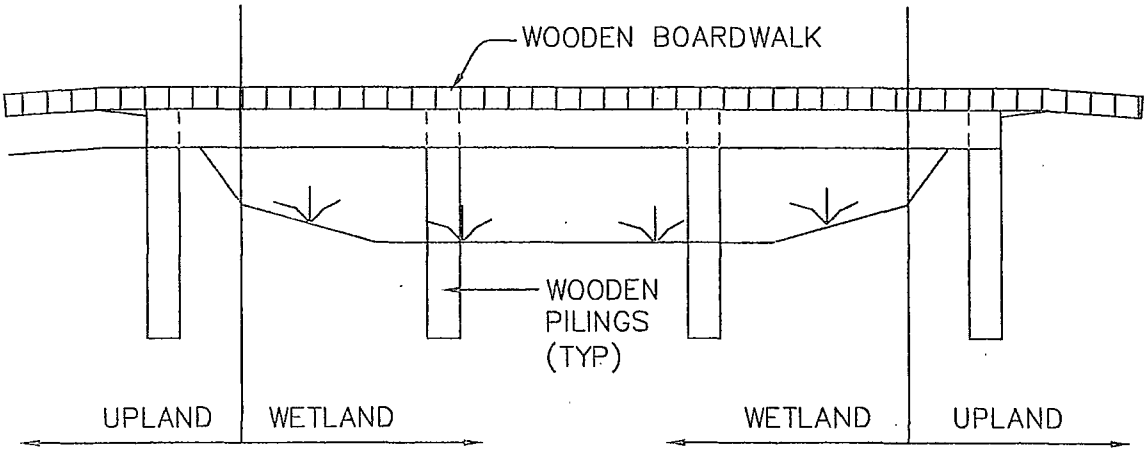
Date: APRIL 2008

Application #: 000790

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CROSS SECTION
WETLAND AVOIDANCE AREA

NOT TO SCALE

Project Title:	SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
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Applicant:	ESTATES, INC.
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Application #:	000791
Sheet	of

Revisions

Date	Initials

BPB Project #05216

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Roper Prop 1

Matt Mundy

From: Jim Futter [jfutter@BPBarber.com]
Sent: Thursday, February 26, 2009 7:25 PM
To: mmundy@estatesinc.com; 'bmundy@estatesinc.com'; 'thodge@estatesinc.com'
Subject: wetland permit and Colt Bowles information

Here is the information you are looking for from Colt Bowles at the Corps.

-----Original Message-----
From: Bowles, Colton B SAC [mailto:Colton.B.Bowles@usace..army.mil]
Sent: Wednesday, February 25, 2009 11:12 AM
To: George Whatley
Subject: RE: Improvements to the Roper Property on Trenholm Road - SAC 2004-35601-6NO

With respect to lowering the pond, it is not considered an impact.

Excavation of non section 10 waters is exempt from permitting provided that the excavation is directly placed in a truck or deposited onto uplands. No double handling or stockpiling in jurisdictional areas.

-----Original Message-----
From: George Whatley [mailto:gwhatley@BPBarber.com]
Sent: Wednesday, February 25, 2009 9:59 AM
To: Bowles, Colton B SAC
Cc: Jim Futter
Subject: FW: Improvements to the Roper Property on Trenholm Road - SAC 2004-35601-6NO

Good morning Colt. Below is a copy of the e-message that I sent you on January 6, 2009. I will also send you a copy of my request dated February 4,
2009 so you will not have to search for our e-mail correspondence. We have also had several telephone conversations relating to the items listed below.
We are requesting the following from you:

1) Please issue a corrected letter which indicates that the impacts are covered under a Nationwide Permit #29 rather than a Nationwide Permit # 39.

2) Also, I called you after I learned that the owner plans to lower the elevation of the pond and asked you if that was an impact. You indicated that the pond could be lowered (or the dam could actually be breached) and this would not be an impact .

3) We also discussed removal of soil / sediment from the bottom of the pond (material to be discharged into uplands) in which you also indicated that this would not be an impact.

We respectfully request that you re-issue the letter described in item 1 and that you e-mail me or send me a letter that supports items 2 and 3. Time is of the essence. We respectfully request your immediate attention to this most important matter.

George Whatley
Senior Design Associate II
BP Barber
Phone: (803) 254-4400

From: George Whatley
Sent: Tuesday, January 06, 2009 8:15 AM
To: 'Colton.b.bowles@USACE.Army.mil'

000792
RP 0138

Subject: Improvements to the Roper Property on Trenholm Road - SAC 2004-35601-6NO

Good morning Colt. The referenced project was covered under a Nationwide Permit issued by you on September 9, 2008 . As you probably remember, I called you upon submittal to ask if lowering the onsite pond elevation was considered an activity requiring a permit. You informed me that we could draw down the pond or completely breach the dam without a permit (however, any other onsite activities within Waters of The US require a permit). Our Project Engineer, Jim Futter, has requested that you verify this by replying to this e-message so that we may have a copy for our file. If you have questions relating to this project, please do not hesitate to call.

Thanks.
George Whatley
Senior Design Associate II
BP Barber
Mailing Address: P.O. Box 1116, Columbia, SC 29202-1116
Physical Address (UPS/FedEx Only): 101 Research Drive, Columbia, SC 29203-9389
Phone: (803) 254-4400; Fax: (803) 771-6676

Jim Futter
Senior Project Manager
BP Barber
Mailing Address: P.O. Box 1116, Columbia, SC 29202-1116
Physical Address (UPS/FedEx Only): 101 Research Drive, Columbia, SC 29203-9389
Phone: (803) 254-4400; Fax: (803) 771-6676
www.bpbarber.com

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Think Green. Print Responsibly.

000793
RP 0139

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

TOWN OF ARCADIA LAKES, ROBERT L. JACKSON, LINDA Z. JACKSON, ROBERT E. WILLIAMS, JR., BARBARA S. WILLIAMS, ELIZABETH M. WALKER, LOUIS E. SPRADLIN, MARY HELEN SPRADLIN, THOMAS HUTTO UTSEY, TONY SINCLAIR, AARON SMALL, BETTE SMALL, GENE F. STARR, M.D., ELAINE J. STARR, SANFORD T. MARCUS, RUTH L. MARCUS, and STEVEN BROWN,

Petitioners,

vs Case No. 09-ALC-07-0069-CC

SOUTH CAROLINA DEPARTMENT OF HEALTH and ENVIRONMENTAL CONTROL and ROPER POND, LLC,

Respondents.

_____/

D E P O S I T I O N

WITNESS: RICHARD W. THOMAS, JR.
DATE: Wednesday, August 19, 2009
TIME: 1:55 p.m.
LOCATION: Law Offices of Nexsen Pruet, LLC 1230 Main Street, Suite 700 Columbia, South Carolina
TAKEN BY: Attorneys for the Respondent(s)

REPORTED BY: SONIA I. MENDEZ, Certified Court Reporter

COMPUSCRIPTS, INC.
A Full-Service Court-Reporting Agency
Post Office Box 7172
Columbia, South Carolina 29202
803.988.0086

APPEARANCES:

ATTORNEYS FOR PETITIONERS:

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jchandler@scelp.org

ATTORNEYS FOR RESPONDENTS:

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BY: JOAN W. HARTLEY, ESQ.
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803.771.8900
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hbrown@nexsenpruet.com

ATTORNEYS FOR SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL:

OFFICE OF GENERAL COUNSEL
BY: STEPHEN P. HIGHTOWER, ESQ.
2600 Bull Street
Columbia, South Carolina 29201
803.898.3349
803.898.3367 Fax
hightosp@dhec.sc.gov

ALSO PRESENT:

Teresa Hodge, Roper Pond, LLC
Charles H. Cook, Esq., Town of Arcadia Lakes Attorney

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION: It is stipulated by and among Counsel that this deposition is being taken in accordance with the Federal Rules of Civil Procedure; and that the deponent waives reading and signing of this deposition.

- - - - - - - - - - - - - - - - - - -

RICHARD W. THOMAS, JR., being first duly sworn, testified as follows:

EXAMINATION

BY MR. BROWN:

Q. Would you state your full name and residence address, please.

A. My full name is Richard Warren Thomas, Jr. I reside at 27 Huntwick Court in the Town of Arcadia Lakes.

Q. Mr. Thomas, you and I met a little bit before this started. I'm Henry Brown. I work at Nexsen Pruet. I represent Roper Pond, LLC.

You understand that you're here for a deposition today in connection with an action before the Administrative Law Court regarding Roper Pond?

A. I do.

Q. There are a couple of things that I'm supposed to tell you by rule, and let me run

through those, if I can. If I ask you a question that doesn't make sense, which is highly probable, or you are confused by anything that I say or any question that I ask, please ask me to clarify it.

Under the rules, you are to direct those questions of clarification to me and not to your attorney. So you are always entitled to ask for a clarification, or an explanation, or any further statement as long as you understand my -- to the point that you understand my question.

Do you understand what I'm asking you to do?

A. Yes.

Q. If you need to take a break at any time, please tell me. If you need to look at documents in furtherance of your answer, please let me know. I have documents here and I may be able to provide it to you.

You are entitled to and I would ask you, if it will help give a complete and full answer, would you refer to documents?

A. Yes.

Q. Have you ever given a deposition before?

A. No, I have not.

Q. One of the purposes of this deposition is to create a written record of what we are saying. I will try to make my questions clear. Your answers need to be in "yeses," or "nos," or other means of which it will be clear in writing later what your answer was.

In our conversation we can carry on very well with yeses, and uh-huhs, and uh-huhs, and nods of the head, but those will not show up later in a written transcript. So I would ask you, if you would, please answer clearly, affirmatively, and in a matter that will be clear in writing.

Would you do that for me?

A. Very well.

Q. Now, I understand that you are the mayor of the Town of Arcadia Lakes?

A. Yes, I am.

Q. And I understand that the Town of Arcadia Lakes is a petitioner in the proceeding that we are here to take this deposition regarding.

A. That's right.

(EXH. 1, Notice, was marked for identification.)

Q. Now, we sent your attorney a Notice of Deposition that I want to ask the court reporter to

mark as Exhibit 1.

Do you have a copy of that already, Mr. Thomas?

A. Yes, I do.

Q. Just for the record, let me ask you to use -- look at Exhibit 1, and see if it's the same as the copy that you have.

A. Yes, it is.

Q. For the record and so there will be no confusion, I would ask that you refer to that Exhibit 1 in connection to my questions. And if for any reason you need to look at your copy to refresh your recollection or answer, you're certainly entitled to. But just let me know if you do that.

A. Okay.

Q. Have you reviewed that deposition notice in connection with the subject matter of what we're talking about today?

A. Yes, I have.

Q. Do you understand that you are here to testify on behalf of the town in connection with this proceeding?

A. Yes, I do.

Q. Do you understand that your testimony

is to provide answers not limited to your own personal knowledge, but to include knowledge or information available to the town?

A. Yes.

Q. And have you prepared yourself to give answers on behalf of the town that include information available to the town?

A. Yes. And I have taken the liberty of putting some notes together for myself.

Q. Okay. Do you have those notes?

A. I do.

Q. Okay. Do you intend to use those notes in connection with your testimony?

A. I do.

Q. Could I take a look at them?

A. Would you like a copy?

Q. Yes, sir, if you could. All right. Do you have an extra copy?

A. Yes, I do.

MR. BROWN: With your -- I'd like to mark this as Exhibit 2, these notes, if I can.

(EXH. 2, Notes, was marked for identification.)

BY MR. BROWN:

Q. Do we have an extra copy of the notes

by any chance, so the witness can use the marked copy?

A. Who needs it?

Q. Well, I was just going to try to use it as --

A. Okay. That's fine. I don't need this. Do I need this?

Q. If you refer to a copy -- would you look at the copy that's marked and tell me if that's identical to this --

A. Yes, I've prepared it. Yes, sir, it is.

Q. For the record then, when you refer to those notes, I'd like for you to refer to what's marked as Exhibit 2.

A. Here you go.

Q. And if you need to look at any other documents, please do so. It's just that in a week or two from now, we will be confused in the written record if we're not clear as to what you're looking at at the moment.

A. Very well.

Q. And what you have handed me as Exhibit 2 is an identical copy as what the court reporter marked as Exhibit 2?

A. Yes.

Q. The other thing I'd ask, and I'll try to do it, is that we not talk over the top of each other because this lady's going to fuss at both of us. She can't write down two people talking at one time.

If you can let me finish my questions and then you'll finish your answers and we'll talk separately, she'll have an easier day.

A. Okay.

Q. Now, what was -- let me go back to Exhibit 1. There are certain categories of subject matters that were to be discussed in the deposition.

A. Yes.

Q. Do you see those?

A. Yes.

Q. Are you prepared to give full and complete answers on behalf of the town as to those categories?

A. Yes, to the best of my ability.

Q. Tell me what you looked at document-wise in preparation for this deposition. Physical documents, what did you look at? What did you read specifically in preparation for this

deposition?

A. I read your questions. What was written on the deposition of the Town of Arcadia Lakes.

Q. Okay. Now, does the town maintain a file specifically in regard to this proceeding?

A. The one of the proceeding today?

Q. Yes, sir.

A. This deposition?

Q. No. Well, let me go back. The issue of the development of the Roper Pond property has been around for a couple of years, correct?

A. Yes.

Q. And the town has taken a position with, not only DHEC, but Richland County or other agencies in regard to whether that project should proceed or not, correct?

A. That's correct.

Q. From the beginning of the town's opposition to this project, has it maintained a separate repository for documents that pertain to its opposition to this project?

A. I believe that is true. I have not gone into the actual town files to verify that, but I believe that we do have a file on that.

Q. Who is the -- who personally has maintained that file?

A. Our town clerk Ms. Christine Murphy.

Q. Has that file been produced to Roper Pond, LLC in connection with this proceeding?

A. As far as I know.

Q. "Yes," as far as you know, or "no" as far as you know?

A. As far as I know, yes. I think y'all asked for that, I believe.

Q. Now, have you independently of the file maintained by your clerk, have you personally kept any files or records pertaining to this opposition to this project?

A. I've kept all of the files that were given to the County and to Roper, LLC during these proceedings.

Q. Do you know if any of the other Town Council, men or women, have kept files pertaining to this proceeding?

A. I do not know.

Q. Have you investigated to see if they did?

A. No, I have not.

Q. Are you familiar with what is in the

files maintained by the town?

A. They should be identical to the files that I have copies of, yes.

Q. As far as you know, are there any files or documents pertinent to this proceeding that you have not reviewed at some point in time prior to this deposition?

A. Not that I can attest to.

Q. And as far as you're concerned, do you understand that when you're answering, you'll be answering on behalf of the town and not just on behalf of Rick Thomas personally?

A. Correct.

Q. Let's talk about you personally. What is your -- just give me a quick summary of your educational background.

A. I have a bachelor's of science in civil engineering, a master of -- master of engineering. I have extensive work in master's of business administration. Did not finish the master's of business administration. I have done extensive marketing work at Columbia University in New York. And I have worked with South Carolina Electric & Gas for going on 35 years in various operations and engineering jobs.

Q. All right. Not to be impolite, but what year did you get your civil engineering degree?

A. I got my Bachelor of Science degree in 1970, and my master's degree in 1997.

Q. What institutions did you get your degree in?

A. University of South Carolina.

Q. Was there a period of time between your degree in '70 and '77 that you were employed?

A. The entire time.

Q. Who were you working for?

A. I worked for Duke Power in 1971. I worked for Wilbur Smith Associates in 1973, and I started working for South Carolina Electric & Gas in June of 1974.

Q. You've been with SCE&G since '74?

A. That's correct.

Q. And you obtained your masters while you were employed by them?

A. I went to school at night for seven years. That's correct.

Q. Now, your BS in civil engineering, did you have any emphasis or specialty in that degree, any concentration or study within that degree?

A. My primary concentration in that degree was in structural and foundation engineering.

Q. What about your masters?

A. My master's degree was based on structures of mechanics and environmental.

Q. Now, when you say "environmental," help me understand what in detail that involved.

A. That entailed work in air and water pollution, and in general environmental.

Q. Now, let's go back. You worked for a while at Duke. What was your responsibility there? What did you do for them?

A. I was in nuclear plant design at the Duke Plant.

Q. Foundation, structure?

A. Primarily structural.

Q. What facility did you work on?

A. I worked on the finals of Oconee and on McGuire Nuclear Station, Lake Norman.

Q. And from Duke you went to --

A. Wilbur Smith.

Q. What did you do for Wilbur Smith?

A. I worked in parking garage design.

Q. And when you came to Electric & Gas

what were your -- you worked as an engineer for Electric & Gas?

A. That's correct. I've been in transmission engineering, materials and standards, operations, key account management.

Q. Transmission would be -- I assume that's electrical transmission, power transmission?

A. I did total design on transmission lines and design, which included environmental necessity, included layout, included surveying, included structural design, included material order, included overseeing construction.

Q. All right. It sounds like at some point you went out of the pure practice of engineering and into management.

A. Management or into overseeing operations. For instance, when I was general manager of Columbia, I was over engineering for the entire northern division. I was over operations which included every day activities of maintenance design and over customer service, which included all the call centers.

Q. Would your management responsibilities include those outside of the discipline of engineering? Is that fair?

A. Oh, yeah, all inclusive.

Q. What year -- all right. From '74 forward, you would have been with Electric & Gas?

A. 35 years. That's correct.

Q. At what point did you cease to be -- and I'll call it -- a pure design engineer? That is designing structures, transmission lines, transmission towers, and then you moved into more of a management activities.

When did that occur?

A. Somewhere in the early '90s, but during that time you're still overseeing and signing off on the engineering and operations plans and procedures.

Q. So from '74 to the early '90s, you are a practicing engineer designing transmission structures or other physical facility for Electric & Gas?

A. That's correct. I still maintain a license to practice engineering in the state of South Carolina.

Q. And that license is in the field of civil engineering?

A. That's correct.

Q. You are a registered professional

engineer?

A. That's correct.

Q. During this time, did you ever seal documents?

A. Yes.

Q. You sealed the -- were you the engineer in charge, then, on a number of these projects that related to the design of transmission facilities?

A. Clarify that.

Q. Well, I assume that for a period of time you didn't seal. You worked under the authority of the city engineer.

A. Well, there are two different questions here. One, we don't have to seal documents at South Carolina Electric & Gas. I have sealed documents in the outside personal private ward, on the side.

Q. Okay.

A. So there are two different answers to that one. I don't -- it's not necessary to seal documents at South Carolina Electric & Gas.

Q. Well, that's what confused me. You answered yes, that you had sealed documents. And I was curious to what you would have sealed.

Now, let me make sure I understand. Do you maintain a business for compensation independent of your employment for South Carolina Electric & Gas?

A. Not in the field of engineering.

Q. When did you have the occasion to seal engineering drawings independent of your work for Electric & Gas?

A. I don't -- I have never had to seal drawings for Electric & Gas, because we don't fall underneath the necessity to seal according to the Registered Engineering Board of South Carolina.

Q. Then I may have been confused. Have you personally ever applied your seal to a set of drawings taking for personal and professional responsibility for the contents of those drawings in any capacity?

A. Yes.

Q. What is that capacity? When?

A. I did some -- I performed engineering -- practiced engineering in my spare time during the '70s, and sealed drawings for various clients in the area of structures.

Q. You had a business or you worked as an engineer independent of your employment by

Electric & Gas?

A. That's correct. Outside of the employment.

Q. How many years did you do that?

A. For about two or three years.

Q. What were the kind of structures that you designed that you would have sealed -- you put your personal engineering seal during that time?

A. Commercial type buildings and/or water structures, water retention structures.

Q. Tell me exactly what you mean by "water retention." Earth and dam?

A. No. I developed for some catch basin structures for engineering over in Florence.

Q. And who was that?

A. Richard Spielman, Jim Helm (phonetic).

Q. It was a spillway?

A. It was an outward structure for a pond where you have boards. You take the boards out to lower the pond, and you put the boards back in to raise the pound.

Q. What other projects did you have outside of that one that you've put your own personal engineering seal on?

A. I can't recall any at the present

time. That's been many years back.

Q. What percentage of your time since 1990 has been involved with overseeing -- let me back up and ask this question.

Since 1990, have you been an engineer sitting on the board calculating drawings or are you more of an oversight of that activity?

A. Primarily oversight, yes.

Q. What are the activities that you are providing oversight to in your current capacity?

A. In my current capacity, I manage and oversee 50 key accounts for South Carolina Electric & Gas.

Q. Does that involve any engineering work?

A. Oh, yes. In any capacity between that customer and SCE&G, I'm the primary contact.

Q. And the structures that require engineering services, give me some overall description of what they are.

A. When?

Q. In this current capacity --

A. I don't have structural.

Q. What are the engineering services that are required in regard to these 50 major accounts?

A. An example would be, a customer is coming onto our system and that customer goes through economic development and is at a point of signing a new contract. I would work with economic development to sign a new contract, electric service contract for that customer. And then help coordinate the actual service needs in getting the power to that customer. What his power needs would be, and how his billing would be worked. Those type of things.

Q. Tying him into your system?

A. Correct.

Q. Prior to 1990, did you have those same type of activities?

A. Yes. In 1984 -- from 1984 to 1990, I started -- was called -- our department was called industry relation and contracts.

Q. And what is involved in that responsibility?

A. I managed the top 50 customers underneath the president of the company.

Q. By "managing," I assume you're taking on --

A. Exactly what I'm doing today.

Q. But it involves many phases of work

outside of engineering?

A. Correct.

Q. Customer relations?

A. Correct.

Q. Billing?

A. Correct.

Q. Customer happiness?

A. Hopefully.

Q. Okay. We all hope for that.

Have you ever had any -- well, let me back up. Are you familiar with the design prepared by BP Barber for the Roper project -- Roper Pond project?

A. I'm fairly familiar with it. I haven't seen the final drawings -- the absolute final drawings, but I've turned -- all that activity has been turned over to our attorney Mr. Chandler.

Q. Have you seen the set of drawings upon which DHEC issued its certification letter?

A. I have seen those drawings, but I have not studied those drawings.

Q. Have you ever, in your professional career, worked on a set of civil drawings similar to the BP Barber drawings at issue?

A. Can you clarify the word "similar," because I've worked with engineering drawings of every which kind. But I mean, that's --

Q. All right. Well, let me get you to do this, you have seen those drawings. How would you describe them? Maybe you can tell me what you understand those drawings to be.

A. Well, you have plan and profile, and you've got layout, and you've got environmental, and you've got drainage. And you've got -- there are dozens of drawings in that.

Q. Okay. They're site drawings?

A. Correct.

Q. Civil site drawings?

A. And some drawings that we were shown actually showed the actual structures and architectural-type drawings.

Q. Is it your understanding that the actual structures and the architectural drawings have no bearing on the issues before the Administrative Law Court?

A. Ask that question one more time.

Q. Is it the Town of Arcadia Lakes contention that there is any aspect of the architectural drawings that you just referred to,

that bear upon your position, the town's position, that the permit was improperly issued?

A. I still don't understand.

Q. You have looked to some extent at the BP Barber drawings, correct?

A. That's correct.

Q. Would it be fair to say that those drawings, in part, create the system by which stormwater will be collected and disbursed off of the property?

A. Correct.

Q. Have you in your career ever had any hands on experience, as an engineer, with creating that type of drawing?

A. Not to my knowledge.

Q. Do you know what calculations are required of a civil engineer in order to determine whether or not his design is adequately managing stormwater off an improved site?

A. I'm aware of many of the needs that are required in order to provide stormwater retention and --

Q. All right. I understand the needs. What do you call "the needs"? All right. Help me with that. Help me understand your definition of

"needs."

A. Well, in my studies in graduate school with waste water treatment and disposal, there are certain areas of BOD and oxygen demand, et cetera, that have to be maintained in order to --

Q. Aren't the waste water -- isn't the waste water collection system going into the sanitary sewer system and not into Roper Pond? Can we agree on that?

A. The sanitary sewer system from --

Q. -- that is designed to be constructed on the apartments at Roper Pond, that system will feed into the County wide sanitary sewer system, correct?

A. The parts coming out of the individual apartments. Am I clear on that?

Q. Do you have an understanding of the sanitary sewer system that is involved in the BP Barber drawings?

A. Yes. There are two sets of drawings. One is the run off on the surface, and one is the actual disposal of the water that's coming out of the individual apartment complex.

Q. What happens to the water that's coming out of the individual apartment complex?

A. It goes into the East Richland County Public Service District.

Q. Into their pipes?

A. That's correct.

Q. Does the Town of Arcadia Lakes contend that there is any error in those drawings that would be a ground to rely upon in having DHEC revoke the permit?

A. We had concerns in the very beginning that there was a possible overflow potential, which we have had in our town in the past several years from that very problem.

Q. In this proceeding, is the Town of Arcadia Lakes contending that the BP Barber design, as it relates to the sanitary sewer system, is a basis to ask DHEC to revoke the permit?

A. In my knowledge, I do not know. I do not know of that, but I would defer that to our attorney, Mr. Chandler, who's provided the filings in this case.

Q. Well, assuming that Mr. Chandler won't get to testify and that you're the representative of the town.

Are you aware of any information that is available to the town that says there is any

problem with the sanitary sewer system designed by BP Barber sufficient to require the revocation of the permit?

A. Not to my knowledge.

Q. All right. Now, let's step over into the second set of drawings that you described, and that is the BP Barber drawings that collect the stormwater, rain water, and manage it from Roper Pond over into Cary Lake.

Is that a fair way to describe it?

A. Under North Trenholm Road, yes.

Q. Well, one thing -- I'm not trying to pin you down. I'm just trying to make sure that we've got a good system here.

A. You're referring to surface water?

Q. Yes. I just want to make sure you and I -- when I use terms, I'm using them in the -- my understanding and your understanding are the same. I just want us to first come up with a set of common terms.

What is the -- your comfortable description -- what are you comfortable with in describing the BP Barber drawings that are managing the stormwater run off? What's a common word that I can use that will describe that to you?

A. Surface water disposal system.

Q. And is it in that -- are there problems in that system that the town is asserting as a basis to revoke the permit?

A. I'd refer to Mr. Chandler's filings on that. You should have Mr. Chandler's pleadings as to what the actual issues are in the case.

Q. Well, we'll go to those, but I've got to get my -- the positions of the town are coming from you. I need to understand what the town knows through you.

You understand that, don't you?

A. Right. But I'm not a legal expert in this case. That's why we've hired Mr. Chandler to take on the legal aspects of this.

Q. I understand. But I'm going to ask you about the factual aspects first, though. And I think I'm entitled to get from you the facts and positions of the Town of Arcadia Lakes.

Now, can you give those to me?

A. "Water quality is paramount to the citizens of Arcadia Lakes," and I will refer to Exhibit 2. "This is evidenced in our work with Gill Creek Watershed Association, Gill Creek being a threatened waterway, our intergovernmental

agreement with Richland County as a co-permittee under NPDES-MS4, our efforts to acquire funding to clean up Cary Lake from past development along Decker Boulevard and Dent School remodeling. And are forming a Citizens of Arcadia Lakes Navy to take on water quality education projects such as marking all the street drains in our town to inform folks that they drain to our lakes and streams."

"We are confident, having met with Mr. Chandler, that we have a case. That is why we've put so far a year of our time in this case and our money into hiring Mr. Chandler to fight against the environmental impact this project will produce."

Q. Now, are those comments you just read from Exhibit 2?

A. That's correct.

Q. All right.

A. Based on what I believe are violations with regard to this project and plans in its permitting with DHEC and U.S. Corp of Engineers.

Q. Now, let me go back then, because I want to try to understand -- I want to go back to your position in this case.

Is it your understanding that you will

be a witness in this case? Do you understand that you will testify before DHEC -- before the Administrative Law Judge to provide information upon which he will make his decision?

A. It's my understanding that everything I say today is being given to the Administrative Law Judge. That's correct.

Q. Is there somebody else besides you that knows more about this matter? Let me back up.

Is there some representative of the Town of Arcadia Lakes that knows more about this matter than you?

A. Is there --

Q. Is there another councilman, representative, someone that --

A. Not that I know. Not on the council, no.

Q. Am I talking to the person who has the best store of knowledge, the best access of knowledge to explain the positions of the Town of Arcadia Lakes?

A. I believe I am.

Q. Let me find out a little bit more about you. Let's go back to this stormwater run off system that you have looked at in the BP Barber

drawings.

Have you ever in your engineering career had any professional involvement in the design of a system similar to or the same as depicted on those drawings?

A. No.

Q. Have you, in your career, ever had any involvement with preparing calculations to determine whether or not the system would meet the requirements of the permit?

A. At what time?

Q. Mr. Jackson -- Mr. Thomas, do you believe that you are competent as a professional engineer to prepare the BP Barber drawings, and seal them, and present them as your work product?

A. No. I don't claim to be a water quality engineer.

Q. You would not claim to have expertise in the design of the stormwater surface, water collection system that BP Barber has presented to DHEC?

A. I would say that I have the engineering expertise to understand what's been done. But as far as -- like I said earlier, the legal issues here that the town is contending, we

have turned over to Mr. Chandler who is the legal expert.

Q. I want to set aside the legal issues. I want to talk about the BP Barber design.

Do I understand you to say that you do not believe you're an expert in regard to the substance of the engineering disciplines reflected in the BP Barber design?

A. As I said, I don't claim to be a water quality engineer.

Q. Would you hold yourself out as competent to prepare, and present, and seal drawings similar to what BP Barber has presented to DHEC in this case?

A. If I had the time to study and develop said drawings, I would be capable of doing that.

Q. But as we sit here today, you have not taken the time to develop that expertise, have you?

A. That is not part of my career.

Q. All right. I'm just trying to understand what your -- what you know and what is your area of expertise as we sit here today.

If I understand your testimony, you do not contend you're an expert -- or you agree you are not an expert in the field of engineering

reflected by the BP Barber drawings?

A. I don't contend to be. No, I don't.

Q. All right. Now, you have stated that the town's positions are those that have been expressed by Mr. Chandler in his legal documents.

Is that a fair description?

A. We have been in consultation with Mr. Chandler and with others in this matter, and we are confident that we have a case.

Q. Okay. I understand that. What I want to find out is what that case is composed of.

Now, do I understand your position correctly to be that this town is asking DHEC to revoke the permit that was issued on December 15th?

A. I'll defer that to Mr. Chandler. To me, that's a legal issue and I --

Q. Do you know --

A. -- I don't claim to have any legal expertise.

Q. Do you know today what the town is asking the Administrative Law Judge to do in this case?

A. Yes. It's in the pleadings. You have a copy of the pleadings.

Q. Let me hand you these.

MR. BROWN: Do I need to give you a copy?

MR. CHANDLER: What is that?

MR. BROWN: I believe that's your -- look at that. That's your complaint and attachments. If I can impose on you to help me make sure I've got the right --

(EXH. 3, Request for Hearing, was marked for identification.)

BY MR. BROWN:

Q. Have you looked at Exhibit 3?

A. Yes, I have.

Q. What do you understand Exhibit 3 to be?

A. Exhibit 3 is a Request for a Contested Case Hearing.

Q. And this is on behalf of the Town of Arcadia Lakes?

A. And other petitioners.

Q. But it is on behalf of the Town of Arcadia Lakes as well as the other petitioners, correct?

A. As far as I understand, yes.

Q. Am I correct to understand that the sum total of all relief you're asking for from the

Administrative Law Court is as expressed in Exhibit 3?

A. I'd have to defer that answer to Mr. Jimmy Chandler who's our attorney.

Q. As of today, have you evaluated and determined from Mr. Chandler what the relief is that you're asking the court to award you?

A. It's here in the filings. Yes. It's right here in the file.

Q. Do you know of any relief that you're asking for other than as is contained in Exhibit 3?

A. Not that I know of, but I defer that answer to Mr. Chandler.

Q. Well, I can't take Mr. Chandler's deposition.

A. I understand.

Q. All right. Now, if I limit my questioning to what is contained in Exhibit 3, am I going to learn from you all of the contentions of the Town of Arcadia Lakes that you are going to present to the Administrative Law Judge?

A. Can I ask you to repeat your question one more time?

Q. Is Exhibit 3 a complete statement of the relief that the Town of Arcadia Lakes is asking

the Administrative Law Court to award it?

A. To the best of my knowledge, yes.

Q. Is Exhibit 3 a complete statement of the basis or contentions upon which you ask that relief to be awarded?

A. To the best of my knowledge, yes.

Q. Okay. Now, I understand that there's a gentleman who is an expert in biology or some field from the University of North Carolina who has been retained in this case.

Am I describing him correctly? Do you know who I'm talking about?

A. I do.

Q. What's his name?

A. I refer to Mr. Chandler. He did all the hiring there.

Q. Had you ever heard of that gentleman before Mr. Chandler hired him?

A. No.

Q. Have you ever spoken with him?

A. I saw him at the pond one day when he was taking samples.

Q. Outside of that contact, have you ever spoken with him?

A. No.

Q. Has anyone else on behalf of the Town of Arcadia Lakes ever spoken with that gentleman?

A. Mr. Chandler.

Q. Outside of your legal counsel?

A. Not that I know of.

Q. As far as you know, the sole contact between the Town of Arcadia Lakes and the gentleman from North Carolina -- the University of North Carolina has been the simple conversation you had out at the pond one day in the past?

A. That's correct.

Q. What did you talk to him about?

A. He was out there taking samples. We were talking about trying to get his equipment working properly.

Q. Do you know what he was engaged to do by Mr. Chandler?

A. He was engaged to determine the viability of the Lily Pad point.

Q. And "viability" meaning what?

A. Ecosystem, the life.

Q. Now, is that something you asked Mr. Chandler to investigate? "You" being the Town of Arcadia Lakes.

A. We asked Mr. Chandler to investigate

anything and everything he thought necessary in order to apply these documents.

Q. So there was no specific request by the Town of Arcadia Lakes to have someone evaluate the viability of the Roper Pond?

A. There was a specific request by the Town of Arcadia Lakes to have expert testimony to the water -- water quality, and to the potential detriment to the town that this project may incur.

Q. Outside of the gentleman from the University of North Carolina, are you aware of any other expert who has been retained to appear and present positions on behalf of the Town of Arcadia Lakes?

A. Yes, there's another witness.

Q. Who is that?

A. A gentleman, I believe, from the University of South Carolina.

Q. And what is his -- what is the substance of his evaluation?

A. I would defer that to Mr. Chandler.

Q. Have you ever spoken to him?

A. No, I have not.

Q. Have you ever seen any reports he prepared?

A. No, I have not.

Q. Do you have any idea what he might testify to?

A. I only have what I understand he may testify to.

Q. All right. What is your understanding?

A. He may testify to the environmental impact on the Gill Creek Watershed from the Roper Pond project.

Q. And do you know this gentleman's name?

A. No, I do not.

Q. Do you know when he was retained?

A. He was retained just recently.

Q. Give me "recently" in the terms of days and weeks prior to today.

A. In the last several weeks.

Q. What is his compensation arrangement with the town?

A. He's working with Mr. Chandler. He would be paid for through Environmental Law Practice.

Q. I assume you're going to reimburse Mr. Chandler for those fees?

A. That's correct.

Q. Do you have any idea what your obligation may be?

A. Not at this point. No, sir.

Q. Do you have any idea what your financial obligation is to the professor from the University of North Carolina?

A. I have not seen the final tally there.

Q. Have you seen a partial tally?

A. No, I have not.

Q. Do I understand that the gentleman from North Carolina is also retained directly by Mr. Chandler?

A. That's my understanding.

Q. Are you aware of any agreement directly between the University of North Carolina professor and the Town of Arcadia Lakes?

A. No.

Q. Has the Town of Arcadia Lakes directly hired anyone to assist it in this case?

A. Mr. Chandler.

Q. Other than Mr. Chandler.

A. No, not to my knowledge.

Q. All right. Could I ask you -- let's do a little bit more background.

Now, in substance, what is the town's

position as to the detriment it will sustain if the project goes forward as permitted by DHEC? Let me ask you this question.

Can you tell that to me without having to read your notes or Mr. Chandler's pleading?

A. I'd rather refer to my notes because that way I won't miss anything.

Q. Do you have any understanding of it without referring to your notes?

A. An understanding of --

Q. What is the town's position as to the detriment the town will sustain if the project proceeds under the permit as issued?

A. Yes.

Q. What is that detriment?

A. The detriment is potential harm to the water flowing through the project under North Trenholm Road, and into Cary Lake, and through the Gill Creek Flood Plain, and eventually into the Congaree River. Harm to the aesthetic interest of the Town of Arcadia Lakes being that the project is surrounded on three sides by the town.

As an example, the Eco-Healthy Lily Pond will be changed into a stormwater impoundment.

Q. All right.

A. It could potentially do harm to the environmental interest of the town, seeing as its seven lakes are a vital part of our identity. Our town motto is Seven Lakes - One Town. We as a town do not believe that the County or DHEC will fully protect us from the environmental impact this project will produce both during and after construction.

Q. All right.

A. "The lack of environmental oversight and checks evidenced when Decker Boulevard was developed and Dent Middle School was remodeled leaving Cary Lake Association with tens of thousands of dollars of clean up are examples that back up our concerns."

That's straight out of document Number 2.

Q. Okay. Now, when you prepared document Number 2, where did you get the information you put in Exhibit 2?

A. From my head and from my experience in having worked with this project since 2003.

Q. All right. Let's talk about these. Now, the potential harm of water under Trenholm Road into Cary Lake, that's what I wrote down real

quickly as you were talking.

Did I write that down correctly?

A. The potential harm from run off water leaving the project as currently designed going underneath Trenholm Road, goes directly into Cary Lake.

Q. That's one of the deficiencies you see with the project as permitted; is that correct?

A. I said that is a potential.

Q. Potential, all right.

Now, does Roper Pond drain into any body of water other than Cary Lake?

A. As part of that flood plain, it goes straight underneath Trenholm Road into Cary Lake.

Q. Does it drain into any other body of water other than Cary Lake?

A. Not to my knowledge.

Q. What part of Cary Lake is it within the boundaries of the Town of Arcadia Lakes?

A. Please repeat that.

Q. What part -- let me ask you this, who owns the lake bottom to Cary Lake?

A. The lake association which is made up of 40 to 43 members of the Cary Lake Association, which are property owners that surround the lake.

Q. The town has no ownership interest in the lake bottom, does it?

A. The town does not have any ownership in that lake.

Q. Are there any residence of Arcadia Lakes who also own a portion of the lake bottom on Cary Lake?

A. To my knowledge, there are many people. The Town of Arcadia Lakes -- Cary Lake is in the Town of Arcadia Lakes.

Q. Are there parts of Cary Lake that are not within the town?

A. That's correct. There are two to five lots on the other side of the lake back behind Pep Boys that are not in the town.

Q. But they are part of the Cary Lake Homeowners' Association?

A. That's correct.

Q. And where does Cary Lake empty?

A. Cary Lake empties down into Forest Lake.

Q. Is that water in any way -- Is Forest Lake in any way in the Town of Arcadia Lakes?

A. No, it is not. Not that I know of, but it's part of the Gill Creek Flood Plain.

Q. But does the water that goes into Cary Lake go into any of the other lakes within the Town of Arcadia Lakes?

A. No. It is the bottom lake. It is the final lake that all the rest of the six drain to.

Q. So the only lake within the Town of Arcadia Lakes that will be affected by any drainage from Roper Pond is Cary Lake?

A. To the best of my knowledge, that's correct.

Q. And Roper Pond today drains into Cary Lake, doesn't it?

A. That's correct.

Q. Do you know of any study that has been made that tells or defines the impact of the drainage from Roper Pond into Cary Lake as of today?

A. I know that the Gill Creek Flood Plain Association has done many studies in the area that take into account Cary Lake and the water associated with it. I know that the County and the Cary Lake Association are in the process of trying to work together in order to clean up Cary Lake from the damage that's been caused due to development.

Q. If I look at those studies, won't I see considerable discussion of the run off into Cary Lake from areas other than Roper Pond?

A. Probably, I would --

Q. You've read those, haven't you? Have you read those other studies that you've just referred to?

A. I have not read the studies.

Q. Then how do you know what's in them?

A. I know what's been asked for, and I know what the clean opportunities are. I know what the clean up problems are. One does not have to read the documents from cover to cover in order to understand that studies have been made in order to come to those conclusions.

Q. But isn't it well known that Cary Lake's problems come from run offs from many areas other than run off that might come from Roper Pond? Now, that's a given, isn't it?

A. I would say that's a true statement. And what we as a town want to do is eliminate the possibility of any further damage to Cary Lake brought about by the development of Roper project.

Q. How much money is in the town's budget for this fiscal year to spend on clean up of Cary

Lake?

A. The Town of Arcadia Lakes is not responsible for the clean up of Cary Lake. I mentioned -- I told you before that Cary Lake is owned and operated by the lake owners' association. It's their responsibility.

Q. You have no legal obligation to assist in any clean up effort of Cary Lake, do you?

A. As far as the NPDES is concerned -- and I'd have to go back and study that -- but I know we are responsible for the water that flows into Cary Lake as well as out through our NPDES rules and regs.

Q. But that water flows in from where outside of Roper Pond? What sources feed Cary Lake other than Roper Pond?

A. Well, we have several other lakes that feed into Cary Lake.

Q. And Roper Pond will not feed into any of those lakes, will it?

A. No.

Q. Those other lakes have contributed to the current condition of Cary Lake, correct?

A. That's correct.

Q. If the HOA came to the Town of Arcadia

Lakes today for money to assist in the clean up of Cary Lake, what obligation, if any, does the town have to present them with money?

A. None.

Q. Have you ever had any legal obligation to pay for any clean up of Cary Lake?

A. Not to my knowledge.

Q. If the dam fails, will the Town of Arcadia Lakes have any responsibility to pay for repairing the dam?

A. What dam?

Q. Is there a dam on Cary Lake, or does it feed naturally?

A. That's correct. Yes. There's a dam on the lower end.

Q. If the dam on the lower end needs repair, will the Town of Arcadia Lakes have any obligation to fund that repair?

A. No. At least not to my knowledge.

Q. Is there any plan by the town to undertake that responsibility?

A. No.

Q. If Cary Lake Homeowners' Association came to the town for money to participate in the clean up, would the town deny that request?

A. We'd have to study, at that time, to see what benefits there were to the town as a whole.

Q. But at this point in time, you have no plans to participate?

A. I haven't been presented with a plan, so I can't answer that question.

Q. You've never had in your budget any money to participate in any clean up of Cary Lake, have you?

A. Not to my knowledge.

Q. Does the town have in its budget any money to participate in the clean up of any of the other lakes in its territory?

A. Not to my knowledge.

Q. Has the Town of Arcadia Lakes ever spent any money to clean up or maintain any of the seven lakes within its district?

A. Not that I know of during my tenure.

Q. How long has your tenure been?

A. I've been mayor for two terms and I was on council for several terms before that. So 12, 13 years.

Q. To your knowledge, the Town of Arcadia Lakes has never spent any money to clean up or

maintain any of the seven lakes within its boundaries?

A. Not to my knowledge.

Q. When you say "potential harm," is it the town's position that it cannot predict any harm other than through the use of a potential? Why do you use the word "potential" in your description of any harm that may result from this project?

A. Because the -- from my -- from the town's standpoint, the lack of environmental oversight and checks evidenced by what's happened on Decker Boulevard and in the Dent School remodeling has left Cary Lake with a multi-thousands of dollars worth of clean up, which brings major concerns to us as we move forward with other projects.

Q. Weren't those events totally unassociated with the Roper Pond property?

A. They're not associated with Roper Pond, but they're associated with what happens in Cary Lake.

Q. I'm talking about what happens in Roper Pond. The fact that someone in a totally different area may have mismanaged their project and put refuge into Cary Lake, are you saying that

that is a predictor of the same event happening at Roper Pond?

A. What I said was, the potential was there.

Q. That's simply a possibility, isn't it?

A. It's a potential.

Q. It is not something that you can say is probably going to happen, is it?

A. That's to be determined.

Q. You have no basis to say that there is a probability of any harm coming from this project, do you?

A. With the current plan, yes, I do.

Q. All right. Let's talk about that. Tell me -- well, let me back up. The current plan.

Tell me what in the current plan you think presents a possibility or probability of harm to Cary Lake.

A. I outlined those before. It will possibly do harm to the water flowing through the project and under North Trenholm Road into Cary Lake.

Q. What is the deficiency in the BP Barber drawings that may lead to that possibility?

A. They're outlined in our petition.

Q. Point them out to me.

A. You want me to read you the document?

Q. No, sir. I want to know what the town's --

A. I'll defer that to Mr. Chandler because he's the legal expert.

Q. He is not my witness, Mr. Thomas. You are my witness and you are the town.

Tell me what facts the town has as we sit here today that allows you to opine that there's a possibility of harm if the BP Barber plan is implemented.

A. Based on what we have been told and led to believe by Mr. Chandler, who is the expert in the legal side of this, there are violations in this plan with regard to the project. The plans and its permitting with DHEC and the U.S. Corp of Engineers.

Q. I want you to step aside and put aside anything Mr. Chandler may have told you. In the absence of Mr. Chandler's comments, is the town aware of any fact upon which it could base an opinion that there is a deficiency in the BP Barber drawings permitted by DHEC?

A. We have hired Mr. Chandler as our spokesman on the legal issues in this case. We believe the case has merit.

Q. Step aside what Mr. Chandler tells you -- if Mr. Chandler becomes a witness, we'll deal with this case differently.

What information does the Town of Arcadia Lakes have that, outside of Mr. Chandler's comments to you, leads you to the conclusion that there are deficiencies in the BP Barber design approved by DHEC?

A. We lean on Mr. Chandler's filings and his documentation as the basis for our --

Q. Is Mr. Chandler's complaint the sole source of facts, for the Town of Arcadia Lakes, for it to present a position that the BP Barber drawings are in some way insufficient?

A. I can repeat. Mr. Chandler's pleadings and his filings speak to the case that the town and the petitioners -- not speaking for them, but as far as the town is concerned -- where we are in our position on this project.

Q. Can you provide an answer to my question without referring to what Mr. Chandler, your attorney, may have told you or what you read

in his pleading?

A. Explain that. I don't understand your question.

Q. Mr. Thomas --

A. That's a very broad question to me being an engineer.

Q. Okay. Well, let's go back. The Town of Arcadia Lakes has asked the Administrative Law Court to revoke the permit for the Roper Pond project.

Do you understand that?

A. That's correct.

Q. Do you understand that there has to be some factual basis or testimony upon which the judge reaches that conclusion and awards you that relief?

A. That's correct. That has been outlined by Mr. Chandler in his pleadings and in his filings.

Q. Did you provide -- did the Town of Arcadia Lakes provide Mr. Chandler any information, facts, documents upon which he prepared those pleadings?

A. Yes, we did. And you have copies of all of those. Everything that was provided to the

County and everything that was provided in our entire process over the last year, you have copies of.

Q. Now, can you, as a representative of the Town of Arcadia Lakes, articulate for me what those facts are that says or leads to a conclusion that the BP Barber drawings are deficient?

A. I prefer, as I said, to defer that to the pleadings and the filings that Mr. Chandler's put forth to the court.

Q. Can I take your answer to be that the Town of Arcadia Lakes has no testimony to offer outside of physical documents to support the allegations in its complaint, Exhibit 3?

A. You'd have to give me the legal definition of some of the --

Q. Mr. Thomas, I'm asking you -- you know what facts are.

A. Yes.

Q. You are an engineer. You rely on facts every day, don't you?

A. Yes.

Q. You rely on calculations all the time, correct?

A. Yes.

Q. You're trained to do calculations?

A. Yes.

Q. You said you have reviewed the BP Barber drawings, correct?

A. I said I've had an overview of them.

Q. Is that overview not sufficient for you to arrive at any conclusions as to its -- their acceptability?

A. I believe that the points that have been brought up by Mr. Chandler in this case, in his filings and in his documentation is the position of the town.

Q. Okay. Now, what I am trying to find out is what the town has -- let's go to his pleadings. Point to me in the pleadings, Exhibit 3, the positions that Mr. Chandler has asserted that the town also asserts are its positions.

A. You want me to read you this document?

Q. No, sir. I want you to go and show me where these positions are stated in Mr. Chandler's document.

A. Sir, if you want me -- you want me to sit here and read how many pages we have here?

Q. No, sir. I don't want you to read

those. Listen to the question.

You have told me that the town's position, as to what is wrong with the BP Barber drawings, are as set forth in Mr. Chandler's document, correct?

A. I said what's wrong with the BP Barber plan -- are you referring to the documents as "plan"?

Q. What is the Town of Arcadia Lakes saying is deficient?

A. They're right here in this Request for Contested Case Hearing.

Q. Okay. Do you say the BP Barber documents are deficient?

A. I defer that to Mr. Chandler, because he's our attorney.

Q. Does the town have any knowledge, independent of Mr. Chandler, as to whether or not the BP Barber documents are deficient or satisfactory?

A. Clarification, are you asking me, do we have anything else outside of this document that we are presenting?

Q. Do you have any evidence, facts, testimony upon which you can -- the town can point

to that says, These documents are deficient in this matter?

A. I still don't -- I'm sorry. I'm sorry --

Q. Where --

A. -- Mr. Brown, I don't understand your question.

Q. Where in Exhibit 3 are the statements by Mr. Chandler that say what is wrong with the BP Barber documents?

A. His grounds for appeal on page 3. I mean, we can read them. There's 3, 4, 5, 6. There's page 7. There's page 8. "Standing," there's Standing on page 9. Relief requested, page 9, 10. I mean --

Q. Does the town have any idea, independent of Mr. Chandler, whether or not the BP drawings are sufficient for DHEC to have issued a permit?

A. Outside of what Mr. Chandler has filed, the town has no other pleading.

Q. I'm not talking about the pleading, facts.

A. Not that I'm aware of.

Q. Okay. Are you familiar with the

allegations that there's been a miscalculation of the particle size in terms of BP Barber's engineering drawings?

A. When was this brought up?

Q. Would you look at page 8 of the pleading, please.

A. Okay.

Q. Paragraph J.

A. Okay.

Q. The approved -- are you there?

A. Page 8.

Q. Paragraph J. Do you see that?

A. Yes. "The approval permit violates Regulation 61-9 in the Department." As I said, I am not an attorney. Therefore, I do not -- I don't claim to be an expert on the law and what's required. That's why we hired Mr. Chandler.

Q. All right. Mr. Thomas, the statement in J is that the plans -- "the Department gave approval to plans that include an arbitrary proposed particle size distribution in the calculations."

A. "Used by the design engineer for post-development stormwater runoff," yes.

Q. Do you see that?

A. Yes, I do.

Q. I assume that you are asserting that that's something wrong with the plans?

A. If Mr. Chandler says that's something wrong, then I agree with Mr. Chandler.

Q. What information did Mr. Chandler rely upon to come to that conclusion?

A. You'd have to talk to Mr. Chandler, because I do not know.

Q. Do you know of any witness on behalf of the Town of Arcadia Lakes, outside of Mr. Chandler, who can tell me how that conclusion was arrived at?

A. Not to my knowledge.

Q. K says, "The approved permit violates Regulation 61-9, 61-68, and 61-101 in that it fails to take into account a number of significant water quality problems associated with the high density design of the project proposed for this site."

Do you see that?

A. Yes.

Q. Can you tell me what are the significant water quality problems that were not taken into account?

A. I defer to Mr. Chandler.

Q. Do you know of any witness on the behalf of the Town of Arcadia Lakes who can provide that information other than Mr. Chandler?

A. Not to my specific knowledge, no.

Q. Do you know if the gentleman from USC has been hired to provide that testimony?

A. I do not know that.

Q. Do you know if the gentleman from UNC has been hired to provide that testimony?

A. You'd have to refer to Mr. Chandler.

Q. Okay. Can I accept that your answer would be the same if we went through all the other allegations made by Mr. Chandler? You're not aware of any evidence or testimony the town has to support the conclusions that have been made by Mr. Chandler?

A. I am not aware of --

Q. We've been through two of the allegations --

A. Ask that question one more time.

Q. We went through J and K on page 8 and you've stated as to each one of those, as far as you knew, the town had no testimony to offer to support the conclusions, allegations made by Mr. Chandler.

Do you recall that?

A. Correct.

Q. Are there any other statements by Mr. Chandler in this pleading that you can provide information, facts, or a source of facts and information, upon which Mr. Chandler used to arrive at these pleading conclusions?

A. Not to my knowledge.

Q. Would your answer then be the same as to all of these other allegations?

A. As far as I can tell, yes.

Q. Did Mr. Chandler tell you who he relied upon to arrive at these conclusions?

A. I do not remember having any specific conversations with him about that.

MR. BROWN: We've been going about an hour and a half. Do you want to take a quick break to get a drink of water? Let's take a quick break.

MR. CHANDLER: All right.

(A recess was taken from 3:10 p.m. to 3:18 p.m.)

BY MR. BROWN:

Q. Going back -- trying to circle back around. If I understand what you told me, there will be no financial impact on the Town of Arcadia

Lakes based upon this project and whether it goes well or doesn't go well.

Is that fair to say?

A. That would be hard to determine, because -- let's look at the NPDES. The town is responsible for what comes into the town and what leaves the town as far as water quality.

If the water quality coming into the town is not regulated by the town and we allow it to flow through the town on into, let's say, the lower lakes, into Forest Lake or Lake Katherine, then the way I understand the NPDES, we would then be responsible. Therefore, we could -- it could result in financial and/or litigation for the mitigation of that damage. Whatever that would be.

Q. Outside of that possibility, would you agree with me that there's no financial impact on the town whether the project goes well or doesn't go well?

A. You mean to the actual budget of the town?

Q. Yes, sir.

A. We're referring to the town's budget. Is that what we're referring to?

Q. Yes, sir. The Town of Arcadia.

A. I don't see -- I don't anticipate any, no.

Q. Now, you already have problems with the water flowing into Cary Lake today, don't you?

A. That's correct.

Q. Some of the other projects you've talked about.

A. We are managing those individually.

Q. Have you incurred any fines or problems under the NPDES as a result of those problems?

A. No. The County has incurred some fines from EPA based on their handling of some of the problems in Gill Creek.

Q. But as I understand, the Town of Arcadia Lakes has not incurred any fines or financial consequences?

A. Not that I'm aware of. We have an intergovernmental agreement with the County. And the County, therefore, is responsible for maintaining our NPDES, MS4 requirements to the EPA entity.

Q. Water has been going from Roper Pond into Cary Lake for quite a long time, hasn't it?

A. I would imagine. It's a spring fed

area. So, you know, that entire area is a multitude of springs and water. So I would imagine it has been flowing through there.

Q. Do you know whether that pond was dug or occurred naturally?

A. I do not know. I know the pond has been there as long as I've been alive. I've been aware of it.

Q. When did you move into your home address?

A. I moved into Arcadia Lakes in 1981, but I was aware of the pond for many years before that because we used to travel out North Trenholm when I was a kid. And the overpass going over the railroad was right there. Pass the pond.

Q. But whether there are parts of the pond that may have been created by digging or whether the whole pond was naturally created, is something you don't know about one way or the other?

A. I'm not privy to that information at this time.

Q. Have you ever been cited prior to today for any deficiency or problem with the water coming out of Roper Pond?

A. Not to my knowledge.

Q. In the absence of financial impact to the town, would it be fair to say that the town's interest in this project lies with the aesthetics and not in terms of money?

A. I don't you -- that question is several parts. Please repeat that.

Q. I assume the town is taking money that it's raised from taxpayers or raised in some form or fashion in paying Mr. Chandler.

A. Yes. The town's matching citizen's contributions to pay Mr. Chandler.

Q. I assume the town -- you and the town council authorized that expenditure?

A. That's correct.

Q. And if you authorized that expenditure out of town funds, I would think that you can conclude that the town has an interest separate and apart from its citizens?

A. The town has an interest in the water traveling into Cary Lake from whatever source that may be.

Q. Well, aren't the vast majority of the citizens of Arcadia Lakes unaffected by whether this property is developed into apartments, or town

homes, or residences?

A. I wouldn't be able to answer that question. I know that the majority of the citizens of the town object to the project the way it's currently designed.

Q. Well, they may have objections for personal reasons. They may have objections for other reasons.

But is there any financial impact to any citizen of the town that you are aware of?

A. You mean out-of-pocket today cost?

Q. Yes, sir.

A. Not that I know of, out-of-pocket today costs.

Q. Would it be appropriate for the town to spend its revenues for the benefit of a limited number of citizens, because of their own personal objections to the project?

A. Repeat that question, please.

Q. As mayor, is it appropriate for the city to spend its funds for the benefit of a limited number of citizens, who may have a personal stake, in the outcome of this project?

A. That would have to be determined by council and by a vote of council whether it would

be appropriate or not, because the council would have to decide that.

Q. Was that a factor to the council when it voted to share the cost of opposing this project?

A. Was what a fact?

Q. Assisting individuals in their personal opposition to the project.

A. Not to my knowledge.

Q. Then would the town's interest in this proceeding and opposing this proceeding, be limited to the impact on the town, separate and apart from any 1, 2, or 10 individual citizens?

A. And I outlined those in my Exhibit 2 under Number 4 that I've stated twice before.

"We believe that this project's current design and plan will do harm to water flowing through the project into Cary Lake and on into Gill Creek Flood Plain, harm to aesthetic interest of the Town of Arcadia Lakes, and harm to the environmental interest of the town as our identity is Seven Lakes - One Town. We as a town do not believe that the County or DHEC fully protected us from the environmental impact this project will produce during and after

construction."

Q. What is the basis for the town's belief that DHEC has not fully protected it in regard to this project?

A. What is the basis? Say that one more time.

Q. You just read a statement that you, the town, did not believe that DHEC would fully protect it from the impact of this project.

Is that correct?

A. Right. And I gave you examples before of the things that bring those concerns to light. One is the detriment to Cary Lake brought about by the Decker Boulevard development and the Dent Middle School remodeling, and their effects on Cary Lake that were caused by those projects. Those two examples.

Q. Set aside what happened in some other project unassociated with this one. What is the basis, the objective factual basis, for the town's belief that DHEC will not protect it from similar circumstances?

A. I've just given you the examples.

Q. Other than those two examples, is there any objective factual basis for the town's

conclusion that DHEC will not act to protect its interest?

A. The ones that I would state would be the ones that Mr. Chandler brought out in his testimony -- in his pleading. His pleading. In his filings.

Q. Outside of Mr. Chandler's filings and outside of these examples you gave with Dent Middle School, what facts or objective basis, if any, does the town have to conclude that it will not be protected by DHEC in the execution of the work that's been permitted?

A. I would -- I do not know of any at this time.

Q. Now, the town was opposing this project before the DHEC permit was issued, correct?

A. The town was opposing this project on several issues --

Q. All right. Tell me what they are.

A. -- before County.

Q. I understand. Would you agree with me that what the County did in permitting this project is not at issue in this Administrative Law proceeding?

A. I have to go back and think about all

of the issues that were presented before County and what was not presented before County. State that question one more time for me please, sir.

Q. Do you have an understanding of what the issues are in the Administrative Law proceeding that this deposition is being taken in regard to?

A. Yes. They have to do with what Mr. Chandler has filed with the Administrative Law Judge.

Q. Are you able to give me an answer to my question without referring to Mr. Chandler?

A. Mr. Chandler is the legal representative for this case. I'm here to give you my opinion on what I believe the town's position is.

Q. All right. Now, what is the town's position on the issues that are involved in this proceeding?

A. The issues that the town has in this proceeding are outlined by Mr. Chandler's in --

Q. As the representative of the town who's been involved in this since 2003, can you tell me today, of your own knowledge, what the issues are in this proceeding without reading what Mr. Chandler wrote?

A. What's in the filings? I mean, that -- I don't understand what you're asking me to tell you. I'm sorry, I don't understand what you're asking me to tell you.

Q. Do you know what relief you're asking before -- asking the Administrative Law Court for in the proceeding that is going on right now, without looking at what Mr. Chandler wrote?

A. But it's all right there. I mean --

Q. Do you know personally what the relief is you're asking the Administrative Law Court for? What is that relief? Without reading what Mr. Chandler wrote, do you know?

A. I cannot quote you line and paragraph.

Q. I'm not asking you to quote it. I'm asking you to give me your personal understanding of it. As the representative of the town who's prepared to come and answer questions --

A. Mr. Chandler --

Q. Would you let me finish the question?

A. Certainly.

Q. Can you give me your personal understanding of what relief you have asked for from the Administrative Law Judge in this proceeding?

A. It's my understanding that we have asked the Administrative Law Judge to overturn the permit that was issued to Roper Pond, LLC by DHEC.

Q. Okay. Now, do you understand why that permit was improperly issued and the grounds upon which you're asking the Administrative Law Court to rely in revoking that permit?

A. We rely on the information given to us and presented to us by our attorney, Mr. Chandler, in conference with him, and in his knowledge of the --

Q. Okay. Can you -- has he relayed that to you personally?

A. As you read through this, yes. I mean, if you read through this, you know exactly what we're talking about. I mean, like I said --

Q. Have you had conversations with Mr. Chandler about the claims in this case outside of what you read in Exhibit 3?

MR. CHANDLER: To the extent that you're asking for attorney-client privileged information, I want to make it clear that there's an objection to that.

MR. BROWN: I understand.

BY MR. BROWN:

Q. All I'm asking you -- I'm not asking you to reveal the substance of your discussions.

MR. BROWN: Although, I will say, Jimmy, he's about turned you into a witness. And I'm not sure what to do about it yet. So far he's the only witness he's got. You are.

BY MR. BROWN:

Q. Now, without revealing the substance of the discussions, have you had conversations, yes or no, with Mr. Chandler in which he described to you what is the basis for asking the Administrative Law Judge to give you the relief you've asked for?

A. Yes. And they're outlined in this document.

Q. Okay. Not legal advice. Has he outlined to you what are the deficiencies upon which you will base your case before the Administrative Law Judge?

A. He's indicated that they are in this document.

Q. Do you have any knowledge of what the claims before the Administrative Law Judge are, other than reading what is in Exhibit 3? And by "you" I mean the town.

A. Not to my knowledge. I don't know of

anything else besides this.

Q. And to the town's knowledge, it knows nothing outside of what Mr. Chandler has written?

A. As to?

Q. The reasons why the Administrative Law Court should set aside the permit.

A. These are the reasons.

Q. Okay. And beyond what is written on that paper, the town has no testimony, evidence, or comments to add, correct?

A. Other than what I presented today.

Q. Well, what have you presented today other than reference to Mr. Chandler?

A. I presented you with --

Q. Exhibit 2?

A. Exhibit 2.

Q. All right. Outside of Exhibit 2 and Mr. Chandler's writing, is that the sum total of the town's facts and evidence to support the complaint?

A. To the best of my knowledge.

Q. Best of your knowledge, yes?

A. Yes.

Q. Now, let's go back to the town's opposition to the project that preexisted this

specific proceeding before the Administrative Law Court.

Am I correct that individuals and the town both opposed the project prior to the specific permit that is being contested in the proceeding today?

A. We took several concerns before the County and before the County Zoning and Board of Appeals -- I'm sorry -- Board of Appeals for major concerns that we had in the project.

Q. Now, when we're talking about "we," was there a committee of individuals, a loose committee, organization, I don't know what the word is, was there a collection of individuals that cooperatively worked together to oppose this project?

A. There were town's people that put their heads together to come up with what we presented to the County, and y'all have copies of those. And those are the proceedings that we had before Richland County Board of Appeals.

Q. Approximately how long ago did that organized opposition to this project begin?

A. A year.

Q. One year?

A. It was about three days before we found out that the project was a go, and that was about a week before the -- what we understood was the final -- final hearing before the Board of Review with the County.

Q. Now, let me make sure I understand. The Board of Review for the County, are you talking about a zoning proceeding?

A. No. The zoning was -- the zoning was redone back in the early -- in 2003, 2004.

Q. What is the specific proceeding that you referred to before the County about a year ago?

A. When Roper Pond, LLC went through the County to get all of the necessary check-offs for their project and the design thereof before it went DHEC.

Q. Is it your testimony that there was no organized resistance to the project until a few days prior to that proceeding?

A. That's correct. About a week to ten days.

Q. Who organized the group?

A. That's hard. Who organized it? It was an assorted number of people that were in -- I don't know if there's any one particular

individual, but there's a considerable number of property owners that came together that had been approached. Back in the early '80s, Roper -- Mr. Mundy and Mr. Walker had come before town council asking to be annexed -- have the property annexed into the town.

Q. When was this?

A. This is back in 2003, 2004, when the original project had come about. And the town indicated at the time that we did not -- at that time it was planned as a condo complex. About, I think, 85, 86 condos where it would transition from single family patio homes next to Kaminer Station, and then progress up and transition into high-rise high-end condos on the north side of the property. And they asked to be annexed.

And we indicated at that time that we didn't have a zoning for that in the town. That they would have to go before County Council to get the property rezoned and have the plans approved. And once approved, we'd look at it again. And possibly we could grandfather them in as to whatever they got approved by the County, because they were going in for a rezoning.

At that time, you know, there was --

there were a large number of folks that live in Kaminer Station and around the area, around Cary Lake, et cetera, that were involved in those presentations that Roper Pond made to the town, to the town council. And then we met next door in Mr. Doug Mark's house. And Mr. Mundy and, I believe, a couple of other folks from Roper Pond were there. And then they earlier met with the town at our Town Hall and they had come to council.

That was back in '84. So there was -- there was a group of folks that were involved in that project and the development thereof starting in the very beginning. Then over the next several years, on a monthly basis, I'd try to get in touch with Mr. Walker and Mr. Mundy to find out what the status was in order to give an update to our council at our monthly council meetings. And most of the time the issues were that they were very busy developing property in Charleston, and didn't have time to get back to the Roper development.

And then within about a week of the meeting before County Council, we fund out by -- I don't even remember. It wasn't from -- it wasn't from Estates Management, but was from the County. They notified us that there was a hearing and that

the property had been rezoned multifamily. And that Roper Pond had come in with a different plan for 200-plus apartments.

And then being told that at that last moment right before, the folks that had been involved in the original presentation of the plan by Roper Pond -- I mean, by Estates Management, came together to try to discuss what the issues were. What was going on and trying to find out information on it. Many of these folks. It just evolved into a group that went down to the County and listened to what the County was presented and tried to get as much information as we could. And then moved forward into what the individual concerns were.

Of course, individuals then come to me, as the mayor, with their individual concerns and then we try to put those together and document those and took them to the County. And what issues we had, we went to the appeals board for the County and had hearings there, which they heard and then progressed onto DHEC.

Q. All right. If I understand then, the organized -- the organization of the group that banded together to oppose the project, that was

motivated by learning that it was an apartment project?

A. Well, that group -- that same -- that group of individuals, town folks, and lake association folks, and Kaminer Station folks had been involved since the very beginning. Since the project was presented to us by Mr. Mundy back in the early '80s. Therefore, yes, everyone was concerned about what was going to be put in their backyards, because many of these folks back up to the development.

Q. Well, I thought I understood you to tell me right before you started your discussion, that the organized resistance began about a week before the hearing before the County?

A. I said that the group of people came together about a week, once the County notified us by mail that there was a hearing and offered -- and we got letters, it's my understanding, if I can remember back because it's been over a year. Almost a year. The County sent us individual letters to everybody that was attached to the project, physically, property.

And therefore all the individuals that were attached started asking questions. And then

that kind of just brought everything together as to what the issues were, what the concerns were, what the project was going to be, how it was going to be. Mr. Mundy with his son and one other came to Town Council and made a presentation on the new project.

Q. Which Town Council?

A. Arcadia Lakes Town Council. And then that brought even more questions up, and there was a huge number of folks there at that meeting and that -- a group from that meeting then led into kind of a group that put together their issues and concerns that were taken before County.

Q. All right. I've heard a lot of stuff and I just want to go back and make sure I got it right. Somewhere in 2003, 2004, Mr. Mundy approached you about annexing the Roper Pond property. And the proposed projects were patio homes next to Kaminer Station, moving over into condominiums.

A. It was a transition from patio, zero lot line type of structures, to high-rise on the opposite side of the Roper property.

Q. And he asked y'all to annex that into --

A. He wanted to see if there was an opportunity for them to annex into the town at that time with that project. Because as I explained earlier, the town surrounds three sides. There's a railroad on one side of the Roper property and the town is on the other three sides. And they asked to be annex -- what were the conditions or what was the opportunity to be annexed into the town.

Q. And your comment was that there was a problem with annexing that project because the zoning didn't allow for it?

A. We didn't have a multifamily zoning in the town at that time. So what we advised him to do was to go form a PUD, planned urban development, take it before the County, get the plan approved, because they weren't literally in the County, they were not in an incorporated area. And once they got it approved, we could look at the possibility of grandfathering them into the town, i.e. annexing them in, under their new plan.

Q. All right. Arcadia Lakes has its own zoning ordinance administered by its own zoning board?

A. That's correct.

Q. Why did you not suggest that he make

an appeal to your zoning board?

A. It was easier -- we thought it was easier for them to do it the other way. I don't remember what the context was then.

Q. Were you concerned that the citizens would oppose that kind of zoning?

A. No. As a matter of fact from the condo standpoint, out of the 15 or 20 small zero lot line patio homes, we had as many as 10 that were spoken for by town's people that wanted to retire and no longer do yard work and still be in the town.

Our town is a very close town. We have almost 900 residents and we are a very, very close nit town. People don't want to move out of the town once they move in.

There are a lot of amenities in the town that are very, very good. For instance, there's no taxes. We don't have any town taxes. We deal off of County taxes, revenue sharing, franchise fees, business licenses. Those type of things. We run the town off of a very lean budget.

Q. So you, for whatever reason, suggested that rather than annexing him in and changing your zoning --

A. We couldn't do that. It was my understanding at that time that that was not an option.

Q. For what reason?

A. If we annexed him in, then he would be annexed in as the existing zoning. And he didn't want the existing zoning, which was residential, light commercial. He wanted multifamily.

Q. So to solve that you suggested he get the County to change it, and then you can bring him in, grandfather him in, or bring him in subject to that zoning?

A. Correct.

Q. And you thought that would work?

A. With the plans that he had then, everyone was very much in favor of those. The plans were very high-end condos, low density, a lot of amenities, and fit in with the -- --

Q. Understanding that we're talking hindsight, but the feeling at the time was that if he had gone forward with that project of patio homes to condominiums, it would have been supported by the town and you could have brought it in, annexed it in, subject to the County zoning?

A. -- with the plans that were presented

to us at that time, we did not have any major problems with those plans at that time that I can recall.

Q. You would have recommended bringing it into the city by annexation?

A. Correct.

Q. And you had citizens in the town who were in favor of it and who actually wanted to live in the patio homes?

A. That's correct.

Q. Is it fair to say then, that the city's -- town's opposition is because of the change to apartments?

A. The town's opposition is laid out in the documents that are presented here in this case before the Administrative Law Judge. The town's concerns were taken up -- there were other concerns that were brought up and then later dismissed when we took them up for the appeals before the County.

Q. Now, the town was opposing the project well before DHEC acted to issue the permit, correct?

A. The town was -- had concerns on the plan and the actual design that we took before the County. And those -- I mean, the County documents

are there. I mean, we laid those out. There's a multitude of those.

MR. BROWN: Mark that as the next exhibit.

Jim, do you need a copy of that?

(EXH. 4, E-mail, was marked for identification.)

MR. CHANDLER: I don't know what it is.

MR. BROWN: It's a -- let Mr. Chandler look at it.

THE WITNESS: (Complies.)

MR. CHANDLER: This is something that came from the e-mail --

MS. HARTLEY: That's a SCANA production.

MR. CHANDLER: All right. I've got it at least in a PDF format in the computer.

MR. BROWN: I think I have another copy in here if you need one to look at.

MR. CHANDLER: Can we take just a minute to talk about this?

MR. BROWN: You want to talk with Mr. Charlie?

MR. CHANDLER: Yeah.

MR. BROWN: Okay. That's fine. You're entitled to do that.

(A recess was taken from 3:55 p.m. to 4:59 p.m.)

MR. CHANDLER: Let me just say, what this represents is an e-mail that was sent from Mr. Thomas to the town attorney. The address in this, unda8@aol.com, is the address of Charles Cook, the town attorney.

We realize that this was produced by SCANA as part of a subpoena. But in terms of something that becomes attached to -- or admissible into evidence, we want to assert attorney-client privilege to this document. It was part of legal advice that was sought from the town's attorney.

MR. BROWN: Okay. Can we do this -- Jim, let's talk about this in the absence of the witness in case we do go further with it.

MR. CHANDLER: Okay.

MR. BROWN: Because I think it would be appropriate for him not to be a part of this discussion about the privilege.

Is that acceptable?

MR. CHANDLER: Yeah.

MR. BROWN: Mr. Thomas, could I ask

you to give us an opportunity to talk?

THE WITNESS: You want me to leave the room, is that what you're asking?

MR. BROWN: Yes, sir.

(The witness exits the room.)

MR. BROWN: Joan just advised me of that outside part of this. I understand and I accept that and you're entitled to assert the privilege and make an objection as to its use at trial. But I think the next question is, are you instructing him not to answer any questions?

MR. COOK: Speaking in candor, it's not -- my recollection of what happened is that we were having a meeting, I think, in October, and so I believe he worked on his ideas of what had been talked about in a prudence meeting or whatever. And he said, Well, I'm going to send that to you and look at it, and he did. And I think I sort of reconstructed it, used my ideas.

My recollection of it is, there is an -- I would think that it had been furnished to you. There's no reason not to. The minutes of the meeting in October. Our resolution that went to planning.

MR. BROWN: Okay. Maybe I don't have

that resolution or I've overlooked it. My next question is, I was going to ask you, did this get sent -- I don't have a signed copy. Was this eventually sent to the Town Council and whether this was sent or not, did this reflect the views of the town as of this point in time?

MR. COOK: I want to see that (indicating) by the other. I'm really working from -- it seems like a long time ago, but generally speaking the resolution -- that resulted in a resolution that went to the Town Council as --

MS. HARTLEY: It did.

MR. BROWN: Do we have that resolution?

MS. HARTLEY: I'll get it. And the substance of it was basically the same. You just added the whereas.

MR. COOK: I'll clean it up a little bit. My point was that that particular document as such never went to the planning council. It was just, so far as I know, from Rick to me, and the idea -- I said, I'll work on something for the --

MR. BROWN: Okay. Well, let's do this, one, just to reserve our position, I don't know that this involves legal advice or its content

is such that it does entitle you to exercise the privilege. You're certainly entitled to assert it. You're certainly entitled to assert that it's not admissible later.

MR. COOK: Just for conversation, there might be somethings that would be asserted but I'm not so sure that I'm as -- I don't want to waive the circumstance.

MR. BROWN: I understand.

MR. COOK: It seems to me that if you have the actual resolution that was adopted, that's more appropriate. I'm giving you the information -- I'm giving you my best --

MR. BROWN: I understand. I don't know that I have that resolution.

MR. COOK: I don't know why we wouldn't want him not to respond to you on the generalities of it, but I don't have that good enough a memory. And if I go back, I know that -- you know that often when you get something from people, you do a lot of crafting about what's going to be adopted as the Town Council.

MS. HARTLEY: I think the purpose that Henry was going to use it for, but I could be wrong, was as a statement of the town's position.

Not the fact that it became a resolution, but that those -- that's an expression of the town's position at that time.

MR. COOK: That to me would be a little unfair because a town's position takes place, not because the mayor or one particular person is trying to get something done, it's when it's adopted.

MR. BROWN: I understand. That was the purpose of the questioning. It is to find out what was done with it.

MR. COOK: I think that came to me and I think for good, fair, and indifferent, I drew up a resolution. And I think the town adopted it.

MR. BROWN: Well, can we get both of them? I don't think I have the resolution. If we can put our hands on the resolution --

MR. CHANDLER: I don't know whether we -- I don't remember seeing that resolution. I don't have a present memory of that. If we didn't produce it earlier, we certainly can produce the resolution. But I just don't have a present memory of whether we did or not.

MS. HARTLEY: I don't know that we had -- I think we do -- maybe we got another

production. I know that when the SCANA -- response to the subpoena from SCANA, what we probably have was Charlie's last iteration of it unsigned.

MR. COOK: Now there were several.

MS. HARTLEY: Right. I remember it being several exchanges.

MR. COOK: I think I formatted it so that it could be certified by the mayor and the clerk, and then it would go as a formal document.

MS. HARTLEY: I think I have that too.

MR. BROWN: Well, let's do this, let me make this suggestion --

MS. HARTLEY: Yeah. That's what I keep thinking. I've seen it too without a letterhead. Do you want me to go --

MR. BROWN: Yeah. Let's go get the resolution, because that would resolve --

MR. COOK: I appreciate that.

MR. BROWN: What I would suggest is, one, that we advise Mr. Thomas, so that he's not taken unfair advantage of, that the position taken by council is that this document was amended and a formal resolution was issued. And what actually went out on behalf of the town is a resolution that he does not have before him.

I'm perfectly comfortable and think that he's entitled to take the position that this is privileged, and any further questions and answers are subject to being pulled from the deposition based on what the judge might rule on whether or not it's attorney-client privilege.

But the main thing I want to talk to him about is, this is more of a refresh your recollection document as opposed to saying you're -- you have bought every statement in here. Because I was trying to get into it without the document, what was the town's opposition to the project. And this seems to tell me what his thinking was, if not the formal position of the town. I'm not going to ask him for any legal advice. I'm not entitled to that.

As a means of refreshing his recollection, is a basis to ask him what his thinking as mayor was and the positions they were taking as a means of providing him information to assist his testimony.

MR. COOK: It's appropriate to recognize that, here again, acting as mayor contemplates that that was after discussion with full council.

MR. BROWN: Certainly.

MR. COOK: And that otherwise it might not necessarily be on behalf of the town.

MR. BROWN: And I think I can state that, and you can correct it if I don't state it correctly, that I'm not presenting this to him as the official position of the town unless he says it is. And that we believe there's a resolution submitted, that was the official position of the town.

But I do want to be able to ask him about his thinking and the council's thinking in the basis for their opposition. And I think this is a statement of his thinking at this time that I'm entitled to examine him about. Not necessarily a position of the town, but he wrote this. What his thinking was as mayor that may not have turned into the official position, but I do think I'm entitled to ask him those questions. And then if we put our hands on the resolution, then that will stand for what the town actually said.

MR. COOK: And I think that we're simply leaving it on the bench as to whether or not we would use attorney-client privilege.

MR. BROWN: You preserve your rights.

MR. CHANDLER: If y'all stipulate we reserve our rights -- I don't want to direct him not to answer, because obviously some of these things that he thought was private got stored on a hard drive at SCANA.

Do you know who Felicia Turner is?

MR. BROWN: That's our secretary. It came to us on a disk. And so when it prints out at her workstation --

MR. COOK: As soon as I saw that it was directed to me, I've got some modifications on what came about. I think I've told it straight as I can remember.

MR. BROWN: I'll accept that. When I looked at it, I had no idea who "unda8" was.

MR. CHANDLER: I understand that. So we're basically going to do some testimony subject to the objection, but we're not instructing him not to answer.

MR. BROWN: That's fine. And I will state and I agree that you preserve all of your rights to claim attorney-client privilege.

MR. COOK: And you will let him know that it came --

MR. BROWN: That you believe there's a

resolution.

MR. CHANDLER: I'll restate it to him if you think it's wrong.

MR. BROWN: All right.

MR. COOK: You'll inform him that he sent that to me for my consideration?

MR. BROWN: That's fine, okay.

MR. CHANDLER: Do we need to wait on Joan?

MR. BROWN: No. Let's just go ahead.

MR. CHANDLER: Okay.

(The witness enters the room.)

BY MR. BROWN:

Q. Mr. Thomas, thank you for accommodating us in that fashion. Let me make a statement to you about the substance of what we talked about, and Mr. Cook and Mr. Chandler are going to correct me if I misstate anything.

I want you to understand so that you're not -- that I don't take advantage of a bad recollection, what the status in the discussion of this document that I've just handed you is. And it is Exhibit 4.

MR. CHANDLER: Right.

MR. BROWN: Could he have Exhibit 4

back in front of him?

MR. CHANDLER: Right. This is Exhibit 4.

BY MR. BROWN:

Q. Mr. Thomas, you have in front of you Exhibit 4.

A. Okay.

Q. Let me make this statement to you. This document was produced pursuant to a subpoena at SCANA. And it appears to be something you prepared while you were at your desk at SCANA.

A. Correct.

Q. It is Mr. Cook's understanding and recollection that you sent this to him for review, and that very likely, probably, this document was marked up, and revised, and this document was not sent out or adopted as the official position of the town. And that there may have been conversations between you and Mr. Cook about this document that I am not entitled and do not want you to tell me any conversations you had with Mr. Cook.

I do want to ask you about this document. If not the official position, the comments that you made in this letter and what your thinking as mayor was during this time frame.

Again, I reiterate that I do not want you to tell me anything Mr. Cook might have told you or any legal advice involved in the communication.

I can state that we have agreed that the attorneys preserve all objections on attorney-client from the point of my handing you that document forward, to object to the use of the document or any questions and answers.

MR. BROWN: Subject to that, if I have stated that correctly, let me proceed with the questions. And if any question comes up that you think is a problem, I would certainly expect you to state your objection and we'll deal with it.

MR. COOK: Mr. Brown, may we also advise him that I had formulated from this document, my recollection, a resolution adopted by the full board that evening, but not this document.

MR. BROWN: Right. And we're trying to put our hands on that resolution.

So Mr. Cook's recollection is that this was not the formal position of the town, but a later document was prepared that may have gone out as the position of the town. But that's something we're trying to confirm.

Is that --

MR. COOK: Correct.

BY MR. BROWN:

Q. Do you understand what I've told you?

A. Yes.

Q. Subject to those objections and that understanding, let me then ask you about Exhibit 4.

Now, let me also tell you this, the name Felicia Turner, up there on top of the first page of Exhibit 4, is a secretary in our office. And all that tells you is that she printed it off a disk sitting at her desk.

A. Okay.

Q. That would not have been on the document that you prepared. So don't let that confuse you as to where that came from. The rest of the document, I believe, is as printed off the disk sent to us in response to the subpoena.

A. Okay.

Q. Having said that, is the substance of Exhibit 4 something that you personally prepared? The sentences on Exhibit 4, did you draft them yourself?

A. I believe that I did prepare this.

Q. And what was the purpose of preparing it?

A. To my best knowledge, the purpose of preparing this was when we went before the planning commission of Richland County to present our case from the town.

Q. All right. Now understanding that Mr. Cook recalls that he reviewed it and may have changed it, aside from what the town may have officially adopted as the town's position, does Exhibit 4 reflect your thinking as mayor as of October 2nd, 2008?

A. I do not recall this as being the total concerns of the town at that time. There were possibly other concerns too due to security, lighting, several other issues that came up that we brought before the County. This planning commission.

Q. Understanding that this is not a total statement of concerns. Is this an accurate statement of the concerns as they are included in the document? To the extent that you have dealt with a concern in this document, does it reflect your thinking as mayor as of October 2nd, 2008?

A. I would have to agree with that since this document was prepared by me.

Q. What motivated your concern over

individual unit owners' property values? Why were you asking Richland County to take that into account at that point in time?

A. To the best of my knowledge, if I can remember back, the residents of the town were concerned about the potential adverse effect to property values in the immediate vicinity due to the way the project was designed. Plus reading on down, add to that the environmental aspect of it. And that's why we had asked the County to do -- and we had asked them to do an economic impact study to determine the loss of property values to our homes in the adjacent Kaminer Station Subdivision.

Q. During this time period, wasn't the sentiment of the individuals and the town to completely stop this project as an apartment project?

A. I don't know that that's a true statement. The majority of the concern was, one, the density of the project based on what had been presented back in the early '80s.

Q. Early '80s?

A. I mean, late 2004.

The original project of the density of 89 or however many units there were there versus

204. It was the density. It was the security issues of having a transient population versus a homeowner type situation where you have people that actually own their condos. Where you have -- there were lighting issues there due to the number of parked cars that would be aimed at the subdivision, Kaminer Station. And there were several other issues there that they felt -- and I can't recall all of them.

One was the potential for the sewer system to be able to handle an additional 204 units when we were having problems with this. There was concern about the ingress and egress right there at Dent Middle School on an already overloaded Trenholm Road early in the morning. Being able to get out. The safety of that. There were concerns, as I said, about safety. As far as who lives there, who doesn't live there, having a transient population next door.

There were concerns -- those were additional concerns that were presented before the council, County Council.

Q. The concerns you described, all of those concerns are created by the change from the patio homes/condominiums to apartment projects,

correct?

A. By the change in design and density. I'd say density and the potential problems that that density could cause to traffic, to safety, to --

Q. Well, you told me you thought the patio home condominium would have been well received by the town, correct?

A. Well, I would imagine, yes, because there were as many as eight or nine that were in a position that wanted to buy one. And I being one of them. I wanted to buy one of the patio homes.

Q. You were one of the ten?

A. I was one of the ten.

Q. If the density of this apartment project was the same as the patio homes/condominiums, would there have been no opposition at this point in time in October?

A. I can't answer that question.

Q. Is it possible there would have been no opposition?

A. There's a possibility that there would not have been no opposition.

Q. What I seem to hear you say is that the organized opposition began when you learned

that it was an apartment project and not the town homes, correct?

A. Well, the concerns started because no one knew what was entailed in the project. Because they had been told one thing and then we were handed something else. And nobody knew what that other project was until Mr. Mundy and Mr. Walker and Mr. Mundy's son and one other, I think -- I don't know if Mr. Walker was there. They came and presented this new plan to Town Council.

Q. On October 2nd you know that it's a 204 unit apartment project, don't you?

A. Yes. Yes.

Q. What you were shown in October 2nd, 2008, is pretty much the same project they got permitted by DHEC in December, correct?

A. I would imagine it'd be probably pretty close to the same, because we mentioned the environmental problems here.

Q. Are the environmental problems Roper Pond?

A. The environmental problems the way I see the issues that are stated by Mr. Chandler are part of the problem, yes.

Q. Well, on October 2nd, when you

prepared that letter expressing your thoughts as mayor, you had not seen Mr. Chandler's pleading, had you?

A. No. And they had not presented a case that they were going to muck out Roper Pond either. That didn't come until after -- my understanding -- until after DHEC issued the permit, then they decided that they were going to muck out the pond.

Q. Where do you get that understanding?

A. I get that understanding from looking at the time line.

Q. What time line?

A. I met -- we met right down the hall here with Mr. Mundy's son and Mr. Walker on December the 22nd last year, and that's when we discovered that they were going to have to muck out the pond because it was not deep enough to handle the first flush requirements.

Q. And if it handles the first flush requirements after digging it out, why is there a problem?

A. The water -- my understanding is what the state -- because the water's of the state and that's also wetlands. And if it's wetlands, then they don't have -- they didn't have the permit.

Mr. Chandler goes through that. The permit -- the original permit that DHEC or the original permit to the Corp of Engineers didn't outline mucking out the pond.

Q. Did the original plan submitted to DHEC show the lowering of the elevations in the pond?

A. Yes.

Q. Now, how were they going to lower the elevations without digging it out?

A. The way I understand it from my meeting of December 22nd was that they did not realize the pond was that shallow and that they were, therefore, going -- it did not have that much free board. They were going to have to go back and muck out the pond in order to make it work as a retention pond.

Q. Do you know of your own knowledge or does the town know of its own knowledge that that is a violation of any standard or regulation?

A. To my knowledge of what has been explained to me, without having a permit to disturb wetlands that's a violation. That's my understanding.

Q. Explained to you by who?

A. Explained to me by my education and by my knowledge of NPDES and by my knowledge of environmental's.

Q. And if that has been permitted and approved by DHEC, what basis do you have to contend that that's inappropriate?

A. That's outlined in the filing.

Q. All right. My questions from now on are going to be exclusive of what Mr. Chandler, as your attorney, has told you. I want to know what knowledge you have exclusive of Mr. Chandler. Any question I ask you about what the town knows or you know is intended to exclude what Mr. Chandler knows.

Is that fair?

A. Okay.

Q. I would like for you to excise out of your memory and your answers information obtained solely from your attorney.

Can we do that?

A. If at all possible, it's very hard to tell you what I didn't know at any particular time.

Q. To the best of your ability, would you give me answers --

A. To the best of my ability, I'm going

to give the honest answer to your question. I'm under oath to do that.

Q. And the question is going to be exclusive of what Mr. Chandler told you. So if you give me an honest answer, it will exclude Mr. Chandler's information.

Is that fair?

A. I would say it's fair as long as you don't ask me questions that are already covered in Mr. Chandler's filings.

Q. I'm going to ask you for the town's knowledge and information.

A. All right. To the best of my knowledge, I'll give you what I understand.

Q. All right. As of October 2nd, 2008, had you retained Mr. Chandler?

A. No, not to my knowledge.

Q. When you wrote the memo expressing your thoughts as mayor of the Town of Arcadia Lakes, the October 2nd memo, what were you encompassing within the phrase "environmental concerns"?

A. My environmental concerns were at that time my understanding that they were lowering the water in the pond. And that by lower the water in

the pond, that that would impact the surrounding wetlands which would then be dried up by them lowering the pond.

Q. So on October 2nd, 2008, you were aware that they were lowering the water in the pond, correct?

A. I was aware that they wanted to lower the water in the pond. They had made that before council, correct.

Q. How were they going to lower the water in the pond on October 2nd, 2008, without digging it out?

A. My understanding was that they were going to drop the outlet structure in order to accommodate that.

Q. Now, let me go back to the issue of depressed property values. Who first raised that to the town as a concern?

A. I do not recall exactly who raised that question.

Q. Did you have a concern about that issue as mayor prior to it being brought to you by any individual in the town?

A. Did I in my role --

Q. Yes. In your role as mayor, were you,

at this point in time, as of October 2nd --

A. I would say I did, because I stated here that we wanted them to do an economic impact study to determine the loss, if any, to homes in the area due to the development.

Q. What was your basis for thinking that the County would have an obligation to do that?

A. You have to go in and read the County regulations on their reasoning behind rezoning the property multifamily for apartments and approving that project.

Q. Is it your understanding that their regulations require them to take into account depression of property values as a result of the projects they approve?

A. It's my understanding that they are supposed to -- they should take into account the surrounding area and how it blends with what project is being developed in that particular piece of property. That's the way I understand it. I've got to go back and read the actual documentation from the County, but the County regulations on zoning stipulates that very carefully.

Q. To your knowledge, do the County regulations on zoning specifically refer to the

depression of property values as a consideration in approving a project?

A. I don't remember that. I'd have to go back and read that particular case in there.

Q. As of October 2nd, was one of your reasons for opposing this project as mayor of the Town of Arcadia Lakes, the potential for individual unit owners to have their property values depressed?

A. Yes. That was one of the reasons we wanted an economic study done to determine that.

Q. Is that one of the reasons you wanted to stop this project?

A. That was one of the reasons for our opposition to the project as it was presented.

Q. And do I understand you to say that as it was presented, the primary concern was the additional density over and above what was presented to you in 2004?

A. No. It was also the economic impact. It was also the character of the neighborhood.

Q. Well, you did not oppose the townhouses, patio homes, condominiums, correct? You personally wanted to buy one.

A. True.

Q. What factor, other than the density of the apartments, led you to believe there would be a depression of economic value for certain homeowners in Arcadia Lakes?

A. Safety to you, to the transient nature of the folks renting the property, light intrusion into the actual property adjoined, potential overflow of the sewer system due to the fact -- did it actually -- was it sized properly to handle an additional 204 units. I mean, the town only has 890 people living in the town. You're adding another 4-500 residents to the system, traffic. All those had -- all those come together -- all of that has to do with the density.

Q. All of those factors arise out of the increased density, right?

A. That's the way I see it.

Q. Okay. Now, sitting here today, can you tell me any reason why the sewer system is inadequate and will cause overflows or fail to function?

A. It was a concern of ours because we have had overflows in the sewer system in our town in the recent past.

Q. Aside from a concern, can you tell me

today of any information anybody's given you, including Mr. Chandler --

A. We've been --

Q. Let me finish the question. Has anybody, including Mr. Chandler, suggested to you, as we sit here today, that it is a probability that the sewer system as designed will not function?

A. We've been given assurance by East Richland County Public Service District that the sewer system will handle the project.

Q. Okay. Is that concern, then, off the table in terms of your opposition to this project?

A. Yes.

Q. Okay. Are you today opposing this project or opposing this permit because of concerns over depression of property values?

A. No.

Q. Why? What is causing you to drop that concern?

A. It's not in our pleadings.

Q. Is that, though, still a motivation for asking Mr. Chandler to oppose it? I understand that it's not in your pleadings, but is that still a motivation today as it was in October?

A. That is not the case that's being

presented to the Administrative Law Judge from the town today.

Q. I understand that. But you hired Mr. Chandler and asked him simply to oppose the permit, correct? You didn't tell him -- you left it up to him to hire the experts, correct?

A. We hired him to look at the evidence, look at the permits and determine what we -- what needed to be in the request for the contested hearing.

Q. In October of 2008, one of your motivations, as the town, to oppose the project as apartments, was your concern over the depression of property values. Isn't that apparent?

A. In October of 2008, yes, it was. I mean, it's in document Exhibit 4.

Q. And the project that's going forward today is the same as the project that was going forward in October, correct?

A. Yes. This was all going before the Richland County Planning Commission. This was our appeals before them to have them look into these to determine if these were issues that we -- that would change the design of the project.

Q. Are you then giving up, or waiving, or

abandoning depression of property values as an issue to present to the Administrative Law Judge in regard to this permit?

A. If they are not in the filing that Mr. Chandler has, then I would say that's a true statement.

Q. Okay. The town is not -- as far as the positions in this case, the town is not going to assert depression of property values, or the density of this project, or any of those other issues in its opposition to the permit issued by DHEC.

Is that true?

A. No.

Q. What's untrue about that?

A. Density, density has -- we believe density has a lot to do and everything to do with many of the environmental problems that we're --

Q. How does density impact the validity of the BP Barber design from managing the stormwater run off?

A. From an engineering standpoint, if there was less density, there would be more soil to absorb rain water. There would be more area to put in a real detention pond and build a real detention

pond and leave the existing pond the way it is.

Q. That's purely hypothetical, isn't it?

A. Not as an engineer. I see that as a reality.

Q. Do you know that the plan of lower density for town homes and condominiums would have less paved area, or less roof surface, less impervious area than the project that is currently being proposed?

A. If you took the project that is currently proposed and you took several of those buildings out of the plan and put in grass or planted material, it goes without question that that would be more --

Q. What basis do you have -- does the city have today to say that the BP Barber plan will not handle the impervious surface that exists on this project today?

A. It's in the filings.

Q. Outside of Mr. Chandler's filings.

A. They're in the filings.

Q. Outside of Mr. Chandler's filings, what basis does the Town of Arcadia Lakes have to assert that the BP Barber plan is inadequate to handle the surface run off?

A. You're taking out the environmental issue?

Q. I'm taking out information that Mr. Chandler has proposed to you.

A. I don't know -- this is our -- what Mr. Chandler's presented to you is our case today.

Q. Another way of saying it is, outside of what Mr. Chandler has written down in Exhibit 3, the town has no information to present to the Administrative Law Court to establish that the BP Barber plan is inadequate to handle the surface run off.

A. Correct.

(EXH. 5, E-mail, was marked for identification.)

Q. Bear with me a minute. Here is Exhibit 5.

Is that an e-mail that you authored, Mr. Thomas?

A. As far as I know it is.

Q. All right.

A. December the 17th.

Q. That is after DHEC has issued the certification on the general permit on December 15th; is that correct?

A. If it was December 15th, then yeah. This is December 17th.

Q. What does the text of your letter say? What does the text of your e-mail say? Just read it for me.

A. "We have until December 30th, 15 days, to file an appeal to DHEC board."

Q. What has happened that you're going to be appealing?

A. We needed to get our hands on the actual plans so that we could study the plans. From what I can understand here, "We need to review the approval and the revised plans to determine if we have a reason or cause to appeal to the board. And if not, we'll send a blanket appeal. We need to get our hands on the plans."

Q. As of December 17th, Mr. Thomas, you had no idea whether or not the BP Barber plans were correct or not; isn't that right, the town?

A. I don't know that that's correct or not. I said that we need to review the approved and the revised plans.

Q. Well, Mr. Chandler provided you his advice and his complaint after December 17th, didn't he?

A. That's been established. We didn't hire Mr. Chandler until later.

Q. We established that the town has no knowledge of what's wrong with those plans outside of what Mr. Chandler told you, correct?

A. On December 17th, we didn't have any idea what the final plans were because we hadn't seen the final plans that came out of DHEC.

Q. Therefore, you had no idea whether those plans were right, wrong, or indifferent, did you?

A. Well, we only had so many days to appeal it. That's why we had to get the plans in order to determine if there was an appeal.

Q. But on December 17th, you had no idea whether the plans were sufficient or not. You just knew that DHEC had allowed it to go forward.

A. We need to review the approval and the revised plans to determine if we have a reason or cause to appeal to the board.

Q. Indicating -- meaning very clearly, you did not know whether you had any grounds to appeal or not on December 17th, did you?

A. We didn't have any idea based on the -- what had been approved. We didn't know what

had been approved. We weren't privy to that, so we were trying to find the plans to do that.

Q. And whether those plans were adequate to handle the stormwater run off on the Roper Pond project, you had no idea whether they would or would not, did you?

A. Not until we saw the final plans.

Q. And whether they would or would not, you didn't know that until Mr. Chandler gave you his pleading either, did you? You told me that the sole knowledge possessed by the Town of Arcadia Lakes to conclude that these plans are defective comes from Mr. Chandler's pleading.

Now, you've told me that 50 times, haven't you?

A. That the --

Q. The town's sole knowledge that there are potential deficiencies with the BP Barber plans comes exclusively from Mr. Chandler. Now, you've told me that at least 50 times, haven't you?

A. I'm still misplaced on your question.

Q. Have you told me repeatedly that the town's only knowledge of any potential deficiencies with the BP Barber plans comes from Mr. Chandler?

MR. CHANDLER: You know, I've sat

here -- I'm going to object to the form of the question.

MR. BROWN: All right. We'll move pass it.

MR. CHANDLER: That question has been asked so many times, and it tries to misstate the facts that have been put on the table.

MR. BROWN: All right. I'll move pass that. I'll move pass that.

BY MR. BROWN:

Q. What is the next to last sentence on your December 17th memo? Would you read it.

A. The next to the last sentence?

Q. Where you say you want to stop that the project. Would you read that sentence for me, please.

A. "Let me know where you think we can go to delay or stop this project."

Q. Your intent as of December 17th was to stop the project by any means you could come up with, correct?

A. Until we could see what the approved plans were from DHEC and the actual revised plans from BP Barber. There's only a certain window of time that you have to look at those types of things

and to make an appeal, if an appeal is available.

Q. Is there a difference to you, Mr. Thomas, as an engineer, between assessing whether BP Barber's stormwater management plan works or not and stopping the whole project?

A. Yes.

Q. There is a difference, correct?

A. Yeah.

Q. If you could simply correct Mr. -- BP Barber's deficiencies, would you then be happy? Would you withdraw your opposition?

A. Then or now?

Q. Now.

A. If we can sit down and come to some clear understanding of what is in here and what needs to be done, yes.

Q. Why were you motivated on December 17th to stop the project as opposed to determining what may or may not be wrong with the BP Barber plans?

A. Because we only had so many days to file an appeal after the decision in order to take it to the board. And then once the board -- there's a time line there.

Q. I understand. What was your

motivation for wanting to stop the entire project as of December 17th?

A. To determine what was actually being proposed and what was being planned in the final plans. I've already said that three times.

Q. Were you, at that point in time, hoping to stop the project permanently as an apartment project?

A. Not to my knowledge.

Q. Were any citizens of the town hoping to stop the project permanently as an apartment project?

A. I would imagine there are some that would love to stop the project, but that's outside my -- you'd have to talk with them.

Q. Did you ever express to anyone your view, either personally or as the mayor, that you wanted to stop the project entirely as an apartment project?

A. No. As a matter of fact, I had a telephone conversation with Mr. Walker, after our meeting on December the 22nd, and he and I just talked, after our meeting down the hall, and I explained to him -- I said, This -- we're not trying to stop the project because the project will

eventually go through. But we will not -- as a town, it's my responsibility to make sure that every environmental dot -- the "I" is doted and the "T" is crossed. And if you want to go talk to Mr. Joe Walker, he's the one that made the call to me.

Q. Outside of your conversation with Mr. Walker, have you ever stated to anyone, either personally or as mayor of the town, that you wanted to stop the entire project by any means possible?

A. I don't remember having that conversation.

MR. CHANDLER: Henry, are you going to be going a whole lot longer?

MR. BROWN: No.

MR. CHANDLER: If you're going to be going a lot longer, I think we need to take a break.

MR. COOK: I'd appreciate a little break.

MR. BROWN: All right. Let's take a little break. I think that I'm about done, but let me talk to my lawyer.

(A recess was taken from 4:52 p.m. to 5:01 p.m.)

(EXH. 6, Letter, was marked for identification.)

BY MR. BROWN:

Q. Mr. Thomas, are you ready to start back?

A. Yes, sir.

Q. I've handed you what's been marked as Exhibit 6. Is that the resolution that went out as the official position of the Town of Arcadia Lakes?

A. To the Richland County Planning Commission, yes.

Q. And that is the work product that you commenced with your October 2nd, 2008, letter?

A. Best of my knowledge, since it flows and it's the same date, I would say yes.

Q. As far as we know today, and subject to correction, this Exhibit 6 is something that was sent to the Richland County Planning Commission as the town's official position in regard to this project?

A. At that time, yes.

Q. And to your knowledge, does it express the sentiments and beliefs of the town at that point in time?

A. At that point in time, yes.

Q. Now, why do you qualify it as to "at that point in time"? What may have changed?

A. The issues that we brought before the planning commission. An example would be, that the development was substantially out of character for the entire town, its neighborhood, contiguous community, and intended zoning use as originally presented. That's straight out of the County regulations as to rezoning and how they -- and what they should have considered in the rezoning of this property at the time. Therefore, we were presenting it to them as our case -- as a part of our case.

Q. All right. And the planning commission, obviously, disagreed with you because they allowed the project to proceed?

A. Correct.

Q. Do you still think that that's a consideration that is meritorious and the project does not comply in that fashion?

A. What the town would think -- I mean, what -- the issue was discarded by the planning commission. Therefore, it can no longer be considered an issue.

Q. Well, if sitting here today, the

planning commission said, I will give you a second bite at the apple. Would you today assert that as a ground to deny the project going forward?

A. I'd have to take that up with my constituents.

Q. How about you personally as mayor; would you still promote that as a reason to stop the project?

A. I can't really answer that.

Q. Well, you held that opinion on October 2nd, 2008, did you?

A. This was the culmination of what came out of our meetings with our -- with my constituents and what they believed were issues and the issues that they wanted me to present as the mayor to the planning commission.

Q. Did you agree with those positions?

A. Sure, I do, because I signed it.

Q. Do you today still believe that is a valid position to present in opposition to the project?

A. It has no merit anymore because the planning commission said no.

Q. Well, I understand it has no effect on the planning commission's decision. But do you

today believe that is a valid concern and a problem with this project proceeding?

A. I'll refer back to our filings with the Administrative Law Judge and Mr. Chandler as to where we stand today.

Q. Okay. Mr. Thomas, I think I've asked you this before, but as the town fully produced all documents or other information responsive to the request and relevant to this proceeding?

A. To the best of my knowledge, because everything -- everything that I went back and looked through were documents that were -- I personally had given to Estates Management when we went before the County and et cetera. So I do not personally know of anything else today that has not been presented to Roper Pond, LLC.

Q. To the best of your knowledge, the town has made full production of all the information you know about?

A. To the best of my knowledge.

Q. Yes?

A. Yes.

MR. BROWN: Okay. Thank you. That's all I have.

MR. CHANDLER: Okay. I don't have any

questions.

MR. BROWN: Mr. Thomas, thank you very much.

MS. HARTLEY: No, not yet.

MR. BROWN: Oh, I'm sorry.

EXAMINATION

BY MR. HIGHTOWER:

Q. Mr. Thomas, you stated that you are concerned about whether or not the department adequately reviewed the -- let's see -- the phrase that you said was "the surface water disposal system." I believe that was the term that you agreed would stand in for BP Barber's drawings, correct?

Do you remember that?

A. That was the terminology that we used as -- other than water produced by the actual units themselves flowing to East Richland County Public Service System.

Q. Now, you have stated that the town as a concern about those documents; is that correct?

A. The town?

Q. The plan that the department --

A. And those concerns are stated in Mr. Chandler's filings.

Q. Has the town retained any person to review those documents?

A. Other than Mr. Chandler?

Q. Yes. Someone with an engineering degree and is a licensed engineer.

A. Define retained, because we put before -- Mr. Hill, Mr. Danny Hill is a neighbor of mine. Mr. Danny Hill is a -- he designs sewer systems, and he's a neighbor in my town.

Q. Mr. Hill, do you -- is Mr. Hill going to be called as a witness in this case?

A. Not to my knowledge. And he has not asked for any compensation for anything that he's looked into.

Q. Has he provided you with any opinions on those documents?

A. Yes.

Q. Can you state what those opinions are?

A. The opinions that he had in the very beginning was he brought up the question about the sewer system and its adequacy to handle the actual sewer system going into the East Richland County Public Service District. Or you're talking about surface water?

Q. Okay. I'm talking about surface

water. I am not talking about waste water disposal. I'm talking about surface water run off, stormwater run off?

A. He looked at the -- he walked over the property along our property line and gave us some idea on where the water was coming from and where it was being drained from.

Q. Did he review the -- I'm going to use that term again -- the surface water disposal system documents?

A. The DHEC -- the drawings that were provided to DHEC?

Q. Yes.

A. To the best of my knowledge, he did review -- did look over those drawings.

Q. He did review those. And what did he tell you?

A. I don't recall the conversations that we had. I don't remember basic conversations that I have.

Q. Did he identify any problems with those documents with regard to surface water run off?

A. Best of my knowledge, the only concerns that I can remember he and I discussing

were the fact that the pond was spring fed and lowering the pond level may or may not have any real impact on its ability to hold water. And the concerns that we all had about the potential overflowing of Trenholm Road during major storm situations. Other than that, I can't remember anything else being brought up.

Q. So except for this resident, Mr. Hill, is it your testimony that no one has looked at the surface water disposal system documents, the ones that the department DHEC approved and is the subject of this contested case proceeding, to determine whether or not there is some problem with them?

A. Well, it's right in this e-mail on here. Mr. Brian Bates, who's also a neighbor, he and I were the two individuals that actually put together the NPDES for the town, along with other expert folks, in order to save the town the dollars of having to go out and hire consultants to do that.

Q. So you're stating that this other person -- what's that person's name?

A. He's right on this e-mail on Exhibit Number 5, Mr. Brian Bates.

Q. Okay. And you're stating that Mr. Bates reviewed the documents and rendered an opinion, an expert opinion on them?

A. As far as I remember, yes.

Q. And what was that opinion?

A. From what I can remember, the major concerns that he had was the ability of the property or the containment system to handle first flush. And he had met with myself and when we talked with Jill Stuart at DHEC.

Q. You talked to Ms. Stuart at DHEC?

A. Yes. Because we had to get her -- get information from her. She's a public official and we went to various public officials in order to try to get as much information as we could on the project, how it was designed and how it would affect our town.

Q. What is Mr. Bates educational qualifications to be an expert?

A. Mr. Bates is a water quality engineer.

Q. He's a registered engineer in South Carolina?

A. That's correct.

Q. A water quality engineer?

A. He works for Wilbur Associates. You'd

have to talk to Mr. Bates. I don't know what his total education is. I do know he's an expert on NPDES.

Q. Has Mr. Bates put any of his conclusions or opinions down in writing?

A. Only what you see here. That I can -- I don't remember him putting anything in writing. If it is, I don't have a copy of it.

Q. Okay.

A. Most of the conversations I ever had with him were just pure conversations or with him arranging for us to talk with the right folks.

Q. Is it -- to the best of the town's knowledge, is there any plan to have Mr. Bates testify at the hearing in this matter?

A. Not to my knowledge.

Q. Except for Mr. Bates, has anybody else reviewed the plan and has rendered some opinion?

A. Well, I indicated earlier Mr. Hill.

Q. Right, but Mr. Hill was the waste water --

A. They were the two engineers that had looked at it.

Q. And neither one of them is going to be called as a witness in this case; is that correct?

A. Not that I know of.

Q. Okay. And neither one has put any opinions down in writing --

A. Not that I'm aware of.

Q. -- whether on a computer, or paper, or whatever?

A. Not that I'm aware of.

Q. And except for conversations with you, have they spoken to any other town official?

A. If they happened to be in the actual meetings with us in the town -- because we have town meetings, called town meetings for the residents to come and talk about the issues. If they were there, then they would have voiced their opinions in those meetings.

Q. With regard to the first flush concern, does Mr. Bates still have a concern about that?

A. I don't know. You'd have to discuss that with Mr. Bates.

Q. He has not voiced any other concerns to you other than the first flush?

A. I'm not -- I don't remember any at this time.

MR. HIGHTOWER: Okay. No further

questions.

MR. BROWN: Nothing, none.

MR. CHANDLER: No questions.

(The deposition concluded at 5:16 p.m.)

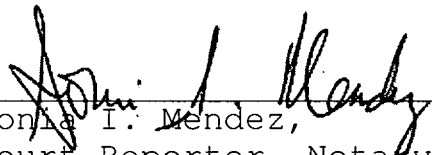
CERTIFICATE OF REPORTER

I, Sonia I. Mendez, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 24th day of August 2009, at Columbia, Richland County, South Carolina.



Sonia I. Mendez,
Court Reporter, Notary Public
State of South Carolina
at Large.
My Commission expires
March 23, 2017.

I N D E X

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E X H I B I T S

Respondent's

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2	Two Page Note Sheet by Richard W. Thomas, Jr.	7
3	Request For Contested Case Hearing	34
4	E-mail dated 10-2-2008 from Richard W. Thomas, Jr., to Unda8@aol.com, Bates Number SCANA - 0511 and 0512	87
5	E-mail dated 12-17-2008 from Richard W. Thomas, Jr., to Brain Bates, Bates Number SCANA - 0874 to 0877	118
6	Letter dated 10-2-2008 from Richard W. Thomas, Jr., to The Richland County Planning Commission, Bates Number PET - 0166 and 0167	126

05216

John Stephens

From: Jill C. Stewart [STEWARJC@dhec.sc.gov]
Sent: Monday, November 17, 2008 12:11 PM
To: Jim Futter; John Stephens
Cc: Ann Clark; bmundy@estatesinc.com; jwalker@estatesinc.com; mmundy@estatesinc.com; BradyJ@schouse.org; jbl@scsenate.org
Subject: Roper Pond

Jim,

We only had a couple of items/questions brought up at our meeting on Friday afternoon.

1. The proposed plans include the lowering of the water surface elevation of the existing pond to allow for detention of post-development runoff. How were the elevations obtained for what is currently below the existing water surface?

2. Is dropping the water surface elevation taken into account when determining if a site is eligible for coverage under Nationwide Permit 39?

3. The third issue raised concerned the sizing of in-line treatment devices, such as Stormceptors, based on our regulations. The problem I am grappling with is that our regulations do not touch on this issue. I want to talk to a couple of current and former staff to get their take on this. I have no problem with the devices and think they will do a good job at pollutant removal, I just need a sounding board. I may need additional information on the sizing of the units, I will let you know. It will be tomorrow before I can talk to these individuals.

I did note a couple of items in the construction sequence on the plans I would like you to modify:

a. In the Intermediate Phase, move preliminary grading to a new line after the installation of basins and diversions.
b. In the Final Phase, move the installation of the base course to before the removal of the sediment basins. Base course will remove a large potential of sediment discharge.

In the interim, please let me know if you have any additional questions.

Thanks,

Jill C. Stewart, P.E.
Manager, Stormwater Permitting Section
Bureau of Water
(803)898-0439

PENGAD 800-631-6989
EXHIBIT
5 Walker
8.20.09 SB

000933
RP 0565

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69-A Hagood Avenue
CHARLESTON, SOUTH CAROLINA 29403-5107

REPLY TO
ATTENTION OF

RECEIVED
FEB 26 2009
B. P. BARBER & ASSOCIATES
COLUMBIA, S. C.

February 25, 2009

Regulatory Division

Mr. George O. Whatley
B.P. Barber & Associates, Inc.
101 Research Drive
P.O. Box 1116
Columbia, South Carolina 29202-1116

Dear Mr. Whatley:

This letter is in response to a Pre-Construction Notification (PCN) dated May 5, 2008, which was received on May 13, 2008. By submittal of the PCN, you requested verification that the proposed project is authorized by a Department of the Army Nationwide Permit.

The PCN contains the following identifying information for this project. The work affecting waters of the United States is part of an overall project known as Site Improvements of Roper Property on Trenholm Road. The project involves impacts to not more than 0.075 acre of waters of the United States, including wetlands. The project is located on the west side of Trenholm Road, in Richland County, South Carolina. The PCN also includes the following supplemental information:

a. Drawing sheets 1-6 of 6 and titled "Site Improvements of Roper Property on Trenholm Road" and dated September 8, 2008.

b. A delineation of special aquatic sites (SAC-81-2004-1871-J).

Based on a review of the PCN, including the supplemental information indicated above, it has been determined that the proposed activity will result in minimal individual and cumulative adverse environmental effects and is not contrary to the public interest. Furthermore, the activity meets the terms and conditions of Department of the Army Nationwide Permit(s) #29.

For this authorization to remain valid, the project must comply with the enclosed Nationwide Permit General Conditions, Charleston District Regional Conditions, and the following special conditions:

1. That prior to beginning the authorized work the permittee must obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations (i.e. 401 Water Quality Certification, Coastal Zone Management Consistency Determination, State Navigable Waters Permit). If the permittee fails to obtain the necessary state certifications and/or authorizations prior to beginning work, this will be considered a willful and knowing violation of the Clean Water Act and appropriate enforcement action will be taken.

000934
RP 0128

2. That impacts to aquatic areas do not exceed those specified in the above mentioned PCN, including any supplemental information or revised permit drawings that were submitted to the Corps by the permittee;

3. That the construction, use, and maintenance of the authorized activity is in accordance with the information given in the PCN, including the supplemental information listed above, and is subject to any conditions or restrictions imposed by this letter;

4. That the permittee shall submit the attached signed compliance certification to the Corps within 30 days following completion of the authorized work and any required mitigation.

5. That all conditions given in the enclosed certification from the S.C. Department of Health and Environmental Control are hereby incorporated as special conditions to this authorization.

This verification is valid until the Nationwide Permits (NWP) expire or for two (2) years, whichever comes first. The time specified for this authorization will remain valid if the Nationwide Permit(s) is reissued without modification, or the activity complies with any subsequent modification; however, the provisions of 33 CFR 330.6(b) will apply if the Nationwide Permit expires, is suspended or revoked, or is modified such that the activity no longer complies with the original terms and conditions. In general, these provisions provide that if the work authorized by this letter has commenced in accordance with the requisite terms and conditions or you, acting in reliance of this Nationwide Permit, have entered into a contract to have the work performed prior to such date, this authorization will remain in effect if the work can be completed within twelve months of the date of the Nationwide Permit's expiration, modification or revocation unless discretionary authority has been exercised in accordance with 33 CFR 330.4(c) or (d).

This letter supersedes the previous letter prepared by this office and dated September 8, 2008. Your cooperation in the protection and preservation of our navigable waters and natural resources is appreciated. In all future correspondence concerning this matter, please refer to our file number SAC-2004-35601-6NO. A copy of this letter is being forwarded to certain State and/or Federal agencies for their information. If you have any questions concerning this matter, please contact Chip Ridgeway at 803-253-3906.

Respectfully,

Tina B. Hadden
Chief, Regulatory Division

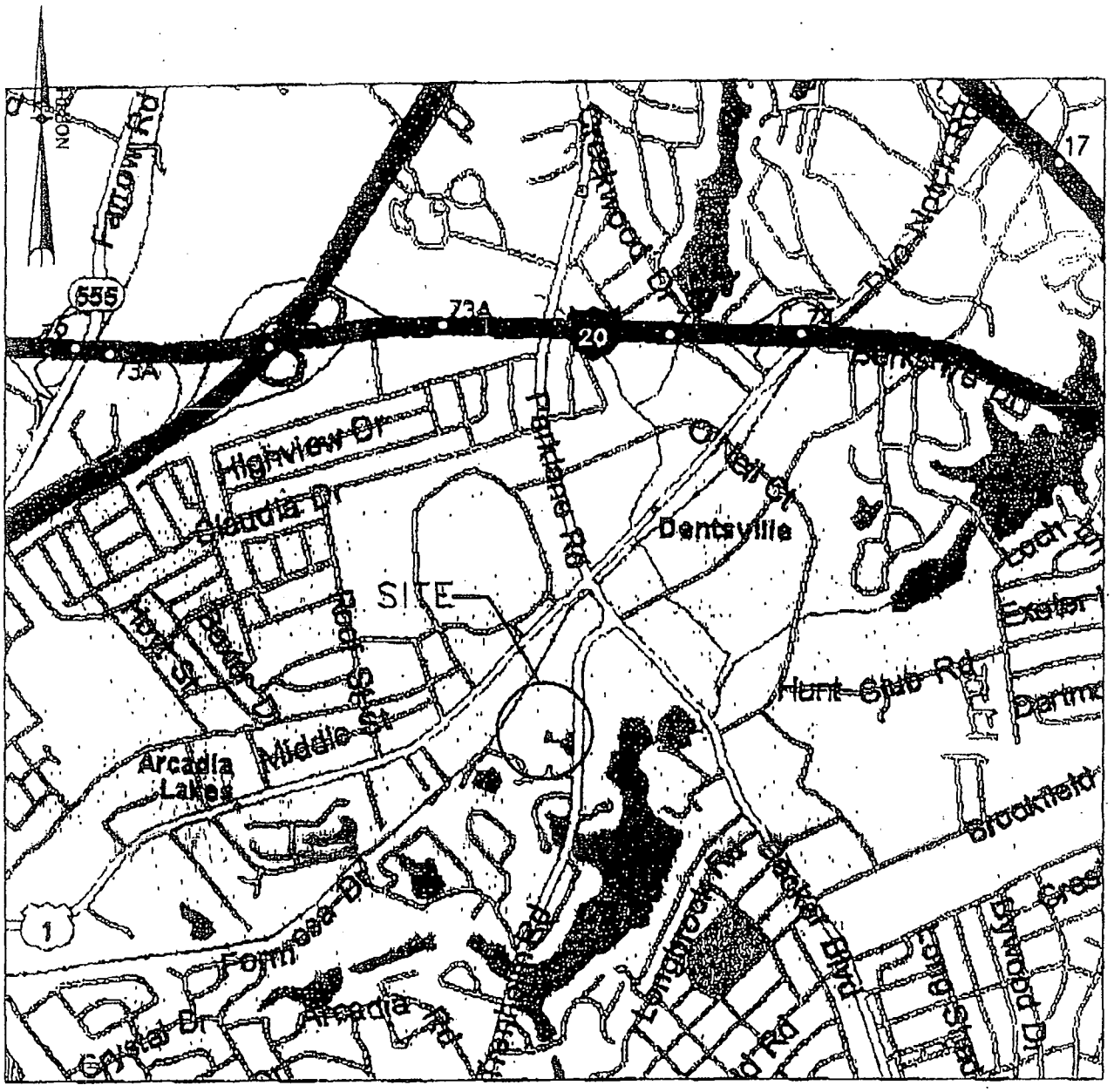
Enclosures:
Permit Drawings
Charleston District Regional Conditions
Nationwide Permit General Conditions
Compliance Certification Form
Customer Service Survey

000935
RP 0129

Copy Furnished:

S.C. Dept. of Health and Environmental Control
Bureau of Water Pollution Control
Attn: Mr. Chuck Hightower
2600 Bull Street
Columbia, South Carolina 2920

000936
RP-0130



LOCATION MAP

NOT TO SCALE

PERMITTED PLANS

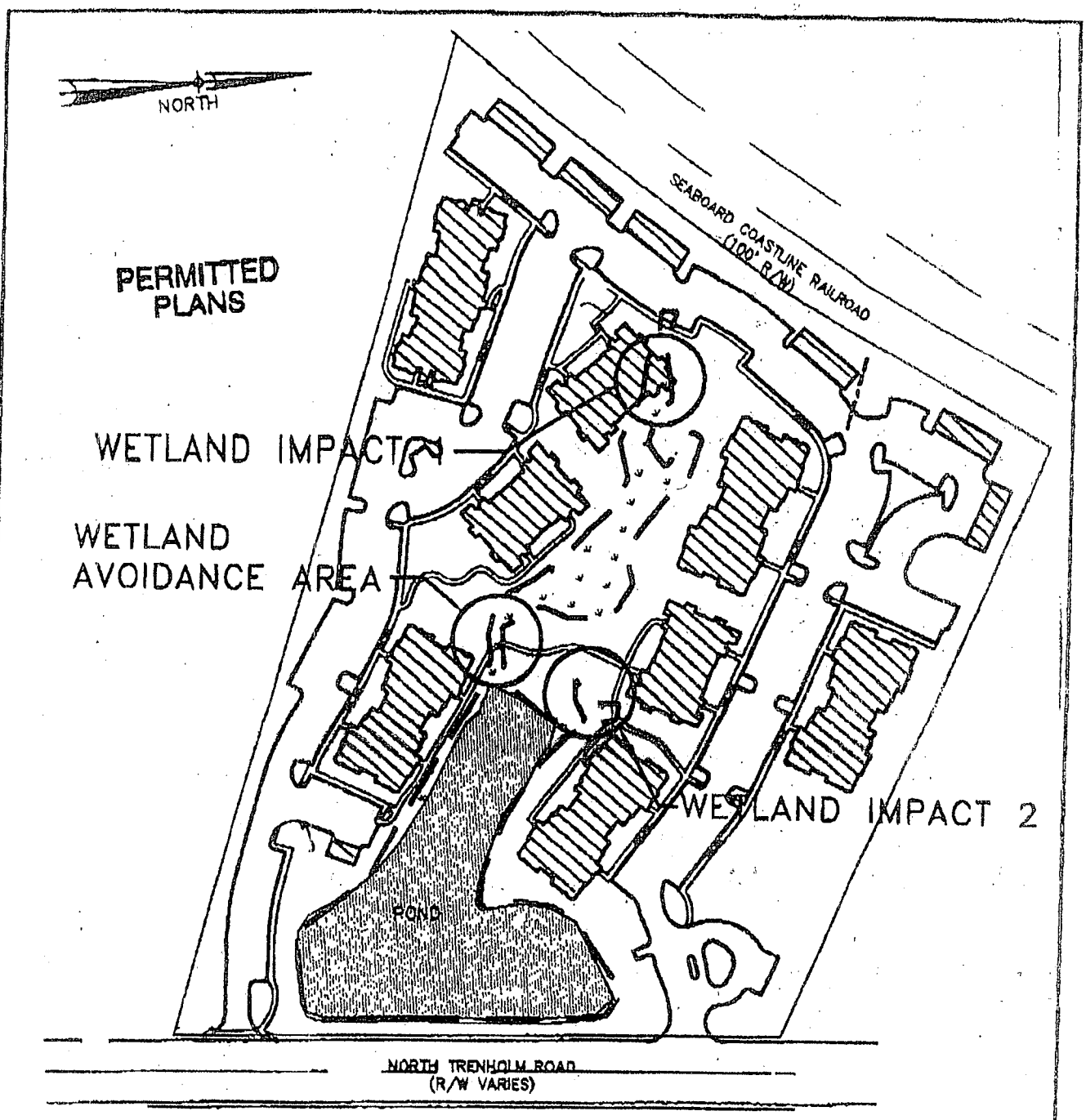
Project Title:	SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
Project Location:	RICHLAND COUNTY, S.C.
Applicant:	ESTATES, INC.

BPB Project #05216

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

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OVERALL SITE PLAN

1" = 150'

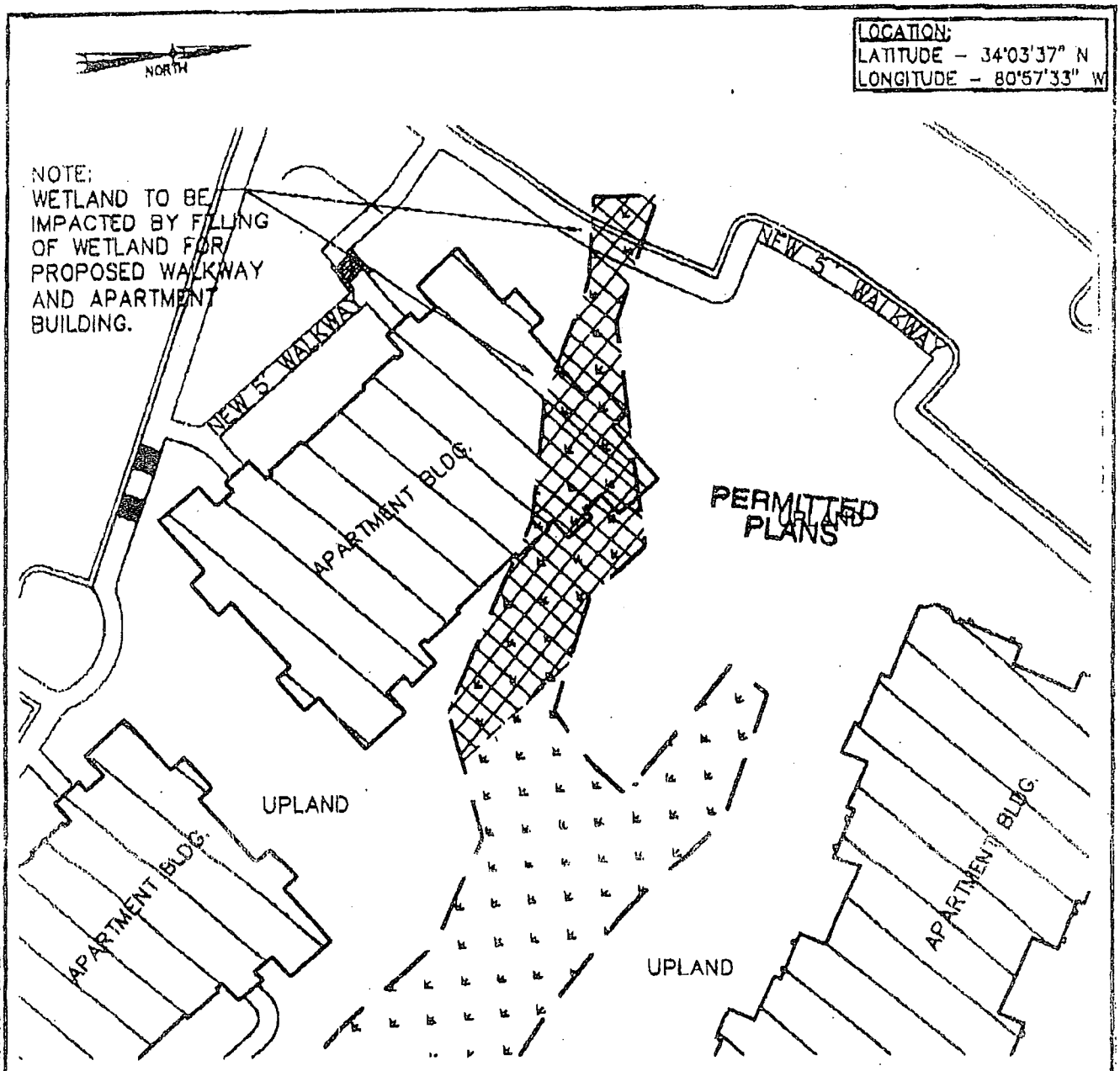
Project Title:	SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
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BPB Project #05216

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

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WETLAND IMPACT #1

1" = 40'

TOTAL WETLAND IMPACT = 0.071 ACRES

LEGEND

IMPACTED WETLAND

WETLAND (NOT IMPACTED)

WETLAND BOUNDARY

Project Title:
SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD

Project Location:
RICHLAND COUNTY, S.C.

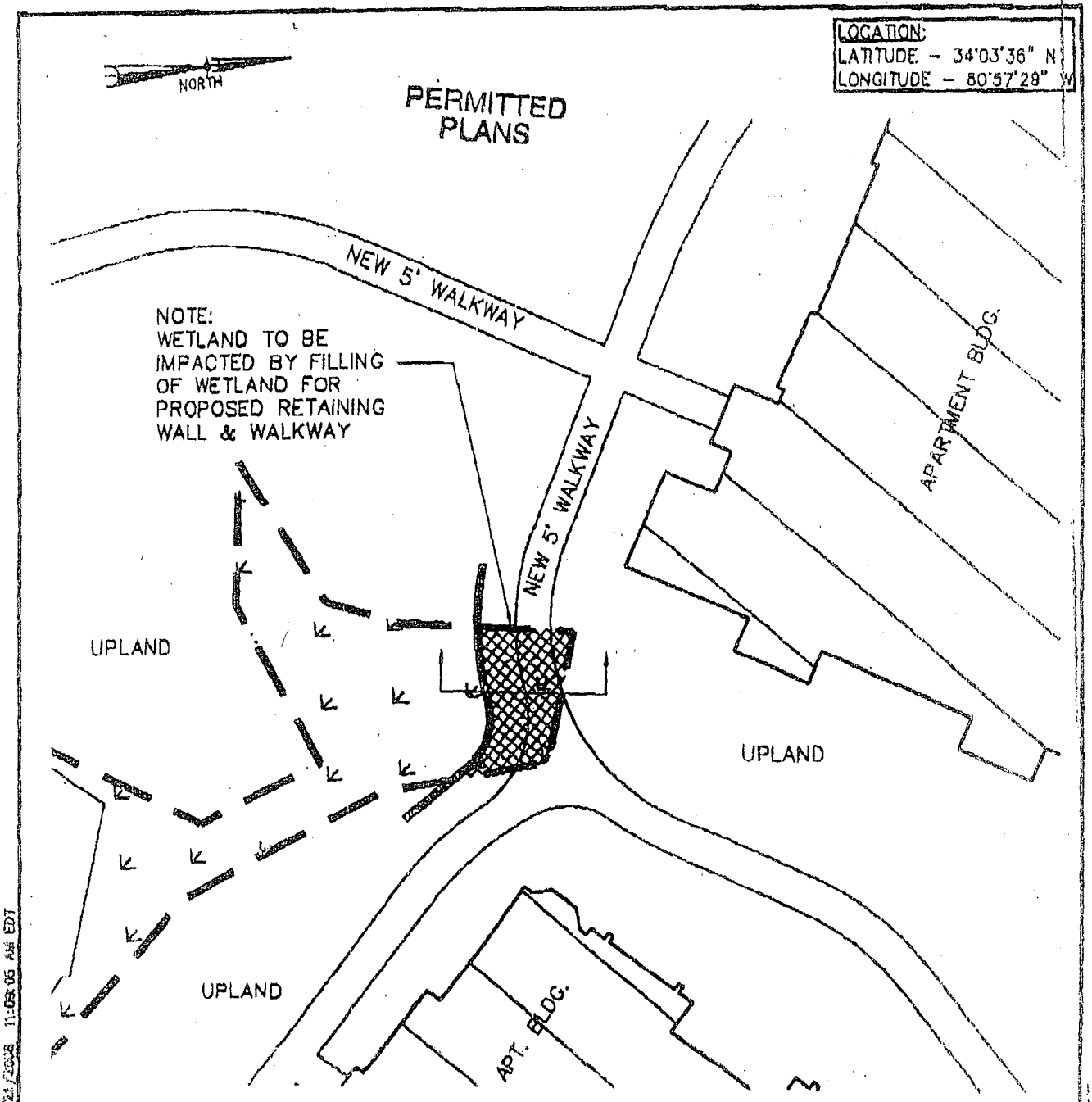
Applicant:
ESTATES, INC.

BPB Project #05216

SAC-2004-35601
Site Improvements at Roper Property on Trenholm Road
Richland County
September 8, 2008

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WETLAND IMPACT #2

1" = 20'

TOTAL WETLAND IMPACT = 0.004 ACRES

LEGEND

IMPACTED WETLAND

WETLAND (NOT IMPACTED)

WETLAND BOUNDARY

BPB Project #05216

Project Title:
SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD

Project Location:
RICHLAND COUNTY, S.C.

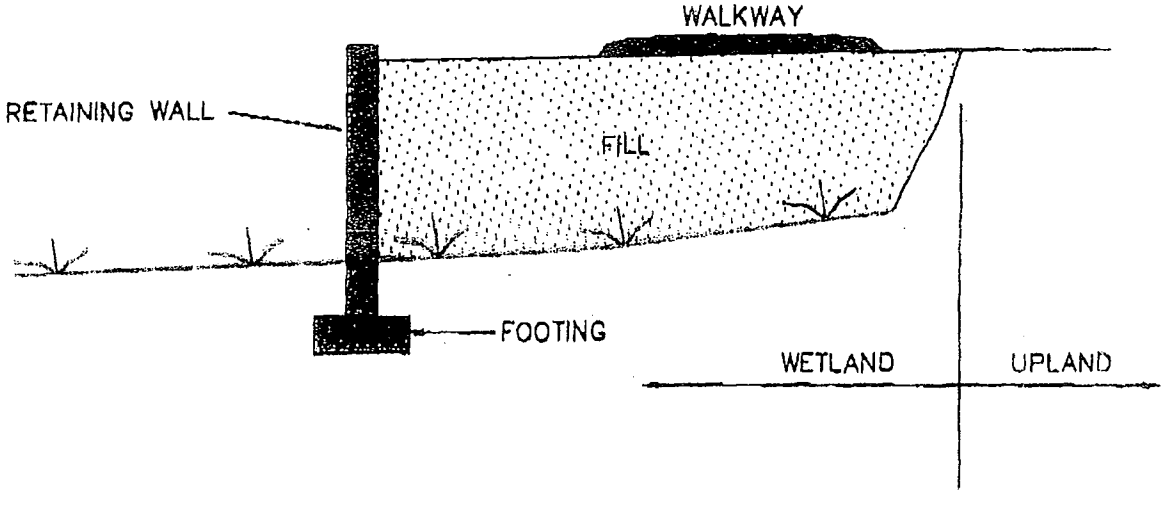
Applicant:
ESTATES, INC.

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

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PERMITTED PLANS



CROSS SECTION
WETLAND IMPACT #2

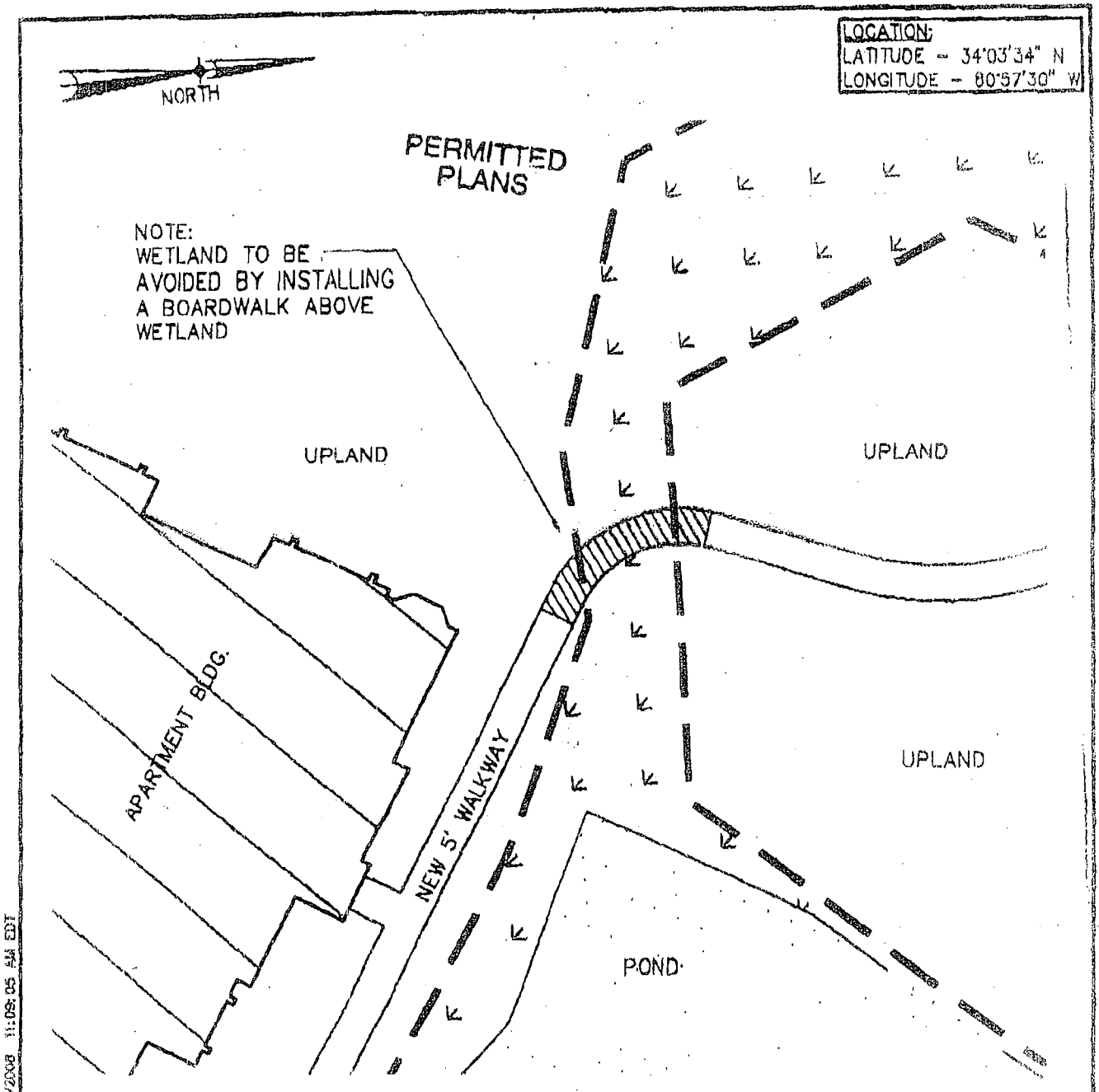
NOT TO SCALE

Project Title: SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
Project Location: RICHLAND COUNTY, S.C.
Applicant: ESTATES INC

BPB Project #05216

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

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WETLAND AVOIDANCE AREA

1" = 20'

TOTAL WETLAND IMPACT = 0.000 ACRES

LEGEND

BOARDWALK

WETLAND (NOT IMPACTED)

WETLAND BOUNDARY WB

Project Title:	SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
Project Location:	RICHLAND COUNTY, S.C.
Applicant:	ESTATES, INC.

BPB Project #05216

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

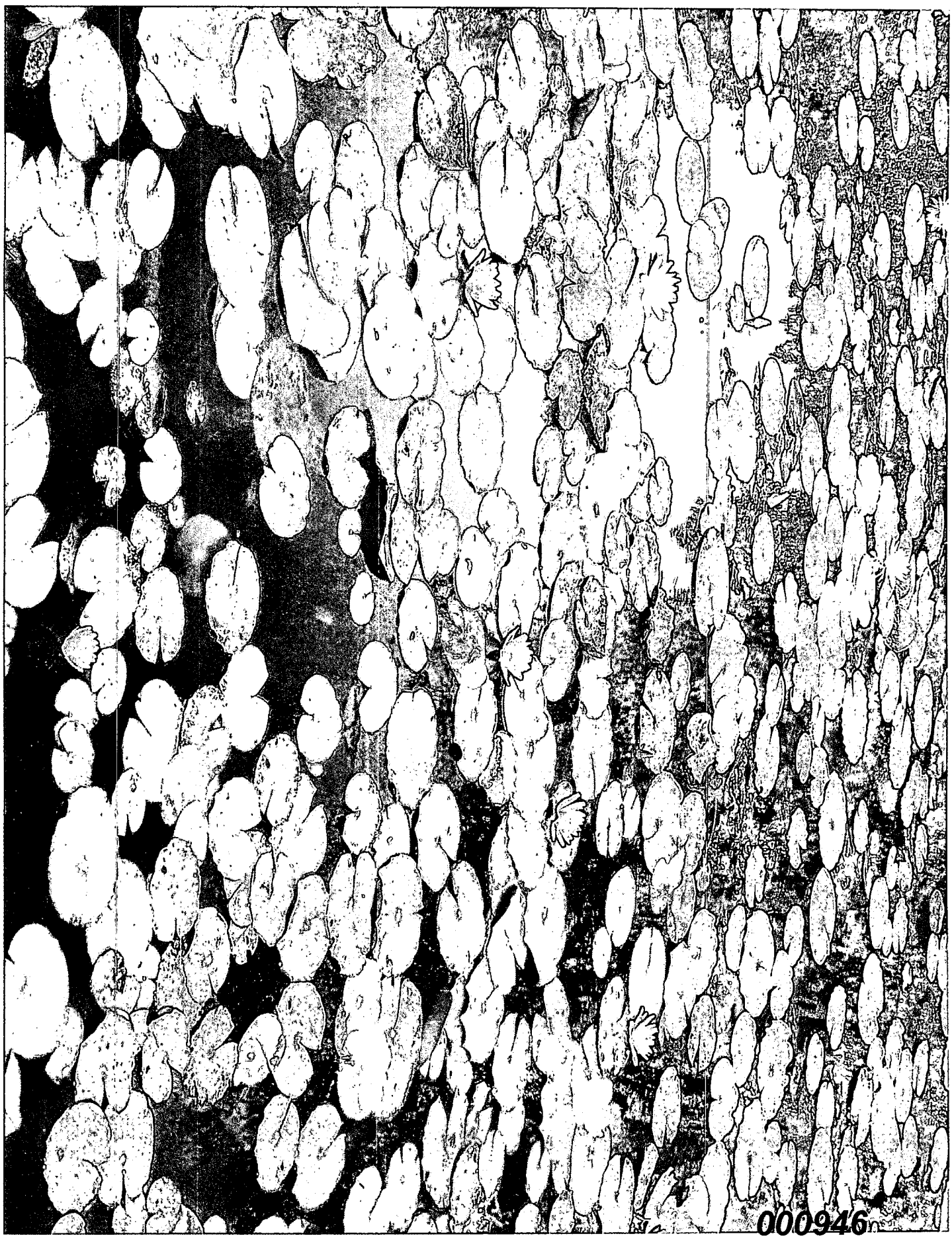
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